

Democracy in the Public Square

Proceedings of Muwatin's
23rd Annual Conference

Mudar Kassis

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Basem Ezbidi

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Democracy in the Public Square: Proceedings of Muwatin's 23rd Annual Conference

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Foreword

This book comprises papers presented at the 23rd Annual Muwatin Conference, entitled “Democracy in the Public Square” held on the 6th and 7th of October 2017 in Birzeit University. Each of the papers included within this book is presented in the original language of writing and presentation.

The 23rd Muwatin Conference marks the first time that the annual conference is held by Muwatin Institute for Democracy and Human Rights at Birzeit University (*hereinafter* ‘Muwatin Institute’) since its relocation to the university. In addition to achieving the goals of the annual Muwatin conferences, which have become a key intellectual and cultural forum, the 23rd annual conference aspired to send a message about the importance of the Muwatin Institute’s relocation to Birzeit University and the continuity of its approach with that of the university.

The conference had an especially international character, with speakers from North America, Europe, Africa and, of course, Palestine. It must be pointed out that, with regret, the Muwatin Institute is unable to host thinkers and researchers from other Arab countries.

The subject of the conference was also of critical importance. It sought to stimulate a discussion about democracy in its

popular (and not populist) form, the necessity of returning to non-elitist conceptions, and to free it from the domination of money, hegemony and unilateralism. It is my belief that the conference was successful in this.

The papers covered in this book offer different approaches to the issues addressed by the conference. The papers attempt to present democracy as a people's right, while addressing the following issues: the failure of the Western liberal model of democracy; the falsity of democracy under colonialism and the effects of colonial violence on the possibility of democratic development in the global South; the absence of a political compass in the midst of alluring slogans about national unity; the alienation of youth and the usurpation of the "public square"; the work of global capitalism in aborting popular revolutions of a democratic nature; the inability of procedural solutions to address central national issues; the falsity of democracy when allied with financial interests; and the manifestations of hegemony on the "street level", through expression, and so forth.

Muwatin Institute seeks to create an environment of societal debate that touches upon our life issues in depth and insists upon integrating theory with practice. It further seeks to play a role in developing Palestinian intellectual production towards the work of the 'organic intellectual', who draws theoretical issues and discussions from daily reality – and is not merely a consumer of slogans, impressions and emotions, but a producer of them and interacting with them.

Introduction

Mudar Kassis

In a world undergoing a phase of large transformations, our future has become a source of worry for us. The world has become a smaller place thanks to advances in technology, communications, and transportation. At the same time, it is also a larger place than before in terms of wars, divisions, and the chasm between the rich and the poor, the weak and the strong. It is a world that continues to spend more on arms than it does on medicine. It is a world inching closer to a third world war, while some of the survivors of the first two world wars are still living. It is a world where some powers have decided to withdraw from some of humanity's most important achievements, and to stop advancing towards freedom, justice, pluralism, solidarity, and justice. The assault on democracy, and retreat from democracy, is what is most worrying to us.

In Palestine, we have become unable to maintain our national and social fabric. We have become unsure of how to achieve liberation, let alone what we would do on the day of our liberation. This is not due to neither inaction nor indifference, but due to an alienation imposed on us by life's demands that

do not stem from our actual needs or design. These needs are of those who wish to commodify us, to a point where even our national struggle and struggle for democracy and human rights have become commodities.

We should move the discussion about the future to the public space, from the hallways to the street. Rather than discuss the future of Palestine in Beijing, Washington, New York and Cairo, we should be discussing the future in Al-Khalil (Hebron)! We must return the Palestinian cause to the public square, back from the hallways of the elites.

Our task has become even more difficult. We now need to liberate the people, maintain their freedom, free the land, defeat occupation, end dependency, and prevent monopolization of the public will (democracy). Yet, that is not all. We must now also liberate democracy itself from its “new form”, a form that has distorted its essence. This essence has been stripped of justice, rationalism, equality, and freedom. In other words, we must redefine democracy. This definition must revolve around our daily lives, rather than around the authorities of the political system and its institutions. The new definition must return the concept of democracy to its origins: the people and their concerns, ambitions, and aspirations.

In an attempt to deal with these concerns, the 23rd Annual Muwatin Conference addressed the distortion of the concept of democracy in practice – generally in the world and specifically in Palestine. It shed light on global transformations in the understanding and practice of democracy. It also sought to return the concept of democracy in our everyday life and in the public space to its pivotal place. Additionally, it aimed to put this important discussion about democracy on the national agenda in the context of Palestinian liberation and Palestinian society’s development needs.

Most discussions about the Palestinian cause have been reduced to issues relating to the nature of political authority and its

structures, while ignoring policies taken at the popular level, such as the organization of public space and Palestinian daily life. One aspect of this reduction is the exaggerated focus on issues related to state and institution building, as well as those issues related to final status issues and peace agreements. Issues are addressed relating to authorities, political or otherwise, but there is an absence of addressing issues relating to the original goal and raison for the existence of such authorities (such as individual and communal self-determination, which requires organization of public space and the questioning of these authorities). There are multiple causes behind this reduction, but they are all intertwined. The most prominent cause comes from the very nature of the peace process, and in its different stages (including Madrid, Washington, Oslo, and post-Oslo negotiations). Another cause is the emphasis on, and interest in, discussions relating to development assistance, as well as other discussions relating to policies, which were formed (or reformed) as a part of the problematic process of shaping the current neoliberal global system.

When it comes to the Palestinian case, the issue of democracy is reduced to an issue of power, the issue of the occupation is reduced to its manifestations (another means of excluding society from politics), and to the fragmentation of the colonial condition into governance issues across multiple fields (usually called the “final status” issues), which include self-determination only superficially. Discussing these issues revolves around mechanisms and their administration, without seeking the public’s view regarding them.

The tendency to reduce political issues to issues of power will not improve the life of people and will not have any clear benefit when it comes to freedom and self-determination. Both freedom and self-determination are main goals of political organizing, and take the form of political authority. This tendency also reduces issues of democracy to issues relating to the political system and its procedures, diverging attention

away from important issues relating to participation and the free will of individuals and groups.

Political discussions raised in the context of these reductions remain fruitless and Manichaeian: One state or two? Fateh or Hamas? Independent state or a confederacy? Negotiations or an *Intifada*? Positions on these issues are discussed in terms of a specific “political realism”, which overlooks vital issues relating to basic assumptions about the essence of the problem that needs a solution. Even the political practice of elections ends in favor of a “majority”, because of negative participation.

While the core of democracy revolves around the fulfillment of the public will, and while multiple countries – including Palestine – have developed tools, systems, and procedures to fulfill this will (such as legal and constitutional reforms, committees to protect human rights and fight corruption, etc.), there is still a shrinking of the necessary public space needed to express and practice this public will.

Several relatively recent global developments have caused this syndrome, or have at least made it more severe, including:

the nature of the neoliberal transformations that appear in the commodification process (or actual privatization) of public space (such as sponsorship of major public events by private companies);

the new security ethos which deprives privacy of any meaning through the privatization of public services (such as the collection of private data by private companies as a condition for the provision of vital services);

the blurred line between what is public and what is private (such as the type of private information available to banks);

modern communication technology, whereas an individual can imagine the emergence of new spaces other than the private and the public, such as the private-public sector;

the public-private sector, and the monopoly of the private sector on public resources (such as the use of GIS for marketing purposes);

and changes in the nature of governance, which does not presume to invest in the public good at the state level (such as funding for higher education), at the local government level (such as urban planning on the assumption that one has to pay for each facility or service provided) and many other features.

The question that arises here is what substantive decisions a citizen could really take if the choices are between products in the market. If the wisdom of the neoliberal plan is accepted, and under the context of the complete dominance of the market and its mechanisms, a new question arises as to whether there is a need for a political system in the first place. In other words, if the political system does not possess any independence from the market, why shouldn't a corporate governance system for social life be a sufficient substitute for political organization? In this case, individuals could become citizens in corporations instead of cities and countries, and they would then show their Microsoft passports when travelling through the airport (instead of an Indian passport for example)!

While the dangers of these changes to the essence of citizenship are of a global nature, it is a very sensitive area in Palestine specifically, which suffers from a higher degree of "exposure", for three reasons at least. First, the fact that Palestine is still in the process of forming its political and economic system (including its market), the current direction of governance will lead to an unbalanced development of the ruling framework, which could be inhumane. Second, the political and economic systems in Palestine are dependent on foreign intervention (whether through economic aid or the dependence of the political system on outside factors), resulting in a higher degree of fragility when it comes to neoliberal transformations, as well as a fertile environment for

political corruption. Third, the absence of a *fait accompli* of what citizenship means (traditions of citizenship) means that no moderation techniques (“conservative” forces to counter change) can be a factor in balancing these processes.

In addition to this, the aforementioned circumstances affect the nature of political movements and the process of national liberation. If these dynamics mean the absence of the nation-state, ambiguity will envelop the fate of the national liberation project.

There are many indicators to show that the aforementioned transformations have become a part of the speech regarding national liberation from the beginning of the 1990s, and its roots could go as far back as the 1970s (coinciding with neoliberal transformations that were at the time called neoconservative policies, coinciding with the emergence of petrodollars). This manifested itself in aspects (perhaps unmentioned) to form the peace process from the beginning of the 1990s, and which will now become common knowledge creating new, and perhaps unprecedented, dynamics for political change and new trends and forms of resistance. The more these trends are rooted in the daily lives of Palestinians, the greater the potential for their adverse impact on achieving peace and self-determination in the traditionally recognized form.

In light of this, there is a need to study the type of intervention needed that could lead to a democratic transition that is not doomed to failure. There is a need for a transition project that is not relegated to merely an idea or an ideal type, but as a project to guarantee the perpetuity of the democratic issue. In Palestine, we still need to form this subject before we begin protecting it.

Therefore, Muwatin's 23rd conference was designed to examine the issues representing the abovementioned transformations and their beginnings, results, and implications, along with the reality and prospects of democracy globally and locally. These issues include the expected effects of the stumbling of the

world system in its current form, the development of tribal and identitarian tendencies, securitization, as well as the increase in talks about justice on the global scale due to the overlap caused by globalization (*i.e.* solutions to issues relating to justice cannot be found within a single state). It also touched upon the impossibility of building sovereign political democracy under occupation, but the ability to prepare for it in the stage of national liberation. The Palestinian national agenda must be formulated in a manner that simultaneously contributes to the national and social liberation processes. Further, the project of building a democratic state in Palestine must come with social components such as health care, education, social security, the role of the security sector, and the performance of judicial and tax systems, in order to enhance the survival and steadfastness of Palestinians in their homeland.

This is all the strategic balance available to face the Zionist project in Palestine. The nature of local and central Palestinian governance is often framed through open discussions of urban planning, the privatization of municipal services (generally what facilities and services should and should not be privatized), water resources management, environmental issues, and their relation to social democracy and decision-making mechanisms. The nature and role of Palestinian civil society is crucial to discussing aspects such as the agendas of various civil society institutions, representation, coalitions, forms of organization and action, and how to reconstruct organized frameworks with a broad constituency such as unions, political parties and bodies of various types. These bodies are usually relied upon in the process of change and decision making.

The papers and discussions in the conference touched upon many of these issues in depth. These discussions and their conclusions can be summarized as issues that need to be solved, and in need of joint political and academic work, in order to form the basis for a better life. The issues range from the status of democracy, its legitimacy, problems of

hegemony, public peace, failure of the liberal model, misery of the neoliberal model, colonialism, neocolonialism, and the Palestinian national project, among others.

There is a consensus that the state of democracy is declining and that there is a dilemma in the nature of the political democratic system (regardless of the different modes or forms of democracy). We understand, naturally, that there is a great degree of disparity between regimes that call themselves “democratic”. These differences are manifested in different areas such as, for example, the level of protection the state and its apparatuses provide for citizens, how involved the state is in the organization of life, welfare and others. However, the general trend is worrying. This decline not only threatens to exacerbate disparities in wealth and increase poverty, marginalization, and exclusion, but may also even lead to wars (including a third world war). We, as intellectuals (both academic and political), must think seriously about our role in this stage.

It has become clear that there is a decline in the legitimacy of regimes classified as democratic, which have resorted to “legislation”, and creating systems and procedures to make up for their decaying legitimacy. They are then used to justify its increased hegemony and encroachment on freedoms under the banner of protecting the people from security threats, protecting sovereignty, the State’s prestige and public peace, among others. However, the problem seems to be worsening, where legislation cannot give legitimacy (since any law that fails to embody legitimacy is a failed and illegitimate legislation!). Such attempts to gain legitimacy through legislation become exclusionary actions, designed to protect the interests of the elites and their allies while undermining the democratic system. However, since the perceived alternatives to the democratic system are no better, and do not constitute a legitimate alternative, their task becomes to preserve the regime legitimacy by insisting on legitimacy as derived from the sovereign rather than from their elites alone.

Regarding the question of possible alternatives able to achieve such legitimacy, the answers seem very difficult in the current globalized situation, where monopolies dominate and warlike tendencies are exacerbated. Despite the formation of multiple popular democracies in the last two decades (especially in South America), the spread of speech calling for social democracy, and the increase in criticism of the capitalist system and its neoliberal phase, the trends around the globe point to a worsening of the crisis without addressing alleviation.

These trends express general weariness from the western liberal style of democracy, the decline of its credibility, the exposure of its deception – which situates elites as rulers rather than representatives of the people – and the globalized economy coincides with the emergence of radical trends in many countries. Extremist tendencies, separatism, and individualism seem to be some of the features of neoliberal changes which, within a project to commodify life and identities, encourages overproduction as a replacement of liberal plurality. This system has also encouraged the development and renewal of many ethnic, racial, religious, territorial, and tribal identities, and encourages the creation of endless minorities who feel they need the protection of authority, and sometimes even foreign intervention.

The changes affecting the world since the mid-1970s – known as “neoconservative policies” in the West, and “Chinese reformations” in the East – were accompanied by high hopes for reform, transitioning capitalist countries towards becoming welfare states. This was followed by the resounding collapse of the socialist system led by the Soviet Union, which eliminated another part of the hope for justice and equality and established a “new world order” that turned many people hopeless, struggling to make ends meet. It brings to mind the famous saying “man is wolf to man”. Today, it may have a different version: “man is an entrepreneurial wolf to man”.

After a quarter of a century of the “New Order”, the world has become intolerable, exploitation is rising, class differences are widening, the accumulation of wealth has reached record levels, and new forms of slavery have emerged and developed. All of this has led to a growing tendency to support “populist” regimes, with ‘strong’ leadership that tends to behave in a manner reminiscent of barbarity. It should be noted here that these types of regimes descended from liberal, socialist and mixed systems, and are located in both the North and the South. In other words, this political pattern is a metaphor for the reality of this miserable world!

This reality can only be seen in a worse light in Palestine. The international reality makes the Palestinian issue a relatively small issue. The magnitude of the danger it poses to the global system can be neglected in comparison to the other emerging problems. Relying on international law and mechanisms is an approach that cannot bear fruit in the current world system, whereas the actions of most major (and minor) powers are sending a clear message about their respect for international law: moving the US embassy to Jerusalem; foreign military presence (or part of it at least); the aggression against Yemen; and other issues in the Arab world and world in general – all very clear indicators of the disregard of international law. This situation poses a grave danger, both in terms of pushing the Palestinians towards reacting to barbaric behavior or, in terms of the sustainability of the current situation, puts the Palestinian people and their future on the brink. At a time when many people have a vision of return to a previous state (regardless of the actual possibility), giving them a glimmer of hope, the Palestinians do not have anything to return to. Therefore, they chant the slogans like “dissolving the Palestinian Authority” and “handing over the keys to the occupation”. They do not realize that the occupation is unwilling to actually “receive the keys”.

Palestinians are in need of a national project. The slogans they employ today are not that. Let us take, for example, the

slogan of “the state”. It is a slogan without content. There is no clarity as to what it constitutes, how to build it, and who is going to build it. The state is the framework for guaranteeing freedoms, education, health, employment opportunities, and other components in the exercise of self-determination. Palestinians need a project beyond the slogan of the state, and the slogans of unity and division. They need a project that embodies the mechanisms of self-determination. Of course, the slogan of removing the occupation remains necessary, but the question remains: What is the Palestinian national project? Who are its originators? This project will not be formulated with the mechanisms and tools available today, which are characterized by a lack of communal discussion. The first step in crystallizing a Palestinian national project is to launch an inclusive, non-sectarian societal discussion that is not ruled by colonial detriments. There is, of course, another question of equal importance relating to the mechanisms of survival, until the culmination of the national project.

There is no doubt that the question regarding the national project is the same regarding the youth, because the question regarding the youth is, necessarily, a question about the future. Society (regardless of the ages of those in it) has a responsibility towards the future. Therefore, the question about youth is also a question about exclusion and inclusion, and not about age. Society is moving and the youth are the natural body moving it, but there is no national project for the youth, but one for the rest. There are social and political forces that demand change, and others that wish to maintain the status quo. It is likely that those seeking change are younger (on average). Yet the issue is an issue of retention and exclusion from decision-making, and not a question of those who are old and those who are young.

This summarizes – in part, certainly – the most important directions and issues addressed by the conference, and undoubtedly deserves to be discussed more deeply and thoroughly.

The Impact of Neoliberalism on Democracy

Manfred Nowak

Democracy and Human Rights

Democracy and human rights are closely interlinked. In well-functioning democracies, human rights are usually better respected and protected than in dictatorships or countries with similar autocratic or authoritarian structures. This empirical statement applies to all human rights despite the fact that certain human rights, above all economic, social and cultural rights, might also be enjoyed in communist and other less democratic regimes. Political rights and freedoms, on the other hand, define the basic characteristics of democratic governance (Nowak, *Politische Grundrechte* 1988, Nowak, U.N Covenant on Civil and Political Rights: CCPR Commentary 2005). The full enjoyment of political rights and freedoms, based upon the collective right of peoples to self-determination, is constitutive for any genuine democracy. Non-democratic regimes, therefore, necessarily violate an important dimension of human rights, as defined

in international law. Since all human rights are indivisible, interrelated and interdependent, as the international community solemnly proclaimed during the 2nd World Conference on Human Rights, held in 1993 in Vienna, any structural violation of political rights and freedoms necessarily has a negative impact on the enjoyment of other human rights and freedoms.

Right to Self-determination and Political Participation

Democracy is based on the principle of the sovereignty of the people. This important principle is laid down in common Article 1 of the two International Human Rights Covenants of 1966, which guarantee to all peoples the right of self-determination: "By virtue of this collective right they freely determine their political status, freely dispose of their natural wealth and resources and freely pursue their economic, social and cultural development." The wording of this provision and the historical context of its adoption make clear that the right of self-determination primarily applies to peoples under foreign occupation as well as colonial and other forms of external domination and subjugation. In such extreme forms of subjugation, peoples under colonial or similarly alien rule have a right to independence. In addition, the right of self-determination protects against extreme forms of external economic exploitation, which in the time of globalisation dominated by neoliberal market forces (land grabbing, extractive industries etc.) may gain practical significance.

The internal political dimension of the right of self-determination follows from the words that all peoples shall freely determine their political status. This democratic element of the right of self-determination is further defined by the general right to political participation and a variety of political freedoms contained in the International Covenant on Civil and Political Rights (CCPR). According to Article 25 CCPR, every citizen shall have the right and the opportunity to take part in

the conduct of public affairs, directly or through freely chosen representatives. Direct political participation can be exercised through referenda over fundamental questions of political governance and similar instruments of direct or plebiscitarian democracy, as we know them, e.g., from Switzerland. However, even in tiny Swiss mountain villages, the original idea of Jean-Jacques Rousseau that the “citoyens actifs” decide every political issue by means of a public referendum in person on the marketplace has never been realised. Direct decision-making by the people, if at all, can only be applied to the most fundamental issues, such as adopting a new constitution or joining a supra-national organisation, such as the European Union, or leaving it as in the case of the Brexit.

Political Rights

Political participation of the people, therefore, primarily takes place in the form of representative democracy with free and fair elections. Article 25(b) CCPR provides for the right to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electorate. This provision enumerates the principles of universal, equal, secret, free, fair and genuine elections, but does not define which political bodies shall be elected. The same is true for similar provisions in the American Convention on Human Rights (ACHR) and the African Charter on Human and Peoples’ Rights. Only Article 3 of the 1st Additional Protocol (AP) to the European Convention on Human Rights (ECHR) restricts the right to free elections to the choice of the legislature. This selection is grounded on the principle of separation of powers, which goes back to Montesquieu and is characteristic for the “Western” type of representative democracy, as opposed to the Soviet model of “peoples’ democracy”. With the implosion of the Soviet Union and its communist allies in Central and Eastern Europe, the “Western” type of representative democracy gained universal recognition, first during the 2nd World Conference on

Human Rights 1993 in Vienna. It means that the citizens of a given state (sometimes also long-term residents) have a right to elect the legislative power (parliament, congress, national assembly etc.), which enacts laws that shall be implemented by the executive power and the judiciary. The principle of the rule of law secures that the executive power (president, government) is strictly bound by the laws enacted by the legislative power and is controlled in the exercise of power by an independent judiciary. The principles of representative democracy, separation of powers (checks and balances) and rule of law are thus strongly interrelated. While in parliamentary democracies (British “Westminster” model), the parliament is sovereign and the government is dependent on the trust of the parliament, in presidential democracies (US model), the president is also elected by the people and is head of the government, which is not directly dependent on the trust of the legislative power (congress). Needless to say, there exist many mixed models and states enjoy a broad margin of discretion in the way how they design the precise structure of democratic governance. From a human rights point of view, however, it is essential that the citizens have a right to elect, by universal, equal, secret, free and fair suffrage, the legislative power, and that the executive power is bound by the laws enacted by the legislative power as well as controlled by an independent judiciary.

The right to take part in the conduct of public affairs is further underlined by the right of citizens, on general terms of equality, to have access to public service in their country. This provision was adopted in order to ensure that both elected “peoples’ representatives” (such as presidents or mayors) and appointed civil servants should represent the entire population and prevent privileged groups (such as the nobility, men or members of a ruling political party, ethnic or religious group) from monopolising public service. On the other hand, the right of equal access to public service does not preclude states from placing conditions on access to public service, such as a minimum age, level of education, standard of integrity or special qualifications.

Political Freedoms

The right to political participation is central for every democracy. However, there are many other human rights, which are essential for the functioning of democracies, above all political freedoms. Freedom of association (Article 22 CCPR) is important as it ensures party pluralism. Everyone (not only citizens) has a right to form and join a political party, which may participate in parliamentary or other elections. This provision, therefore, excludes one-party systems, as we know them from many communist or fascist states, in which one ruling party dominates every aspect of public life and where the formation of other political parties is strictly prohibited. One-party regimes were also widespread in many African states during the early years after having achieved political independence from colonialism. In contrast to so-called “peoples’ democracies”, the human right to freedom of association, therefore, ensures multi-party democracy. This does not exclude the right of states to prohibit extremist political parties, which aim at the destruction of democracy, human rights and the rule of law. Such a provision is, e.g., contained in the German Constitution of 1949 in order to avoid a situation in which a fascist party of “National-Socialists”, led by Adolf Hitler, had come to power by means of democratic elections with the clear aim of establishing a racist and fascist dictatorship (concept of “militant democracy” or “streitbare Demokratie”). Such a prohibition of misusing political rights and freedoms is also contained in Article 4 CCPR which ensures that nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised therein.

The most general political freedom is freedom of opinion, expression and information, as guaranteed in Article 19 CCPR. While freedom of opinion, similar to freedom of thought, conscience, religion or belief in Article 18 CCPR, refers to the

private “forum internum” of every human being, freedom of expression includes the “freedom to seek, receive an impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice” (Article 19(2) CCPR). For a well-functioning democracy, freedom of expression, and in particular, freedom of the media, is absolutely essential. As freedom of association ensures party pluralism, freedom of expression shall guarantee media pluralism. The right to free and fair elections can only be ensured if every voter is able to form his or her opinion freely, i.e. without manipulation by the government or by private actors. Media freedom, therefore, is not only threatened by state censorship, but also by media concentration in the hands of a few powerful individuals, such as Rupert Murdoch or Silvio Berlusconi. Freedom of expression requires governments on the one hand, to respect private media, and on the other hand, to protect media pluralism by restricting the power of those who aim at monopolising media ownership. In times of global private media concentration and “fake news”, the role of public broadcasting corporations, such as BBC, with an obligation to provide objective and pluralistic information about political questions seems to gain significance again. The obligation of states to protect media pluralism also gains importance in times of globalisation driven by neoliberal economic policies and in times of the Internet being controlled by global transnational corporations, such as Apple, Microsoft, Google, Facebook, Twitter and Instagram. New social media can play a crucial role in fostering democratic movements, as we have seen during the “Arab spring” in 2011. On the other hand, new social media, the Internet and cyber-criminality are also increasingly used to empower populists, to foster radicalism and extremism, to produce “fake news” and to manipulate the people, referenda (such as about the Brexit) and elections (as in the US). Since freedom of information and expression is essential for the well-functioning of democracies, there

is probably no other area where the impact of neoliberalism on democracy is more evident and visible. It is one of the big challenges for well-functioning democracies to ensure objective and pluralistic information of the people in times of the Internet and neoliberal media power.

The right to freedom of assembly in Article 21 CCPR is a particular form of expressing a political opinion. Public gatherings, street demonstrations, protest marches, political rallies and similar assemblies, both indoors and outdoors, in the streets, in private or public property, constitute a powerful means of the people to organise support for a specific political idea and to express this political opinion to a broader audience. The early mass demonstrations of the “Arab spring” in 2011 even resulted in the overthrow of powerful and long-established dictators in Tunisia, Egypt and Libya. On the other hand, the “power of the street” may also be used for anti-democratic purposes, as we have seen with the rise of fascist movements during the time between the two World Wars. This is one of the reasons, why international human rights law restricts this important political freedom to peaceful assemblies. Authoritarian governments also often misuse freedom of assembly to organise governmental demonstrations as a means of showing to the people how much popular support they enjoy. Examples range from Nazi Germany to present China and North Korea. In view of its significance for democratic governance, everyone has the right to organise a peaceful assembly without having to ask for prior government permission. On the other hand, states may require prior notification in order to re-route traffic in public streets and to provide security against any form of violence, either by the demonstrators or by their opponents. States not only have an obligation to respect public assemblies, but also to protect them even when they are hostile to the respective governments. If anti-government demonstrators are attacked by pro-government supporters, the police nevertheless has an obligation to protect the anti-government demonstrators

against their attackers. Whether the police is acting in such a neutral spirit often serves as litmus test for the maturity of a democracy. In countries where the government organises its supporters to march against anti-government demonstrators, this usually results in violent clashes and casualties.

The right to peaceful assembly, as all other political freedoms, carries with it special duties and responsibilities and needs to be exercised in a responsible manner. For example, Article 20 CCPR explicitly provides that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In addition, all relevant articles authorise governments to restrict the exercise of these political freedoms in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. These limitation grounds seem to be very vague and excessive. They may, therefore, only be imposed in conformity with the law and if “necessary in a democratic society”. This requirement is taken from the European Convention on Human Rights (ECHR), where it applies to all political freedoms as well as to the right to privacy and freedom of religion in Articles 8 to 11 ECHR. The drafters of the Covenant decided to use the term “necessary in a democratic society” only with respect to freedom of assembly and association in Articles 21 and 22 CCPR, but not with respect to other political and private freedoms. Nevertheless, this phrase may be interpreted as another proof that even in a human rights treaty with universal application, the existence of a democratic society and democratic governance structure is presupposed. In its long-term jurisprudence since the 1970s, the European Court of Human Rights has interpreted this provision as requiring pluralism, tolerance and broadmindedness as necessary elements of a democratic society. Even if certain political expressions are shocking or disturbing for ordinary people, they have to be tolerated in a democratic society for the sake of upholding democracy, pluralism and human rights.

Political rights and freedoms have not been developed to protect the majority but to empower those who hold minority opinions, which might be unpopular and often uncomfortable to the average citizen.

Rights to Equality, Non-discrimination and Minority Protection

This brings me to a final essential element of democracy laid down prominently in international human rights law: the aim of achieving equality and non-discrimination and of protecting minorities. According to Article 26 CCPR, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Equality before the law goes back to the Enlightenment of the 18th century and is directed against any arbitrary enforcement of laws by the executive power. Equal protection of the law has been described as a 19th century concept, which requires the legislative power to ensure substantive equality by eliminating, as far as possible, social and economic inequalities among the people. The social insurance legislation since Otto von Bismarck in Germany, socialist and communist revolutions in the 20th century, the New Deal legislation under Franklin D. Roosevelt in the US and the social welfare and social security legislations in many European and other states during the 20th century were based on the idea that the democratically elected legislative power has a responsibility to provide substantive equality through social welfare and labour laws. These laws aimed at protecting the people against social risks (sickness, accidents, disability, old age, unemployment, maternity etc.) and economic hardship. The social welfare state is the

result of the right to equal protection of the law, and more specifically, of a broad range of economic, social and cultural rights laid down in the International Covenant on Economic, Social and Cultural Rights (CESCR) of 1966 and similar regional human rights treaties. With the development of the right to the equal protection of the law and, as a consequence, comprehensive economic, social and cultural rights, the state assumed a new role and legitimacy. While the liberal state of the 18th and 19th centuries, based upon social contract theories of the Enlightenment, derived its legitimacy from its power of protecting its citizens against external and internal violence, the social welfare state of the 20th century derived its legitimacy from providing prosperity and social justice. While personal security from violence (“freedom from fear” in the words of Franklin D. Roosevelt) could also be ensured by an authoritarian state, such as Thomas Hobbes’ “Leviathan”, social security from poverty (“freedom from want”) is based upon substantive equality and requires democratic governance.

The United Nations, an organisation that was established in the aftermath of the horrors of racism, fascism and National Socialism, has since its very beginnings placed the battle against discrimination at the forefront of its human rights activities. Apart from special treaties against racial discrimination or discrimination against women, the prohibition of all forms of discrimination runs like a red thread through both Covenants. While the explicit non-discrimination grounds mentioned in Article 26 CCPR refer to the most obvious forms of legal and factual discrimination of the past, other forms of discrimination on the basis of sexual orientation and gender identity, age and genetics have been added in more recent years. Prohibition of discrimination means that States have an obligation to eliminate all forms of discrimination from its laws and governmental practices. The right of equal and effective protection against discrimination goes beyond state sponsored discrimination and requires states to take effective measures to protect people against discrimination in the private

sphere, such as in the labour and housing market, by privately owned hotels, restaurants and similar service providers. Since democracy is based on the principle of peoples' sovereignty, where every citizen has an equal vote to participate in the political decision making, democratic governance functions better in more egalitarian societies.

The right to equality and non-discrimination also means that affirmative action might be needed to eliminate stereotypes, to accelerate de facto equality and to provide temporary special measures, such as quotas and preferential treatment, in order to empower groups that have been discriminated against for a long time, such as women and persons of African descent. This principle also applies to minorities. Contrary to a common misunderstanding, democracy does not simply mean the rule of the majority or "the winner takes it all". Democracy means that the people, i.e. all people or citizens of a particular country, have an equal right to political participation and decision-making, and that in a pluralistic society, based upon the principles of tolerance and broadmindedness, minority positions and views shall be equally taken into account. Article 27 CCPR is a special provision, which guarantees to members of ethnic, religious or linguistic minorities the right to enjoy their own culture, to profess and practice their own religion, or to use their own language. Combined with the democratic principles of equality, non-discrimination and pluralism, this protection shall also be extended to other types of minorities, such as the LGBTI community, persons with disabilities, the elderly, migrants and refugees. Diversity management is a major requirement for pluralistic democratic societies.

This short review of international human rights law shows that all major requirements of democratic governance, such as the right of peoples to self-determination, political rights and freedoms, equality and non-discrimination, minority protection, pluralism, tolerance and broadmindedness, are laid down in the major universal human rights treaties.

Taken together, one might speak of a human right to democratic governance. Of course, there are different models of democratic governance, and states have a fairly broad sovereign power of discretion in defining and designing their respective type of democratic governance. However, any attempt of moving towards more “illiberal”, “guided” or “authoritarian” democracies, as is currently advocated and practiced by authoritarian and populist politicians, soon leads to structural violations of core human rights principles. Democracy and human rights are strongly interlinked and interdependent. In well-functioning democracies, all human rights are better protected than in more autocratic regimes. At the same time, the domestic implementation of human rights, which are enshrined in legally binding international treaties with almost universal ratification and acceptance, necessarily leads to more democratic governance structures.

Rising Economic Inequality

In his bestseller “Capital in the Twenty-First Century”, published in the English translation 2014, the French economist Thomas Piketty presented the most comprehensive empirical analysis of the historical development of income inequality in a number of countries, above all the five industrial countries USA, Japan, Germany, United Kingdom and France (Piketty and Goldhammer 2014). His analysis is based on the World Top Incomes Database, which has been developed by the joint work of some thirty researchers around the world. It is the largest historical database available concerning the evolution of income inequality, based primarily on income tax data. He distinguishes between income from labour (salaries, wages, bonuses etc.) and income from capital (rent, dividends, interests, profits, capital gains, royalties etc.). One of his main indicators for measuring income inequality is the percentage of the 10% richest people (top decile) in the overall national income of the respective countries. At the beginning of the

20th century, this percentage was higher in Europe (in the UK almost 50%) than in the US (just over 40%). As a result of two World Wars and the World Economic Crisis in the 1920s and 1930s, this percentage decreased to less than 35% in the late 1940s. During the time of economic reconstruction, the “Trente Glorieuses” between 1945 and 1975, this percentage remained fairly much the same, even in the US thanks to a policy of social justice and welfare. In Sweden, the country with the most advanced social welfare policy, this percentage even decreased to less than 25% in 1980. These thirty years of economic growth and reconstruction, combined with high income tax and social welfare policies, based upon the economic theories of John Maynard Keynes, were also the time when the two International Human Rights Covenants have been drafted and adopted by the UN General Assembly in 1966. Although the West had succeeded in 1950 to split the envisaged Universal Convention on Human Rights into two different treaties, both Covenants were adopted on the same day and constitute two parts of what has been often called the International Bill of Rights. In other words, the international community at that time had recognised already the equality and indivisibility of civil, political, economic, social and cultural rights, a dogma which was later reaffirmed during the second World Conference on Human Rights 1993 in Vienna. In other words: the social justice and social welfare policies, which marked some thirty years of economic reconstruction after the end of World War II in Europe, the US and other parts of the world, had found their international legal expression in the International Covenant on Economic, Social and Cultural Rights, which provides for the progressive realisation of the rights to education, health, work, social security, food, housing and an adequate standard of living for all human beings.

Piketty then shows that since the 1970s and 1980s economic income inequality has sharply increased again, most significantly in the US and the UK, as a result of neoliberal economic policies. In the US, economic income inequality had reached in

2010 almost 50% and is even higher than in the UK before the outbreak of World War I. In the UK it had risen to more than 40%, while in Germany and France it remained between 30 and 40%, in Sweden even below 30%. Piketty then compares the relationship between the total private wealth (real estate, financial assets, professional capital) per country expressed in years of national income. Before the outbreak of World War I, the total private wealth in European countries, such as Germany, France and the UK, hovered around 6 or 7 years of national income. Until 1950, this capital/income ratio decreased to roughly 2 or 3 years, while recently it increased again to between 4 and 6 years. This leads him to his main conclusion that in the 21st century, income from capital (including inheritance) is again much more important than income from labour, similar to the situation in the 19th century (Piketty and Goldhammer 2014, 26): “When the rate of return on capital significantly exceeds the growth rate of the economy (as it did through much of history until the nineteenth century and as is likely to be the case again in the twenty-first century), then it logically follows that inherited wealth grows faster than output and income. People with inherited wealth need save only a portion of their income from capital to see that capital grow more quickly than the economy as a whole. Under such conditions, it is almost inevitable that inherited wealth will dominate wealth amassed from a lifetime’s labour by a wide margin, and the concentration of capital will attain extremely high levels – levels potentially incompatible with the meritocratic values and principles of social justice fundamental to modern democratic societies.”

The well-known British economist Anthony Atkinson, in his last book of 2015 entitled “Inequality – What can be done?”, arrives at very similar conclusions and also asserts an “Inequality Turn” in the US and UK taken in the 1980s, i.e. at the time when Ronald Reagan and Margaret Thatcher had introduced radical neoliberal economic reforms (Atkinson 2015). He considers inequality as one of our most urgent problems and presents a comprehensive set of policies that

could bring about a genuine shift in the distribution of income, including reforms in technology, employment, social security, the sharing of capital, and taxation. In his opinion, there are many reasons to tackle inequality that are directly related to human rights and democratic governance (Atkinson 2015, 301): “If we reduce inequality of economic outcomes, then this contributes to securing the equality of opportunity that is seen as a key feature of a modern democratic society. Social evils, such as crime and ill-health, are attributed to the highly unequal nature of societies today. These provide an instrumental reason for seeking to achieve lower levels of poverty and inequality, as does the fear that extremes of inequality are incompatible with a functioning democracy. And there are those, like me, who believe that the present levels of economic inequality are intrinsically inconsistent with the conception of a good society.” (Atkinson 2015, 301)

In recent years, the Organisation for Economic Cooperation and Development (OECD) published a number of studies on the basis of the OECD Income Distribution Database, which in principle confirm the studies of Piketty and Atkinson and which try to provide answers to the questions why inequality keeps rising and why less inequality benefits all (OECD 2011, Nowak, Menschenrechte: Eine Antwort auf die Waschende Ökonomische Ungleichheit 2015). All studies conclude with the “need to go social” (OECD 2011, 19) by various means, such as increasing income taxation for higher incomes, reintroducing inheritance and property taxes as well as financial transaction taxes.

Already in 2009, the two British epidemiologists Kate Pickett and Richard Wilkinson published a well-known book entitled “The Spirit Level – Why More Equal Societies Almost Always Do Better” (Wilkinson and Pickett 2009, Judt 2010). On the basis of a wealth of social and health data collected over decades, the two authors establish an empirical correlation between the extent of income inequality and a number of health and social

indicators. They show that a high level of inequality correlates to a higher rate of mental diseases, drug abuse, child mortality, teenage pregnancies, obesity, violent crimes and incarceration. More generally, the two authors prove that a higher level of equality leads to more trust among the people and more social coherence, which is essential for democratic societies.

Privatisation of Core State Functions

Another direct and highly visible result of neoliberal economic policies is the trend towards privatisation. After all, privatisation, deregulation and the minimization of the role of the state constitute the mantra of neoliberal economic policies, as defined in the “Washington Consensus” of 1989. Under the military dictatorship of General Pinochet in Chile during the 1970s, the so-called “Chicago Boys”, i.e. young economists from Chile who had been trained during the 1950s and 1960s at the Chicago School of Economics in the economic theories of Friedrich von Hayek and Milton Friedman, got their chance to implement a radical policy of privatisation, with far-reaching consequences for social security. Margaret Thatcher and Ronald Reagan are well-known for their deliberate neoliberal policies of privatisation and deregulation. Most governmental functions which have been subjected to such policies during the last decades have no or only a limited bearing on human rights and the functioning of democracy. This applies, e.g., to state industries, banks, media, or public utilities, such as gas, electricity, roads, airports, railroads, public transport, postal and communication services. On the other hand, there are certain human rights, the implementation of which requires states to take specific measures, which are generally considered inherent governmental functions of democratic states. In a recent book entitled “Human Rights or Global Capitalism – The Limits of Privatization”, I analysed the impact of global trends towards privatisation on selected human rights, namely the rights to education, health, social security, water, personal

liberty and personal security (Nowak, Human Rights or Global Capitalism: The Limits of Privatization 2017).

Rights to Education, Health and Social Security

The extent to which schools, universities, hospitals and other health care services, pensions and health insurance providers, water and water management systems, prisons, the police and the army can be privatised, depends, of course, on the precise scope and content of the respective human rights. To establish private schools and to send children to religious schools is even explicitly recognised in international human rights law. On the other hand, all children have a human right to free and compulsory primary education, and states have an obligation to progressively introduce free education also in secondary and higher education. Unless states wish to subsidise privatised schools, the possibilities of transnational corporations to make formidable profits with such schools are fairly limited, as states are bound to provide free education to all (not only poor) children. The right to the enjoyment of the highest attainable standard of physical and mental health is less explicit about the obligation of states to provide health care free of charge as a core state function. On the other hand, states are required to create conditions, which would assure to all medical service and medical attention in the event of sickness. Whether these medical services are provided by a public health service or by private doctors and hospitals, is within the discretionary power of states as long as they ensure that all sick persons, including the poor, the elderly and other disadvantaged groups have equal access to such services. If the state relies largely on private health care providers, it must ensure, by means of an effective social security system, such as an obligatory health insurance scheme, that the risks of accidents and sickness are shared by the community and are not to be borne by the individual himself or herself. The same is true for other similar risks, such as disability, old age, unemployment or emergencies. The human right to social

security, one of the most important achievements of the social welfare state, implies that human beings should not have to be afraid of drifting into poverty if they get sick, old, unemployed or disabled. The term “social” illustrates that the state has to provide, as one of its core functions, the necessary safety nets by means of pooling such risks and by deliberate distribution from the wealthy to the poor, the healthy to the sick, the employed to the unemployed, and from the younger and actively employed generation to the elderly. The privatisation of pension funds, which we presently can observe in many countries, in essence means that the pooling of funds on the basis of a tacit “generations agreement” is gradually replaced by a system where everybody is responsible for his or her old age pension and where private insurance companies make huge profits. This clearly constitutes a retrogressive measure in violation of the human right to social security in Article 9 CESCR. The same holds true for budget cuts in the welfare system and the gradual dismantling of other aspects of the social security system by outsourcing these services to profit oriented business companies.

Right to Water

Since water is a natural resource, which has been traditionally considered a public good, the people in most societies are particularly sensitive toward the privatisation of water and water management, as the “water wars” in Bolivia and other countries vividly illustrate. Nevertheless, the World Bank, the IMF, the EU and other international organisations pursuing neoliberal economic policies have been actively pushing for the privatisation of water, thereby creating huge profits for a few transnational corporations. In reaction, the international human rights community, driven primarily by the Global South, has been advocating for the explicit recognition of a right to water, to be derived from the already existing social rights to health and an adequate standard of living. A growing number of states also recognise the right to water in their respective

constitutions and, thereby, explicitly prohibit the privatisation of water and water management. In other countries, courts have stopped all too far-reaching plans of privatising water, as this is considered a retrogressive measure in violation of a core state human rights obligation.

Rights to Personal Liberty and Dignity

A similar reverse trend can be observed with respect to the privatisation of prisons. Originating in the United States, the business of making profits by running private prisons and other detention facilities spread since the 1980s to the United Kingdom and other countries, such as Australia, New Zealand, South Africa and Canada. However, in a landmark judgment of 2009, the Israeli Supreme Court has held that, even if one assumes (as the advocates of prison business argue) that for-profit companies are more effective and cheaper than state-run institutions, and that they would reduce the number of human rights violations in detention, the very idea of delegating the custody of prisoners to for-profit companies and thereby treating prisoners as a commodity violates their human rights to personal liberty and dignity. This courageous judgment corresponds to a certain reverse trend in other countries. In Canada, New Zealand and to some extent also Germany, the neoliberal policies of prison privatization introduced by conservative governments have later been reversed when more liberal or labour governments took over. The UN Human Rights Committee also criticized New Zealand and Australia for their prison privatisation policies by reminding them of their obligation under Article 10 CCPR to treat all persons deprived of liberty with humanity and with respect for the inherent dignity of the human person. Article 10(3) CCPR explicitly provides that the essential aim of the penitentiary system shall be the reformation and social rehabilitation of prisoners. It is difficult to see how private prison operators, who are primarily interested in profits and are often paid according to the number of prisoners, can facilitate the reformation and early release of

prisoners if they are at the same time interested, for business reasons, in keeping their “clients” as long as possible in prison. Even in the United States, where the total prison population had been skyrocketing during the age of neoliberalism from 320,000 in 1980 to 2.3 million prisoners in 2009 (by far the highest number in the world), certain more liberal states, such as New York and Illinois, have enacted legislation expressly barring private prison contracts.

Right to Personal Security

The management of privatised prisons is, however, only one of many functions of private military and security companies (PMSCs), which have been mushrooming during the age of neoliberalism in the United States, the United Kingdom, South Africa, the Russian Federation and other states in all world regions. 70 percent of all PMSCs are registered in the US and UK. Altogether, they earn more than \$100 billion per year by gradually taking over traditional core functions of the state, such as classical police and military functions. The war initiated by the Bush administration and the Blair government against Iraq in 2003 has been described by the British Observer as the “first privatised war”. At certain times, there were indeed more employees of PMSCs, such as Blackwater, stationed in Iraq than US military personnel. In many countries in the Global South, including Kenya and Papua New Guinea, employees of PMSCs by far outnumber regular police forces. Under the conservative government of David Cameron, when the current Prime Minister Theresa May was Home Secretary, plans were revealed by the Guardian in 2012 to privatise the delivery of a wide range of services previously carried out by the police in England and Wales to the company G4S. With more than 600,000 employees, G4S is the largest employer quoted on the London Stock Exchange and the largest PMSC worldwide. From a human rights perspective, the fact that these “modern mercenaries” take over more and more core functions of states is alarming, as the protection of the right to personal liberty and

security and other human rights against external violence (war) and internal violence (crime) constitutes the main legitimacy of the modern state and its traditional monopoly of the use of force, which has been identified by the German sociologist Max Weber as the main criteria for distinguishing the state from other social entities. According to the social contract theories underlying the birth of the modern nation state during the age of Enlightenment, the people create states and entrust them with the monopoly of the use of force in order to protect their natural human rights (according to John Locke: life, liberty and property) against their fellow human beings. The right to personal security against all forms of violence encapsulates this idea in modern international human rights law (Article 9 CCPR): Human beings can rely on the state to protect them against external and internal violence by their armed forces and state police. If these core state functions are outsourced to PMSCs, the state puts its own legitimacy into question. On the initiative of countries in the Global South, the United Nations have been drafting a Convention on PMSCs, which tries to identify at least a core of inherent state functions that must not be outsourced to PMSCs under any circumstances. Among those functions are direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, and police powers, especially the power of arrest or detention including the interrogation of detainees. Under the pressure of PMSCs and their powerful lobbying groups, the US, UK and other Western states, however, obstruct this drafting process and adopted at the same time a soft law alternative (the Montreux process), which resulted in an International Code of Conduct for Private Security Service Providers.

We are witnesses of a number of dangerous vicious circles. The neoliberal economic policies of privatisation, deregulation and minimising the role of the state resulted in failed and fragile states, which led or at least contributed to a rise in transnational organised crime, armed conflicts, rebel movements and terrorism. This in turn creates a feeling of

insecurity among the people, from which the private military and security industry is benefitting. As more police and military functions have been assumed by PMSCs, as more the trust in the ability of the democratic state to protect its own people against crime and wars is dwindling. The lobbying groups of PMSCs are also among those who advocate tough on crime politics, which lead to a higher incarceration rate, to overcrowding of prisons and the need of outsourcing the prison management to PMSCs.

The Crisis of Democracy as a Result of Neoliberal Economic Policies

Human rights and democracy are in the worst crisis since the end of World War II. The very concept of human rights is put in question by states and politicians in all world regions. Even some of the oldest and most stable democracies in the US and in Europe find themselves in the middle of a veritable crisis of democracy. The art of democratic politics to find compromises between opposing political opinions and to respect other democratic parties has given way to democracy by confrontation and a “winner takes it all” mentality. Democratic elections and referenda are no longer decided by a well-informed electorate, but by powerful lobbying groups representing business interests, by money, dirty campaigning and fake news distributed via tabloid press and new social media. While the space of civil society is shrinking, the power of transnational corporations and global financial markets is further growing, and governments seem to have lost control over economic decision making processes. Governments only step in when mismanagement and financial speculations have resulted in veritable economic and financial crises, and often taxpayers’ money needs to save banks and other business enterprises deemed “too big to fail”. This leads on the one hand to corruption, tax evasion and global organised crime, on the other hand to a feeling of insecurity,

arbitrariness and a growing frustration among the people with the results of democratic governance. Insecurity and frustration are the best breeding grounds for populism, radicalisation and new authoritarianism. Populist leaders in all world regions are openly advocating new forms of “illiberal”, “guided” or “restricted” democracy, a trend that reminds us of the rise of fascism in the 1920s and 1930s.

How are these developments related to the phenomenon of globalisation driven by neoliberal economic policies? International human rights law, as it developed in reaction to two World Wars, the Great Depression, the rise of fascism and the Holocaust, created a blueprint for a new, more just and more peaceful world order. In this new world order, states with democratically elected governments would be the main power holders with the responsibility to respect human rights and to protect their populations against external and internal violence (freedom from fear) and poverty (freedom from want). This required strong states in which the armed forces and the police had the monopoly of the use of force and governments had the power and financial means to progressively implement an advanced welfare state where economic, social and cultural rights could be realised. This required high and progressive taxation, social transfers, revenues created by economic activities of the state and a considerable degree of state control over the economy. In many industrialised states, such policies were at that time practiced in accordance with the economic theories of John Maynard Keynes.

During the Cold War, the Western model of an advanced welfare state governed by multi-party democracies was challenged by the Soviet model of a planned economy governed by a one-party “peoples’ democracy” under the rule of the communist party. When the Soviet model imploded in Europe and the Iron Curtain was falling, a historic window of opportunity opened to finally establish a new world order based upon democracy, the rule of law and human rights. The

Vienna Declaration and Programme of Action 1993 reaffirmed the universality, equality, indivisibility, interdependence and interrelatedness of all human rights as well as that “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.” This is a clear indication that the Western model of multi-party democracy had been universally approved, and in fact many African and Asian countries had changed during these years from one-party to multi-party democracies.

The year 1989 did not only mark the end of the Cold War; it is also the year in which the “Washington Consensus” was adopted by the World Bank and the IMF with its neoliberal agenda of privatisation, deregulation and minimising the role of the state. Instead of celebrating the victory of democracy, human rights and the rule of law over dictatorship, totalitarianism and repression, the advocates of neoliberal economic policies simply celebrated the final victory of capitalism over communism. The negative consequences of this unfortunate trend, which contributed to a more or less uncontrolled rise in power of transnational corporations and global financial markets are well-known. In this contribution, I only focussed on two developments, which are clearly caused by such neoliberal economic policies. Growing economic inequality has led to a situation, which is similar to the one in Europe before the outbreak of World War I. Such a high level of inequality and injustice undermines the social coherence of modern democratic societies and the social contract on which our societies are built. People lose trust in each other and trust in the capacities of democratically elected politicians to protect them against violence and poverty. This necessarily leads to populism and new authoritarianism.

Secondly, the large-scale privatisation of state infrastructure and even of core functions of the democratic welfare state undermines the very legitimacy of democratic governance. If democratically elected governments deliberately delegate their responsibility to operate schools, health services, pension and social insurance funds, prisons, police and the military to the corporate sector with the argument that private business is more efficient than the state, it is not surprising that the electorate loses trust in democratic governance and in the capacities of democratic leaders to protect their human rights to education, health, social security as well as personal liberty, dignity, integrity and security. After all, international human rights law relies on states, and not on business, to fulfil these important functions. Again, populism and new authoritarianism are the logical consequences of such developments.

Finally, it is a new mind-set that is undermining the social coherence and democratic functioning of our societies. Capitalism is based upon competition, confrontation and the logic of the survival of the fittest while democracy needs compromise, tolerance, solidarity and respect for minorities, disadvantaged and vulnerable groups of society. These essential democratic values seem to get lost in our everyday life and interactions with each other. In certain fields of the economy, capitalism and more competition leads to economic growth, prosperity and the reduction of poverty. However, there are other fields of the economy, in particular those that are directly related to the protection of human rights and that are rightly considered as core functions of the democratic state, in which the capitalist logic should have no place and where the state needs to regain control over the economy.

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Legalising Democracy or Democratising Law?

Reem Bahdi

Introduction

Using the case study of Indigenous peoples in Canada, this paper reflects on the disconnection between the rule of law and democracy as abstract ideals, and the rule of law and democracy as they manifest themselves through experienced reality. Considering the long history of oppression and attempted genocides of Indigenous peoples in Canada, and taking seriously the need for reconciliation between Indigenous and non-Indigenous peoples, this paper deals with the question “how could we let genocide happen and how do we let oppression continue, all in the context of democracy and the rule of law”?

The analysis offered adopts the stance of a citizen rather than that of a lawyer, a legal scholar or a legal professional, for the simple reason that we, as citizens, have too long

abdicated our responsibilities towards Indigenous peoples to the law and political leaders. I use the phrase “legalising democracy” to suggest that law has been used by purportedly democratic societies to oppress peoples and simultaneously deny individual and collective responsibilities for such oppression. In Canada, oppression, extending to genocide, has been perpetrated through law against Indigenous peoples and normalised by and within Canadian democracy as lawful.

In response to the legalising of democracy, “democratising law” is proposed. By “democratising law,” I mean the idea that law actually serves the basic assumption of a democracy, which I understand to be, first and foremost, that all have equal dignity and worth.^[1] I turn to the experiences of the Truth and Reconciliation Commission (TRC) in Canada to sketch out a basic framework, proposed by the TRC, to point us towards this more democratised space. I then reflect on the meaning and value of empathy as a necessary element of the democratisation of law.

The Rule of Law and Violence

Before I get into details about the legalisation of law, I would like to set out two basic ideas on which I will at least implicitly rely: the concept of rule of law and the notion of law as violence. Democratising law is connected to the notion of rule of law. Let’s start by acknowledging that the rule of law is a contested concept. The classical articulation of the rule of law is often associated with A.V Dicey. Dicey has both his critics and supporters. I invoke him only for the claim that the rule of law implies, in a democracy, that none be above the law

^[1] In this sense, I distinguish my approach to democratising law from those who use this label to call for more education about law and legal institutions, or for improved access to law and legal institutions. See for example (Komarovsky 2017).

and that the law applies to all equally, regardless of economic, social or political status or other differences (Tamanaha 2004, 63-65). By implication, we have to be concerned with the social impact of law; the rule of law must begin and end with the basic ideals of democracy – that all have equal dignity and worth.

I distinguish the rule of law from “rule by law” which gives one group the power to rule over another group and justify structural inequality (O’Donnell 2004). Law can be a form of violence, which sanctions violence and that often results in other forms of violence. “The law is the means through which power is exercised in a society that has renounced crude violence. It legitimises other forms of violence by giving them a veneer of rationality, specifying who can be violent and under what circumstances.” (Komarovsky 2017) Just because law operates in a democracy does not mean that law is just, or that it does not perform violence. When law operates in a democracy to perform violence, it not only legalises violence but also simultaneously erases democracy, creating the state of affairs that I call “legalised democracy.” We can understand the power of law to legalise democracy by understanding the reality of Indigenous peoples in Canada.

Legalising Democracy: Indigenous Peoples in Canada

Indigenous peoples in Canada entered into treaties with “the Crown” – then the government of England – and now the government of Canada. Under these treaties or agreements, Indigenous peoples agreed to share the land with the Crown in return for certain terms, including agreements about Indigenous rights to traditional practices such hunting and fishing, payments and other conditions (Borrows 2005). However, The Crown has not lived up to its century old treaty obligations or recognised Indigenous peoples as sovereign

nations with whom they had entered into solemn agreements (Borrows 2005, 48-50). Instead, the Crown viewed Indigenous peoples as uncivilised, and needed to be assimilated into European ways (Canadian Royal Commission, Parliament of Canada 1996).

In Canada, we are still coming to terms with our relationship with Indigenous peoples, and with the realisation that violence has been inflicted on Indigenous peoples through the colonial project that resulted in the creation of the nation of Canada (Ladner 2001). By “coming to terms,” I don’t mean trying to correct past wrongs or recognise our role in trying to kill off Indigenous peoples and cultures, though that is an important part of “coming to terms.” I mean that we are still learning about what we, those who participated in or benefited from the colonial project, did to Indigenous peoples, often through law, but sometimes even without the law (we were so confident in our ways).

Colonisation takes shape through the denial of the equal dignity and worth of all peoples. Law in Canada has historically employed multiple overlapping and mutually reinforcing ways to colonise Indigenous peoples and take their land. The logic of colonisation continues to the present day (Manuel and Derrickson 2015). Let me set out the broad parameters of some parts of the story.

Canadians recently learned about the full force and impact of residential schools. Residential schools were schools created by government, often contracted out to churches, that took Indigenous children out of their communities – usually by force- and taught them “practical” skills that would make them more productive in the context of socio-economic norms constructed by colonizers (Woolford 2015). Government officials were very clear about the residential school purpose. The purpose was to “take the Indian out the child” because, as our reigning politicians then put it, Indigenous people had

to be first civilized and then assimilated into the body politic (Gordon and White 2014). The residential school project was advanced in some circles as a benevolence project.

Residential schools had a tremendous impact on Indigenous communities who were expected to be re-modelled in the coloniser's image (Woolford 2015, The Truth and Reconciliation Commission of Canada 2015). The schools tore up families and communities: children were often taken to sites miles away from their homes and not allowed to speak their native language. It was not uncommon for parents and children not to share the same language and thus not to be able to converse together with any freedom or comfort. Many children died from diseases in these schools. Tuberculosis spread in part because the school construction helped spread the disease. Sick children were often sent home to die and diseases were spread to communities in that way. Some children died trying to escape the schools and return home. Sexual and physical abuse was not uncommon.

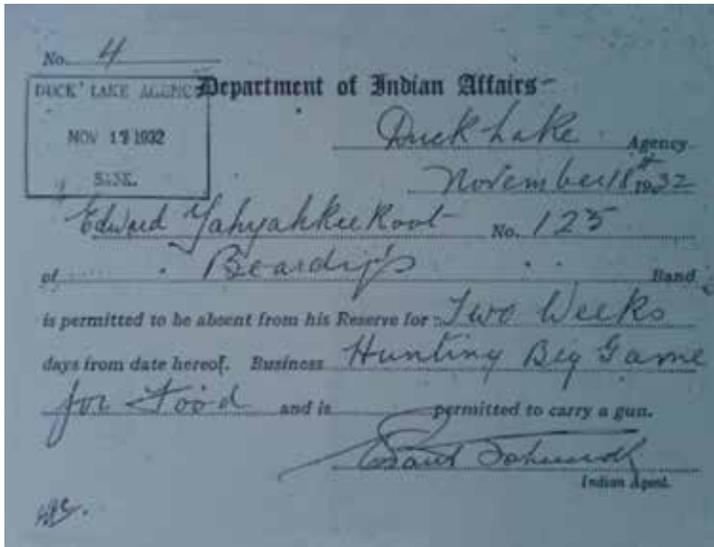
Introduced in 1876 and still part of Canadian law, The Indian Act is “the principal statute through which the federal government administers Indian status, local First Nations governments and the management of lands put aside for Indigenous peoples (commonly called “reserve land”) and communal monies.” (Historica Canada 2006) In 1920, the Indian Act made attendance at residential schools mandatory for every Indigenous child (Hanson 2009). But, residential schools are only part of the colonisation story. The Indian Act created a special regulatory regime for governing Indigenous peoples in virtually all aspects of life, and worked to divide and conquer Indigenous communities and peoples from each other. For example, the Act defined who would be recognised as “an Indian” – women especially were denied this status on the basis that they had married outside the reserve (Historica Canada 2006). The Act also forced those who went to university to

lose their Indian status (and one had to have the status to live on a reserve).

The Indian Act also created the “reserve”, defined as “a tract of land, the legal title to which is vested in Her Majesty, which has been set apart by Her Majesty for the use and benefit of a band”. Reserve land has several special features including the fact that “legal title to reserve lands is held by the Crown, another word for the Canadian government, rather than by individuals or organizations.” And, the Canadian Minister of Northern and Aboriginal Affairs (which used to be called the Indian Affairs) “must approve or grant most land transactions.” While we can (and should) debate the merits of neo-liberalism and property ownership as the means of defining social relations and economic stability, in a neo-liberal system that depends on property ownership and title, Indigenous peoples are disenfranchised through exclusion.^[2] The Indian Act created the Indian Agent or a government of Canada official whose job is to administer the Indian Act. The Indian Agent has tremendous powers: for example, a pass system, much like the permit system used by Israel, was created and enforced by Indian Agents.

Indigenous peoples could not leave their reserves to go to school, meet with each other, hunt or go to the doctor without permission from the Indian Agent. The pass system was introduced so that the Canadian government could colonise Indigenous lands by containing them in finite spaces. Concerns about violence and or law and order was used to justify the system. Like other parts of Canada’s colonisation story, the Indian Act and the pass system will sound very familiar to Palestinians.

^[2] This exclusion is best understood not as an exception to neo-liberalism or the spaces in which neo-liberalism operates but rather as a consequence of neo-liberalism or a way of harnessing its hierarchies to deepen hierarchies.



"A 1932 pass, giving permission to its holder to leave the reserve." (âpihtawikosisân 2012)

Legislation also controlled political associations and legal challenges to government colonizing action in Courts. For example, the Indian Act "forbade First Nations from forming political organizations; and prohibited anyone, First Nation or non-First Nation, from soliciting funds for First Nation legal claims without special license from the Superintendent General (which granted the government control over the ability of First Nations to pursue land claims)." (Indigenous Corporate Training 2016) The Act also created a form of government called the "Band Council" which, though elected by or representative of the people and called "self-government," ultimately remains accountable to the Canadian government (Indigenous Corporate Training 2016).

Some prefer to call the Canadian government's historic policy towards Indigenous peoples, "cultural genocide." (The Truth and Reconciliation Commission of Canada 2015) Others say that it was, and remains, genocide without the "cultural"

qualifier (Woolford 2015). No wonder then that Indigenous peoples in Canada face the highest unemployment rates, the lowest life expectancies, the highest incarceration rates, the lowest levels of education, the highest rate of murdered and missing women and girls, no running water in some communities, inadequate housing, poverty and disease (Historica Canada 2011).

The violence committed against Indigenous peoples in Canada continues. In 2017, a report was released about the continued leaking of poisonous chemicals from an old paper manufacturing plant into the water of an Indigenous reserve in Ontario called Grassy Narrows (Masazumi, et al. 2005). The plant shut down but the Indigenous community is suffering from mercury poisoning left by industry. Government researchers insist that there is no problem and the mercury levels are safe. But, Japanese researchers found that 90% of the population shows signs of mercury poisoning.

Some argue that Canada continues to practice forms of violence against Indigenous communities that most thought were a thing of the past. The practices continue but the public attention has faded. For example, Canadian eugenics legislation permitted the forced sterilisation of people considered unfit to have children. Indigenous women were disproportionately sterilised (Stote 2015). Eugenics legislation has been revoked. However, a study has found that Indigenous women are still, to this day, disproportionately recommended for sterilisation although the formal eugenics movement has been widely condemned (The National Post 2015). One researcher has noted that women's reproductive capacities were targeted because "preventing Indigenous women from getting pregnant was a means of limiting government responsibilities." (Porter 2015)

This state of affairs is the product of law and legal institutions in a democracy. Full stop. It is not that law was absent, unclear, unknown or not enforced. The law was doing what it was

supposed to do. Sometimes it directly targeted Indigenous people. Sometimes it excluded them from benefits. Sometimes it operated in a way that imposed a disproportionate burden on them. This is the legalisation of democracy. How was this state of affairs allowed to develop and flourish in the full view of democracy and the rule of law? How was oppression normalised? At this point, I offer some reflections that draw on my status as a citizen as much as my privilege as a law professor. I go back to the question with which I opened up my remarks: how could we let genocide happen and how do we let oppression continue, all in the full view of democracy and the rule of law? I would like to present a framework that is surely incomplete but that might help explain at least part of the reason of how/why, as a society, we let this state of affairs continue and thrive through law.

Legalising democracy relies in part on *myth-making*. In the playgrounds, we learned that “Indians” gave up Canada for a pile of beads! No wonder that we don’t object too much when our Supreme Court issues judgements that deny Indigenous peoples their treaty rights. After all, we believed that we owe people nothing and have already been too generous. *Denial* is also part of the Canadian social psyche. We are told that Indigenous people drink and are lazy, so they are responsible for their own misfortune. Denial is sustained in part through the *hagiography of Canadian leaders*. We do not scrutinise our political leaders for the roles that they played in oppression and genocide. For example, Sir John A. Macdonald, the first prime minister of Canada was a proponent of residential schools. He is quoted as saying such things as:

“When the school is on the reserve the child lives with its parents, who are savages, and though he may learn to read and write, his habits and training mode of thought are Indian. He is simply a savage who can read and write. It has been strongly impressed upon myself, as head of

the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.” (Indigenous Corporate Training 2016)

Other Canadian leaders have also been explicit with their racism. Duncan Campbell Scott was a high-ranking bureaucrat within Indian Affairs and a celebrated Canadian academic who served as President of the Royal Society of Canada from 1921-1922. He oversaw much of the residential school policy and defined his professional mission as getting “rid of the Indian Problem.” (The Critical Thinking Consortium n.d.) He is celebrated in Canada nonetheless.

Silencing is another component of legalising democracy. We are effective in Canada at silencing historical records. Somehow, for example, documents of the eugenics movement in Canada and the pass system were destroyed or never archived in the national archives of Canada (Oliviera 2016). Many Canadians do not know about the eugenics movement in Canada. We are also effective at insisting on our own *false benevolence*. As I have already suggested, residential schools were considered a favour to Indigenous peoples because they would be taught skills and given training.

Femicide has also been part of our history. Indigenous women continue to face high rates of sterilisation, as I have briefly noted already, and are also disproportionately victims of murder (The National Inquiry Into Missing and Murdered Indigenous Women and Girls 2018).

Moreover, *reliance regimes* have been created where Indigenous peoples are deprived of their full opportunities and have to rely on transfer payments from the Canadian government. To add insult to injury, the money that is

transferred goes in theory to them but in practice to non-Indigenous experts or companies. The term “bungee economics” is sometimes used to describe this state of affairs where a bungee is a rope that when stretched snaps back to where it came from.^[3]

These factors – myth-making, denial, silencing, femicide, and reliance regimes intermingle with law, are operationalised through law, and become normalisation through law. How do we move from this state of affairs to the equal dignity and worth of all peoples? How do we move from legalising democracy to democratising? In Canada, a Truth and Reconciliation Commission (TRC) on Residential Schools was held. The TRC’s report offers some insights: the next section draws on the TRC’s observations and recommendations to offer some preliminary reflections.

Democratizing Law

At the end of the day, the democratic limits of law are society’s normative and ethical limits. The democratisation project needs not only law reform and reform of legal institutions but also an unravelling and examination of the social practices and institutions, including normative ones, particularly those that manifest in everyday life and that have thus become invisible to us.

The challenge, of course, is how do we go from legalising democracy to democratised law given that history and current reality remain intermingled? As a result, new power dynamics have developed within the economic, legal and political structures that have been built over decades to systematise oppressive policies; yet we turn to these same structures

^[3] I am grateful to my colleague Professor Jeffrey Hewitt for introducing me to this term.

to change the status quo. The education system is a good example. Universities and academia, as the role of Duncan Campbell Scott suggests, helped institutionalize the colonial violence against Indigenous peoples. Yet, universities have now declared a commitment to decolonising the academy. At the same time, Indigenous individuals and communities are traumatised and exhausted; yet, we turn to them for leadership in order to change the status quo. Moreover, social, political, legal and economic inequalities abound; yet we turn to social, political and economic strategies to undo inequality.

While the TRC has acknowledged that we need political and legal reforms, it has stressed that the road to democracy is built on several pillars. We need to learn our own history.

“Too many Canadians know little or nothing about the deep historical roots of these conflicts. This lack of historical knowledge has serious consequences for First Nations, Inuit, and Métis peoples, and for Canada as a whole. In government circles, it makes for poor public policy decisions. In the public realm, it reinforces racist attitudes and fuels civic distrust between Aboriginal peoples and other Canadians. Too many Canadians still do not know the history of Aboriginal peoples’ contributions to Canada or understand that by virtue of the historical and modern Treaties negotiated by our government, we are all Treaty people. History plays an important role in reconciliation; to build for the future, Canadians must look to, and learn from, the past.” (Truth and Reconciliation Commission of Canada 2015, 4)

In short, everyone in Canada has to understand their role as treaty people who have obligations to each other.

The TRC commissioners also tell us that no change can happen unless we first unlearn so that we can learn. We have to unlearn the stereotypes and racist ideas that we were taught in our childhoods, on the playgrounds and in books that were given to us. We have to unlearn, for example, that Indigenous peoples were so stupid that they gave up their land in exchange for a few beads. We have to learn that Indigenous peoples used what we call “beads” to create wampum belts that are sacred - these belts are used to narrate a story, solemnise an agreement or convey authority to enter into agreements. For example, “The Two Row Wampum”, a belt commemorating a 1613 treaty between the Mohawk and the Dutch conveys the notion that treaties were statements of peace and friendship.

“A bed of white wampum symbolizes the purity of the agreement. There are two rows of purple, and those two rows represent the spirit of our ancestors. Three beads of wampum separating the two purple rows symbolize peace, friendship and respect. The two rows of purple are two vessels travelling down the same river together. One, a birch bark canoe, is for the Indian people, their laws, their customs and their ways. The other, a ship, is for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other’s vessel.”
(Canadian Royal Commission on Aboriginal Peoples 1996)

As we strive to unlearn, we will experience hopes and fears along the way. I fear, for example, over-taxing my friends and colleagues in my question to unlearn and learn. I also fear that indigenisation, a project that many faculties in Canadian universities, have taken on, may be undertaken with gusto but also without full consultation or sufficient knowledge. Ultimately, we have to accept that most of us were complicit in

a policy that aimed at the elimination of Indigenous peoples. As the TRC report puts it,

“For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada.” (The Truth and Reconciliation Commission of Canada 2015)

What does the TRC say we have to do? The TRC report opens up with ten principles for truth and reconciliation. These principles include the importance of recognising international standards; the recognition and respect for treaty, constitutional and human rights; the importance of healing relationships; the need for constructive action aimed at de-colonisation; the requirement for social and economic equality and inclusion; the mutual-responsibility of Indigenous and non-Indigenous peoples to create healthy relationships; the need to include traditional Indigenous leaders in reconciliation processes; the revitalisation and integration of Indigenous oral histories, laws, protocols and connections to the land; political will; and, sustained public education and dialogue. While the principles are aimed at achieving truth and reconciliation in the context of Canada’s residential school legacy, they also serve as a starting point for the goal of democratising law.

Indeed, the TRC expressed an opinion about law that encapsulates the objective of democratising law as I have tried to articulate it.

“Law must cease to be a tool for the dispossession and dismantling of Aboriginal societies. It must dramatically change if it is going to have any

legitimacy within First Nations, Inuit, and Métis communities. Until Canadian law becomes an instrument supporting Aboriginal peoples' empowerment, many Aboriginal people will continue to regard it as a morally and politically malignant force. A commitment to truth and reconciliation demands that Canada's legal system be transformed. It must ensure that Aboriginal peoples have greater ownership of, participation in, and access to its central driving forces." (The Truth and Reconciliation Commission of Canada 2015, 258)

In short, law has to begin with and aim at equal dignity for all regardless of identity. Dignity and equal worth, in turn, requires empathy. I would like to suggest that empathy requires more than intellectual understanding of the other's perspective. It includes both cognitive and affective considerations. The cognitive includes perspective-taking which requires understanding differences, while the affective includes imagining the pain as if it were one's own and affirming commonalities in human emotions.

The "as if we were enduring it" is not an epistemological stance (we may not actually be able to accurately imagine the magnitude of torture but we can imagine that it produces intense fear, panic, pain etc.) The "as if we were enduring it" is not an ontological stance (we need not actually take on the pain). Rather, "as if we were enduring it" is a political statement about the recognition of the equal dignity and worth of the other.

Empathy, in my view, has a political goal as well as an individual or private one: to bring us (back) to the place of affirming our common humanity. Empathy is when we understand another's perspective and imagine their pain as though we are suffering it. We have to do both the intellectual

work of figuring out perspective (which may be based on different experiences, different assessments, different world views) and the affective work of imagining their pain *as though it were our own* (which is based on common experiences, common suffering, common realities). Properly constituted, the legal process facilitates both the intellectual work and the affective work. Feminist, critical race and other social justice-oriented scholars have focused so much on trying to develop an understanding of difference and make different experiences visible through various techniques and methods, such as reading silences and narratology. The goal of this difference-oriented stance is not to entrench differences but to emphasise our common humanity.

Conclusion

The rule of law and democracy as abstract concepts differ from the rule of law and democracy as the play out in peoples' lives. The rule of law and democracy as abstracts demand the equal dignity and worth of all people. The rule of law and democracy in real life, however, produces different realities for some people. Law has been used by purportedly democratic societies to oppress peoples and simultaneously deny individual and collective responsibilities for such oppression. In Canada, oppression, extending into genocide, has been perpetrated through law against Indigenous peoples and normalised by and within Canadian democracy as law.

As Canada and Canadians reflect on our history of genocide and its legacy, we also need to reflect on how to we can engage our capacity for empathy and democratise law so that all people can live in equal dignity and feel secure in their equal worth. This is perhaps the greatest challenge for our increasingly fractured and intersecting world.

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Rewriting the People: Graffiti, Movement and the Tense of the Possible

Peter Lagerqvist

*How do I know what I think, until I've
read what I wrote?*

E.M Forster

In March 2005, four months after the death of PLO Chairman and Palestinian Authority President Yasser Arafat, his successor Mahmoud Abbas ordered a large-scale cleaning of street-fronts in a number of West Bank cities, including the seat of his self-rule government, Ramallah. Effecting a symbolic wiping clean of the historical slate and a renewal of the iconography of power, as Arafat imagery was replaced by or conjoined with pictures of Abbas on Ramallah's streets, the initiative entailed specific instructions that graffiti and martyrs' posters were to be removed from the city's walls, which had by the fifth year of the second Palestinian uprising accreted into a cacophonous



Ramallah, Rukab St. [J], 2005

and near ubiquitous tissue of urban annotation. The edict intervened against a practice that had long many carried the full weight of national political tradition, consecrated during the first Palestinian uprising against Israeli occupation, which had erupted in 1987 and is widely thought to have petered out with the installation of limited Palestinian administrative autonomy in the Occupied Territories, pursuant to the 1993-1994 Oslo Accords between the PLO and Israel.

Through graffiti, activists and political factions had during preceding years worked the full gamut of nationalist insurrectionary politics, staking out political positions, announcing general strikes, engaging in political and social debates, and, in the face of punitive, sometimes lethal censure by the Israeli army, inducting party cadres through graffiti writing (Petee 1996). Ever potentially collective in scope, punishment sought to prompt homeowners and shopkeepers to paint over graffiti, lest they suffer fines, beatings, and the humiliation of being forced to perform this work under the eyes of Israeli soldiers. Instructions from political factions

- “Don’t paint over graffiti voluntarily. First Warning!” - concomitantly re-inscribed the inviolability of the writing on the wall, as political principle: “Palestinians were to desist from taking on the functions of policing themselves for the benefit of occupying authorities.” (Peteeet 1996, 143)

The signing of the 1994 Oslo Accords entailed a wholesale transgression of this interdiction, as Arafat’s self-rule authority assumed responsibility for suppressing Palestinian militancy in the West Bank and Gaza. He largely discharged this responsibility for over half a decade in the teeth of mounting popular dissatisfaction, yet when such discontent finally boiled over in late 2000, the Palestinian leader resisted Israeli and international pressure to quash what soon became known as the second Intifada, instead improvising irregular support for armed insurgents while disavowing formal leadership of the uprising. His equivocation boosted support among the Palestinian Authority’s financial backers in the West for “Palestinian governance reform.” On assuming office, Abbas wedded himself to this program and immediately announced an end to the long-faltering revolt. His accession inaugurated an era of progressively more extensive and effective Palestinian self-policing and self-censorship in the Occupied Territories, as increasingly seamless PA security co-operation with Israeli forces, and a concomitant, more explicit official revaluation of armed Palestinian resistance not as sacrifice but treason, routinised transgression of long-held national totems. (Hill 2016)

I was working as a journalist in Ramallah in the spring of 2005, and like other residents, part of my daily routine was to walk through a dense tangle of scrawling declamations, pictograms, and posters commemorating the city’s martyrs, plastered in duplicate and triplicate on every street. Over the space of a few days, I began noticing that graffiti and poster were being scrubbed off downtown street fronts leaving behind palimpsests in which the original writing could oftentimes be hazarded, as if out of focus. One day on a late walk back home

I spotted a small work crew of two or three men in hazmat suits scouring the limestone facades of city' downtown in the early hours of the morning, swathed in billowing clouds of dust. On inquiring with the Ramallah municipality, I was told that the work had been commissioned by the office of Ramallah's governor. An acquaintance of mine worked in his office and helped me arrange a meeting.



The governor struck a cautious tone at first, opening the interview with an avowal that his office had consulted with representatives of the main political factions and militias in the West Bank before embarking on the work. In the same breath, however, he also gestured to a future that would make redundant such consultation, proceeding to detail plans for the erection of fifteen public billboards in Ramallah on which future street writings would be afforded an officially sanctioned space. “We want to organize the graffiti in the city,” he explained. In this telling, a new political order was reauthorized through and set in relief against a prior order of legitimation and practice. Implicit in the new dispensation was a formally articulated relationship between the proto-state and Palestinian society as *civil* society, cultivated by the state and

speaking *through* and *to* the state. What was being dreamt in the moment of erasure was a new Palestinian public.

Indeed, while posters and writings on the wall crept back unto Ramallah's streets in ensuing days and months, the intervening cleaning of the city also adumbrated the production of another kind of citizenry, as Ramallah became the site of a proliferating self-rule engagement with good governance, also taken up by the main political opposition party Hamas during national municipal elections in 2004. Attending the emergence of new aspirational housing developments, such as Rawabi and Rehan, promoted as citadels of a new, emblematically moderate middle class, this engagement would further reformat a national politics eviscerated by the proscribed terms of the Oslo agreements, into the local and municipal. Ensuing years would see the erection of new barriers to direct pedestrian traffic in Ramallah's small downtown; the adoption of parking meters; the installation of new and bewilderingly arbitrary street signage, alongside the unfolding of campaigns to wear-your-seat-belt, get-to-know-your-local-police-force (Abourahme, *Assembling and Spilling-Over: Towards an Ethnography of Cement in a Palestinian Refugee Camp* 2014), and not least, to keep-your-city-clean.

Notwithstanding its historical poignancy, the 2005 street cleaning in Ramallah sparked no significant public reflection or debate. Few of my friends and acquaintances volunteered an opinion about what was happening; those prodded into reflecting on it by me were most often ambivalent; while expressing scepticism about the program of the powers that be, including the official cleanliness-and-order narrative, they did not disavow the possibility that it may be a good thing for Ramallah's streets to be cleaned. Many had long dismissed the graffiti on the street as *haki fadi*, or "empty talk," something that would, in a moment of political disillusionment merely reflect, in but Lori Allen's words, "the gap between nationalist form and the content of popular desire, where political

potentials are suspended between surface slogans and the depth of people's recognition of catchphrase vacuity." (Allen 2006, 104)

To this date, however, I admit to feeling poorly informed about what was "felt publicly" about the issue at the time, but also wonder whether this unintelligibility may not in and of itself be a point of departure for a problematisation of the way we think about public-ness, which is to say political subjectivity, in Palestine as well as farther afield? If the Governor's proposal for new graffiti billboards in Ramallah represented a particular kind of *enframing* of the body political - to borrow a term from Timothy Mitchell's early oeuvre (1991) what was it that was being enframed? What figure comes before, or after, this peculiar transposition of the dream of the Public Square, this squaring of the public, unto the Palestinian scene? And in what way might we draw on the unintelligibility of what (did not) happen in 2005, to think that which has been felt by many Palestinians to be receding since the Oslo Accords; their sense of themselves as a people who can make things happen?



In his reflections on the “historical sublime,” Eelco Runia argues that “ultimately the question of discontinuity is the question of how we can do things that we couldn’t imagine doing—the question, that is, of the mystery of human creativity,” a mystery which arises precisely from the fact that “[i]t eludes the medium in which we have to answer it,” (Runia, *Into Cleanness Leaping: The Vertiginous Urge to Commit History* 2010, 18) which is to say historical narrative, or discourse itself. One possible reason for why the answer eludes the medium is that the medium, which is to say language, *is* the answer. E.M Forster’s challenge: “How do I know what I think, until I’ve read what I wrote?” poignantly expresses this contradiction also in so far as the question of historical discontinuity would refract the underlying discontinuity of the subject-in-language, the split subject of psychoanalysis. In writing we are eternally catching up with ourselves but can therefore also in various measure surprise and exceed ourselves. Who has not once asked themselves; did *I* really write this? Indeed, does the “mystery of human creativity,” not invariably entail a displacement vis-à-vis oneself, an abduction of the self? And what is this mystery, but the mutually structuring conceits of identity and agency, at work in the quintessentially modern notion of the Author?

Social theorists have drawn on such insights to problematise notions of agency derived from the modern, liberal concept of the autological individual, as exemplified perhaps most prominently by Michel Foucault’s problematisation of that subject/object as an “empirico-transcendental doublet,” in his seminal work, *The Order of Things*; “a being such that knowledge will be attained in him of what renders all knowledge possible.” (318) The vast body of social constructivist scholarship to which Foucault gave impetus, but which also predates him, in the work of early anthropologists like Franz Boaz and Ruth Benedict, has been successful in the main in showing up the contingencies of ways of knowing and being in the world, including our knowledge of ourselves, less so in accounting for discontinuity and change. In sociology, the critique of the autological individual has been

accomplished by investment in another, no less autological and closed concept, that of Society. As Bruno Latour has argued, taking up Gabriel Tarde's foundational critique of sociology's founding father, Emile Durkheim, Society cannot be proffered as a ready-made explanation for anything, in so far as it is itself always in-the-making, no less than the individual, and accordingly itself needs explaining (Latour 2005).

In trying, for the purposes of my own research in Palestine, to think my way out of this conceptual cul-de-sac, I have found it instructive to draw on Brian Massumi's elaboration of the notion of affect. Closely related to Spinoza's concept of *connatus*, it may best translate as a way of thinking the eventfulness of the event; that which happens before we know what has happened, or what will have happened. Affect strikes us prior to the precipitation of a discernible emotion, so that an affective response to an event can be both sad and happy at the same time; affect is in this sense pre-personal, and pre-subjective, in so far as we know who we are in relation to what we feel and where we are. Affect entails no fixed point of view and is commonly experienced as being seized or abducted by something outside of "oneself," of being, in a literal sense, moved. Indeed, one of the conceptual uses of affect is to allow us a way of thinking motion in a direct analogue relation to *emotion*, and thus also in opposition to the fundamentally static language of subject *positions*, as applied across the social constructivist tradition. Explains Massumi:

Signifying subject formation according to the dominant structure was often thought of in terms of "coding." Coding in turn came to be thought of in terms of positioning on a grid...The very notion of movement as qualitative transformation is lacking. There is "displacement," but no transformation; it is as if the body simply leaps from one definition to the next. Since the positional model's definitional framework is punctual, it

*simply can't attribute a reality to the interval,
whose crossing is a continuity (or nothing). The
space of the crossing, the gaps between positions
on the grid, falls into a theoretical no-body's land.
(Massumi, Parables for the Virtual: Movement,
Affect, Sensation 2002, 4)*

Inter alia, I propose in this essay to think the figure that comes before civil society, the would-be subject of graffiti, which is to say, the body-in-language, as a figure which could fill the hitherto uninhabited spaces of this “theoretical no-body’s land.” I read this figure in relationship both to the phenomenology of movement and the logic of verb tense, tendering that one way to think affect is in relation to the tense of the present continuous, the open present. This line of thinking, I further argue, compels us to rethink not merely the historicity of Palestinian graffiti, its contingencies in relation to manifestly significant historical developments, but to countenance that historicisation itself, as a re-investment however contrarian in a particular politics of time, as empty, homogeneous time, may occlude the very thing that we are concerned with; the question of agency as something other than liberal self-authorship, i.e., the question, now rising to a double register, of whether another world is possible?



The question of the “public” is a founding concern of graffiti scholarship. In the 1970s, observes art historian Ian Bourland, US academe appropriated wall graphing “under the rubric of urban folklore,” something that would capture or otherwise render “a primitive overflow of the collective id, something of a release valve for repressed tensions, taboos, and turbulence.” (Bourland 2007, 61) Recuperated in tropes such as “the community’s voice” and “communal memory,” these connotations foreground much subsequent work on graffiti outside the narrow precincts of art-history, even when the register is no longer explicitly psycho-social (Ballard, David and Wilson 2002). In much of this work, graffiti both expresses and naturalizes the notion of the social, and of the public. By example, work on graffiti and tagging in the context inter alia of urban gang culture has frequently set the practice up in opposition to municipal or cultural governance, or as bound up with internal, sub-cultural politics derivative of such opposition. In contrast, studies, inter alia, of Catholic murals in Belfast during the Northern Ireland Troubles has recognized that they, while “at one level emblems of resistance to Protestant domination and British rule...are also, and perhaps just as powerfully, a means of policing community will; part of an inwardly focused propaganda which largely ignores debate.” (Ballard, David and Wilson 2002, 14)

Julie Peetet’s work during the first Intifada, which recognizes graffiti not only as a medium of non-state governance, but also as a mediation of “critical” internal debate, is I think an important, early intervention in this literature. Firstly, in so far as Peteet recognizes that graffiti may read in the register of *both* public and state, as crypto-bureaucratic language as well as crypto-public expression, but also, *neither*, which is to say that in so far as graffiti is “critical,” i.e. in conversation with itself, it may also be of the order of something else entirely, something immanent, which does not yet exist, but is precisely in-the-making. Suggestive to me in relation to this is a point which Peteet has not been alone in making, namely that graffiti

is also an act, which is to say, an event, entailing particular kinds of consequentiality. Called into question therein is the characteristically liberal insistence on the possibility of separating speech from action, as rehearsed, inter alia, by one scholar's characterization of stone-throwing as "the iconic physical manifestation and symbolisation of resistance in the First Intifada" and graffiti as "the iconic communicative expression of resistance of that time." (Sauders 2011, 16) To varying degrees, this understanding is echoed in a larger body of comparative graffiti scholarship; both work that brings into conversation graphing on walls in widely diverging contexts and locales - including with ever more frequency, Palestine - but also writings on Palestinian graffiti itself, which while sometimes referencing its first Intifada mythos, tends otherwise or indeed at the same time to eschew historicisation, in so far as they implicitly or otherwise take it to be the same "thing" during the first Intifada, its post Oslo aftermath, the outbreak and rapid unravelling of the second Intifada, and finally the awkwardly bracketed process of terminating that uprising for which Abbas' accession nevertheless seems an indisputable watershed.

One of the most apparent discontinuities, across this historical span, is that graffiti during the first Intifada took place in a field of sanction and violence, remorselessly subject to Israeli punishment, sometimes lethally so. As such, Peteet recounts, its "...simple production and signification of resistance and defiance - assumed primacy in the construction and potency of meaning." (Peteet 1996, 142) Punishment was always potentially collective, extending not only to Palestinians who could be identified as owning or being responsible for the maintenance of any particular wall or surface, but to anyone who might be passing by and who could be thus dragooned into painting over the writing on the wall; in effect, any potential reader. This is something that graffiti writers were aware of and sometimes instrumentalised as a means of politicizing and mobilizing their communities.

By targeting, for instance, the houses of compatriots who abstained from nationalist politics, preferring rather to “live quietly,” as per classic counterinsurgency parlance, they thrust them to into political subjectivity, in the fundamental sense of being confronted with their own subjugation. Indeed, such practices replicated the logic of a much broader range of Palestinian insurrectionary practices (Tamari and Hudson 1990). As such, this mode of production of graffiti may be seen as having performed a sleight of camouflage, a persistent confounding of attempts to separate individual from nation, but also writer from reader, which worked *within and with the violence of the occupation*, turning this violence, its use of punishment, against itself - a point to which I return in the end of this essay.

In “What is an Author” (1980) Foucault argues that the emergence of the figure of the Author in the European tradition is inextricable from the problem of accountability and punishment; the operation of holding individuals responsible for what they write. Yet in this regard, the author is also a device of retrojection, projecting backwards responsibility for what is in the final analysis, an event of reading, as set out in Roland Barthes classic essay “The Death of the Author.” (1977) The text as an event interpolates no writer, argues Barthes, only a reader, as an empty slot, awaiting an occupant, the “I”. (Deleuze, et al. 1990) In this sense the concept of authorship functions much like the notion of individual agency, which in historical perspective acquires its social force not from any certainty about efficient causality –an intractable philosophical problem which a quintessentially modern, if thus also dissident philosopher such as David Hume understood to be a mystification of Habit - but from the necessity of founding personal liability and hence, the possibility to undertake commercial contracts for commodity production oriented towards the future, i.e. capitalism.

As recounted by a friend of mine, who as a young man was politically active during the first Intifada, graffiti production was deeply bound up with matters of accountability and punishment. . The man, who I shall call Ahmed, recalls working with upwards of a dozen or more young men on his assignment. All wore face mask he recalls, and often bags to cover their shoes, as well as pillows stuffed into their jackets, to disguise the shape of their bodies-in-motion. They never referred to each other by name. In addition to activists tasked to carry supplies, paint the walls and operate as look outs. the team would always include at least two witnesses, unknown to each other, whose task would be to observe and testify to what member of the local community might pass by and could accordingly be held accountable as a possible informant if the Israeli army later arrested any members of the team. Another friend, who was a boy at the time of the first Intifada recall that he was often afraid to read graffiti.

It would have been apparent ten years later that things had changed. One of the consequences of the Israeli army's unrelenting obliteration of graffiti during the first uprising was that writings on the wall came to present, in Peteet's words, "hastily written, fleeting, fragmentary images, much like the intifada itself" (Peteet 1996, 142). The riotous cacophony of graffiti that greeted visitors to Ramallah during the early years of the second uprising, absent direct and continuous Israeli army policing of a now nominally autonomous city, accordingly belied a paradox. It may visually have presented the very image of "society's voice," a "release valve for repressed tensions" (Bourland 2007, 61), and, following Sauders, an unmarred domain of authentically local and autochthonous speech. What it bespoke, however, was not the assertiveness of a political collective as much as a shift in the conditions within which that collective was imagined and constituted.

Rejoining Peteet's radically qualified but nevertheless persistent



returns to the concept of meaning, we can thereby also note that work of graffiti during the first uprising was not exclusively semiological in nature, recalling also Lori Allen's observation that political slogans had come to express primarily "the gap between nationalist form and the content of popular desire, where political potentials are suspended between surface slogans and the depth of people's recognition of catchphrase vacuity." (Allen 2006, 109) Allen's reading is I think consonant with - if not reducible to the complaint of a Palestinian friend, with whom I discussed an early version of this essay, who told me. "There is so little interesting graffiti to read these days." What is worth thinking over in both of these formulations, I would argue, is the question of interest as something reducible to *content*. . Most Palestinians who have shared with me recollections of the first Intifada best recall very simple slogans, e.g. most commonly the tag: "Fatah passed here," "*Fateh marrat min hona*." In fact, one could I think posit that concerns over what graffiti "is about" - its meaning in a conventional semiotic sense - and the separation between form and content which enables the distilling out of meaning, may be a function as much of the mode of production of graffiti, as any inherent quality of the graffiti itself, indeed, that the question of content occludes the force of graffiti as a phenomenological unity, one figure of which is precisely *not* a figure, but *movement*.

I follow here Brinkley Messick's observation, in the *Calligraphic State*, on the changes wrought by the introduction of mechanical type on the writing and reading of texts in modern Yemen, where legal contracts in the pre-modern era were drawn up as circular spiral. Observes Messick:

"In the new, straight documents, form is separate from, prior to, and more determinate of the shape of the textual contents. In the old spiral texts, by contrast, form and content are not clearly separable, and it appears that, if anything, it is textual contents that determine form. That is, in spiral texts, the ultimate shape depends on the physical extent of what has to be said." (Messick 1992, 237)

As Messick documents, the older spiral texts in Yemen required both reader and writer to turn the document in their hands as they wrote, movements which became part of habits, with characteristic styles. Put differently, the reading of such documents *entailed a doing that was also a movement*, in which the body-in-language is not merely indirectly entailed or implied to but made to surface, or put different yet again, the reading enacted apprehension itself. Brian Massumi explains as follows, regarding "the simple example of the kind of spiralling, vegetal motifs you see in a lot of traditional decorative arts:"

We don't see spirals, we see spiralling. We see a movement that flows through the design. That's what it is to see a motif. The forms aren't moving, but we can't not see movement when we look at them. (Massumi, *The Thinking-Feeling of What Happens* 2008, 3).

It may not be incidental, I would speculatively posit, that the epistemological tradition with which Messick is concerned so elaborately engages the problem of knowledge as a problem

of transmission, or *Isnad*, according to which the nature of the movement of knowledge cannot be separated out from the knowledge itself. Like a complicated piece of machinery and its manual, they must always be used together. *Isnad* then would be the name not only of a chain of transmission, but also of a particular kind of *event*, and furthermore - in the case of the Shi'a legal tradition in Yemen, which holds the window of religious interpretation to still be open - it is explicitly an event in-the-making. In similar vein we may note that in the pageantry of visual rhetoric Mahmoud Abbas did not merely replace or succeed Arafat, in the tense of the past perfect, but is *still*, in posters and plaques echoing back to those put up in 2005, pictured together, *in the process of succeeding him*, jointly inhabiting an extended continuous present; echoing an older, Islamic engagement with the question of sovereignty as one of succession, of rulers as *khulafa*. In another, far more intimate and banal register, one can note the colloquial Palestinian expression - "*inta tani!*" literally, "you too!" which expresses anger or annoyance, usually to a relative or close friend, but does so in a manner which always acknowledges that the friend is merely the conduit for an affect which precedes them, that they did not themselves author the annoyance ; consonant with an understanding, however recessed in the history of this expression's usage, that the event, as affect (Massumi, *Parables for the Virtual: Movement, Affect, Sensation* 2002), always precedes itself; that we are always *in media res*.

In these respects, the notion of movement is often inseparable from that of an aesthetic, as borne out also by the literature on the first Intifada. By example, attention to the politicisation of the veil undertaken by the Islamist movements overshadows the fact that concerns over dress and comportment were according to many recollections a generalised feature of the first Intifada, embodied in Yasser Arafat's characteristic arrangement of his keffiyeh into a map of Palestine. One could tell a communist not only from the colour of their keffiyeh

(Red) but also, as anthropologist Ala' Al Azzeh has reminded me, of the brand of cigarettes which they smoked. The passivity of a community member, a feeling that they were not in-movement, could found suspicions of collaboration, but by the same token, the investigation of collaboration demanded a proper "aesthetic of judgement," in which all the motions had to be gone through (Jean-Klein 2001). My friend Ahmed, mentioned earlier, had in his youth during the first Intifada been tasked asked by several competing factions in his village to produce their graffiti because he was known for having beautiful hand writing: "*Al khatt ta3i kaan helou.*"

Turning back to the production of graffiti, what is striking Juliet Peteet's field notes is the manner in which her interlocutors resist interpellation as an inactive public, or audience, even in the would be act of reading itself. Then as now, the writing of political slogans on the wall are frequently analogized to forms of media, most commonly newspapers. Yet as becomes clear from a closer reading, the import of the analogy of the newspaper is not merely the content of the paper, what it says, but *a way of reading* it, specifically, a way of reading it *in motion*. "It's kind of like reading the newspaper," one interlocutor explains to Peteet, "... as I walk to the main road, *I scan the walls quickly* [my italics] to see what is newly written." (Peteet 1996, 151) The tropes of action and movement, constantly reemerge "You didn't *stand around* reading graffiti, you read it in passing, often from a car," experiencing the feeling of being moved by something outside of yourself. A writer and scholar explained that he paid particular attention to graffiti as he rode in the shared taxi in the mornings." (Peteet 1996, 151) Motion is directly transmissible in these accounts into *emotion*; subsumed within tropes of communion, in which the personal and impersonal is elided; one reads alongside and with others, in shared taxis, in the street etc, one reads to know not merely how people feels, but, to wit, how *one should oneself feel*, in order to become in fidelity with the event, as Badiou might

put it. "...many people told me they made a point to read graffiti when "things are hot" or when "things *are happening* [*my italics*]." (Peteet 1996, 151).

In these respects, graffiti, did not so much "make place" - as is often the assertion of graffiti scholarship, or indeed "take it" (Sauders 2011) but was productive of an atmosphere or mood, i.e. what is both a place-ness of time, and time-ness of place. We read herein echoes of Ella Chmielewska, who, in commenting on the deployment of pieces of Los Angeles graffiti in a traveling exhibition in Montreal, in 1994, observes that the graffiti artefacts were not exhibited as objects or events in their own right, but rather featured as peculiar kind of framing background for the exhibition, neither in the foreground of background but rather occupying a peculiar kind of *beforeground*, evocative of the chronotope of a late 1980's Los Angeles. (Chmielewska 2007) If one were to spatialize the operations of the mind-as-language, we might characterize the beforeground as the domain of metonymy. Metonymy, as Eelco Runia notes

... wants us to believe that it imparts only one "meaning" – the truth, that this "meaning" lies right at the surface, and that this one "meaning" is all that it conveys. Because it suggests that it has nothing to hide, metonymy denies that it needs to be interpreted. Metonymy thus tries to situate itself before the subject/object split...Insofar as it succeeds in doing so, the knowledge it imparts is "common knowledge. (Runia, Spots of Time 2006)

Another way of understanding metonymy, as the domain of the taken for granted, is that it is, as per Freud's own inference, one of the characteristic linguistic operations of the unconscious. It is also in this key that one may understand the psychoanalytic language through which early graffiti scholarship seizes on graffiti. (Bourland 2007) Indeed, one of the most provocative observations made by Peteet is on the relation of graffiti, movement, and the would-be unconscious. "By 1990, few people actually stood around reading graffiti. Reading, I would suggest, had taken

on a *subliminal quality* [*my italics*].” (Peteet 1996, 150) In similar key, Palestinian teachers recall that school children would absent mindedly inscribe popular slogans of the first Intifada on their desks (محمد ومحمد بلا تاريخ). To wit, what they were enacting was not the autonomous volition of the liberal, modern cogito, but something more akin to unwitting, contagious mimesis of crowds, which has so fascinated modern thinkers, from Spinoza to Smith, Hume, Le Bon, Freud and Canetti. (Mazzarella, *The Myth of the Multitude, Or, Whos Afraid of the Crowd?* 2010) To Canetti, explicates Anna Aizman, “crowds are not who they are but what they do – not identities, but actions. A crowd that exits the theatre is a separate species from the crowd that sits in the theatre.” A crowd, in other words, is a movement. And a movement makes its own sense of both time and place.

I never came across in my later years in Ramallah any of the fifteen graffiti billboards that the Governor of Ramallah had talked to me about in 2005. One friend, who knows the city better than anyone I know, told me recently that he saw such board erected at the central Manara, but that it soon fell into disuse. Within a few years, it became clear that efforts by municipal and state authorities to cultivate a more self-regulating citizenry were not yielding anticipated fruits. By 2010 the seat belt campaign had petered out. On returning to Ramallah in the summer of 2011, I learned that the operation of the city’s new, and expensive parking meter scheme had been momentarily suspended. Yet in revisiting to the time and place of Ramallah, a decade after the 2005 ascension of Abbas, it was also clear that something had changed, most noticeably in the sensibilities of a younger generation of Palestinians. In an interview, graffiti artists Hamza Abu Ayyash told me of how he was once detained while drawing on roadside wall by Palestinian Mukhabarat, the security services. “What are you writing, graffiti (*graffiti*), or slogans (*shi’araat*), they asked him? ‘Graffiti,’ he said, to which they replied: “OK fine, carry on!”

My point in relating this anecdote is not to highlight that graffiti has ceased to be transgressive of authority. As noted earlier, graffiti in Ramallah is sometimes critical of the Palestinian Authority. Nor indeed, can it be said that graffiti during the first Intifada was the voice merely of an oppositional, or critical public. Of interest, rather is explicit possibility of separating out the content of graffiti (slogans) from its form (graffiti). It is all the more poignant for the fact that Hamza, who is of a post Intifada generation of graffiti *authors*, is a well-known exponent of a form of graffiti production which mimics the elaborately spun forms of Arabic calligraphy but without use of Arabic letters. In other words, he produces writing that is purely aesthetic, which has no content, or meaning as such, or, perhaps more accommodatingly, which does not *yet* have a meaning or content, in which meaning can be felt to be immanent. He writes it not only on walls, but also houses, cars, bags, and in the form of tattoos, bodies, feeding onwards through the city. It is tempting to tender that he writes not only a homage to the graffiti of the first Intifada, but an apperception of affect as such.

While talking to me about Palestinian street writing, another local artist observed that posters and graffiti were still appearing in Ramallah, but that activists seemed to go to some effort to avoid defacing shops or house facades, using only light poles, tree trunks or transmission boxes, and avoiding use of glue, which leaves hard-to-remove residue on stone walls. "It's as if there is a kind of unspoken agreement between activists and the city," he concluded. Neither the police nor municipal authorities, he also observed, appeared concerned with the few scrawls of graffiti that could still be read in the downtown area, even though some of it skewered the Palestinian Authority. My interlocutor was too young to have participated in the first Intifada, but he recalled the graffiti of the first uprising as a "newspaper of the street," while also emphasizing that the graffiti of the first Intifada belonged to a particular moment. Palestinians now had other means of communicating. He mentioned smart phones and Facebook. But he told me that he was thinking about an art project that would

entail erecting graffiti billboards in Ramallah, whereupon the people could again express themselves. Although never realised, in other words, in the sense and scope imagined in 2005 by the Governor of Ramallah, the graffiti billboard had become part of a particular collective unconscious of the city, also in so far as the unconscious is neither a place nor a time, but precisely a scrambling of such coordinates. When I noticed, a year later the appearance of disused public billboard in Ramallah renovated Old Town, I could not but help feel that it was both too far ahead of itself, and already passé.



This peculiar out-of-jointedness of graffiti echoed to me a remark made by Sophia Stamatopoulou-Robbins in her sensitively rendered account of the governance of waste in post Oslo-Palestine. Stamatopoulou-Robbins' recalls hearing around her in 2011 Ramallah a discourse unfamiliar from earlier stays in Palestine, four years earlier; a new ability by some Palestinians to talk about their lives as if there were no Israeli occupation. One of the most effects of this talk is to enable a depoliticisation of matters of everyday governance; de facto turning the everyday into something ordinary, and uneventful. Explains one of her interlocutors: "some things just aren't about occupation – and garbage is one of them." (Stamatopoulou-Robbins, *Governing Remains: Garbage and*

the Emergence of the Technical-National in Post-Oslo Palestine 2011, 4) It is also against this backdrop that we may understand the repositioning of nationalist speech as “dirty” and thus - to adapt Mary Douglas’ (Douglas 2002) classic anthropological formulation - as language out of place. This discourse, which is familiar to anyone who spends time in Ramallah at the time of this writing, expresses itself in two peculiar kinds of ways of talking: an “impulse to refer to the occupation in the past” as well as “a new geographic imaginary that conceives of the occupation as located at the outer borders of Palestinian governance.” (Stamatopoulou-Robbins, *Governing Remains: Garbage and the Emergence of the Technical-National in Post-Oslo Palestine* 2011, 4)

In closing this essay, I would like to think through this particular relationship between time and place, or chronotope, - so evocative Raymond Williams notion of a “structure of feeling”; (Williams 1977) the sense of an era, which is undeniable, but only becomes available after the era as such has passed, in retrospect and embodied in novels and works of art. What the structure of feeling structures, in fact, is the notion of the event as such. What the structure of feeling structures, in fact, is the notion of the event as such, and what it allows us think, *inter alia*, is the way in which “each era,” as originally phrased by the historian Jules Michelet and taken up with new import by Walter Benjamin, “dreams the one to follow.” (2002, 4) I wish to undertake his exercise in order to think about the relationship between authorship and political possibility in a more encompassing sense.

The Author, observes Roland Barthes is “a modern figure, a product of our society, insofar as, emerging from the Middle Ages with English empiricism, French rationalism, and the personal faith of the Reformation, it discovered the prestige of the individual, of, as it is more nobly put, the ‘human person’.” (Barthes 1977, 142-142) Yet in the very moment that the Author strides unto the world historical stage, it also comes to stage itself as peculiar kind of absence within the text itself, “diminishing like a figurine at the far end of the literary stage,” so that:

the text is henceforth made and read in such a way that at all levels the author is absent. The temporality is different. The Author, when believed in, is always conceived of as the past of his own book; book and author stand automatically on a single line divided into a before and an after. (Barthes 1977, 142-143)

In rereading Barthes' classic text, I am struck by how closely his rendering of the moment of the Author maps unto a theological understanding of the place of God in modern Protestantism. Precisely in the same moment that Protestant theologians invest themselves in a God whose will can be discerned, unmediated by Church clergy, directly from the textual fundamentals of the faith, the Bible, (whence, infamously, we are bequeathed the term 'fundamentalist') - that very God also comes to be figured as impossibly remote and aloof in his absolute sovereignty; the font of the Hobbesian Leviathan, the figure of the King as God-on-Earth, or the modern State.

One can reconcile the contradiction by thinking both God and State through the problem of the subject-of-language, which is to say, the problem of grammatical tense. The modern God, as Author of the world, recedes from the world in so far as he recedes from the present tense continuous, a concept entailing all the ambiguity of the English term "moment," which may ascribe something flickering, of the order of seconds, but also a historical era, or epoch, of the order of decades and centuries. Incidentally, the Arabic word for moment, *lahtha*, derived from the verb *lahatha*, "to notice," retains in itself an understanding of the moment as anchored in a bodily, or phenomenological experience of time, i.e. the body-in-language. "Modernity," which in Arabic is derived from the same root as "event," would itself nothing but such an extended moment.

It is by this logic that Protestant theologians could agree with Catholics that God was capable of miracles, yet also argue that his direct intervention in the world, "had ceased after the

early Church,” (Daston 1991, 101). The “after” connotes not a definable date – but precisely the past perfect tense itself; the time of another time, which is also another place, or strictly speaking, another world. In the intervening time, the extended present of disenchanting modernity, God intervenes only indirectly, by delegation to angels. (Agamben 2011, 267) It is the guidance of this divine bureaucracy, which according to Agamben furnishes the basis for Adam Smith’s conception of the force of The Market, as the mystery of the Invisible Hand. The belief that the bureaucracy works according to God’s eternal, general will, provides the basis for the elaboration of empirical science, as a search for patterns in the conduct of human societies as well as nature itself.^[1] In secular, political terms, the time of miracles in which worlds can be made and unmade, which is also the time at once both before and after, time, is the time of Revolution.

In the modern imaginary, this time before time corresponds simultaneously to both past and future perfect, i.e. the moment of the making of the world and the theologically ordained end of the world, or end-times, the post-apocalyptic scene which has become the prevalent feature of late capitalist imaginaries of the future. It is not incidental that this world is populated by roving mobs, an echo not merely of the Hobbesian State of War, but testimony to the fact that the crowd is a figure of political agency in the modern imaginary. Just as a revolutionary crowd once founded the political order inhabited by liberal democracy, it is only by and through the crowd that the world will be remade. The crowd, then, would always be immanent to the liberal imaginary, a real and pressing possibility. but difficult to think-feel as an actuality, to wit also in the perception of academics. “[C]rowds are pushed into the past,” in much current scholarship, observes William Mazzarella. “Their relation to the present is,

^[1] Indeed, during this period the notion of nature and what is natural in both humans and animals undergoes a notable shift, from designating in the Middle Ages merely that which exhibits some regularity, to ascribing an infallibly constant principle, or normativity. (Daston, 1991)

to adapt a term from Johannes Fabian, allochronic [...], crowds are generally considered in a register of intellectual history where they are treated as the paradigmatic social formation of an earlier “mass” phase of modernity.” (Mazzarella, *The Myth of the Multitude, Or, Whos Afraid of the Crowd?* 2010, 698-699) I read this persistently perceived past-ness of the crowd, as a symptom of a world where it is becoming increasingly difficult to conceive of the possibility of Another World; in which the place-time of miracles is ever receding in time, fleeing simultaneous into a fading past and ever receding future.

To concede, however, that nothing is possible anymore, is also to fall prey to the ontological presumptions of the modern, liberal notion of agency, and the politics of empty time which it carries with it. I was made to reflect on this a decade after the 2005 erasure of graffiti in Ramallah, when I showed to a local friend photographs of the erased walls, in which the writing could still be barely discerned in palimpsest, erased but also emergent. More than a decade younger than me, my friend had few coherent memories of the first Intifada, but was immediately and forcefully affected by the photographs. He remembered that has a child he was confounded by a graffiti that called for a popular strike on a date that had long ago passed; graffiti that had remained on the wall because graffiti was not supposed to be erased. “I think there is still graffiti from the first Intifada in the refugee camps,” he then told me, “maybe Amari camp or Qalandia. We can go look for it.” Some time passed, we both became busy with work, and when I brought up the matter with him again a few months later, he averred that he may have been mistaken, that he had himself, in fact never seen such graffiti inside the camps. Yet in the moment of confrontation with the photographs from 2005, he had been seized by the feeling that the graffiti in the camp *must* be there; the thought was to him was real and pressing, no less insistent than the dream of the graffiti billboard, which had now become part of the collective unconscious of Ramallah.

Indeed, as Ala Al Azzeh has pointed out to me, it is not only

felt, but can also be argued on the basis of the historical record, that the first Intifada was underway in the camps since the late 1970's well before it was recognized as a national event, and that it endured in the camps, after the signing of the Oslo Accords, irrespective of the pronouncements of Palestinian officialdom. The camps, we might aver, make their own world, and thus their own sense of possibility. Yet this is not, I think because they are places of stasis, where "time stands still." To the contrary, they are constantly working at sustaining, an ever expanding, increasingly epochal present continuous, as collective movement. In this continuous present, every historical disaster may well *still be happening*, yet no disaster has finally *happened*. I think it is from this tense that we must apprehend jointly the common Palestinian refrain "we are still living the Nakba" and the relatively scarcity of novels or films rendering of the Nakba in the synoptic, or *epic* mode, i.e. a mode which would allow us to have an overview of it.. In so far as the Nakba is still happening, the consequences of this happening can yet be turned into something other than disaster, even the inversion of disaster. In other words, it can still be possible to exercise a particular kind of agency *inside* the event. I believe that it is this kind of agency that Gilles Deleuze, in the *Logic of Sense*, characterizes as "counter-actualization."

Iris Jean-Klein explicates what this may look like with an example from the first Intifada, observing the example of a street merchant, who, seeing Israeli soldiers advancing down the street towards him, overturning everything in their way, suddenly up-ends his own cart, eliciting laughter from women observing the scene. (Jean-Klein 2001, 113-114) Continues Jean-Klein in a more general note that

When asked to give a reason for "not doing X now," people tended first to list structural or material constraints-but then moved effortlessly on to talking about the denials as if they were acts performed, not measures endured. It was as though, [...] [they] were appropriating from the Israeli regime the authority to author; that is, to a greater

extent influence their daily lives, arrests and all.
(Jean-Klein, 2001, pp. 113-114)

As recalled, it is precisely this form of working *within the violence of the occupation*, which was so characteristic of the practice of graffiti of the first Intifada. In so far as it appropriates from the occupation the possibility to author, however, it is also a peculiar kind of authorship. Recollecting stories heard from Hebron, during the first Intifada, Hamza Abu Ayyash recalls that activist who set out to write graffiti at night would sometimes bring with them a bucket of white paint, and if stopped by Israeli soldiers would have an answer ready. “I am on my way to erase graffiti.” In historical perspective I like to think this figure, the clever Hebronite of Palestinian street lore, as a peculiar instantiation of the impossible Palestinian political subject writ large; a kind of self-fashioned blur, or walking Bergsonian duration, fleeing *from* by leaping *into* and *through* the contradiction at hand, to arrive at a new sense of possibility altogether.

Not incidentally, this would also be the defining move of the Pessoptimist, as Sylvain Perdigon has so beautifully rendered. (Perdigon 2008) Instead of tethering politics to “hope,” with its eternal but also infinitely receding promise, what is in some sense nothing more than an alibi for impotence, Pessoptimism would be animated by what is beyond *ak* but a kind of intuitive grasp, outside of the cogito, what the painter Francis Bacon termed an “optimism of the nervous system,” (Ibid) a constantly self-impelling ‘perplexion’ which is a cognate of the notion of affect.. (Massumi, *Parables for the Virtual: Movement, Affect, Sensation* 2002) Deferring the necessity to choose between optimism and pessimism, affect would be the inner motor schema of Pessoptimism itself. What it impels is not anything that can be framed, in the manner of the Governor of Ramallah’s billboards. In fact, affect does not, as Massumi would argue, exist at all, but rather insists and subsists, as a movement within the quotidian and the everyday, within which the possibilities of future revolutions are ever being reconstituted.



Ramallah, Rukab St. 27, 2011



Ramallah, Rukab St. [], 2005

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