ISRAEL’S WAR RECORD IN GAZA

ALSO IN THIS ISSUE
SUDANESE AND SOMALI REFUGEES IN JORDAN ▪ EGYPT’S JUDICIARY

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ISRAEL’S WAR RECORD IN GAZA

ARTICLES
2 Sudanese and Somali Refugees in Jordan: Hierarchies of Aid in Protracted Displacement Crises
Rochelle Davis, Abbie Taylor, Will Todman and Emma Murphy

13 Dissidence and Deference Among Egyptian Judges
Mona El-Ghobashy

20 The Plight of Egypt’s Political Prisoners
Nadeen Shaker

28 Hebron, the Occupation’s Factory of Hate
Joshua Stacher

34 A Lonely Songkran in the Arabah
Matan Kaminer

SPECIAL REPORTS
38 Israel as Innovator in the Attempted Mainstreaming of Extreme Violence
Lisa Hajjar

46 Armed Social Science: Counterinsurgency and Professional Ethics
Kristian Williams

EDITOR’S PICKS
48 New and Recommended Reading


COVER Rubble of a water tower in Khan Younis, Gaza, destroyed during Israel’s 2014 Protective Edge Operation. (Massimo Berruti/AFD/Agence VU/Redux)
At a State Department ceremony on September 14 the United States and Israel signed a Memorandum of Understanding promising $38 billion in military aid to Israel over the ten years from 2019 to 2028. As the White House was quick to point out, it is the largest single military aid package ever pledged by the US to any country, demonstrating President Barack Obama’s “unshakable commitment to Israeli security.”

The coverage by the *New York Times* and other mainstream outlets evinced relief that Washington’s “special relationship” with Israel remains intact, despite the dormancy of US-sponsored Israeli-Palestinian negotiations, the reported personal dislike between Obama and Prime Minister Benjamin Netanyahu, and the determination of the Obama administration to strike a bargain with Iran regarding its nuclear research program over vociferous Israeli objections. In fact, those ties were never in peril, and the Iran deal does not represent a major shift in US grand strategy away from the twin alliances with Israel and Saudi Arabia.

It is true that the Memorandum of Understanding is not quite business as usual. The bulk of the 2019–2028 money—$33 billion of it—is Foreign Military Financing (FMF), which by US law must be spent by the recipient nation on purchases of weaponry from American manufacturers. In the past Israel enjoyed a unique partial exemption from this requirement, allowing it to spend 26 percent of its aid dollars on arms made by Israeli firms. The set-aside helped Israel to become the seventh largest arms exporter in the world by 2011. Israel was also permitted to use the FMF funds to buy fuel. The new Memorandum closes those two loopholes.

In addition, Israel signed a side letter agreeing to return any more military aid dollars that Congress might appropriate in excess of the $3.1 billion per year laid out in the Memorandum currently in effect and not to lobby Congress for such extra boodle in the future. Neo-conservative darling Sen. Lindsey Graham (R-SC), sure he discerned the White House’s hand behind this codicil, sputtered, “It is a level of antagonism against Israel that I can’t understand.”

Some independent commentators, as well, see in these measures the beginnings of an effort to cut the US-Israeli “special relationship” down to a bit less extraordinary size. Maybe, but this latest pact aimed at massive buildup of Israeli military capacity is not good news for the cause of peace and justice in the Middle East.

It can only enrich the parallel “special relationship” between Israel and US weapons makers, for instance. Lockheed Martin, Raytheon and their ilk have their own lobbying corps, of course, and they have an enduring interest in keeping Israel armed to the teeth. The end of Israel’s exemption from to FMF rules—whereby American taxpayers subsidized the Israeli arms industry—simply routes more taxpayer dollars into American arms merchants’ coffers. It is a particularly pernicious form of corporate welfare.

Moreover, the expansion of military aid to Israel, along with the sales of warplanes and high explosives that Congress regularly approves, sends the message that Washington is content for Israel to remain a garrison state that need not resolve its remaining conflicts with its neighbors, chiefly the Palestinians. The White House press release on the Memorandum boasts of the $3 billion transferred under Obama for missile defense systems, which it claims saved “untold” lives in 2014 “when Israeli civilians were subjected to rocket fire.” There is no mention of the 1.8 million Gazans who have repeatedly endured withering Israeli bombardment using projectiles of US supply.

The new military aid package, in short, is another grim reminder that US stewardship of the Israeli-Palestinian file has functioned not only to frustrate peace but also to consolidate the Israeli occupation of Palestinian lands and deepen its structural violence.
In late 2015, hundreds of Sudanese staged a sit-in outside the office of the UN High Commissioner for Refugees (UNHCR) in Amman, Jordan. Their hope was to obtain recognition of their rights as refugees and asylum seekers, and to receive better treatment from the agency. A previous protest in 2014 had ended when Jordanian police persuaded (or compelled) the Sudanese to leave the site. This time, however, after the Sudanese had camped out for a month in the posh neighborhood of Khalda, the police arrived in force in the early hours of a mid-December morning. They dismantled the camp and transported some 800 protesters and others—men, women and children—to a holding facility close to Queen Alia International Airport. In the ensuing days, the Jordanian authorities, assisted by Sudanese government representatives, deported the majority of these people to Sudan. Nuclear families were split up between countries. More than 100 of those deported were detained and questioned upon arrival in Khartoum. Several reported harassment and intimidation at the hands of the Sudanese authorities from whom they had originally fled. Some had their documents seized and are now on the run. The whereabouts of others are unknown. Those Sudanese who were part of the protests but managed to escape deportation remain fearful for their future in Jordan.

This crackdown on non-violent refugee protest is not unprecedented. In Egypt in 2005, a peaceful sit-in of Sudanese outside UNHCR offices in Cairo turned deadly when Egyptian police attacked the group, killing at least 28

Rochelle Davis is associate professor of cultural anthropology in the Center for Contemporary Arab Studies at Georgetown University. Abbie Taylor, formerly research associate with Georgetown’s Institute for the Study of International Migration, now works for the International Medical Corps. Will Todman graduated from Georgetown with an M.A. in Arab studies and is now research associate at the Center for Strategic and International Studies. Emma Murphy graduated with a B.S. from Georgetown’s School of Foreign Service and has joined the Peace Corps in Senegal.
protesters. More recent reports from Egypt describe how an anti-smuggling law enacted in late 2015 is being implemented to result in the arrest and deportation of those—Sudanese, Eritreans, Ethiopians, Syrians, Palestinians and Iraqis—the government says have paid smugglers to get on boats (in Egypt or Libya) to cross the Mediterranean Sea to Europe.¹

In 2012 in Lebanon, 13 Sudanese refugees and asylum seekers who mounted a two-month hunger strike outside UNHCR offices were reportedly arrested and detained.² Israel hosts an estimated 45,000 Sudanese and Eritrean refugees and asylum seekers.³ The vast majority of these people are denied residency or work permits. If they are caught working illegally, following a law passed in 2015, they are detained in a “welcome center” in Holot and then, after 12 months, either imprisoned, forcibly repatriated or sent to a third African country. Thousands have taken their protests to the Knesset, in spite of fears of deportation.⁴

Before rounding up the Sudanese in December, the Jordanian government had deported few refugees and asylum seekers. Those who had been deported seem to be those who had either upset the status quo or acted “politically” in ways deemed undesirable by the government. The mass deportation in December remains, hopefully, an anomaly that does not threaten the hundreds of thousands of refugees of all nationalities who remain in the country and describe Jordan as a place of relative safety.

Nonetheless, it is clear that governments and security services in Jordan and other host countries are sending a message to all refugees, migrants and citizens that their status in the country is not protected by international agreements or norms. The message is to be quiet and accept what is on offer. And there are few or no channels for complaints, whether about the status itself or about inadequate protection and ineffective or imbalanced aid provision.

Read differently, the stated reason behind the Sudanese protests in all of these countries—lack of access to services for refugees—points to a larger pattern in responses to refugees in the Middle East. That pattern shows a hierarchy of policies and agreements based on the national origin or citizenship of the persons, rather than their status as refugees or asylum seekers. A Jordanian NGO, ARDD-Legal Aid, describes this hierarchy and offers better suggestions for how refugees should be treated in a report titled “Putting Needs Over Nationality.”⁵

We expand on the ideas expressed in that report and elsewhere to analyze how international agencies and host countries in the Middle East have created refugee aid regimes that structure their services based on citizenship. This structure creates a hierarchy of service provision that often addresses immediate refugee flows, but ignores or normalizes as less needy those who come from situations of protracted displacement.

We identify four elements that are part of this hierarchy: size, race, time and awareness. The first element, size, addresses the large refugee populations that have arrived in countries of first asylum—Palestinians in 1948 and 1967, Sahrawis in 1975–1976, Iraqis after 2005 and now Syrians. Because the movements are so large, they become the target of funding and programs (which is not to say the responses are adequate). Refugees who do not fit that citizenship-based designation are often left without emergency care or assistance.

The second element, race, is tied to the African-ness of Sudanese and Somali refugees and the assumptions about civilizational underdevelopment and inferiority that accompany how they are seen in the Middle East. Such inexcusable views reflect the legacy of an Arab nationalism that deemed Semitic Arab-ness superior to other types, particularly those that are both Arab and African, even though both Sudan and Somalia have long been members of the Arab League. These assumptions are also the residue of older experiences with former African slaves or soldiers, who are most often seen as “other” due to their skin color.

The third element is time. And while not particular to the Middle East, the region has endured major population movements as a result of wars in the last 15 years (Iraqis, Syrians and now the ignored Yemenis). The urgent fact that, today, Turkey, Lebanon, Jordan, Egypt and Iraq are the hosts of 4.8 million Syrian refugees simultaneously obscures hundreds of thousands if not millions of others who are victims of conflicts going back many decades and live in situations of protracted displacement.

The fourth and final element is awareness. Sudanese and Somali refugees in the Middle East are only a small percentage of the many Sudanese and Somali refugees in the world, the vast majority of whom fled south or west to other African countries. Because these people are not a single large concentration in the Middle East (except in Yemen), relatively little is known of the conflicts in their countries or the reasons for their flight.

We focus here on the experiences of Sudanese and Somali refugees and asylum seekers residing in Jordan, a group of approximately 4,000 people, half of whom are children.⁶ While recognizing that they are small in number compared to the hundreds of thousands of Syrian and Iraqi refugees in the country, in addition to Palestinians, we chose to write about these two populations because the plight of Somalis and Sudanese illustrates some of the most pressing issues connected to long-standing conflicts and situations of protracted displacement. In addition, because the Sudanese and Somalis come from countries that do not border Jordan, they have arrived via complicated routes and personal negotiations and are often viewed by Jordanians as travelers or labor migrants, and thus not akin to Syrian and Iraqi refugees.

Due in part to these commonalities, Sudanese and Somali refugees and asylum seekers recount similar experiences in Jordan. Their shared experiences of harassment stand out—their darker skin making them easy targets. Furthermore, their citizenship, rather than their status as displaced, frames how most international NGOs and the UNHCR respond to them, which means provision of assistance and programming only when funds are unrestricted (rarely) or when budgets allow on an ad hoc basis.
Conflict in Somalia and Sudan

The time element that relates to Sudanese and Somali refugees in Jordan and elsewhere evidences how drawn-out conflicts result in protracted displacement, which is defined as more than 25,000 people living in exile for more than five years.

UNHCR data shows that the number of Somalis and Sudanese registered as refugees and asylum seekers in Jordan has increased over the past 20 years. Notably, the number of Sudanese refugees and asylum seekers almost quadrupled between 2012 and 2014. Various factors have contributed to the recent rise, including the long-running conflicts and issues connected with access to resources in Sudan and Somalia, as well as the trend of families reuniting in Jordan.

The majority of Sudanese in Jordan came to the country as a direct result of the conflict that began in Darfur in the late 1990s. Despite the 2011 Doha Document for Peace in Darfur, the fighting continues. The spike in Sudanese arrivals in Jordan in 2013 and 2014 is directly connected to this continuous violence: “Some 450,000 persons were displaced in 2014 and another 100,000 in January 2015 alone, adding to some 2 million long-term internally displaced persons (IDPs) since fighting erupted in 2003.”

For Somalis, civil war has been part of life since 1991. Somalis have fled to numerous countries and in large numbers, according to the UNHCR—Kenya (420,000), Yemen (250,000), Ethiopia (250,000), Djibouti and the Gulf states. A similar number of Somalis are internally displaced (1.1 million of a total population of 12.3 million, according to the UN Population Fund), and thousands have been resettled in Europe and the United States over time. These numbers do not reflect the actual displacement, however, as many are not registered as refugees and live either as guest workers or illegal immigrants.

Because the Gulf states do not allow the UNHCR to operate within their borders, Somalis living there often moved to Yemen (before 2015), Kenya, Jordan, Egypt and Syria (before 2011) to register with the UNHCR, gain access to aid or get a chance at consideration for third-country resettlement. Yemen is no longer a safe place, however, due to the Saudi-led attack that began on March 26, 2015 and continues to the present. The total displacement in Yemen (IDPs and refugees) is nearly 2.5 million people, the UNHCR says, of whom some 30,000 are Somalis who have fled Yemen for Somaliland, Djibouti, Ethiopia and Somalia.

Sudanese and Somalis must obtain visas to enter Jordan. To our knowledge, there is no smuggling network that brings them overland from Egypt or Saudi Arabia or Iraq. But only eight of the 20 people interviewed flew directly to Jordan.
from their home country (in this case Sudan). Four separate Somali women described traveling via Yemen before eventually arriving in Jordan; prior to Yemen, one had also spent time in Kenya and another in Syria. Two of the women spoke of experiencing violence and insecurity in Yemen, with one revealing that she had been raped while a domestic worker in a Yemeni household. One Somali family fled Somalia after the mother (a health worker) was seriously wounded and another family member was killed in two separate attacks. When explaining why the family traveled to Jordan, the mother said: “I came here [Jordan] to register for the UNHCR and for medical treatment, and because living here is better.” The family arrived after living in the United Arab Emirates, where they were able to obtain visas for Jordan. Another man described transit through Bahrain, due to the difficulties of traveling directly to Jordan. A Sudanese woman left Sudan for Iraq, where she and her family experienced violence and harassment, and later she traveled to Jordan with her husband and children; her husband has since been deported by the Jordanian authorities, to where and for what reason she did not reveal.

These experiences highlight two points: first, that these refugees and asylum seekers want to come to Jordan because it is a place of safety; and second, that they are “non-border” refugees who enter with visas and then seek asylum. This second point leads Jordanian authorities to view Sudanese and Somalis (and now likely Yemenis as well) as people who overstay their visas, rather than as refugees. In December, for example, a government spokesman said the Sudanese refugees were being deported “because they had arrived in Jordan under the false pretext of seeking medical treatment,” taking advantage of Jordan’s “relatively lax medical visa policy.” Any future restrictions on visas on such grounds would be a serious blow to all those fleeing conflict. While the Sudanese and Somalis obtained visas to enter Jordan, their stated reasons for leaving their homes were like those cited by Syrians and Iraqis: violence, political threats, the breakdown of services, the desire to avoid participation in conflict and the need for health care, to name some. The Sudanese and Somalis thus rely on the global system of deferring to UN authority to designate an individual as a refugee despite the fact that they may be “illegal” in the eyes of the state. In the case of Jordan, and elsewhere, this system usually protects those designated as refugees, but beyond and before protection, the system has also created a troubling hierarchy of refugee-ness.

### Jordan as Host Country

In early 2016, preliminary census results estimated Jordan’s total population at 9.5 million, including 2.9 million “guests” of non-Jordanian origin, a category embracing refugees, asylum seekers and migrant laborers. Jordan has earned a reputation of tolerance for refugees and asylum seekers residing in its territory, though it is not a signatory to the 1951 UN Refugee Convention or its 1967 Protocol. In the absence of international obligations and national refugee legislation, the UNHCR signed a Memorandum of Understanding with Jordan in 1998 (partially amended in 2014), which, among other things, underlines the principle of non-refoulement—protection against forcible return to country of origin—and agrees that refugees and asylum seekers should receive treatment in line...
with international standards. The Memorandum also acknowledges the 1951 Convention’s definition of a refugee, and allows the UNHCR to interview and determine the status of persons seeking asylum in Jordan. In spite of Jordan’s generosity, and a clear stipulation in the Jordanian constitution that “political refugees shall not be extradited on account of their political beliefs or for their defense of liberty,” there are instances of deportation among all refugee populations—from Syrians to Iraqis to Sudanese—instilling feelings of insecurity among all refugees and asylum seekers residing in the country.

In 2015, Jordan was reported to have the second-highest per capita rate of refugees in the world. While this count and other UNHCR statistics do not include Palestinians, nearly half of Jordanian citizens either are or are descended from Palestinians who found refuge in Jordan following the creation of Israel in 1948, and the Israeli occupation of the West Bank (and Gaza and the Golan Heights) in 1967. To serve these populations, the UN Relief and Works Agency for Palestine Refugees (UNRWA) was established in 1950 (prior to the existence of the UNHCR). UNRWA is a model of categorization of services and funding by national origin, and still runs schools, clinics and other programs intended for Palestinian refugees and largely staffed by same.

Funding for the UNHCR, the UN body that deals with all refugees other than Palestinians, has followed this “country of origin” model in Jordan in today’s refugee crises. For example, in November 2015, the UNHCR reported that it received $197.2 million in donor contributions to its operations in Jordan for 2015, of which $195.4 million went toward its Syria response and $1.8 million toward its response to the Iraq crisis. It had requested $329 million from donors to fund its Jordan operations in 2015, meaning that it had received only 60 percent funding as of November, all of which was contributed under the Syria and Iraq responses, leaving 40 percent of the needs unmet.

The model of refugee engagement by citizenship has not held in other ways, however. With the arrival of tens of thousands of Iraqi refugees in 2005, the government of Jordan was quick to reject the establishment of separate schools or health facilities for Iraqis (citing the Palestinian case as a negative), and instead sought to integrate them into national public services. The same has been true with Syrians. As the government allowed Iraqi and then Syrian refugees into its schools and health facilities, it also pushed for greater development aid to build and support this infrastructure. The US is the largest donor, and Secretary of State John Kerry pledged additional funds to Jordan at the February donor conference on Syria in London. Accordingly, development aid spikes in 2003 (the year the US invaded Iraq), followed by a continuous rise since 2007–2008 with significant increases post-2011, parallel the various refugee flows from Iraq and Syria (or, more precisely, the US decision to provide funding for them).

But this targeting of funding at certain populations leaves the populations for whom money is not earmarked to perceive themselves as invisible or ignored by humanitarian actors and the wider international community. The situation in Jordan reveals the realities of humanitarian aid: First, there will never be sufficient aid to meet people’s needs; and second, giving is often structured around specific crises and appeals, and as more crises remain unresolved and new ones emerge, a shift in priorities or fatigue among donors can have devastating consequences for those who fall victim to protracted displacement. Above all, humanitarian assistance is and always will be unsustainable and insufficient in the mid- and long term, without either addressing the conflicts that keep people as refugees or modifying host-country policies so that refugees are allowed to work, regardless of their nationality.

Refugees are defined by their national origin as a result of agreements struck between the UNHCR and governments, as well as government policies. Thus, in the case of Jordan, refugee and asylum-seeking populations experience differential access to services as well as differences in how they obtain refugee status: Syrians are granted prima facie refugee status and must register with both the government and the UNHCR, whereas others—Iraqis, Somalis and Sudanese—are required to undergo Refugee Status Determination on a case-by-case basis. Palestinians with Syrian, Lebanese or Iraqi travel documents are still a third category: Most often they are not let in to the country, but if they manage to enter, they fall under the jurisdiction of UNRWA. They are not registered with

### Refugees and Asylum Seekers in Jordan (December 2015)

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Refugees</th>
<th>Asylum Seekers (awaiting Refugee Status Determination)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Syria</td>
<td>623,112</td>
<td>0 (recognized prima facie as refugees)</td>
</tr>
<tr>
<td>Iraq</td>
<td>29,263</td>
<td>15,312</td>
</tr>
<tr>
<td>Sudan</td>
<td>1,013</td>
<td>2,203</td>
</tr>
<tr>
<td>Somalia</td>
<td>598</td>
<td>197</td>
</tr>
<tr>
<td>Total</td>
<td>654,141</td>
<td>18,789</td>
</tr>
</tbody>
</table>

*Source: UNHCR Population Statistics Database*
or provided services by the UNHCR and are not eligible to register for resettlement. UNRWA has had to appeal for additional funding to provide emergency services specifically for these Palestinians.

Life in Jordan

Somalis and Sudanese wishing to claim asylum in Jordan need to make an appointment to register with the UNHCR. After registration, they are issued certificates stipulating that they are recognized by the UNHCR as asylum seekers. To be recognized as refugees, however, they must undergo the Refugee Status Determination process, which consists of multiple interviews and home visits. Each of these steps may involve a wait of many weeks or months. While they await a decision, asylum seekers are not eligible for assistance from the UNHCR or the Jordanian government, though they have been known to receive handouts of cash or in-kind assistance from the UNHCR when funding allows. Some make do with the charity of passersby, neighbors, religious organizations and local NGOs. Those who are recognized as refugees—the vast majority of Somalis and around a third of the Sudanese registered with UNHCR in Jordan in 2014—are eligible for cash assistance and refugee services. They can also be considered for resettlement. According to the UNHCR, 160 Somali households and 176 Sudanese households receive monthly cash assistance.

Seasonal, occasional or emergency aid does not help with everyday expenses such as education and health care, not to mention housing and food. Those registered with the UNHCR can receive subsidized primary health services in government-run health facilities, after paying 2 Jordanian dinars ($3) to open a file, but they still have to pay a part of the costs for medication, surgical procedures, lab tests and other services. Primary and preventive health care for children age 6 and under is free of charge, as is child delivery. Sudanese and Somali refugees, as non-Jordanians, must pay a yearly fee of 40 dinars ($65) to enroll in public schools. This fee has so far been covered by the UNHCR and a contractor aid organization called International Relief and Development, which also provides children with necessary school supplies.

One Somali mother said money is so tight that “we share water and electricity with the neighbors. Thank God, my children are in school. But every day I face problems. I don’t have enough to cover the expenses. The school tells the children they want money, and now it’s cold outside, and I don’t have enough for the bus for them, so they have to walk [to school] and come back soaked in rain.” Legal restrictions prohibit Sudanese and Somali refugees, like other non-Jordanian nationals, from working. While it is possible for foreigners to get a work permit in Jordan under
what is called the kafala system, it is extremely difficult due to the costs as well as the need to find a Jordanian sponsor (kafil) willing to complete the complicated bureaucratic process. Employment agencies that specialize in this process for agricultural laborers, construction workers and food service employees (occupations dominated by Egyptians), and domestic workers (largely Sri Lankans, Filipinos and Indonesians), stipulate that the workers give up their passports in exchange for work authorization. The migrants work long hours and are often confined to their workplaces. No one, and particularly not refugees, should be subjected to these exploitative labor practices. A new Jordanian plan to allow Syrian refugees to apply for work permits is a good move, but deepens the refugee hierarchy-by-citizenship model.

None of our interviewees had been able to work legally in Jordan and many were forced by need to turn to employment in the informal sector. Several interviewees cited the constant fear of being caught by the police or Ministry of Labor officials. Fatima, a 21-year old Somali woman, remarked: “Because we are refugees we can’t work at all, and even if we tried to find a job to take care of our food and other daily needs, the Ministry of Labor would catch us and put us in jail and mistreat us, not giving us anything at all, because we are refugees. I was working in a women’s gym and a group of women came and asked me if I worked there. They were dressed like normal customers, and so I said, ‘Yes, I work here.’ They asked me if I had a license to work. I said I didn’t have it currently, and they told me to go with them, showing me their IDs, and then without any mercy they threw me in a car, and they took me to a police station with many other Somali girls in the same car.”

Other interviews revealed that some Somali and Sudanese refugee families were forced to rely on their children working to meet basic needs. Miriam, a Somali woman, said, “We get by because my teenage daughter works cleaning houses. She works really hard for someone of her age, but it will only be until we can get out of this situation. My son also works cleaning cars, and sometimes he goes to clean bakeries and they give him food and he brings it home.” This kind of unregulated labor leaves the worker open to exploitation, because the employer may not pay what was promised or at all. The worker, who is not allowed to work legally in the first place, has no recourse.

In these circumstances, Sudanese and Somalis in Jordan stick together. A study of social relations among refugee populations in Jordan found that Sudanese and Somalis cited the highest levels of “bonding social capital”—relations with others of their own nationality. Not surprisingly, communal living was common among those interviewed, especially young, single men, as were shared finances, such that whoever was able to find work used the income to support those they lived with. Adam, a Sudanese man, said, “We are about 15 or 16 Sudanese in the same house and we all go out to search for work. Any one of us who finds work uses the money to get food for everyone and takes a bit from it for rent. I mean, we make a collection for rent, each one according to his ability, how much he worked and according to his circumstances, 2 or 3 lira and so on. There are no other people to help me and we get no help from the UN.” Adam went on to say: “Sudanese... we help each other. Even on the level of when I want to talk to my family, they give me money to talk with my family from a call center.” The same study mentioned above found that “Sudanese and Somalis both say that the perceived racial difference makes it harder for them to integrate within the Jordanian community.” Both groups reported they had very little “bridging capital,” or trusted interactions with Jordanians or other refugee communities.15

Perceptions of racism and experiences of discrimination at the hands of Jordanians were prevalent in our interviews. Many interviewees cited verbal and physical racial attacks, often linking those experiences to certain neighborhoods. Zaynab, a Somali woman, reported: “Currently, I am living in al-Bayadir. We are the only Somali family living here and, thank God, this area is pretty safe and we don’t face any problems over here. The former area that we were living in was Jabal Amman, but we faced a lot of difficulties there. People beat my kids and they didn’t let up on them even when the police came—they were always abusing my kids and throwing stones at them. When the cops came they didn’t do anything, even when some boys tried to beat my kids in front of them. They didn’t do anything at all and they said we had to get a statement from a doctor to prove that we were honest. That night I was out of my mind and I cried in the street. I even thought of committing suicide and threw myself in front of cars. Because of all these problems with my family, I left that area and went far away because we were treated really terribly and people over there insulted us, calling us ’slaves’ and ‘abu samra’ [blackie] and bad words. Sometimes they said, ‘Why did you Somalis come to our country?’” The UNHCR has similarly documented instances of Jordanians attacking Sudanese refugees, and others describe racism directed at Sudanese and Somalis by schoolteachers and police.16

It is important to note that Sudanese and Somalis in Jordan feel a double discrimination, due not only to the color of their skin but also to their status as refugees. Mahaj, a 19-year old Somali woman, recounted the following: “I remember once when I was walking with my sister in the street and there was a man in his forties playing soccer with a couple of boys and they said, ‘Move quickly, you [a racial slur I won’t repeat].’ We responded to him that it was a public street. He got mad at us and started to abuse us loudly saying things I won’t mention. Eventually he said he would push our faces to the ground, and we were afraid, but we decided not to talk to him and kept walking home. A couple of days later my mother was coming from her friend’s house when she saw three boys beating my brother and throwing stones at him, but when she came they ran away and she called the police because it wasn’t the first time they had beaten my brother. When the police came we told them everything. While we were talking with them the 40-year old guy came, and we told the police that he used to

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abuse and bother us. When he heard that he tried to beat me in front of the cops. The police stopped him but they didn't do anything else…. My mental state is bad when I encounter rejection and discrimination between white and black—that affects my mental situation a lot. Sometimes I get really mad and cry.”

Notably, our interviewees opened up about this discrimination even though it is hurtful and embarrassing to talk about. The interviewees were vocal about this subject because they knew they could trust the interviewers and also because this project was directed by foreigners who are seen as part of the international aid system. On the other hand, our experiences talking about anti-black discrimination in Jordan with Jordanian friends and colleagues reveal that many are unaware of what Mahaj articulated, in large part because they do not interact much with darker-skinned people. This dynamic has a class element, as the refugees live among poorer Jordanians and Palestinians and are perceived to compete with them for housing and jobs.17

The Sudanese and Somalis interviewed did also speak of positive interactions with the locals. Mohammad, a 37-year old from Sudan, stated, “My relationships with neighbors are good and strong. Sometimes they send us food, especially on Fridays, and they invite us to visit them. When I first came here, I didn’t have a place to live and I didn’t have any money. I slept in the mosque with my children, and a Jordanian guy hosted me in his apartment. I am still living there today.” Other interviewees cited the support of neighbors, and it can reasonably be assumed that at least some proportion of these helpful people are Jordanians and not other Sudanese or Somalis. Many individual Jordanians hire Sudanese and Somalis informally to wash cars or clean houses, and these jobs are what allows the refugees to survive.

Isra’, a 23-year old from Darfur, said: “My relationship with my neighbors is pretty good, and I have good interactions with them. They do everything for us and they help and embrace us. They are much better than the UNHCR, which doesn’t care. They just gave us a document to prove that we are refugees. They do everything for us and they help and embrace us. They are much better than the UNHCR, which doesn’t care. They don’t even look at us. They just care about Syrians and Iraqis. There is a lot of discrimination even though all of us are refugees, humans and equal. There is no difference between us based on color, be it white, black or red. They don’t meet with anybody from African countries. They only care about Syrian and Iraqis who get everything for free; they get heaters, blankets, covers and jackets for winter.”

These accounts illustrate how a life lived on the socio-economic margins has shaped the ways in which Sudanese and Somali refugees perceive themselves, their status as refugees and their treatment in Jordan. This type of life has also shaped the ways in which they cope, turning to each other—and, to a lesser extent, to Jordanians—rather than to international aid agencies, who often cannot or do not help them.

Why do Sudanese and Somalis come to Jordan if aid provision is scarce, integration difficult and the possibility of resettlement so remote? Those interviewed mentioned that they or their families traveled to Jordan because it is a country where they believed they could find safety, register with the UNHCR and live a better life—even if it meant embarking upon a treacherous journey beforehand. Not all of them intended to go to Jordan when they left Sudan or Somalia. Most went to other countries first. But their experiences of violence, exploitative employers and medical problems, or their desire to reunite with family members, prompted them to search for an alternative location, particularly since protracted crisis at home made return a virtual impossibility.

Life in the International Refugee Aid Regime

At a time when the number of people forcibly displaced around the world is higher than ever before—there are more than 60 million refugees and internally displaced from crises old and new—the deportation of the Sudanese protesters in December 2015 underscores the urgency of lasting and equitable relief for each of these persons. Special attention is owed to those who find themselves out of place in the international refugee regime or left behind by it. These people are paid little attention now, but not because they do not fit the legal definition of refugees. They are passed over because, in a world of protracted emergencies, finite and bifurcated funding mechanisms, and a politics of humanitarian priorities that amounts to selective valuation of human life, what matters is where refugees come from. These refugees in protracted displacement seek only what their peers seek—aid, protection and durable solutions for themselves and their families.

The quandaries of humanitarian assistance are enormous. We relay the experiences and concerns of Somalis and Sudanese in Jordan not only to raise awareness of their particular situation, but also to trigger innovative thinking about ways to ensure that they—and others like them—are afforded a greater measure of dignity. As we surveyed the assistance that these communities do receive, what stands out is that the UNHCR, Christian and Muslim charities, and local Jordanian organizations are the parties that have stepped up.

The Jordanian news site 7iber.com has published a series of in-depth stories about these “second-tier refugees,” both before and after the mass deportation in December. Some of the refugees interviewed for the articles tell of receiving mental health and psychosocial support from the Noor al-Hussein Foundation Institute for Family Health, which provides health services for both Jordanian citizens and resident non-citizens. The aforementioned ARDD-Legal Aid advocates on behalf of Somali and Sudanese refugees, including in cases of labor exploitation.

Christian and Muslim charities also included Somalis and Sudanese in their work. Muslim-run soup kitchens helped some. A number of the adults we encountered as part of
our research took advantage of free education provided by organizations like the Jesuit Refugee Service, where classes were open to all, regardless of nationality. It was a rare opportunity for Syrians, Iraqis, Jordanians, Palestinians, Somalis and Sudanese to learn and socialize together, treated equally. Similarly, Jesuit Commons: Higher Education at the Margins provides two years of university-level study, regardless of nationality, for those who would not otherwise have the opportunity. In 2011, we also witnessed firsthand the work of the International Catholic Migration Commission, which provided low-cost renovations to rented homes occupied by Somali refugees, among others. The program was particularly important for refugees, who lived in substandard dwellings, and whose landlords often ignored or refused their requests for repairs.

Notably absent from our survey were the international NGOs and development organizations funded by foreign governments and executing contracts awarded by the UN, USAID and other large agencies. The situation of those who do not fit into the targeted refugee categories is the result of an unfortunate, and perhaps even unintentional, collusion of funding drives that seek donations for certain crises and then dole it out to international development organizations, who create those targeted programs. One proposed solution is to include Sudanese and Somalis and others as a percentage of aid recipients, which continues the aid provision by nationality that is the very problem, but widens the range of nationalities. But as Alice Su reports in The Atlantic, “Jordan’s government has already faced a backlash from international donors for pushing them to spend at least 30 percent of their funding on Jordanian host communities, which are struggling to support the influx of Syrian refugees. Suggesting that funds to deal with the crisis be diverted even further would be difficult.”

Another solution is to allow refugees to work, a proposal long rebuffed by Jordanian officials given the high unemployment rate in Jordan. The high percentage of foreign migrant laborers in agricultural, construction, services and industry suggests that there is room for flexibility, perhaps employing refugees rather than importing migrant labor. At the World Economic Forum in January 2015, Queen Rania suggested that Jordan was prepared to create “economic zones where refugees can find employment.” The Jordanian prime minister, Abdallah al-Nsour, stated the following February that the plan involved employing up to 150,000 Syrian refugees in these zones, conditional on the international community supporting the Jordanian economy with $1.6 billion worth of aid and preferential import tariffs. In April, Syrians were given a three-month window to apply for work permits for free, and as of the end of July, some 23,000 permits had been issued of the promised 50,000 for the year. As they are given only to Syrians, however, the permits reinforce the hierarchy that provides certain services to refugees with certain citizenships. The best solution would be the end of the conflicts in Syria, Sudan, Iraq, Yemen, Palestine and Syria. Amina, a Syrian woman, described it most clearly. “There were many positive things about my life in Somalia: I didn’t feel alienation [from society], and I wasn’t living in a foreign country. I was living with people like me who had the same skin color and nationality. Because of that I was comfortable and there was no kind of discrimination. But in Somalia, everything was dominated by war, hunger and [related] problems. The strong exploit the weak, and injustice and corruption pervades everything.” For most refugees, returning home is the ideal solution, as long as that home provides them safety and security, services for their family, and a way to live in dignity. Majida, a 46-year-old Somali woman, said: “I hope that when I go back to my country I find it safe and free of wars. My country needs many things, such as hospitals, schools, universities, ministries and a just government that is made up of all the tribes and keeps the country safe and spreads peace among the people.” Until that happens, assistance to refugees should “put needs over nationality,” in the words of ARDD-Legal Aid, in order to provide the most vulnerable with the protection they deserve.

Endnotes
1 Al-Abnaim, July 18, 2015.
2 Al-Akhbar, August 31, 2012.
3 Dan Connell, “Refugees, Ransoms and Revolt,” Middle East Report 166 (Spring 2013).
6 Our fieldwork on these refugees took place as part of several research trips in 2013–2015, when we collected 320 interviews with urban refugees in Irbid, Zarqa and Amman. These interviews were conducted by a variety of people living in Jordan—refugees and Jordanian citizens—who we trained in qualitative research methods and who sought out friends, co-workers, neighbors and relatives to interview. The questions aimed to elicit the refugees’ narratives about their experiences living in their home countries and living in displacement in Jordan. We also asked about their aspirations and fears for the future and how they dealt with challenges in their lives. The majority of our 20 interviews with Somalis and Sudanese were with young adults who had come alone or with their families when they were children. Half of the interviewees were women. The Sudanese interview had mostly fled violence in Darfur, while the Somali had originated in Mogadishu and Baidoa. See Rochelle Davis, Abbie Taylor and Emma Murphy, “Gender, Conscription and Protection, and the War in Syria,” Forced Migration Review 47 (September 2014); Rochelle Davis and Abbie Taylor, “What Do You Miss Most? Syrian Refugees Respond,” Jadaliyya, December 11, 2013: http://www.jadaliyya.com/pages/index/15555/what-do-you-miss-most-syrian-refugees-respond; Rochelle Davis and Abbie Taylor, “Syrian Refugees in Jordan and Lebanon: A Snapshot from Summer 2013,” Center for Contemporary Arab Studies, Georgetown University, September 2013: http://ccas.georgetown.edu/study/124723596744.html. All names used in this article are our creations, as we did not record our interviewees’ names. It is important to note that we asked the interviewers to interview refugees in their communities, and these interviewees chose to interview Somalis and Sudanese, as well as Syrians, Iraqis and Palestinians.
8 Al Jazeera America, December 18, 2015.
11 After Jordan severed legal and administrative ties with the West Bank in 1988, it continued to provide Jordanian passports to West Bankers who sought to travel, but these papers did not confer rights of citizenship. After the Palestinian Authority began issuing passports in 1995, Jordan revoked the citizenship of any of its citizens found to be carrying an Israeli or a Palestinian passport.
12 ARDD-Legal Aid, “Putting Needs Over Nationality.”
13 Ibid.
15 Ibid., pp. 10–11.
16 Vice, November 20, 2014; Al-Monitor, December 2, 2015.
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Dissidence and Deference Among Egyptian Judges

Mona El-Ghobashy

In the Mubarak era the Egyptian judiciary acquired a reputation both inside the country and abroad for curbing the excesses of the authoritarian presidency. Since the 2013 coup, however, the courts seem like a rubber stamp. The change is dramatic—but judges in Egypt have always been deeply divided over conceptions of law and relations to the executive.

After the coup of July 3, 2013, judges in Egypt repeatedly shocked polite world opinion. In hasty proceedings held in police facilities, in the absence of defense attorneys, courts passed down sentences of death and life imprisonment for thousands of supporters of the ousted Muhammad Mursi, Egypt’s first elected president. In one pair of cases in Minya province in 2014, 1,212 people were condemned to die for the killing of two policemen. Mursi himself faces six separate trials. In one of these, related to Mursi’s escape from illegal detention as a political prisoner in the early days of the 2011 uprising that unseated Husni Mubarak, judge Shaaban al-Shami imposed the death penalty. Shami had ordered Mubarak released in a 2013 corruption case, and two years later was promoted to assistant justice minister for forensic medicine. In that capacity, he vehemently denied the medical examiner’s statement that
the body of Italian researcher Giulio Regeni, murdered in early 2016, showed signs of torture.

It is not just members of Mursi’s Muslim Brothers who have fallen victim to severe court judgments. In February 2015, judge Nagi Shihata sentenced 230 activists, including the neo-Nasserist Ahmad Douma, to life in prison for a December 2011 protest against the ruling military council. In March 2016, a Minya court sentenced three Christian teenagers to five years in prison for producing a video mocking ISIS. In May, special “terrorism” circuit courts imposed jail terms ranging from two to five years on 152 protesters contesting the government’s “transfer” of two Red Sea islands to Saudi Arabia. (An appeals court later replaced the prison sentences for 47 of the convicted with fines of 100,000 Egyptian pounds, or $11,270.)

Off the bench, judges have been no less harsh in their public statements. There have been gratuitous swipes at the Egyptian poor, as when Justice Minister Mahfouz Sabir told a television interviewer that children of garbage collectors do not come from a “respectable milieu” and thus are unqualified to serve as judges. There have been declarations of “thirst for revenge” upon the Muslim Brothers, as when Sabir’s successor Ahmad al-Zind shared with a television presenter his wish that 10,000 Brothers be killed for every soldier slain in insurgent actions since the coup. “I swear by God Almighty that, personally, the fire in my heart will not be extinguished unless for each one there’s at least 10,000.”

What has happened to the Egyptian judiciary, long seen as a pocket of integrity within a repressive state? It may not be the right question.

The judiciary is not a uniform, faceless body. There are three apex courts, each sitting atop an intricate judicial hierarchy of its own, and specializing in civil/criminal, constitutional and administrative families of the law, respectively.

And Egyptian judges have always been deeply divided over conceptions of the law, worldviews and orientations toward the executive. The dissident judges who were hailed as heroes during the Mubarak years are now purged, exiled, imprisoned or facing trial. The judges who dominate the bench and airwaves today, under President ‘Abd al-Fattah al-Sisi, stand shoulder to shoulder with generals and police chiefs to reassert state power. In the judiciary, as in every Egyptian institution, the 2011 revolution and the subsequent reaction exploded conflicts that had been contained and crystallized political loyalties. It also refocused attention as never before on the startling interpenetration of law and politics in contemporary Egypt.

Law and Politics, Entwined

No one leafing through an Egyptian newspaper from the 1980s onward can help but notice the ubiquity of judicial mediation, in social matters from marriage to religious conversion, in policy matters from economics to education and health, and in sundry other matters from labor conditions to political association and management of elections. That much is already remarkable. What is more noteworthy still is that judges in Egypt exert their influence in two distinct ways—through their decisions, especially administrative and constitutional court rulings with a direct bearing on government interests, but also through the judges’ professional association, the Judges’ Club, established in 1939. Since 1968, the Club has been the theater of intense factional struggles between judges with close ties to the executive and jurists seeking maximal autonomy from the imperial presidency.¹

Driving judicial politics are the endless laws and ordinances pouring out of Egypt’s hyper-regulatory state. Given the ambiguity inherent in law, a whole world of interaction emerged where citizens brought complaints against arbitrary regulations, lawyers translated them into legal arguments, judges interpreted the laws, legal scholars explained the rulings and journalists recorded the disputatious goings-on in Egypt’s teeming courtrooms. Over time, the terrain of law came to overlap heavily with the terrain of politics, practically ensuring that political tussles wound up in the courts, and that legal battles had political consequences.

Despite its rarefied name, Egypt’s Majlis al-Dawla or administrative court system is at the heart of public politics. Like their French models, these courts are institutions “before which the humblest citizen could arraign and call to account the all-powerful and interfering state.”² Tasked with finding facts and establishing the right in disputes between individuals and government officials, Egyptian administrative judges developed a strong professional ethos as monitors of the arbitrary exercise of bureaucratic power. Since 1946, they have produced a body of case law upholding citizens’ rights and liberties, while extending judicial control of the bureaucracy by stretching the definition of “public official” to include the president and all of his ministers, the head of al-Azhar, the mosque-university at the apex of Islamic jurisprudence, and the Coptic patriarch.

Administrative courts also have jurisdiction over election management by the Ministry of Interior. Challenges to election outcomes, meanwhile, fall in the purview of the top appeals court, the Court of Cassation. The president’s party in Egypt thus contends not only with political opponents in elections but also with two sets of unpredictable judges. In the 2005 parliamentary elections, administrative courts sided with litigating NGOs and ordered the installation of closed-circuit television cameras inside counting stations, a major step that ensured that every vote cast was a vote counted. When it was established in 1979, the Supreme Constitutional Court (SCC) added another layer of judicial scrutiny. Indeed, the SCC’s rise to national prominence was partly due to its striking-down of election laws in 1986 and 1990 and its momentous decision in 2000 requiring complete judicial supervision of elections.

Yet judicial independence and assertiveness would have been a dead letter if not for the energetic legal mobilization of Egypt’s citizens. As law-and-society scholars point out,
courts are reactive institutions by design: They can only rule on the initiatives of litigants and lawyers. In a pattern that appears time and again in Egyptian political history, regular citizens and disgruntled civil servants made use of legal institutions, activating the courts to weigh in on major controversies. Since the 1990s an unstoppable flow of litigation has made its way to the administrative and constitutional courts, prompting judges to examine a wide range of official acts. When judges began to rule against the government on high-profile political cases, journalists started tracking administrative litigation as a recurring David-and-Goliath drama with judges as noble upholders of rights against the government’s copious wrongs.

The Judicialization of Politics Under Mubarak

Even judges serving on specially convened “state security” tribunals ruled against government interests. In 1987, a state security court acquitted striking train conductors, agreeing with their prominent cause lawyer Ahmad Nabil al-Hilali that strikes were a right guaranteed by Egypt’s 1982 ratification of the International Covenant on Economic, Social and Cultural Rights. In 1993, another state security court acquitted all 27 defendants in the assassination of the speaker of Parliament, Rif’at al-Mahgoub, rejecting confessions obtained through torture. It was at this juncture that lawyers, reporters and scholars in Egypt and abroad began to pay attention to the relative independence of some judges. As Nathan Brown observes, it was these unwelcome rulings by exceptional tribunals that prompted the government to resort to “the most reliable exceptional court system—military courts.”

A case from the tail end of 1992 shows how Egypt’s various courts simultaneously enable and constrain both rulers and citizens. In response to the armed Islamist insurgency in Upper Egypt, the government launched a campaign of police violence and legal repression that would extend to every facet of associational life by the end of the 1990s. To avoid the unpredictability of state security courts, Husni Mubarak began referring Islamist militants to military tribunals where judges are military officers and there is no right of appeal. In one such case, defendants’ lawyers contested the decision before the administrative courts, arguing that the president’s referral of civilians to military tribunals violated the constitution’s guarantee of a fair trial.

The case landed in the docket of Tariq al-Bishri, a senior judge with a side career as an accomplished historian of contemporary Egypt. In December 1992, Bishri struck down the president’s decree, a decision that leftist law professor Husam ‘Isa called “one of the most significant rulings in the history of Majlis al-Dawla.” Not about to swallow this
challenge to presidential prerogatives, the government activated the SCC’s interpretation function, asking it for a binding interpretation of the 1966 Code of Military Justice at issue. A month later in January 1993, the SCC returned the broadest interpretation of presidential power in the law, enabling the government to try hundreds of Islamist militants before military tribunals, and in 1995, 1996 and 1999, to block dozens of Muslim Brothers from running in parliamentary elections or forming the “soft Islamist” Wasat party.

As the government produced ever more intrusive statutes in the 1990s and 2000s, more Egyptians turned to the courts to contest arbitrary and unfair decrees. Between 1995 and 2008, the caseload of the administrative courts increased sixfold from 10,709 cases filed to 65,546. Broadly, the cases can be broken down into three types: suits by individuals on parochial matters that nevertheless carry wide-ranging import, such as a wife’s right to travel without her husband’s permission; suits brought by groups of workers, residents or farmers collectively injured by some government act; and impact litigation by cause lawyers and opposition groups intent on publicizing decisions that the government labored mightily to keep out of the public eye. A liberalized print and satellite media market diffused information about the tactic of administrative litigation. Newspapers published photos of litigants as they massed on the new courthouse steps chanting slogans against the government, and rows of television cameras filled courtrooms on days when judges announced their decisions in what came to be called “public opinion cases” (qadaya ra’ amm).

By the mid-2000s, consumers were contesting the government’s unilateral privatization of garbage collection; workers were resisting their wrongful termination from the privatizing public sector; and Baha’i’s and reconverting Copts were suing civil servants for refusing to record their confessions on national identity cards. The last three years of the Mubarak regime saw a flurry of anti-government rulings on core features of how power holders conducted business. Courts ordered the removal of police from university campuses and the imposition of a national minimum wage. They asserted the right of citizens to bring cellular phones into police stations, while invalidating sales of public land to a key Mubarak crony, the military’s expulsion of residents of a mid-Nile island and the signing of a 15-year contract to export natural gas to Israel. In a year-in-review piece, one of the top two independent dailies enthused, “Majlis al-Dawla: The Hero That Ruled Egypt in 2010.”

Naturally, reporters hyped rulings that rebuked the government, without inspecting too closely the substance of abstruse judicial arguments. The equivocal meaning of most rulings was glossed over in favor of the newsworthy bottom line—whether the verdict upheld or challenged a government decision. For instance, despite the media’s gleeful framing of it as a slap in Mubarak’s face, the 2010 Supreme Administrative Court ruling on the export of gas to Israel simultaneously upheld foreign policy as “an act of sovereignty” (‘amal al-siyada), not subject to judicial review, and underscored the public’s right to monitor the government’s use of natural resources. Such “tactical balancing” between deference to the executive and accommodating public opinion meant that court rulings alternated between challenging and endorsing government power. Even though court rulings rarely laid the controversy on hot-button issues to rest, the attunement of judges to multiple audiences and the unpredictability of their decisions were opportunities that citizens and activists seized, over time turning litigation into a form of political voice.

The SCC performed its own balancing act in the 1990s and 2000s. As Tamir Moustafa has shown, the constitutional court enthusiastically supported the government’s economic restructuring and rollback of Nasser-era controls, while leveraging that support to produce rulings protecting political and associational rights. But it stopped short of challenging the use of military tribunals and other high-stakes tactics of the state. Still, even this accommodationist formula proved intolerable to Mubarak, especially after the 2000 election supervision ruling. The president preempted the SCC’s norm of judicial self-selection and packed the body with pliable judges from outside the court, expanding the number of sitting justices by 50 percent. To deflect criticism, Mubarak saw to it that one of the outsiders was the country’s first female judge, the prominent anti-Islamist attorney Taha’i al-Gibali. In 2009, Mubarak made an even bolder move, appointing as chief justice one Farouq Sultan, a primary court judge who had no background in constitutional adjudication, having served on military and state security courts. Yet instead of reducing the court’s political influence, packing it with loyalist jurists would only deepen what Moustafa aptly called “the judicialization of Egyptian politics” post-Mubarak.

Judges Fill the Streets

It is not unusual for political struggles in democracies and non-democracies alike to be amplified by court decisions. What is unusual is to see judges actively lobbying and forming tacit alliances with social groups, while other judges cleave to the government. That is what happened over the course of 2005–2009 in one of the most dramatic political episodes of the late Mubarak era. The story begins in July 2000 with the SCC ruling requiring full judicial supervision of elections. The ruling’s unintended effect was to render the government’s use of military and state security courts. Yet instead of reducing the court’s political influence, packing it with loyalist jurists would only deepen what Moustafa aptly called “the judicialization of Egyptian politics” post-Mubarak.
In 2002, judges’ disgust with government rigging congealed into an electoral upset. In the internal elections of the Judges’ Club, whose membership includes all judges and prosecutors except for administrative and constitutional jurists, a slate of 15 candidates led by Zakariyya ‘Abd al-‘Aziz won the board and chairmanship, overturning a decade of control by a pro-government faction. Calling themselves Tayyar al-Istiqlal (the Independence Current), in 2005–2006 the ‘Abd al-‘Aziz camp organized a high-profile, confrontational campaign against election rigging and for a new law guaranteeing judicial autonomy from the executive in the four core areas—budgets, promotions, secondments and disciplinary procedures—where the government had long meddled to punish or coopt judges. Capitalizing on the singular opportunity of the year 2005, with its three elections (for Parliament and president, preceded by a constitutional referendum), the Club’s leadership disseminated methodical reports on the conduct of elections that embarrassed the Mubarak regime at a moment of intense international scrutiny.

In a miscalculation, in the spring of 2006 the government moved to silence the ‘Abd al-‘Aziz faction by singling out for censure two of its most prominent members, Mahmoud Makki and Hisham Bastawisi, accusing them of unprofessional engagement in politics by speaking to the media about election rigging. In response, judges audaciously borrowed the protest tactics of Egypt’s workers and political opposition, holding several silent street vigils and a month-long sit-in at the Club headquarters in downtown Cairo in solidarity with Makki and Bastawisi. To solemnize their street action, judges donned their official red and green sashes over their starched suits, as cameras clicked and whirred and an American newspaper editorial gushed, “All rise for the judges of Egypt.”

The government suddenly found itself faced with the most formidable, media-savvy opposition alliance of Mubarak’s tenure. Rallying around the disinterested judges were pro-democracy movements such as Kifaya and its youth offshoots, the 100-plus Muslim Brothers and other opposition deputies elected in 2005, liberal politician Ayman Nour and his following, feminist activists, law professors, public intellectuals and cause lawyers.

To be sure, opposition fronts were not new, but the presence of elite judicial figures in their midst was. Of this high moment in the politics of dissent, the late political scientist Mohamed Sayed Said wrote, “The conflict centers on the principle of the independence of society—all of its institutions, not only the judiciary—from the state. Authoritarianism does not spare any social institutions but works to control them all through monitoring and stringent subordination to security.”

The judicial dissidents prompted both fence-sitting and unabashedly pro-government judges to coalesce into a self-conscious bloc wielding arguments of judicial distaste at turning the Club into a salon for public debate. Even if judges supported the ‘Abd al-‘Aziz faction’s demands, they were leery of its bold tactics and ambivalent about tethering the cause of judicial independence to the wider pro-democracy surge. “These demonstrations are alien to the judiciary. I can’t imagine how a judge can accept this,” Rif’at al-Sayyid, head of the Cairo Court of Appeals, told a government newspaper. “The number of judges in Egypt is around 13,000, and if at most a couple of hundred demonstrate, we can’t assume that these 200 are all the judges.”

Fearful at the increasing density and growing appeal of opposition politics, the government moved forcefully to capitalize on the fissures in the judiciary.

Enter Ahmad al-Zind, a pugnacious, unapologetically pro-government judge who emerged to take on the Independence Trend. The showdown came in February 2009, in closely watched Judges’ Club elections that saw the government put all its resources behind Zind and his slate, running on a platform of “rectifying the Club’s relationship to the state.” Competing against him was Hisham Geneina, ‘Abd al-‘Aziz’s aide-de-camp and a key member of the Independence Trend. Zind won the chairmanship with 52 percent of the vote to Geneina’s 44 percent, and his slate secured all but four of the Club’s 14-seat board. Regaining the Club was a central plank in the government’s counter-thrust of repression during the last three years of Mubarak’s rule, to prepare the ground for parliamentary elections in 2010 and presidential elections in 2011. The former were blatantly fixed and the latter never took place, overtaken by the biggest accident in Egyptian political history.

Law, Courts and Judges in Revolution

The pervasive legalism of Egyptian politics did not vanish after Mubarak’s overthrow, but was deepened and elaborated. The revolution did not smash the state in one fell swoop, as stylized notions of revolution imagine; the Egyptian bureaucratic leviathan continued to operate, under the new management of Mubarak’s generals. One of the first acts of the Supreme Council of the Armed Forces (SCAF), the coterie of ruling generals, was to churn out decrees to protect themselves and stem the tide of mass mobilization. A new law criminalized workers’ strikes; a new chapter was added to the penal code criminalizing “spreading terror and threatening law and order”; and the code of military justice was amended to give military tribunals sole jurisdiction over officers accused of making ill-gotten gains. At the same time, nearly 12,000 civilians, including children, were brought before military tribunals, a rate that makes Mubarak’s use of these exceptional courts appear restrained.

Courts and judges were woven into the fabric of revolutionary politics, and individual judges became as familiar in national political life as SCAF generals, celebrity youth activists and martyrs’ families. Muhammad Fu’ad Gadallah, a relatively young administrative court judge, was embraced by Tahrir Square revolutionaries as their legal guru, and later plucked by President Muhammad Mursi to be a member...
of his team of non-Muslim Brother advisers. Muhammad Ahmad ‘Atiya, a senior administrative court judge esteemed by cause lawyers for his jurisprudence, chaired the committee overseeing the March 2011 constitutional referendum and then served as minister in the first post-Mubarak cabinet.

Administrative courts were everywhere in those heady first months after Mubarak’s ouster, in a sense continuing their resounding rulings from 2008–2010. Prodded by litigants capitalizing on the sudden expansion of political possibilities, courts legalized the Wasat party, ending its 15-year battle for recognition; rolled back privatization of three textile companies and the iconic Omar Effendi department store; dissolved both Mubarak’s National Democratic Party (NDP) and the 1,790 flagrantly rigged municipal councils; and fined Mubarak and his ministers Ahmad Nazif and Habib al-‘Adli 540 million pounds for blocking Internet and cellular phone service for five days during the revolution.17 When jubilation waned and public opinion soured on the military rulers, citizens sued the SCAF and obtained court rulings to establish a special pension for citizens injured during the revolution; assert expatriate Egyptians’ right to vote in elections; and put an immediate stop to the detention and torture of civilians in military prisons and the violation of women detainees under the rubric of “virginity tests.” As soon as the last verdict was read aloud, supporters of plaintiff Samira Ibrahim chanted, “Down, down with military rule!” and “O judges! O judges! We have you after God!”18

Peeking into the details of administrative litigation from this period reveals how these courts became a venue both for tenacious old elites and for rising forces, rather than an uncontested space of revolutionary vindication. The plaintiffs in the NDP dissolution case were Mustafa Bakri and Ahmad Fadali, two long-time Mubarak sycophants who sought to disavow their former patron. The judge, Magdi al-‘Agati, had a reputation among legal specialists as a pro-government jurist who tended to uphold the executive’s lawmaking prerogatives. He is now Sisi’s top legal adviser, holding the post of minister of state for parliamentary and legal affairs. By contrast, a rights NGO brought the Internet case and the judge, Hamdi Yasin ‘Ukasha, is a left-leaning jurist whose ruling is an amalgam of legal critique of the 2003 communications law; informative reconstruction of the Mubarak regime’s past efforts at communications blockage (notably during the April 6, 2008 nationwide call for a general strike); and hagiography of the revolution’s first 18 days.

Judicial politics took a more dramatic turn after the parliamentary contests of 2011–2012, the first free general election since 1924. Combined, Muslim Brothers and salafis held nearly three quarters of parliamentary seats, but only the former would soon embark on a course of protracted brinkmanship with the courts. It was at this juncture that the judicialization of revolutionary politics began to entail extremely high stakes. “Unlike any other similar upheaval in the last two centuries,” Ellis Goldberg remarks, “the Egyptian revolution was one in which legality and the interpretive decisions of the country’s highest judges played a dominant role in its outcome.”19

In the spring of 2012, at a peak of public frustration with the parliamentary Brothers over their ham-handed election of a constituent assembly, an administrative court certified the ambient mood, invalidating the 100-member body on the grounds that it was unrepresentative and illegitimately included some of Parliament’s own members. At the same time, the presidential election campaign was in full swing, supervised by a commission headed by SCC Chief Justice Farouq Sultan. He and other commissioners had rejected the Brothers’ first choice of presidential candidate, Khayrat al-Shatir, forcing them to put forward their number two, Muhammad Mursi. Sensing personal animosity from the SCC judges, Brother deputies tabled a bill revising the SCC law, among other things seeking to roll back Mubarak’s expansion of the bench. Sound in theory, the maneuver clearly targeted specific judges, namely Sultan and the outspoken Tahani al-Gibali, an advocate of military guardianship and weighted voting. In a thoughtful postmortem of Parliament’s first 100 days, Tariq al-Bishri criticized the Brothers for bungling their core task of electing a constitution-drafting body while picking improper battles like the SCC law. In uncharacteristically angry language, he rebuked them for commandeering the maiden post-revolutionary legislature for partisan ends. “As a former judge, I cry out against this conduct and call on others to do the same.”20

On June 14, the SCC issued a portentous ruling. In an unheard-of sequence that transpired over barely half a day, judges heard arguments, issued their decision and had it printed in the official gazette, invalidating the election law by which Parliament was elected. The SCAF wasted no time in using the SCC decision to dissolve the first-ever Egyptian legislature elected by universal suffrage, while transferring to themselves legislative powers and limiting presidential powers. That meant that when he was declared the narrow winner of the presidential contest two weeks later, Muhammad Mursi assumed office without an elected legislature to counterbalance the formidable unelected military, bureaucratic and judicial chunks of the state. To underscore his place, SCC justices insisted that Mursi take the oath of office before jubilant Islamist crowds in Tahrir Square, where one delirious man held up an ornate, gilded armchair with a handmade sign—“seat of the new Egyptian presidency.”

With Mursi as president, the intrajudicial factionalism involving dissidents and pro-government judges from 2006–2009 was repressed, but the principals had changed positions. The top figures of the Independence Current were now in the Mursi government. Brothers Mahmoud and
Ahmad Makki were vice president and minister of justice; Husam al-Ghiryani was elected chairman of the reelected constitution-writing assembly. And the most consequential appointment of all, though no one guessed it at the time, was Hisham Geneina as head of the Central Auditing Agency. Ahmad al-Zind, who had defeated Geneina in the 2009 Judges’ Club election, leveraged his chairmanship to turn the Club into a focus of anti-Islamist and anti-presidential agitation. If, before the revolution, the Club was an outpost of defiance against a powerful imperial presidency, now it had turned into a center of ideological resistance to a precarious elected presidency. Zind presided over a raucous general assembly meeting on November 8 where he threatened to have judges boycott supervising the impending constitutional referendum, in protest at the sections on the judiciary in the constitutional draft.

When Mursi issued his fateful November 22 decree shielding the constituent assembly, Parliament’s upper house and his own decisions from judicial oversight, he was acting out of a palpable sense of encirclement by court decisions and Zind-allied judges. Post-decree, and despite the fact that Mursi retreated from it on December 9 after a surge of intense opposition, it was but a short step for his opponents to cohere under the banner that he was a dictator in the mold of Mubarak. Mursi’s fears of a coordinated effort by displaced old elites and anti-Islamist forces to torpedo fragile elected institutions were not unfounded. His mistake was in underestimating how ingrained judicial review had become in Egyptian political culture, a bitter irony given the Muslim Brothers’ contribution to this culture with their enthusiastic resort to the courts to redress government abuses under Mubarak.

It mattered little to many Egyptians that, underneath the fight between Islamists and non-Islamists, what was at stake was bolstering the fledgling elected parts of the state to counterbalance the mighty unelected enclaves. It was hardly that the public hated democratic control; it was that the Islamists would not or could not get beyond their personal injuries to communicate the broader urgency. And there was also the legacy of deep public esteem for judges, a constructed contemporary political tradition that the Islamists had helped to build but that ultimately catalyzed their demise. When Islamist crowds encircled the SCC on December 2, the day it was set to review the procedures under which the constituent assembly and the upper house of Parliament were elected, what most people saw was thuggish muscle flexing, not a defense of the electoral principle in the construction of the Egyptian state.

**Judges, Courts and the Awe-Producing State**

In the time of Sisi, as outlandish rulings and offensive public statements proliferate, public veneration of judges is no longer the common sense. When young activist Sana Sayf flatly told an investigating judge that she would not participate in the charade of answering his questions because he lacked any independence from the government, she was expressing what many now believe—that judges are part of the problem, not the solution. Sayf is paying for her honesty by serving a six-month jail sentence, after a court decided that she was guilty of insulting a government employee.

Those judges who have always felt that judges are part of the problem are being systematically persecuted. Dozens have been forcibly retired by tendentious disciplinary boards, including the past leader of the Independence Trend, Zakariyya Abd al-Aziz. The disciplinary tribunal that dismissed him insisted that he incited protesters to storm State Security headquarters on March 5, 2011, relying solely on the testimonies of military generals and complaints from Zind’s faction of judges. Abd al-Aziz’s fellow traveler, the elderly Alexandrian judge Mahmoud al-Khudayri, is now serving a three-year prison sentence. The sentencing court said that he and confederates “controlled” Tahrir Square between January 28 and February 11, 2011, and tortured people using the offices of a tourism company adjacent to the square. Judges ‘Asim Abd al-Gabbar and Hisham Ra’uf, along with human rights lawyer Nigad al-Bura’i, are being investigated for drafting and sending to the presidency an anti-torture bill bringing Egypt’s inadequate law into line with the UN Convention Against Torture.

Sisi’s government found it much harder to deal with one particular judicial dissident. Ironically, removing Hisham Geneina proved far trickier than outsting the president who appointed him. As chief government auditor, Geneina activated his oversight powers, boldly fingering the police, judicial sector and intelligence agencies as key sites of high-level corruption. The circuitous path to oust him began with a 2015 law granting Sisi the right to dismiss heads of independent regulatory agencies, including the Central Bank. When a reporter misquoted Geneina as saying that corruption cost the treasury $76 billion in 2015 (the correct time frame is 2012–2015), the government acted quickly. A Sisi-appointed fact-finding commission found Geneina to have exaggerated the figure and claimed that he misrepresented the public. Sisi sacked Geneina in March, prosecutors accused him of “gathering documents” to misrepresent corruption rates, and he stood trial for “disseminating false news that disturbs the public peace.” In late July he was sentenced to a suspended year in jail and a $2,252 fine.

In a sign that administrative litigation has become a fixture of Egyptian politics regardless of regime type, citizens are still resorting to Majlis al-Dawla to contest government decrees, and the courts continue to alternate between challenging and upholding executive power. Two high-profile cases in 2016 stand out. In February, the court sided with the government on forced disappearances, ruling that victims’ families could not prove that their sons were being secretly detained by the Interior and Defense Ministries. In June, the court sided with
human rights lawyers contesting the executive’s “transfer” of Red Sea islands Tiran and Sanafir to Saudi Arabia, instead asserting Egyptian sovereignty over the islands. The two decisions were handed down by the same three-judge panel headed by Judge Yahya al-Dakrouri, an establishment figure with a mixed record of jurisprudence. They can be appealed before the Supreme Administrative Court.

It is tempting to dismiss pro-government judges as lackeys of military rulers, automatons who move only at the behest of the de facto center of power. The reality is far more troubling. Many judges are active, self-willed architects of an expanded regime of legal exception and legal repression. Before joining the cabinet, Magdi al-'Agati was head of the administrative courts’ legislation department, reviewing all bills coming from the executive, where he green-lighted a new counterterrorism law with marginal revisions. Along with a “terrorist entities” law and another expansion of military courts’ jurisdiction, these laws punish a dozen different acts with the death penalty; loosen judicial oversight of prosecutors’ detention orders; and fine anyone who publishes news about counterterrorism operations that contradicts official statements.21 Above all, the laws stretch the definition of terrorism to take in acts of civil disobedience such as blocking roads and staging protracted sit-ins, forms of direct action that were mainstays of popular politics during the Mubarak years and that powered the revolution’s first 18 days and many months thereafter.

There have always been judges who see their role as applying, not checking, punitive laws. The zeal with which these judges and prosecutors are expanding the infrastructure of legal repression and resuscitating Mubarak’s paradigm of permanent emergency suggests that political dissidence is not their only target. A broader pacification of the population seems to be the goal, to punish the rampant disobedience and disrespect for authority that ruling elites remember as the revolution. Commenting on an avalanche of summary expulsions of students from universities, an administrative court judge said, “The reasons behind the expulsions [nowadays] weren’t there during Mubarak’s time. There wasn’t a revolution during Mubarak’s time.”22

The current moment is a high-water mark for true believers in the doctrine of untrammeled Egyptian state authority. This idea conjures a unified state of officials exercising benevolent but stern authority over society, a society minutely regulated for the maximum realization of public order (al-nizam al-'amm). The notion of al-nizam al-'amm so foundational to Egyptian laws and jurisprudence refers to well-policed streets, to be sure, but an entire range of public comportment besides, from dress to vagrancy to public assembly to visible religious markers to election queues. Ellis Goldberg and Hind Ahmed Zaki23 noticed early on the recrudescence of this idea in 2011, at precisely the moment when police regimentation of the population broke down and the people in all their diversity and division chaotically and creatively reclaimed the streets.

Upholders of haybat al-dawla, the state’s awe-inspiring prestige, are now triumphant in the militarized presidency, the loyalist legislature, strata of the judiciary and prosecution, universities and media, and broad segments of the general public. Advocates of the rival principle of statecraft, the separation of powers, what might be called the organized suspicion by judges, legislators and citizens of the executive’s lawmaking powers, are encircled and silenced. In the Mubarak years, this constellation of jurists, lawyers, activists, regular citizens, journalists and intellectuals gave concrete form to the conception that the state is not a disciplining guardian, but an organization capable of being made to work for and not against the population. The seesaw battle between state reformers and state fetishists, made clear like a windowpane by the revolution, will be a keynote of Egyptian politics for many years to come.

Endnotes
4 Brown, The Rule of Law in the Arab World, p. 114.
6 Figures made available to the author in 2010 by judge ‘Adil Farghali, then president of the Court of the Administrative Judiciary.
7 One Egyptian NGO has adopted the American term “strategic litigation” and produced a booklet collating favorable court rulings it has obtained on behalf of workers and others. Khalid ‘Ali and ‘Ala’ ‘Abd al-Tawwab, al-Ahwar: Abhas al-Taqadi al-il-Markaz al-Misri [In The Name of the People: The Most Prominent Rulings from the Center’s Strategic Litigation] (Cairo: Egyptian Center for Economic and Social Rights, 2014).
8 Al-Shuruq, December 31, 2010.
15 Turnout was 4,567 judges, with Zind securing 2,421 votes and Geneina 2,057. For more, see: http://www.ashri.net/egypt/alcf/2009/pro216.shtml.
17 In April 2011, a court decision ordering the removal of the Mubarak family’s name from all public institutions was handed down by the Cairo Court of Urgent Matters and later suspended by its appeals court. It was referred to the administrative courts, which have yet to issue a decision.
18 Al-Badil, December 27, 2011.
22 Reuters, June 1, 2016.
The Plight of Egypt’s Political Prisoners

Nadeen Shaker

On December 2, 2013, Mahienour al-Massry organized a protest on the corniche running along the Mediterranean seashore in Alexandria, Egypt’s second city. The human rights attorney’s raven ponytail and oversized black glasses made her easy to spot amid the dozens of people with their backs to the sea and their eyes trained on the courthouse across the busy roadway. Inside the building, two police officers were appealing their conviction for the brutal killing of Khalid Sa’id in 2010, one of the incidents that galvanized the 2011 uprisings that brought down President Husni Mubarak. The protesters shouted: “Down with every agent of the military!”

It was not long before Alexandria’s chief of police led a contingent of black-clad officers through the traffic to the corniche. They stationed themselves not more than three feet from where the demonstrators had taken their stand. “You have ten minutes,” the chief growled into a megaphone, his amplified voice drowned out by the protesters’ calls for the execution of Mubarak and his ruling clique as well as the current president, ‘Abd al-Fattah al-Sisi.

A phalanx of riot police and a few masked officers fanned out facing the protest. “It was barely ten minutes,” al-Massry...
recalled, before the first water cannon spouted. The tear gas came next. Then the riot police bore down in a formation so tight it appeared they would swallow the demonstration whole. Women screamed as the policemen swung their batons. “The Interior Ministry are thugs,” they shouted in shaking voices. Al-Massry said the police were “beating us senseless. One protests had his head cut open by a masked special forces man with an American stick.” Luckily, she herself was unhurt.

Since Sa’id’s murder, al-Massry had taken it upon herself to organize annual demonstrations to renew demands for justice in his case. In June 2010, the convicted officers dragged Sa’id out of an Internet cafe and beat him to death for allegedly having posted a video clip showing them in possession of illegal drugs. Leaked photographs of the young man’s battered face sparked the creation of a Facebook page in his memory. It was called “We Are All Khalid Sa’id,” and it activated a national campaign against police brutality.

A law banning unsanctioned protests had passed only a few weeks before the December demonstration. At the time, al-Massry was unconcerned about its impact. “We didn’t know whether authorities would use the new law,” she said. She joked that she thought she was more likely to be arrested for wearing a mismatched outfit than staging an unauthorized demonstration.

But the authorities invoked the law to level charges against al-Massry and eight of her peers. Two were released pending trial. Al-Massry was convicted, along with the rest, fined 50,000 Egyptian pounds (a little over $7,000) and sentenced to two years in prison. The sentence was later reduced to six months and then suspended after she had served fewer than three. But al-Massry was soon thrown back in jail on charges related to an earlier protest she had helped to mount outside an Alexandria police station. In January, she spent her thirtieth birthday on the inside, complaining through her sister of food and water shortages and of sharing a tiny cell with 26 other prisoners. She was finally let go in mid-August.

**Jails Beyond Capacity**

Until her release, Mahienour al-Massry was one of an estimated 16,000 political prisoners behind bars in Egypt. Leading human rights organizations believe the number is considerably higher. Since Sisi assumed the presidency in June 2014, some 41,000 Egyptians have been arrested or faced criminal charges for political reasons, according to the Egyptian Center for Economic and Social Rights (ECESR). Others have been abducted and held incommunicado. The Egyptian Solidarity Initiative reported that 163 dissidents disappeared between April and June alone. Egypt now ranks second in the world for jailing journalists, and in 2013 fell on the Freedom House Index—which measures civil and political liberties—from partly free to not free. In 2015 its score for political freedoms stood at 33 on a scale of 0 to 40, with 40 meaning there are absolutely none. Political prisoners are at risk of beating, starvation and other abuse. In 2015, according to ECESR, more than 100 people died in custody, 59 percent of them due to medical neglect and another 29 percent as a result of torture.

Those who survive languish in deplorable conditions. In the summer of 2015, the National Council for Human Rights, the only semi-independent body authorized to visit Egyptian houses of detention, reported that in 2013 and 2014, prisons were overcrowded by 160 percent and lockups at police stations by 300 percent. Government officials deny the allegations. Abu Bakr ‘Abd al-Karim, the interior minister’s spokesman, told a television journalist that the report was simply “not right,” adding that if prisons really were that packed, inmates would be committing suicide.

Whatever the actual figures, the rapid rise in incarceration is undeniable. The plight of political prisoners is highly visible, outraging scores of human rights activists, lawyers, journalists and staffers of non-governmental organizations. All of these forces are agitating for repeal of Law 107 of November 2013, “the protest law” under which al-Massry was charged and which laid the groundwork for the mass arrests. To hold a protest, this legislation stipulates, an organizer must seek permission from police, but the police have full authority to block any event they deem threatening to public safety. The law bans unsanctioned gatherings of ten or more people; those who defy it face stiff fines and jail sentences of two to five years. The minimum sentence goes up to seven years if the state claims a protester was caught with a weapon.

Law 107 came into force under ‘Adli Mansour, who served as acting chief executive for 11 months after the armed forces’ ouster of President Muhammad Mursi in July 2013. But it is Sisi who has used the measure to fill the prisons beyond capacity.

**Sisters in Unjust Detention**

When she started serving her initial sentence, al-Massry feared the worst. It was not yet daybreak, she said in an interview in Cairo between her two prison stints, when she was driven to the Ab’adiyya women’s prison in the Nile Delta town of Damanhour some 30 miles southeast of Alexandria. The medium-sized facility is tucked between farmland and a primary and middle school. The warden intended to put her in a cell by herself, she recalled, but overcrowding was so severe that she was sent to the debtors’ ward instead.

In block 1, cell 8, a 15-by-20 foot space, 18 women were crammed together with only a television set and an electric cooker. There were no beds.

Her cellmates had been warned to expect a firebrand. So they were caught off guard by the sight of the svelte 28-year old, dressed in ragged white prison garb, her hair plaited in a neat braid. “I looked relatively small to them, and I was wearing glasses," she said. “I was also smiling." Her cellmates...
Wadi Natroun and Worse

On January 25, 2014, Karim Taha and Muhammad Sharif organized separate marches about five miles apart in Cairo to commemorate the third anniversary of the uprising that toppled Husni Mubarak. Both demonstrations were quashed, and the two men met up to share a cab home. The driver took a detour that led them straight into a police checkpoint. They were both arrested and interrogated at a police station. The next day, they were transported to an unofficial prison at a military camp near one of Cairo’s satellite cities.

The facility was poorly maintained. Its 2,000 square feet encompassed ten cells, several of which were for solitary confinement. Taha and Sharif, both in their twenties, were locked up in a cell with 66 other inmates. All in all, they estimate, the prison might have housed 280 people at a time. “You slept like a sword laying on its edge,” Taha recounted during an interview in Cairo. There was no room to toss or turn.

Things looked bleak indeed until they met Sheikh Fanta, a salafi with a ginger beard and nicknamed for the orange soda, who invited them to sleep in the comparative luxury of the 21 square-foot cell he occupied along with seven others. Taha and Sharif considered themselves liberals, and did not expect the hospitality of an ultra-conservative Islamist.

Sheikh Fanta’s cell was far more agreeable than their previous accommodations, where the mix of prisoners included drug dealers, murderers, rapists and takfiris, people “who accused others of apostasy, even their own wives. No one talked to them,” Taha said. In the sheikh’s cell, everyone identified first as Egyptian. But among them, Taha continued, were a socialist, Muslim Brothers, salafis and jihadis, “and even someone with no ideology.”

A week later, three more detainees were brought to the camp. Rumors flew that they were takfiris. The guards warned the inmates not to approach the new arrivals, said Sharif, as they were “nothing like you.” A dangerous convict known by the sobriquet Abu Anas was among them. He and two accomplices had killed a policeman standing guard at a church on their way to rob a jewelry store, according to news reports, before they were apprehended. Abu Anas spoke to no one, and refused to eat or pray with the other inmates.

In February 2014, Sharif and Taha left the unofficial detention facility for Wadi Natroun, a maximum-security prison and former CIA “black site” on the Cairo-Alexandria desert road.

What they encountered could have been the model for a painting by Piranesi. The cell to which they were assigned was shared with 24 others. It had four windows and a small bathroom. “It was so cold,” Sharif said, “that if you touched your bare head on the wall for three minutes, you would get a sore throat then and there.” Taha quickly ascended to cell leader while Sharif assumed responsibility for distributing food rations, which consisted of chunks of meat, rice, bread, beans and lentils. The inmates invented ways to make the food edible by slicing the meat thin like shawarma. They brewed tea in a contrivance that involved bottled water, string, cloth, plastic and a cooker. They shared smuggled cigarettes, and scrawled lines from the young revolutionary poet Mustafa Ibrahim on the walls.

On the political front, they formed a group they called the Coalition of Egypt’s Prisoners, which was comprised

asked how old she was and how to pronounce her given name (Ma-hee-NOUR). They never quite got it right.

Immediately upon arrival, and though she knew her request would be denied, al-Massry asked the warden if she could see the prison charter, which details how Egyptian penitentiaries should be run. The charter is based on legislation and gives prisoners extensive rights to paid labor, health care, rehabilitation and intervention from social workers, along with visitation and personal correspondence. Copies of the document are not readily available to the public, and those that do circulate bear a “no publishing or copying” warning. “The warden told me, ‘I am the charter,’ which meant that he would settle any disagreement between us,” she said. She asked him, “How can you punish me for something I did not know was punishable?”
of revolutionary socialists and other secularists, as well as Islamists. They sent out occasional press releases. They started planning a hunger strike after officials refused their requests for better treatment, more exercise and more than half an hour in the bathroom. The hunger strike began in late April and lasted for almost a week. Coalition members refused all food and visits. “We succeeded, and people started talking about a hunger strike in Wadi Natroun,” Taha said.

On May 28, however, the warden instituted a new punitive measure. The visiting hour in Wadi Natroun usually took place between noon and 1 pm but without notice the warden moved it back to 4 pm. When the cell was finally opened, Taha strode into the booth where the warden was standing and harangued him for the long delay. A police officer punched Taha in the chest. Taha lobbed a water bottle at the officer, as other prisoners tried to separate the two. Enraged, the warden threw Taha into solitary confinement.

That night, the prisoners broke out in chants for the release of Taha and another inmate. The administration let the men out of solitary confinement the next morning. But on a radio in their cell the inmates heard a broadcast that claimed a mass escape attempt had been stopped. Three days later, guards meted out collective punishment, including beating and public shaming.

That was not the end of the repercussions. On May 31, special forces sent by the Interior Ministry stormed one cell after another on both wings of the ward. They pushed the prisoners out into a corridor and administered beatings “wherever they could get us,” Sharif said. “I’d never seen so many soldiers where they led us next—the space we used as the bathroom.” It was an expanse of ground enclosed by four walls and roofed with barbed wire.

The prisoners were ordered to strip down to their underwear. “Our hands were tied behind our backs using our torn-up clothes, just like prisoners of war,” Sharif said. They spent the next five hours kneeling under the torrid May sun, blindfolded, as the jailers dealt them additional blows. Taha was among 19 prisoners summoned for transport to another facility for further punishment. Still in his underwear, he was taken to what he later found out was Gamasa prison, located a six-hour drive away in a different province. Fatalities have been reported there.

For nine days, he had no idea where he was, locked up in a pitch-dark cell with another man. In the silent blackness, he said, “bugs virtually became your friends.” He was provided with scant food, blankets and a bucket in lieu of a toilet. Guards beat him every day, mostly on the back, masking the marks with Voltaren gel they forced the prisoners to apply. His hands became horribly swollen.

Back in Wadi Natroun, Sharif said, he and the rest of the inmates spent the next three weeks in a cell holding criminals. The space was subject to intrusive searches every other day. Officers would slash open sacks that held the prisoners’ belongings, throw their food away, and beat them, or make them stand facing the wall. “One time, an officer came in with a knife and a bar of soap,” Sharif said. “He thought someone might have hidden something inside it.”

Such treatment continued until Taha and Sharif finally faced trial and were acquitted on June 16, 2015.

After Taha’s release, the authorities pursued him again in connection with another political case. He evaded arrest and fled to Prague, and was sentenced in absentia to life in prison.

Sharif is back in Cairo, trying to find a way out. He has undergone extensive therapy to overcome the trauma of prison. “Leaving Egypt,” he said, “is consuming my thoughts.” —NS
month to keep these women locked up, she said, while the women’s indebtedness was sometimes as little as a tenth of that amount. The missive was printed in the independent newspaper *Mada Masr*.

One night, as her cellmates gathered around the television to watch a live broadcast of a Sisi speech, she was stunned by their effusive praise for the field marshal turned president. “I only cried two times when I was inside, and that was one of them,” al-Massry recalled. As Sisi spoke, her own mind flashed to the demonstrators martyred by soldiers and police since the fall of Mubarak, the “virginity tests” inflicted upon women protesters, every brutalizing act in which the military has had a hand. “I started screaming, ‘Turn off the TV, turn off the TV!’ The women were shocked,” she said, but then they drew close to offer her comfort.

Many of the women had been imprisoned for so long that they had lost touch with political realities. They believed that Mursi’s removal would mean amnesty for them. One of the older women told her that Sisi was “different” than the rest. Al-Massry replied, “Do you know that [in the eyes of the state] you are more dangerous than Mubarak? You are spending eight years in prison for being in debt while Mubarak did three years” on charges of monumental corruption.

The women in the debtors’ ward did cooking and laundry together. They bartered with cigarettes, and sometimes they were allowed to converse with other prisoners in a covered courtyard outside. Al-Massry petitioned the warden to grant the women at least an hour of fresh air every day, but to no avail. Nonetheless, she said, she managed to gain her cellmates’ trust little by little.

**Hunger Strike**

Toward the end of August 2014, al-Massry’s sister Maysoun paid her a visit and told her that imprisoned activists elsewhere had launched hunger strikes. Al-Massry decided to do the same. She had come into contact with Samah Samir, a political prisoner assigned to a different cellblock. Samir was
a hospital administrator whose case was entangled with that of a band of five students, known as banat al-Azhar, or “the Azhar girls,” charged with unauthorized protesting, violence and destruction of public property. Al-Massry said the Azhar girls were transferred from a Cairo jail to Ab’adiyya without any personal belongings, not even their shoes.

Samir and the Azhar girls were all ready to join al-Massry in staging a hunger strike. But once prison officials got wind of their intentions, the facility “turned upside down.” Al-Massry was summoned to the warden’s office, where he and representatives of the Prison Authority warned her not to proceed.

“You are a mature person,” the warden told her. “What will a hunger strike change? You will only hurt yourself.” He advised her to write down her grievances instead, to which she rejoined, “But you have banned me from writing!”

Indeed, Al-Massry had been barred from corresponding because of her open letters, two of which got through to the press. She sometimes got around the prohibition by jotting notes in the margins of books that she would pass to her sister when she visited. Or she would dictate the messages. On this occasion, however, she resolved to ignore the officials’ admonitions and go ahead with the hunger strike, along with the Azhar group and some of the women in the debtors’ ward.

Some of the hunger strikers, particularly the diabetics among them, quickly fell ill. Samir and the Azhar girls stayed strong, but al-Massry called off the strike after two days. It felt like both a betrayal and a defeat.

Thistles in the Regime’s Throat

Not a year after al-Massry’s release from Ab’adiyya, she was back in the dock, accused of storming an Alexandria police station. What had really happened was that she and other lawyers staged a sit-in at the station in March 2013 to demand the release of activists held inside. The police responded with insults and beatings, but it was al-Massry and two journalists who were tried for assault and other fabricated offenses. In February 2014, the judgment was handed down: a two-year prison sentence and bail set at 5,000 Egyptian pounds or $600. The term was postponed as al-Massry’s lawyer due. The authorities detained al-Massry two weeks before the hearing commenced.

On May 25, a few days beforehand, al-Massry’s case came up at a Cairo news conference called to protest the incarceration of two journalists, Lu’ay Qahwagi and Yusuf Shaaban, who had been covering the sit-in at the police station and were also given two-year sentences in the prosecution of the protesters. The journalists were jailed at Burg al-‘Arab prison, near Alexandria, where two crisscrossing flights of stairs lead up to courtrooms on each side of the square-shaped stories. The off-white fluorescent lighting gives the fawn-colored walls a glint of foreboding.

Hundreds of lawyers, journalists and supporters who had been barred from the proceedings gathered near the courtroom doors, many sitting scrunched with their backs to the walls of the corridor. Large sheets of paper had been tacked up to double as posters: “Freedom for Mahienour and Yusuf.” “Mahienour and Yusuf are thistles in the throat of added in a Facebook post that Shaaban had contracted hepatitis C in custody and was deprived of adequate medical care.

Hind Qahwagi complained that her husband had been stripped of his personal belongings and that she had been treated “horribly” during visits strictly limited to 15 minutes. Her brother was allowed no books, not even those of non-political nature. The power went out at the prison every morning.

Al-Massry’s sister Maysoun, who was also in attendance, called the prosecution “comical.” “People like my sister and Shaaban and others were targeted because they were fighting for a cause in light of their profession and their sense of belonging to the country,” she said. “Now they are paying the price.”

The flaws of the Egyptian judicial process were on flagrant display when the appeal was decided. The session took place in the courthouse in the Manshiya neighborhood of Alexandria, where two crisscrossing flights of stairs lead up to courtrooms on each side of the square-shaped stories. The off-white fluorescent lighting gives the fawn-colored walls a glint of foreboding.
every regime.” As per what has become standard procedure, the judge did not allow the defendants’ families into the courtroom, either.

The session began almost four hours late. A troop of police conscripts marched through the thinning crowd and entered the courtroom. Those supporters who remained furiously tapped out text messages. Ranwa Yusuf sat crinkling her forehead, tears welling up in her eyes. Then chants were heard from the courtroom—an ill omen—and soon word of the decision passed from mouth to mouth. The guilty verdict was upheld, and the prison terms were cut from two years to one year and three months.

Shaaban’s wife arose and cried, “Down with the military!” As others joined in, the chant grew to a crescendo and echoed through the courthouse. The families of the detainees descended the stairs, some 200 people in their wake. The conscripts stood mute as lawyers shouted at the crowd to leave in an orderly fashion so as not to risk arrest. Quieted to weary stillness, the families and supporters exited to the corniche in a long single file as police vans reeled past. Some family members fainted and crashed to the asphalt. Others gave interviews to journalists. Some just headed home.

Repeated Violations

Malik ‘Adli, a human rights lawyer, contends that Law 107 violates the Egyptian constitution and should be repealed. He calls the law “disreputable,” adding that it has affected more people than a similar anti-protest statute enacted under British colonial rule in 1914.

Between June 2012 and December 2015, when the Egyptian parliament was suspended, the presidents Mansour and Sisi issued hundreds of executive orders that have the force of law. Mansour declared Law 107 just eight months before his transitional presidency ended and he returned to his job as chief justice of the Supreme Constitutional Court, Egypt’s highest judicial body. He was effectively
in the position of ruling on his own decrees. It created a glaring conflict of interest, says Khalid ‘Ali, a prominent human rights lawyer, “a legal and constitutional irony that is unprecedented in the Egyptian judicial system.” Although Mansour said he would recuse himself should the protest law reach his court, the judicial process in Egypt was under a cloud. As chief justice, ‘Ali said, Mansour was positioned to exercise undue influence upon the objectivity of his fellow judges. In late May, Mansour was replaced as chief justice pending his retirement on June 30.

In May 2015, two other human rights lawyers, ‘Ali and Tariq al-Awadi, petitioned the Supreme Constitutional Court to have the law overturned because it gives the authorities the discretion to call off any protest they determine will infringe upon public safety. The requirement to get a protest permit, the brief argues, implies “breached freedoms” and thus violates 13 articles of the Egyptian constitution.

The petition is still with the Committee of State’s Commissioners, a body within the Supreme Constitutional Court that is charged with preparing the case for court. Khalid ‘Ali is optimistic about the prospects. “If the law is repealed,” he said with a smile, “anyone who was imprisoned over the petitioned articles of the law will be acquitted.”

And what of bettering conditions for those who remain in prison? The government, said Nasir Amin of the National Council for Human Rights, is far more focused on how to absorb more prisoners than how to develop adequate detention facilities for those already held. “The new priority is building new prisons,” he said, “or finding ways for current prisons to accommodate the increasing population.”

A former general with the Prison Authority, who chose to withhold his name, beamed as he talked about the creature comforts—automatic doors and single beds—of the new prisons. He looked forward to land purchases that would make room for still more penitentiaries, and said that “American expertise” was being sought as part of a prison reform initiative. In the meantime, the Interior Ministry’s human rights division has opened a hotline for complaints.

On its website, the Prison Authority says it is “adopting state policy, which is directed toward respecting human rights, through implementing prison reform and rehabilitation.” The ministry boasts of abolishing flogging in 2002, fitting prisons with 40 libraries and encouraging activities such as reading, drawing, sculpting and music. ‘Adli sees these claims as rhetoric hiding the numerous violations taking place inside prison walls. The reality is that wardens routinely ignore the legislation on the Egyptian books—not to speak of international human rights norms—and repeatedly violate the rights of the incarcerated.

For example, Article 43 of the Prisons Law lists solitary confinement as the fifth of six steps of disciplinary action that prison authorities are expected to follow. Before a prisoner is sent to solitary confinement, there must be a warning, followed by withholding of privileges, barring from promotion to a higher prisoner status and then demotion to a lower status. Yet prisoners are often sent to solitary confinement the moment they clash with prison administrators. (The sixth step is a “disciplining room.”) The prison charter makes no provision whatsoever for collective punishment, but the al-Nadeem Center for the Rehabilitation of the Victims of Violence and Torture reported 24 such incidents in 2015.

In May 2015, the National Council for Human Rights held talks with the Ministry of Interior aimed at producing amendments to the Prisons Law. But the negotiations mostly relitigated issues that were settled in law or practice long ago.

For example, the Council disagreed with the Ministry’s proposal to extend the period of solitary confinement to six months. “We thought it was a very cruel duration,” Amin said. The existing Prisons Law capped solitary confinement at 15 days. Other points under discussion included the suspension of sentences after three quarters of the duration, which the ministry agreed to because “it already existed in law,” and something vaguely described as “intellectualizing prisoners,” to which the Ministry committed in 2006.

In the months that followed, the Council watered down its reports on prison visits, redacting and re-editing paragraphs that addressed torture and sexual assault, and eventually asserting that Egypt’s lockups and prisons are “torture-free.” The Interior Ministry, of course, continually denies any mistreatment or abuse inside its detention facilities.

Human rights organizations say otherwise. In 2015, according to statistics compiled by the al-Nadeem Center, there were nearly 700 cases of torture—39 of the victims did not survive. Only a handful of accused perpetrators are prosecuted and those who are often receive light punishment. In November 2015, riots broke out in Ismailiya and Luxor after the deaths of Afifi Husni and Tal’at Shabib in police custody. Video footage showed Shabib’s body badly bruised from blows to the neck. The officers in Husni’s case were convicted and sentenced to eight years. The officers in Shabib’s case got three to seven years. But another court has ruled that compensation in such cases will not come from the state, but from the personal monies of convicted policemen, ending any hope of justice for torture victims. There is little promise that overall conditions will improve as the prison population continues to swell.

CORRECTION: In the last issue, Madeline Otis Campbell should have been credited as co-author of the article, “NGO Governance and Syrian Refugee ‘Subjects’ in Jordan.” The corrected article is available on our website. We very much regret the error.
Hebron, the Occupation’s Factory of Hate

Joshua Stacher

"You are going to Hebron?" a Palestinian colleague remarked. “Oh, that’s a special place.” Thirty-two miles south of Jerusalem, Hebron is the largest Palestinian city in the Israeli-occupied West Bank, with some 215,000 inhabitants. The gritty, largely working-class town puts out anywhere from 33 to 40 percent of Palestine’s gross domestic product, depending on the estimate. The large mosque in Hebron’s old city houses the tombs of Abraham and his family, making the site holy to the adherents of all three monotheistic religions. But the above comment was not meant in an economic or a spiritual sense.

What makes Hebron special is the religious-nationalist militancy of the Israeli settler projects in the city and its environs—along with the ferocity of the accompanying violence. In the province as a whole, the settlement pattern is the same as elsewhere in the West Bank—the inward creep of colonization forces the occupied population into ever smaller and denser enclaves. The southern Hebron hills are a recurrent flashpoint, as settlers and Israeli army bulldozers repeatedly try to push Palestinian shepherd families out of their villages.

But Hebron’s real distinctiveness lies in what is called H2, the portion of the city that remains under Israeli military control by the terms of a 1997 agreement between Israel and the Palestinian Authority (PA). In H2, which encompasses the old city and the Ibrahimi Mosque/Tomb of the Patriarchs, about 800 settlers, guarded by 1,500 Israeli soldiers, live in the midst of 40,000 Palestinians. Most Palestinian Hebronites live in H1, the part of the city under nominal PA control. The Israeli army stages regular raids on houses in H1—one soldier told writer Ben Ehrenreich that his superiors do not

Joshua Stacher is an editor of this magazine and associate professor of political science at Kent State University.
want the Palestinians to lose “the feeling of being chased.”

The Palestinian residents of H2 are subject to even worse treatment: daily harassment, invasive surveillance, regular curfews and frequent settler attacks.

**Flashpoint**

A small community of Jews lived among Muslims and Christians in Hebron for hundreds of years prior to the beginning of Zionist immigration and the resulting conflict over Palestine in the late nineteenth century. In 1929, amid tensions over rights to the Temple Mount/Noble Sanctuary in Jerusalem, Palestinians killed 66 Jews in Hebron. (Nine Palestinians also died in the fighting, and Palestinians sheltered more than 400 other Jews from massacre.) The British-run police force evacuated the surviving Jews to Jerusalem, and there would be no Jewish presence in Hebron again until after the 1967 war.

Settlers established Kiryat Arba, to the east of Hebron’s old city, in 1968. The Israeli daily *Haaretz* disclosed in July that the Israeli government of the time discussed how to support Kiryat Arba, despite being aware that the construction violated international law. The first settlement in the old city appeared in April 1979, when Jewish women and children were placed in the abandoned Beit Hadassah hospital under cover of night. The government of Menachem Begin was not enthusiastic about the outpost in the middle of a major Palestinian town, but soldiers took up positions to defend it. In the ensuing decade, more settlers moved from Kiryat Arba into the city center, founding Beit Romano, Tel Rumeida and Avraham Avinu, with the government’s tacit approval as well as the army’s protection. A fifth city center settlement, called Beit Ha-Shalom by the settlers, was started in 2014 with the blessing of the Israeli defense minister after the Israeli Supreme Court ruled that the settlers’ use of a front man to purchase the four-story building from its Palestinian owners was legal.

As the settlers in the Hebron area tend to come from the religious-nationalist side of the Zionist spectrum, they believe that God granted all of biblical Israel to the Jewish people. They are heavily armed. Moreover, they openly express sympathy with the teachings of Meir Kahane, the US-born founder of the militant Jewish Defense League and the Kach party in Israel, which was barred from elections owing to its anti-Arab racism. The most infamous men rumored to be residents of Kiryat Arba are the League’s Keith Fuchs and Andy Green, two fugitives wanted in connection with the 1985 bombing death of Alex Odeh, a regional director for the
On the walls of this Hebron kindergarten, settlers have spray-painted “Death to the Arabs” in Hebrew.

Jonas Oppenklaski/Laif/Redux

American-Arab Anti-Discrimination Committee, in Santa Ana, California. Another Kiryat Arba settler, Robert Manning, was extradited to the United States and convicted in 1994 on charges of killing a secretary in Los Angeles with a mail bomb in 1980. He is also a suspect in the Odeh assassination.  

During Ramadan of 1994, less than six months after Yitzhak Rabin and Yasser Arafat shook hands on the White House lawn to seal the deal of mutual recognition between Israel and the Palestine Liberation Organization, Baruch Goldstein, a settler from New York, burst into the Ibrahimi Mosque with an M-16 and murdered 29 Palestinians while wounding another 125. Survivors of the mass shooting beat Goldstein, a Kahane follower, to death. Settlers built a shrine to Goldstein in what they call Meir Kahane Memorial Park. The Israeli government destroyed it. The settlers rebuilt it, and today it remains a pilgrimage site for those traveling to Kiryat Arba.

In the aftermath of the Goldstein massacre, the Israeli government accelerated the pace of colonization of Palestinian land even as the “peace process” commenced by Rabin and Arafat got underway. Predictably, Hebron was a frequent site of clashes between settlers and Palestinians. Israel rebuffed the PA’s call to disarm the Hebron settlers and instead sent more soldiers to the city. The army closed down streets, hurting Palestinian businesses. The army also imposed multiple curfews on the city—but not on the settlers, who seized the opportunity to take over more houses. The Ibrahimi Mosque was partitioned with thick bulletproof glass into Muslim and Jewish spaces of worship. Eventually, the accord was signed that divided the city as a whole into H1 and H2.

The agreement did not bring peaceful coexistence, however. After the outbreak of the second intifada in 2000, Hebron was a focal point of Palestinian resistance. Israel cracked down hard with round-the-clock curfews in H2 and closure of the gold and fruit markets in the old city. Abandoned, the area has become known as Ghost Town. In 2007, the Israeli human rights organization B’Tselem reported that 1,014 Palestinian homes in the old city (41.9 percent of housing in the area) had been vacated and 1,829 businesses (76.6 percent of area shops) shuttered.

“You Wanna See How the Arabs Live…”

It does not take long for a visitor to understand why the atmosphere in Hebron is uniquely toxic. In the parking lot around the corner from the Ibrahimi Mosque complex, it is sunny and eerily quiet at midday in May. One vacant-looking building is draped in Israeli flags.
Most Palestinian universities are underfunded, but Hebron University is extreme in its needs. Compared to other institutions in Palestine, there are few buildings named for wealthy donors.

Israeli restrictions on Palestinian movement mean that students rarely enroll in a university outside the vicinity where they were raised. Most of Birzeit University’s student body comes from the Ramallah area; the students from Nablus and Qalqilya attend al-Najah University. Around Hebron, students go to Hebron University or the other school in town, Polytechnic University. The restrictions on movement mean that Palestinian campuses develop regional cultures; it is difficult for young Palestinians to meet their peers from other parts of the country and learn about their experiences.

Professors are similarly isolated—by the occupation’s system of permits and checkpoints as well as by the heavy teaching loads. As one female professor said, “Just knowing someone who works in your field from another university is an achievement.” Travel abroad for conferences or research can be even more difficult, as academics are frequently denied exit permits to neighboring Jordan. Hebron University is located in H1, the Palestinian Authority’s designated area of control, but it is not uncommon for agents of the Israeli Shinbet to request meetings with faculty members. The Shinbet turns the names of uncooperative professors over to the PA’s security forces. In one case from 2011, the PA arrested a Hebron University instructor and tortured him for two weeks on the grounds that he dismissed the possibility of a two-state solution. As the professor stated, “The PA works for Israeli interests and Israeli security.”

At Hebron University, class cancellations are the norm due to the frequent closures and curfews imposed by the Israeli army. The only way to cover all the material on the syllabus is to tack on two or three extra weeks to each term. Teachers are accustomed to composing special exams because the disruptions of military occupation cause students to miss the regularly scheduled exam so often. Students resident in Hebron are subject to nighttime army raids and sound grenades that disrupt sleep, not to mention the constant threat of arrest or worse. One faculty member rattled off the names of three students in the department who had been killed by the army in recent years. He continued, “It’s a small community. People get affected when a student gets killed. It’s hard to teach depressed students under this psychological pressure.” —JS

The Kiryat Arba settlers have set up a shop across from a long-closed restaurant. A message in Hebrew—“Respect the Sabbath”—is plastered over the restaurant’s hand-painted Arabic sign. Two or three Palestinian stalls are also selling souvenirs. The shopkeepers hawk their wares more aggressively than their counterparts in Jerusalem or Bethlehem, as few tourists tread this path any longer.

On the other side of a checkpoint turnstile, the old city’s market is likewise mostly empty. Kids emerge curious about the rare visitors; the shopkeepers themselves look almost surprised. Poster-size photos of Goldstein’s 29 victims hang on the walls. In a “peace park,” two people chat on a bench. Down an alley, the shopkeepers have strung chicken wire to shield themselves from rocks or garbage tossed down by the settlers living upstairs. A sack of excrement sits atop one cage. Turning left, a soldier takes a drag on his cigarette as he rests on his M-16.

A message on a wall—“STOP”—alerts the next person in line to step forward into a cage. The settler kids on the playground dribble a basketball, unseen but clearly heard.

The alley empties into a square devoid of traffic. The walls bear telling graffiti—“Fight Ghost Town.” There are army command posts on two of the four sides of the square. A soldier takes a drag on his cigarette as he rests on his M-16.

Ahead one can see the main commercial zone of H1. It is bustling. But first, after a left onto al-Shuhada Street, visitors must pass on foot through a massive, menacing checkpoint and walk by the settlement of Beit Hadassah. The checkpoint has been here for more than 20 years—it once consisted of twin cinder blocks—and is newly fortified. The current design renders invisible whatever might happen inside.

Pedestrians enter the checkpoint one by one. A green light alerts the next person in line to step forward into a cage. The green light shines again. Through a door is an empty room where two Israeli soldiers sit behind a small window. “Go!” they yell, at least at bearers of US passports. Then there is another disorienting, solitary cage, a turnstile and another stretch of closed-off street next to Beit Hadassah. Palestinian residents of H2—the only Palestinians permitted in the area—traverse the checkpoint on their way to H1. None of them look up as they exit.

The scene gets stranger after the checkpoint: One settler in running clothes is doing hill repeats. Another woman
wearing a uniform with the name of the settlement is waiting. She starts filming the Western visitors with her smartphone. “What’s wrong? My camera does not hurt more than yours.” She draws closer. “My family lived here until 1929 when the Arabs massacred them.” Another woman shouts in an unmistakable Brooklyn accent, “What do you want? Why are you here? If you wanna see how the Arabs live, go to Syria.”

Here there are schools, a soccer pitch and omnipresent Israeli flags. The graffiti shows the Jewish temple rebuilt in Jerusalem. Neither the al-Aqsa mosque nor the Dome of the Rock is depicted, though these structures now stand on the presumptive site. Above the image is a quote from the Passover Haggadah, “Build the Temple quickly and in our time.” Bumper stickers demand the release of Meir Ettinger, a grandson of Meir Kahane who was jailed in connection with a firebombing that killed an 18-month old Palestinian baby named ‘Ali Dawabsha. Haaretz describes Ettinger as the “number-one Jewish suspect of terrorism” in the eyes of the Shinbet, Israel’s internal security service. On June 1, he was let go after ten months in administrative detention. Other signs refer to the settlement’s land as “stolen by Arabs” in 1929.

The driver of a passing Subaru shouts out the window, “This is Jewish property.” Palestinians are forbidden to drive in H2.

**Documenting Hebron**

If visitors to Hebron are few, there is plenty of documentation of what happens here. Christian Peacemaker Teams, an ecumenical group based in Chicago, keeps a team in Hebron that, among other activities, accompanies Palestinian children to school. The children often encounter settler harassment. Breaking the Silence, an Israeli organization of anti-occupation ex-soldiers, conducts regular tours of the city as well as the southern Hebron hills. Most soldiers despise being posted to Hebron, but many of them recognize that soldiers and settlers are partners in the project of colonization. As Breaking the Silence has commented about the West Bank in general,

The security forces do not see the settlers as civilians subject to law enforcement but as a powerful body that shares common goals. Even when the wishes of the settlers and the military are at odds, they still ultimately consider each other as partners in a shared struggle and settle their conflict through compromise. As a consequence, the security forces usually acquiesce in the settlers’ goals, if only partially. Thus, settler violence against Palestinians is not treated as an infraction of the law. It is instead one more way in which Israel exercises control in the Territories.”
Another organization, the Temporary International Presence in Hebron (TIPH), files daily reports on the situation in the city. Established by the 1997 accord, TIPH has a staff of Danish, Italian, Norwegian, Swedish, Swiss and Turkish observers who carry out two or three shifts per day. Once, there were as many as 180 people on staff; today, there are 64. All have diplomatic immunity. The civilian observers patrol H1 and H2 by car and on foot. Their mandate from Israel and the PA is clear: They are to watch but not to interfere. TIPH organizes tours for outside delegations, though the Israeli government complains when it considers the number excessive. The organization also engages in community relations like the underused “peace park.” Settlers and Palestinians alike disdain TIPH as ineffective.

The cornerstone of TIPH’s mission is to write down what it sees. There are incident reports, monthly reviews and quarterly assessments. The documentation is distributed to the Israeli government, the PA and the governments of the six countries that supply the observers. According to one staffer interviewed in May, TIPH monitors have authored over 20,000 reports since 1997. The reports are not classified but they are confidential: No one but Israel, the PA and the TIPH member governments can read them.

If the reports are not public, what good are they? TIPH personnel shrug—perhaps governments have more latitude to share private information. The member states are afraid that publicizing the reports will anger “the parties to the conflict,” a term implicitly understood to mean Israel. One joke is that the documents are locked in a vault in Oslo. In any case, the settlers and soldiers behave noticeably better when TIPH personnel are around, giving some respite to the besieged Palestinians.

Heightened Alert

In 2016, Hebron has been on heightened alert. According to TIPH, Israeli security forces killed nearly 30 Palestinian Hebronites between October 2015 and the succeeding spring, part of an increase in such incidents across the West Bank. If one accounts for other killings near settlements in the Hebron governorate, the figure ticks upward.

The routine killings in Hebron usually do not make the news outside of Palestine. A pair that did attract international media attention occurred on March 24, after two Palestinians reportedly attempted to stab soldiers at a checkpoint next to the volatile Tel Rumeida settlement. One soldier was “lightly wounded,” according to the army. The two Palestinians, Abd al-Fattah al-Sharif and Ramzi al-Qasrawi, both 21, were shot dead.

The same day, B’Tselem published a video, shot by Hebron resident ‘Imad Abu Shamsiyya, that shows Sharif lying flat on the ground, incapacitated by a gunshot wound in the stomach. An ambulance is parked nearby and paramedics are visible in the frame. The notorious settler Baruch Marzel is also on the scene, shaking hands with soldiers. Abruptly, the Israeli army medic Elor Azaria cocks his rifle and fires at Sharif’s head. No one reacts. Azaria is on trial for manslaughter in the execution—he claims he sensed a “clear and present danger”—sparking a firestorm in Israel. A poll conducted in late March found that 57 percent of respondents did not want the soldier indicted in the shooting. Later, it was revealed that Qasrawi was also executed at the same intersection. The videographer Abu Shamsiyya has received death threats and is fighting a legal battle as settlers have filed a formal complaint.

The quotidian crisis of Hebron, like that in other West Bank locales, seeps into Israel as well. On June 8, two Palestinians, Khalid and Muhammed Muhamra opened fire on a crowded restaurant in central Tel Aviv’s upscale Sarona market. The gunmen, cousins from Yatta, a town five miles south of Hebron, killed four Israelis and wounded 13 others.

Israeli academic Michael Feige, whose research concerns the conflict, a term implicitly understood to mean Israel. One journalist investigated the Muhamra’s background, it emerged that Khalid had watched the army raze his family home in 2003, when he was in third grade.

Such collective punishment might occur anywhere in the occupied West Bank. But in Hebron and its environs, these measures seem to have a special bite, perhaps because of the non-stop acrimony in the city or perhaps because here the settler-colonial project at the heart of the occupation is hyper-visible. As one international living in Hebron said, “You can only learn hate here.”

Endnotes

6 B’Tselem, Ghost Town: Israeli Separation Policy and Forced Eviction of Palestinians from the Center of Hebron (Jerusalem, May 2007).
8 The video is posted online at: http://www.youtube.com/watch?v=P-BlyzAM5A4.
A Lonely Songkran in the Arabah

Matan Kaminer

There was something awe-inspiring about the dark red rainclouds that covered the sky of the Arabah on April 13. Precipitation is rare in this section of the Great Rift Valley, which lies below sea level and hundreds of miles from the Mediterranean. When it does come, the rain rushes down the wadis of the Israeli Negev and from the high mountains of Jordan opposite, flooding the dry bed of the Wadi ‘Araba, prying loose the landmines buried decades ago when the two states were in a state of war. Rarer still is rain in April, the month in which fresh days and cold nights begin to give way to the stifling 24-hour heat of summer, and the month in which the bell peppers that have brought prosperity to the Israeli side of the Arabah begin to wilt and rot.

The thirteenth, moreover, is not just any day in April: It is Songkran, the Thai new year, one of four annual legally mandated days of rest for the thousands of Thai migrants who make up the bulk of the agricultural workforce in the territory of the Central Arabah Regional Council. In Thailand, Songkran marks the beginning of the end of the dry season, and locals greet the hottest days of the year with exuberant tossing of water and talcum powder in expectation of the monsoon.

Matan Kaminer is a doctoral candidate in anthropology at the University of Michigan.
rains that will come in May or June. As far as the Thais of the Arabah were concerned, then, rain was no reason to put off celebrating; on the contrary, it may have seemed to promise something other than the bleak, suffocating summer ahead.

Soon after 9 am, I joined the workers of the Arabah community of Ein Amal (not its real name), in their holiday procession. Ruddy rainclouds were piled ominously in the sky, but the workers were engrossed in the parade. Each farm’s employees sat on a tractor-drawn, flower-garlanded trailer, drinking beer and brandy, sometimes dancing to the music blaring from the makeshift sound systems displayed next to plastic sports trophies, sometimes slipping off to cover friends on nearby tractors with talcum powder. But the performance had no audience: Work in the community had been brought to a halt by the holiday, and apart from the odd passerby, Israelis seemed to be taking shelter from the storm indoors.

Thunder was already rumbling across the desert and fat raindrops were slamingm into the dust when the parade came to an end in a small lot near the soccer field at the center of Ein Amal. My car and I, both caked with talcum, were commandeered to take home a worker who had passed out from drink. By the time we parked in the tractor shed of the family farm where I was doing my fieldwork at the time, the drumming of the rain on the high corrugated-metal roof of the shed was ear-splitting. Upon entering the nearby quarters, we found that the roof was leaking directly over the bed of one of the two workers who had come with me to help carry their friend home.

After doing what I could to help contain the damage, I drove back to the celebration. Huge puddles were already forming on the roads, and I made it through the biggest one at the cost of a license plate. The day had turned dark, lit but intermittently by streaks of lightning, and the rain showed no sign of letting up. But the party was still going full blast, under the flimsy jerry-rigged canopy of a tractor-drawn wagon. I hung around for a few minutes, and then headed home. No other Israeli was in sight.

A Niche for Self-Labor

The colonization of Palestine began in the late nineteenth century with the First Aliyah, or Zionist immigration, and the establishment of plantations worked by Palestinians under the management of Jewish settler-owners. A generation later, the “socialist” or “labor settlement” wing of the Zionist movement began its ascendance to hegemony via the “conquest of labor,” with the demand that Jewish-owned farms employ the Jewish proletarians who were streaming into the country in the wake of World War I. The battle ended with a commitment of the central Zionist institutions to the financing of land purchases for communal and collective farms (kibbutzim and moshavim, respectively), which would provide a prestigious if not luxurious livelihood for these European worker-pioneers. The new communities prided themselves on their commitment to labor qualified as “Hebrew”—that is, exclusive of Palestinians—and “self”—that is, rejecting of “exploitative” wage relations.

Most communities of the “labor settlement” movement swiftly abandoned both principles after the creation of the state of Israel and the 1948 war. The transfer of lands confiscated by the state from Palestinian refugees provided these previously land-poor settlements with vast new fields to cultivate, and the Military Government imposed on Israel’s new Palestinian citizens, as well as the immigration of hundreds of thousands of Middle Eastern (Mizrahi) Jews, supplied a pool of cheap labor. Rejecting these “temptations” out of fidelity to the values of their movement, many young kibbutzniks and moshavniks looked for ways to continue the pioneering quest. Some found it in the Arabah.

The Arabah (in Hebrew, Arava, in Arabic, ‘Araba) is a low-lying, hyper-arid valley stretching from the Dead Sea in the north to the Gulf of ‘Aqaba in the south. Separated from the rain-giving Mediterranean by the mountains of the Negev and Sinai, and scorching hot in the summer, it has been a zone of transhumance and transit for thousands of years. Long-distance travel was cut off as the Arabah became the militarized border between Israel and Jordan in the course of the 1948 war, and as many of the locally resident Bedouin were forced over that border into Jordan. Following the opening of the Israeli port of Eilat in the early 1950s, the border zone gained in strategic importance. Nevertheless, officials were skeptical of the plausibility of agriculture there, and it took the direct intervention of titanic ex-Prime Minister David Ben-Gurion to gain government support for the establishment of the Arabah’s first moshav, Ein Yahav, in 1959, by a “nucleus” of settlers born and raised in the communities of the labor settlement movement.

A number of factors converged to make reliance on Hebrew self-labor plausible in the Arabah long after it had ceased to be so in the rest of the country. Government investment in irrigation infrastructure made it possible to tap the region’s deep aquifers, and the high temperatures made it profitable to grow summer vegetables in winter. The extreme climate and distance from cities attracted a population of adventurous youth while making cheap labor power hard to come by. When, following the 1967 war, agricultural enterprises in the rest of the country became heavily dependent on Palestinian day laborers from the Occupied Territories, this form of employment was precluded by the impracticability of commuting to the Arabah from anywhere in the West Bank, and the point-blank refusal of local farmers to consider letting West Bankers reside in the area. Arabah farmers were, however, amenable to employing the labor of young volunteers, mostly from Europe and North America, who were fascinated enough by the settlers’ way of life to supply their energies in exchange for the opportunity to participate in it.

The exodus of second-generation youth from the rain-fed valleys of Israel’s north and center to the desolation of its southern desert, and their subsequent self-policing to ensure adherence to the principle of self-labor, suggest a subjective
orientation that I venture to call “exploitation anxiety.” These Labor Zionists perceived exploitation of the work of others, especially non-Jews, as an evil less because of its effect on the exploited, and more because of its ostensible impact on the exploiters. Raised on the writings of Ber Borochov and Joseph Haim Brenner, they saw work—and especially agricultural work—as a means of redemption and a pathway to an organic relationship with the Land of Israel. The employment of others, especially Palestinians, signaled a return to the “upside-down class pyramid” that had supposedly characterized the “parasitic” and “unproductive” Jewish society of the diaspora.

The decision of these young pioneers to flee the regions of the country where cheap agricultural labor was abundant may seem absurd at first, but in fact it reflects an intuitive understanding of capitalist market rationality. The employment of Mizrahi and especially Arab labor was not just a temptation to “regress” toward a more comfortable, bourgeois existence; even if a farm or a community managed to resist the lure, it would find itself besieged by price competition from exploitative neighbors. Short of complete withdrawal into autarky, it was only possible to maintain self-labor by forming an economic enclave in which bourgeois exploitation was not feasible. This niche was carved out in the 1960s, and it held its own until the 1980s.

Bell Peppers and Thai Migrants

The Jewish settlers of the Arabah did not carve out this niche entirely on their own, of course. Besides land grants and heavy government subsidies for irrigation, their livelihood also depended on the protection afforded them by high tariffs, which prevented the flooding of Israeli markets with cheaper vegetables from abroad. Settler self-labor survived by moving into the Arabah and enlisting its climate for comparative advantage in the winter market, but remained sheltered from competition with countries with similar climates and cheaper labor forces. This protection was eroded as the Israeli state embraced neoliberal economic policies beginning in the mid-1980s. As tariff barriers were lowered and unit prices fell, Arabah farmers were faced with the need to overhaul their methods and target markets.

After a period of experimentation, a new pattern began to emerge. Beginning in the early 1990s, the wide range of vegetables that had been cultivated in the Arabah for distribution in Israeli markets was increasingly replaced with a monoculture of bell peppers destined for export to Europe. But with rapid expansion of the area under cultivation came a thirst for labor that could no longer be satisfied by the settlers themselves. Fortuitously for them, the transformation of the local economy coincided with a major, rapid shift in national labor policy. In response to the first Palestinian intifada, the government of Yitzhak Rabin began to replace cheap Palestinian labor with migrant workers imported from around the world. The country chosen as a pool for agricultural laborers was Thailand.

In other parts of the country, Thais replaced Palestinian farm workers as Romanians and later Chinese replaced construction workers; in the Arabah, on the other hand, they replaced no one, but catalyzed a massive upheaval in the local mode of production. This upheaval, of course, could not but have consequences for a local culture predicated on “exploitation anxiety.” When Thais began arriving in the Arabah in the early 1990s, they were slotted into the pre-existing bureaucratic category of “volunteers,” with ramifications that went beyond the purely formal. Holidays like Songkran became community festivals, with employers and their families feasting on pad thai—a tourist favorite prepared especially for Israelis despite its complete absence from the cuisine of Isaan, the northeastern region of Thailand where the vast majority of migrants originate. Including not only dances and beauty pageants but also “best boss” contests, these rituals attempted to bridge the gap between the pioneering ideology of Israel’s “labor settlement” movement and the traditions brought by the workers whose very presence flew in the face of this ideology.

In those years, it seems, the farming community resolved the conflict between its self-image as a self-laboring pioneer collective and the employment of migrant workers by cobbling together a sort of paternalism. Today farmers speak of “the Thais of olden times (shel pa’am)” with nostalgia, praising their primitive innocence—“they had just come down from the trees”—as well as their hard work and their deference. Many assert that “they called us ‘mother’ and ‘father’”—a vocabulary of legitimated domination that has its place in Thai culture, but must have struck these Oedipal, youth-worshipping Zionists as odd before they provisionally accepted the obligations it entailed.

Yet all of that truly seems like “olden times” today. As the number of Thai workers grew from two or three to up to 20 per farm, new relations of production and patterns of life were established that made the paternalism difficult to uphold. Today workers are packed into barracks, two or four to a room and sharing a kitchen; on every farm, they form a miniature community with an internal hierarchy based on age and seniority. Of an evening, cooking, eating and drinking are social activities carried out by the miniature farm community; on weekends and holidays, soccer and takraw tournaments integrate the mini-community into a larger one that includes all Thais resident in the vicinity. This community is the one that carried out the Songkran procession in Ein Amal, on its own and in almost total isolation from the Israeli community in which it is embedded.

The Wellsprings of Alienation

The failure of the early attempt to integrate Thai migrants in a paternalistic relationship with their employers can be understood as the effect of changes in the migration regime and the underlying socioeconomic forces that it mediates. This regime has always been a draconian one, dominated by
the “demographic” imperative of preventing the permanent settlement of migrants in Israel and any diminution of Jewish predominance in the population. Migrants arrive in Israel on five-year visas that cannot be renewed; married couples are barred from migrating together; and the few women among the migrants are subject to immediate deportation if they become pregnant and choose to keep the child. But whereas in the 1990s and early 2000s enforcement was lax, with many migrants simply replacing their passports and returning to Israel for ten years or more, in recent years it has been tightened significantly.

The state, moreover, has found an ingenious method of fighting undocumented migration by forcing employers themselves into becoming privatized enforcers of migration policy. Employers are granted a quota of workers, spoken of as “visas,” according to an index based on the area and crops they cultivate and calculated in such a manner as to keep the labor supply tight. Workers are “bound” (literally, “chained,” kvulim) to their employers, such that if any worker outstays his allotted time or leaves his employer, the latter forfeits his “visa,” leaving the farm short of labor. As social media and other electronic means of communication make it easier for workers to find out about jobs on other farms, every worker becomes a potential liability as a “fugitive” (barhan), and employers are pushed to use illegal methods such as withholding passports or even kidnapping to ensure that their workers stay put and go home when they are told to.

A further impediment to paternalism is the policy reform agreed to by Israel and Thailand in 2013, in an effort to reduce the exorbitant fees theretofore paid by migrants to Thai middlemen working with Israeli counterparts. Fees have dropped steeply, but as middlemen were eliminated employers lost the ability to choose which workers they would import. Whereas previously employers were able to reward workers by bringing over their brothers or sons, thus building relationships with entire families in Thailand, today employers must accept whatever workers they are assigned, much to their chagrin.

The state’s political need to prevent the permanent settlement of migrants thus creates an extremely rigid labor market, in which neither partner in the transaction has much choice. Practically, there are two corollaries. On the one hand, since leaving one’s boss is so hard, employers can get away with paying extraordinarily low wages (on average about 70 percent of the Israeli minimum wage, to which migrants are legally entitled) and providing substandard living arrangements. On the other hand, since dismissing workers is equally difficult, workers enjoy considerable autonomy. The work is hard and monotonous, but workers retain a great deal of control over its organization and rhythm. The structure of work teams and the division of tasks are de facto determined by the workers themselves, based on the same hierarchies of age, seniority and prestige that rule the social life of the quarters. Employers have little choice but to acquiesce in the choices made by workers with regard to work organization. They visit the fields infrequently and apply sanctions sparingly. The use of Israeli foremen, while not unheard of, is rarely successful since workers are so much more knowledgeable about the work than their superiors.

Exploitation Anxiety and Migrant Invisibility

In exploitative societies throughout history, paternalism has served to dull the pangs of masters’ consciences by casting subalterns as helpless children who would be much worse off on their own. The first encounter between Israeli employers and Thai workers gave rise to an ad hoc paternalism that was quickly nullified by the alienation from Israeli society that the migration regime aimed to achieve. This regime has effects that are far from convenient for Arabah farmers, turning them into enforcers of migration policy and making it almost impossible to discipline workers through the sack. At the same time, however, it may make it easier to deal with what I have termed their exploitation anxiety.

This exploitation anxiety, it must be noted, was developed in implicit opposition to the paternalist solution. The pioneer parents and grandparents of the farmers of the Arabah were repelled by what they saw as a parasitic symbiosis between the planters of the First Aliyah and their Palestinian workers. They were after a “pure settlement,” an egalitarian and homogeneous one in both class and national terms. Becoming “mothers” and “fathers” to their workers may have offered a resolution of a kind, but not one that meshed well with the settler ideology on which they had been raised.

By forcing a swift turnover of workers, making employers into enforcers and inadvertently providing workers with the means of resisting employer control over the labor process, the migration regime has shut the door on paternalism and on the possibility of a hybrid culture of the kind that grew up in the antebellum US South or in British India. Paradoxically, it has made it possible to quarantine “local” culture and immunize it against Thai influence. The Israelis of the Arabah can tell themselves, as several told me, that “they don’t feel” any Thai impact on their community. They perpetuate this fiction in their outward self-presentation through various public relations productions that efface the Thai presence in the Arabah. In so doing, they go some way toward calming their own exploitation anxiety—not by imagining exploitative relations as intimate ones, but rather by altogether diverting their gaze from these relations.

The state of Israel and their own ideological habitus present Arabah farmers with an impossible demand: to carry on a self-sufficient settler-colonial form of agriculture in the context of a global market in which cheap, copious labor is the norm. Self-labor is ruled out by the brutal economic facts, and paternalism is denied by state migration policy. What is left is disavowal, and thus the Thai migrants of the Arabah are condemned not only to exploitation but also to invisibility. Once in a while, spring rains may bring relief, but April 13, 2016 will not be the last lonely Songkran in the Arabah.
Israel as Innovator in the Attempted Mainstreaming of Extreme Violence

Lisa Hajjar

The present era of counter-terrorism wars has severely damaged what, in hindsight, looked like a solid international consensus about which forms and levels of violence are “legal” in war and what “humanitarian” limits are imposed on such violence. The counter-terrorism paradigm of “with us or against us” in which the latter—and all that is proximate to it—is regarded as targetable upends the important distinction in international humanitarian law (IHL) between civilians and combatants and inflates the norm of proportionality to justify indiscriminate violence. This paradigm is the dominant strategic approach in the US “war on terror” and Israel’s “war model” approach in the Occupied Territories, as well as among regimes like Syria and Saudi Arabia. A vivid example of this paradigm at work among regimes of various stripes is the rampancy of hospital bombings in areas located amidst “against us” enemies—in Afghanistan, Gaza, Syria and Yemen.¹

There is, however, a way in which regime type matters. The criterion is not the nature or amount of the violence used but rather the way in which some governments derive a sense of their own legitimacy and license to kill on the basis of the rules and norms of IHL. While the violence inflicted on Gaza in the summer of 2014 may resemble the violence being inflicted on Aleppo or Sanaa today in terms of carnage and destruction, the difference is in the intellectual labor that more “law-conscious” governments expend to frame their violence as legal. The implications

Lisa Hajjar is professor of sociology at the University of California-Santa Barbara.
of these interpretative efforts bear upon the future of humanitarianism itself.

The Making of Humanitarianism

The concept of humanitarianism emerged in the nineteenth century and is part of the history of social and political transformations that turned people into humans. This process involved the creation of a universal category—human beings—that would come to include all people. A key episode in the process was the transnational abolitionist movement to end chattel slavery in the Americas. Abolitionists were “norm entrepreneurs” because they pioneered the concept of humanitarianism, which could be defined as identifying with the suffering of strangers because of a recognition of shared humanity, and acting upon that recognition to change the conditions that cause such suffering.

The transformation of the laws and customs of war into IHL began in the late 1800s. It, too, was motivated by a politics of recognition and goal-oriented transformation, in this case the recognition of the humanity of enemies and efforts to forge new rules to balance the inevitable harms of warfare with the obligations on war-makers to refrain from causing “unnecessary” and “excessive” harm, especially to those who are not actively engaged in war—that is, civilians or enemy soldiers who have been injured or captured.

The first Geneva Conventions were promulgated in the late nineteenth and early twentieth centuries to give legal force to more humanitarian rules for war. After World War II these balancing obligations were vastly expanded and elaborated with the promulgation of the four Geneva Conventions of 1949.

The four main principles of IHL are: 1) distinction—the obligation to distinguish between combatants and legitimate military targets on the one hand, and civilians and civilian objects on the other, and the related obligation to avoid purposefully attacking the latter; 2) proportionality—the obligation to use force that is proportional to the military objective or target; 3) necessity—the obligation to limit attacks to what, where and who constitute necessary and legitimate military objectives; and 4) humane treatment—the obligation to protect rather than assault civilians in militarily occupied territories as well as injured or captured enemy combatants. Consequently, while war remains legal, deliberate violations of these principles can constitute war crimes.

Given the fact that the nature of war changes, for example with the invention of new kinds of weapons or new forms of conflict, how do these norms and rules remain relevant and binding while being adaptive to changes? One very important way is the role of state practice—particularly the practice of powerful states—in promoting what is or should be legal in the context of war and armed conflict. Customary IHL, according to the International Committee of the Red Cross, “derives from ‘a general practice accepted as law’…and that the international community believes that such practice is required as a matter of law.” Another way in which IHL rules are clarified or modified is through the enforcement of international criminal law. Although this body of law has existed since the end of World War II, it only began being put into use and developed after the end of the Cold War. International criminal law pertains to war crimes, crimes against humanity, torture and genocide.

Israel as Innovator

Israel deserves a certain pride of place as the preeminent “innovator” in producing interpretations of IHL that depart from well-established international consensus but are nevertheless thoroughly engaged with its rules and norms. Israeli officials have gone to great lengths to frame as legal and ethical the war-model response to the second intifada that started in 2000, the first of the current spate of counter-terrorism wars roiling the Middle East.

The practice of powerful states is key to promoting what is or should be legal in wartime.

Because Israel is a powerful state, one question at hand is whether these Israeli state practices may become “the new custom” for wars against stateless enemies. It is indisputable that the Israeli model has been very influential upon the US “war on terror,” especially in regard to torture and targeted killing. And the Israeli-inflected US model has been influential upon other countries, including Britain, which, for example, authorized the targeted killing (conducted by US forces) of two British citizens in the multinational military campaign against ISIS in Syria.

To understand Israel’s role as an innovator, it is worth quoting the words of Daniel Reisner, who headed Israel’s International Law Division (ILD) of the Military Advocate General’s unit until 2005. Reisner offers an exceptionally frank explanation of the dynamical relationship between Israel’s violent state practice and legal interpretation. Referring to targeted killing, Reisner says: “We defended policy that is on the edge…. In that sense, ILD is a body that restrains action, but does not stop it.” He continues:

What we are seeing now is a revision of international law…. If you do something for long enough, the world will accept it. The
whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries…. International law progresses through violations. We invented the targeted assassination thesis and we had to push it. At first there were protrusions that made it hard to insert easily into the legal molds. Eight years later it is in the center of the bounds of legitimacy.

It is also worth recalling that the war-model paradigm for Gaza and the West Bank is inherently flawed because the territories remain occupied as Israel retains “effective control.” Under international consensus-based interpretations of IHL, it is illegal for an occupying state to use massive military force against occupied territories—whose civilian population is categorized as “protected persons.” By the same measure, indiscriminate violence and the targeting of civilians by militants from an occupied population are also illegal, although there is a right to fight against foreign occupation if done in accordance with the laws of war. This right to fight is set out in the 1977 Additional Protocol I of the Geneva Conventions, which has more than 160 state-party signatories and is widely regarded as a contemporary articulation of customary international law for asymmetric wars. Israel is not a signatory to the Protocol and rejects the principle of occupied Palestinians’ right to fight.

In order to justify its own claimed right to wage war in Gaza, Israel has staked out a position that this region is “no longer occupied.” The historical roots of this interpretative “de-occupation” date to 1967, when Israeli officials asserted that the newly captured Gaza and West Bank were not “occupied” but “administered” territories in order to claim that the military was not bound on a de jure basis by the rules and requirements of the Fourth Geneva Convention. Although this interpretation never obtained international credibility, it became the cornerstone of Israel’s doctrine on the state’s rights in the West Bank and Gaza. Israel’s position took a new course in the 1990s in response to political changes resulting from the Israeli-Palestinian negotiations, notably the military redeployment from Palestinian population centers and the establishment of the Palestinian Authority (PA). As a result of these changes, officials asserted that areas under the semi-autonomous control of the PA (Area A) had become differently “foreign.” This rebranding became highly significant following the
breakdown of negotiations in July 2000 and the start of the second intifada in September.

Israel characterized Palestinian protests at the start of the intifada as acts of aggression and its own actions as national self-defense. The military’s rules of engagement were loosened, and heavy weapons, including tanks and helicopter gunships, were deployed against unarmed protesters. The justification for this war model was premised on assertions that the law enforcement model (i.e., policing and riot control tactics) was no longer viable because the military was “out” of Palestinian areas, and because some Palestinians possessed arms and thus constituted a foreign “armed adversary.” Officials described the second intifada as an “armed conflict short of war,” and asserted Israel’s self-defense right to attack an “enemy entity,” while denying that those stateless enemies had any right to use force, even in self-defense.

“Legalizing” IHL Violations

Over the ensuing 16 years, several events provide snapshots of the trajectory of Israeli state violence and innovative legal interpretations. The first of these is the “legalization” of targeted killing. In November 2000, the Israeli government for the first time acknowledged its targeted killing policy following the assassination of a Fatah leader, Husayn ‘Abayat, in a missile strike that also killed two women “bystanders.”

With that public acknowledgment of extrajudicial execution, which previously had been done and denied, officials including Reisner asserted its lawfulness on the following bases: 1) Palestinians were to blame for the hostilities, which constituted a war of terror against Israel; 2) the laws of war permit states to kill their enemies; 3) targeted individuals were “ticking bombs” who had to be killed because they could not be arrested; and 4) killing terrorists by means of assassination is a legitimate form of national defense. The deaths of untargeted civilians were termed, in accordance with the discourse of war, “collateral damage.” Between September 2000 and August 2014, approximately 440 Palestinians, of whom 278 were the targets, were killed during targeted killing operations. (This statistic excludes thousands of Palestinians killed by other means.)

The second example is the justification of indiscriminate violence. In late March 2002, Israel launched a far-ranging military campaign in the West Bank in response to a deadly suicide bombing by a Hamas operative in a Netanya hotel on Passover eve. Operation Defensive Shield, which at that time was Israel’s largest military operation since the 1982 invasion of Lebanon, signaled a change in Israel’s strategies of violence. The new strategy, termed “mowing the grass,” was devised to inflict punishing levels of violence and destruction with the aim of both debilitating present capacities and deterring future violence against Israel. In practice, “mowing the grass” involved directing attacks not only at militants and suicide bombers and their abettors, but also at the broader infrastructure in their proximity. During Operation Defensive Shield, Israeli forces reentered many parts of Area A and laid waste to the infrastructures of the PA.

The battle of Jenin was the most decisive event in Operation Defensive Shield. Although many Jenin residents fled before the fighting began on April 2, over 1,000 remained, and Palestinian fighters from several factions prepared for the Israeli army’s incursion into the Jenin refugee camp. On April 9, 13 Israeli soldiers, all reservists, were killed in an ambush. This incident generated intense political pressure within Israel to take the camp quickly with no more soldier casualties. Consequently, instead of sending soldiers into buildings to capture or kill fighters, some buildings were shelled first or Palestinians were commandeered as human shields to precede and protect soldiers. To finish the Jenin operation, the military deployed enormous armored bulldozers that flattened everything in their path. (Although the US government criticized Israel for excessive use of force in Jenin, a year later the Pentagon purchased some of Israel’s armored bulldozers and used them during urban operations in occupied Iraq.)

In retrospect, Operation Defensive Shield and especially the battle of Jenin was pivotal in the evolution of Israeli military strategy. At the time, the decision to use ground troops rather than aerial bombing was deemed more appropriately proportional. But urban operations are tactically difficult and more dangerous to the state’s own forces. The deaths of even a small number of soldiers highlighted the Jewish Israeli public’s extreme aversion to casualties. This casualty aversion inspired soldiers to use human shields to protect themselves, though the Israeli High Court of Justice subsequently prohibited that practice in a 2005 ruling.

The third example, grounded in the desire to wage war without the risk of soldier casualties, was the strategic shift toward greater violence projected from the air or from a distance. Bombardment, while less risky for soldiers, is less discriminating and proportionate to those in targeted areas. In a targeted killing operation on July 22, 2002, an F-16 dropped a one-ton bomb in the densely populated Gaza neighborhood of al-Daraj in order to assassinate...
Salah Shehadeh, a Hamas military commander. The bomb destroyed the apartment building where Shehadeh lived and eight nearby buildings, and partially destroyed nine others. In addition to Shehadeh and his guard, 14 Palestinians, including eight children, were killed, and more than 150 people were injured. In this instance, the military responded to public outcry about the size of the bomb, the targeting of a residential neighborhood and the high casualty rate by conducting an investigation. The findings of this investigation justified targeting Shehadeh as a perpetrator of terrorist violence while conceding that there had been “shortcomings in the information available,” namely the presence of “innocent civilians” in the vicinity of what was claimed to be Shehadeh’s “operational hideout.”

Redefining “Human Shields”

The fourth example is the repurposing of the concept of “human shields.” The rhetoric of “innocent civilians” amidst “legitimate targets” in the wake of the Shehadeh assassination foreshadowed Israel’s new use of the concept to reframe “enemy civilians” as de facto human shields being used by the enemies against whom Israel was waging war in order to shift blame for civilian casualties caused by Israeli strikes onto the organizations being targeted. Moreover, the decision to use aerial technology—whether planes or drones—to bomb individuals rather than using manned operations to capture them illustrates the strategy of prioritizing the safety of soldiers.

The logic of this prioritization was promoted as “ethical” in an influential 2005 essay authored by Asa Kasher, a Tel Aviv University professor who serves as an ethics adviser to the Israeli military, and Amos Yadlin, a general in the army. They write:

“Usually, the duty to minimize casualties among combatants during combat is the last on the list of priorities, or next to last, if terrorists are excluded from the category of noncombatants. We firmly reject such a conception because it is immoral. A combatant is a citizen in uniform. In Israel, quite often, he is a conscript or on reserve duty…. The fact that persons involved in terror…reside and act in the vicinity of persons not involved in terror is not a reason for jeopardizing the combatant’s life in their pursuit.”

This prioritization of the safety of one’s own troops runs completely contrary to the IHL principle of civilian immunity and it fabricates from whole cloth the “civilianization” of waging combatants. It also fundamentally contradicts the fact that IHL makes no room for distinguishing among civilians on the basis of national identity. Grégoire Chamayou, in A Theory of the Drone, describes this Israeli effort to promote the “hierarchization of bodies” and the “civilianization” of soldiers as “the principle of immunity for the imperial combatant.” He minces no words in describing the implications: “The
project is nothing less than the dynamiting of the law of armed conflict as it was established in the second half of the twentieth century: an evisceration of the principles of international law in favor of a nationalism of self-preservation.”

The fifth example is the asserted right to use vastly disproportionate force against the expansively interpreted “against us” enemies. The backdrop to this assertion was Israel’s 2005 unilateral withdrawal of ground troops from Gaza, which was preceded by the forced removal of Jewish settlers and followed by a total sealing-off of the Strip. Following the 2006 Palestinian legislative elections that brought Hamas to power and the subsequent factional conflict that led to the routing of the PA from Gaza in 2007, the siege of the Strip intensified. This sequence of events bolstered Israel’s claims that Gaza was a terrorist-controlled hostile entity populated by terrorist sympathizers and civilians used by Hamas as human shields. This official framing was comparable, in terms of legal discourse and military strategizing, to how Israel described Hizballah-controlled areas following Israel’s unilateral withdrawal from occupied southern Lebanon in 2000. The result was the “Lebanonization” of Gaza as foreign, hostile and attackable, and a place where the safety of civilians—even during an Israeli attack—was not Israel’s responsibility. As Neve Gordon and Nicola Perugini explain, “The post-hoc framing is crucial to this process [of legitimizing bombing that kills large numbers of civilians] since it allows Israel to claim that violence was used in accordance with international law and is, as a consequence, ethical.”

Using Deliberately Disproportionate Force

During Israel’s terribly destructive 2006 war on Lebanon, the military employed a strategy of deliberately disproportionate force. This strategy was termed the “Dahiya doctrine” in reference to the total destruction of the heavily Shi’i southern Beirut suburb by that name. Maj. Gen. Gadi Eizenkot, who had been head of the Northern Command in 2006, revealed the existence of this doctrine in 2008. He stated:

“What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on…. We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases…. This is not a recommendation. This is a plan. And it has been approved.”

Gabi Siboni, a retired colonel and strategic analyst, elaborated upon the strategic logic of the Dahiya doctrine in October 2008 by describing it as

the principle of a disproportionate strike against the enemy’s weak points as a primary war effort, and operations to disable the enemy’s missile launching capabilities as a secondary war effort…. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher…. Such a response will create a lasting memory…, thereby increasing Israeli deterrence and reducing the likelihood of hostilities against Israel for an extended period.”

Indeed, two months after the revelations about the strategic logic of the Dahiya doctrine, Gaza was subjected to similarly massive and disproportionate use of force when Israel launched Operation Cast Lead. The levels of extreme violence meted out upon Gaza between December 27, 2008 and January 18, 2009 made Operation Defensive Shield and the battle of Jenin pale in comparison.

In April 2009, the UN Human Rights Council authorized an international fact-finding mission, headed by South African jurist Richard Goldstone, to investigate Operation Cast Lead. The Goldstone Commission reported that both the Israeli military and Palestinian militants had committed war crimes and possible crimes against humanity. According to the report, Israel targeted the “people of Gaza as a whole,” not distinguishing between civilians and combatants and at times intentionally attacking civilians. Also, the report found that the targeting of civilian infrastructure was deliberate, systematic and part of a larger strategy.

The Goldstone report became an object of defensive and scornful propaganda issued by Israeli officials and other foreign supporters of Israel, foremost among them US politicians. While the report stands as one authoritative record of Operation Cast Lead, it did not lead to any consequences for those responsible for war crimes. In November 2012, Israel decided to wage another war on Gaza. Operation Pillar of Defense, which started with a targeted killing operation, was an entirely aerial campaign of bombing that lasted eight days.

Bringing the Heat on Gaza

The war on Gaza in the summer of 2014 was by far the most violent and destructive episode to date. Operation Protective Edge was claimed to be a response to rocket fire from Gaza but
was more plausibly motivated by the Benjamin Netanyahu government’s desire to foil the Hamas-PA rapprochement that had taken hold in April. During this 31-day onslaught, Israel put to use all of the military strategies of intentional, extreme, non-discriminating amounts of violence.

In terms of the overarching objective of this war, Israel was “mowing the grass” to destroy not only present Hamas capacities but also the organization’s very existence and the possibility of a future recuperation. The bombing campaign included more than 6,000 air attacks, and the firing of about 50,000 artillery and tank shells, which, combined, has been estimated as a total of 21 kilotons of high explosives. The weapons included drones and US-made Apache helicopters firing US-manufactured Hellfire missiles and US-exported F-16s carrying 2,000-pound bombs. These levels of force and forms of weaponry are typically reserved for wars against foreign militaries.

There was clear evidence of the Dahiya doctrine—the intent to cause so much damage that it would require years of rebuilding. Israel targeted a vast array of infrastructure, including desalination plants, electrical grids, hospitals, schools and universities, as well as every structure identified with or alleged to be under the control of the Hamas government. Toward the end of the war, Israel bombed and flattened several of Gaza’s few high-rise apartment buildings and shopping centers.

There was also evidence of patent disregard for the lives and safety of Gazans who were trapped in densely populated areas with no means of escape. By the end of the war, more than 2,100 Palestinians had been killed and more than 11,000 injured, the vast majority of them civilians. Whole families were wiped out, and whole neighborhoods razed.

The doctrine of prioritizing the safety of soldiers blended with some instances of reprisal attacks for Israeli casualties. During the assault on the Shuja‘iyya district of Gaza City, Palestinian militants put up a strong fight that resulted in the killing of 13 Israeli soldiers and the wounding of up to a hundred more. After that, the area was pounded with some of the heaviest weapons in Israel’s arsenal. Comparable levels of indiscriminate violence were meted out on other densely populated areas as well, including Bayt Lahiya and Khan Yunis.

On August 1, shortly after a 72-hour ceasefire went into effect, a reconnaissance unit of the Givati Brigades in the Rafah area encountered a Hamas unit and a firefight broke out. One of the Israeli soldiers was captured and taken into a tunnel. The commanding officer, Col. Ofer Winter, announced the implementation of the “Hannibal directive” over the radio, thus commencing a wholesale assault on the entire area. In the first three hours, 1,000 bombs were dropped, and over the course of that day more than 2,000 shells were fired—including into residential areas—resulting in a death toll of 135. It was the first time the decades-old, secretive directive had ever been employed; it entails responding to the capture of an Israeli soldier with huge amounts of force, even at the risk of killing the captive, in order to avoid a future situation in which the soldier would be used as a bargaining chip in a prisoner exchange. (In June 2016, it was reported that the directive had been canceled.)

Will Extreme Violence Become the “New Custom”?

It is interesting to consider whether Israel’s strategic doctrines to use and justify extreme violence could become “the new custom” for asymmetric wars. Israel has engaged repeatedly in practices that contradict the bedrock rules of IHL with devastating consequences for those on the receiving end of the violence. Israel’s ability to articulate legal rationales for its own uses of extreme violence, however deviant from international consensus they may be, and thus far to avoid serious repercussions or accountability is certainly going to tempt other states engaged in asymmetric conflicts to follow similar courses and assert similar justifications. This is one way in which customary international law develops through state practice.

But other developments suggest that at least the justifications may be authoritatively undercut, even if there is no criminal accountability for specific individuals responsible for war crimes. In late 2014, the UN General Assembly recognized Palestine as a non-member state, and on January 1, 2015 the PA acceded to the Rome Statute to join the International Criminal Court (ICC). Later that month, the ICC prosecutor opened a preliminary inquiry into the 2014 war on Gaza.

An ICC prosecutor’s inquiry is not an investigation, although it may be a precursor to one. But the value of a high-level inquiry is to subject Israeli state practice to exposure and analysis about how it comports with or violates current rules of IHL. Indeed, the fact that this inquiry was launched (and to date is ongoing) is an apt illustration of the high-stakes battles over what is legal in war. In reaction, Prime Minister Netanyahu condemned the ICC prosecutor’s initiative and the government mobilized and supported a well-coordinated anti-ICC media campaign. At the same time, banking on the ICC treaty’s principle of complementarity (i.e., the court should be used only as a last resort when other avenues of justice are closed), Israel launched at least five criminal investigations of Operation Protective Edge.

Interpretations of what is lawful in war—especially in this century when counter-terrorism wars so dramatically disregard the rules—is a reflection of the politics of law. Therefore, on the transnational terrain where state practice and legal interpretation may or may not “ripen” into custom, there is room for other kinds of politics of law as well. These tactics involve the marshaling of evidence and empirical information about alleged war crimes and other gross violations, and judging it against consensus-based interpretations of law. There is, in other words, room for scholars and activists who are knowledgeable about IHL to participate and collaborate.
in the defense of rules and norms that seek to protect rather than deliberately harm humans caught up in war.

The importance of law-savvy intellectual work should not be underestimated. Among other things, it can provide substantive support for the rising tide of the boycott, divestment and sanctions (BDS) movement, which aims to draw international attention to Israeli violations of international law and has been fueled by the waves of extreme violence described above. The BDS movement does indeed, as its critics claim, seek to “delegitimize” aspects of Israeli ruling practices and use of force that violate Palestinians’ rights; those aspects should be understood as illegitimate, and international consensus-based interpretations of IHL are the basis for doing so. To the extent that those violations, including flagrant war crimes, are ignored by some and justified by others in defense of Israel, and that criticisms of gross violations by the Israeli state are falsely portrayed as manifestations of anti-Semitism, such postures should be seen as an assault on humanitarianism itself. Moreover, in light of an increasingly aggressive campaign directed by the Israeli government and supported by its fiercest defenders in the United States and other countries to stifle and even criminalize criticism of Israeli violations, the need for an empirically grounded law-based counter-narrative has never been greater.

Endnotes
6 Efraim Inbar and Eitan Shamir, “‘Mowing the Grass’: Israel’s Strategy for Protracted Intractable Conflict,” Journal of Strategic Studies 37 (2014).
7 Yael Stein, Human Shields: Use of Palestinian Civilians as Human Shields in Violation of High Court of Justice Order (Jerusalem: B’tselem, 2005).
8 Kasher and Yadlin, pp. 50–51.
10 Ibid., p. 134.
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16 The “Hannibal directive” was conceived in the 1980s following the capture of three Israeli soldiers by Hizballah in Lebanon. New York Times, August 7, 2014.
17 Haaretz, June 28, 2016.
Armed Social Science
Counterinsurgency and Professional Ethics
Kristian Williams

Counterinsurgency is sometimes referred to as armed social work; it could also be called armed social science.

Social scientists help the security forces understand the local population, its needs, interests, values, attitudes and culture. Their insights inform and structure legitimacy-building “hearts and minds” programs, government propaganda and strategic concessions.

Social scientists also map the local population, geographically and socially, identifying kinship structures and other social networks, lines of influence and authority, and points of tension and possible conflict. This information can be used to unearth the insurgent organization and its support network, target leaders for cooptation or elimination, and intervene strategically to reduce or amplify conflict.

For all of these reasons the US military has aggressively recruited social scientists to support counterinsurgency operations in the post-September 11, 2001 war on terror, starting in Iraq and Afghanistan, but predictably expanding to other theaters. These efforts have rightly produced sharp controversy within the disciplines, especially anthropology and geography.

Local police have used social scientists for much the same purposes for decades. Most notably, George Kelling’s team at Rutgers University helped police map New Jersey street gangs, their structures, social supports, economics and territory. They then advised the authorities on deployment, arrest and prosecution strategies, and on coordinating with churches and social services on gang abatement projects. In Salinas, California, the military did this work directly, loaning advisers from the Naval Postgraduate School to the Salinas Police Department. It is interesting that these programs did not generate moral crises.

The controversies in the academy have been fundamentally confused. To understand why, it is helpful to distinguish between three normative categories: general moral claims, politics and, balanced uncomfortably between the first two, professional ethics.

By general moral claims I mean considerations of good and bad, right and wrong, virtue and vice, which are thought to apply to everyone, in all circumstances, all of the time. For the purposes of this discussion it makes no difference whether these claims are Kantian, utilitarian, Aristotelian, Christian or unsystematized. It is not the content that is important, but the type of claim.

By politics I mean ideas about the way society ought to be structured, especially with regard to the distribution of power and resources, as well as attempts to enact those ideas, and simple power struggles.

By professional ethics I mean a set of obligations particular to some occupation, its activities, its institutions and its participants.

Obviously, there must be some relationship between these three spheres. Professional obligations ought not to contradict the demands of justice, for example. And efforts to see those obligations codified and enforced will largely take a political form.

Analytically, however, the distinction is real, and it is well to keep in mind what kind of principles are invoked by normative claims.

For instance, it may be that two Catholics share a moral outlook but disagree about the type of political system that best reflects that outlook. Simply insisting on the moral values will not move the conversation forward, then, since that is where they agree. If one wants to persuade the other of his point, the argument needs to take place at the level of politics—considerations of real-world effects, questions of strategy and assessments of the balance of forces.

Likewise, a pair of accountants may fundamentally disagree about politics and morality—this one a conservative Christian, that one a liberal utilitarian—and yet agree about the ethical standards of their profession. They both know it is wrong to cook the books.

The debate surrounding those social scientists who have participated in counterinsurgency has presented itself chiefly as a question of professional ethics. That is, it has invoked codes particular to disciplines like geography and anthropology to argue that it is unethical for social scientists to assist in the military’s efforts.

That argument found traction, and the American Anthropological Association, for one, formally adopted a position condemning the military’s efforts to recruit anthropologists for their Human Terrain System. Almost no anthropologists enlisted in the Human Terrain Teams, and that program was quietly decommissioned. So score one for the good guys.

Kristian Williams is author of Our Enemies in Blue: Police and Power in America and an editor of Life During Wartime: Resisting Counterinsurgency (both from AK Press).
Unfortunately, the arguments that produced this minor political victory are largely fallacious, and carry with them some other, bad, implications. The problem is that though “professional ethics” may be the most available arena for the debate, it is the wrong one. This approach suffers from being both too narrow and too broad.

It is too narrow precisely because the arguments are couched in terms of professional obligations. Hence, these concerns only constitute a problem for anthropologists or geographers, but not for all social scientists and not for all people.

That of course raises the question of why these special obligations would attach to those disciplines. One answer is that counterinsurgency applications of social science constitute a type of malpractice, a perversion of the profession destructive of its aims. The anthropologist David Price, for example, has argued that the military tends to flatten social theory and instrumentalize research findings. That may well be true. But the argument is vulnerable to the objection that what is needed, then, is better anthropology and a smarter military—exactly what is advocated by Sarah Sewell, Dan Cox and other proponents of engagement.

The malpractice objection operates by analogy: Medical ethics are largely a protection against bad medicine. The error, however, is that military anthropology is not necessarily bad anthropology, though it may be. And, in any case, that is not the real impetus for the objections. It is a bit like trying to argue that it is bad for physicists to build bombs because it is bad physics, rather than because bombs are bad. Or that the problem with mathematicians working on NSA decryption programs is that it leads to bad math. Maybe it does, maybe it doesn’t—but isn’t that beside the point?

(As an aside, some military theorists describe counterinsurgency as “military malpractice,” with the implication that it is unethical and unprofessional for soldiers to participate in it. The problem, as they see it, is that their job is to kill people and if they spend a lot of time digging wells and drinking tea with the locals, their job becomes harder to do. That points to the problems with “malpractice” analogies and some of the weaknesses of the professional ethics framework.)

Another argument against military anthropology is that it makes all anthropology more difficult and dangerous by association, and therefore harms the discipline. This argument is somewhat analogous to the ethical demand that reporters protect confidential sources. It is only partly an obligation to the source; it is also an obligation to others in the profession, so that their sources will trust that similar commitments will be honored.

A third reason social scientists may be under special obligations is that they are exposed to greater moral risk. Anthropology and geography have particularly troubling histories of military involvement—including espionage during World War I, advising on Japanese internment during World War II, participation in civil engagement programs that were used to create assassination lists in Vietnam, and so on. To avoid similar missteps in the future, it makes sense to institutionalize additional safeguards.

These are all important considerations, whether or not they are decisive. And similar reasoning led the American Psychological Association (APA) to bar psychologists from participating in military interrogations. It was the right decision; however, it is disanalogous to the social science debates. An important aspect of psychology is what has been described as its “Hippocratic” character, which is part of what makes it, like medicine, not merely a science but a modality of care. Anthropology, sociology and geography simply do not have that same orientation. Moreover, by their very nature they cannot, and efforts to reshape the disciplines on the model of medicine could only result in an unsavory paternalism.

All of which brings us back to the problem of narrowness. The standards invoked in these arguments are specific to their particular disciplines. They do not travel, even within the social sciences, which makes one wonder how much force they can really have. If one can shed one’s professional obligations, or dodge an ethical prohibition, simply by moving down the hall, from the anthropology department to, say, criminology, police science or security studies, then surely one can do the same thing by transferring allegiance from one institution to another—for example, by leaving the university and joining the Marines.

Unfortunately, professional ethics can only go part of the way—and not the first part. The disanalogy with psychologists and torture is illustrative. The APA prohibition on certain kinds of interrogation comes in a context of a general prohibition on torture and acknowledges an additional responsibility for psychologists. That is, it is wrong for anyone to use torture, but it is especially wrong (for reasons particular to the profession) for psychologists to do so. The new restrictions apply specifically in contexts where other safeguards, like judicial review, are lacking.

The difference is that there is no generally recognized prohibition on collaborating with the US military. A case could be made, of course, based on the nature of the activity (e.g., atrocities), the nature of the conflict (e.g., wars of aggression) or the nature of the institution (whether on pacifist or anti-imperialist grounds). And it is just these concerns that animate the effort to break the ties between the academy and the military. But by making the issue one of professional ethics, the activist academics have bypassed these moral and political questions, which are logically prior.

The second problem, the one of breadth, is of a different nature. It concerns the formulation of the ethical demands themselves. In general, the standards have been articulated in terms of transparency, informed consent and not harming the interests of those one studies.

But this standard, too, does not travel. The field of criminology, for example, simply would not exist if it adopted that standard. Or, say to an economist, “first, do no harm,” and
Once he grasps the intended meaning, he will stare blankly for a long minute. Once he grasps the intended meaning, he would likely point out that there are winners and losers with every economic policy—or, if he is a Marxist, that there are competing, conflicting, irreconcilable class interests.

The problem of over-breadth is that the ethics being cited take a safeguard developed to protect particularly vulnerable people and generalize it to a principle of the discipline.

That puts social scientists who study powerful groups—the police, the military, stock traders—in something of an awkward position. Professional obligations may require that they protect these groups and their interests, while moral considerations and political commitments might require the opposite.

The mistake, again, is the attempt to address the issue without directly confronting the politics involved. Worse, by implication, it will tend to depoliticize the research. The demand that social science be harmless, when inherent conflicts of interest are at play, amounts to a demand that it be irrelevant. It provides the formal appearance of neutrality, but will tend to preserve the status quo. That is, if social scientists harm no one, their work will implicitly support the powerful.

The implications are twofold.

First, we social scientists should take the fight off campus. Rather than pursue these controversies intramurally, as debates within disciplines, we should treat them as the broad, crucial social questions that they are. There is more at stake than the soul of sociology. And in any case, the best way to guard the integrity of the disciplines is likely to take on the bigger questions first. We should use expertise and resources to discredit the military, condemn war and unmask imperialism—then to pursue a professional standard of non-collaboration.

Second—or, in fact, simultaneously—we should understand the danger that we pose, rather than making ourselves harmless and then imagining that we must be good because we have no claws. Do not resist the “weaponization” of the disciplines; treat knowledge as a weapon and use it to fight for justice and equality. Use it to arm marginalized and powerless groups and aid them in their struggles. Rather than disarming the social sciences, we should use our arms responsibly. As with any weapon, the first rule of research should be “be careful where you point that thing.”

We should consider what we are aiming at and what effect our work is likely to have. But we should aim at having some effect. Knowledge is not neutral, and our ethics should not demand that it be. Responsibility means taking sides. As important, it means taking risks.

Endnotes

1 Price observes, concerning the US Army’s Counterinsurgency Field Manual, “The Counterinsurgency Field Manual’s approach to anthropological theory was not selected because it ‘works’ or is intellectually cohesive. It was selected because it offers an engineering-friendly, false promise of ‘managing’ the complexities of culture as if increased sensitivities, greater knowledge, and panoptical legibility could be used in a linear fashion to engineer domination. It fits the military’s structural view of the world.” David Price, Weaponizing Anthropology: Social Science in Service of the Militarized State (Petrolia, CA: Counterpunch, 2011), p. 190.


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</thead>
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<td>Spring 2016</td>
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</tr>
<tr>
<td>MER 277</td>
<td>Winter 2015</td>
<td>Iran’s Many Deals</td>
</tr>
<tr>
<td>MER 276</td>
<td>Fall 2015</td>
<td>ISIS</td>
</tr>
<tr>
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<td>Summer 2015</td>
<td>Inside the Inside: Life in Prison</td>
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<td>Spring 2015</td>
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</tr>
<tr>
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<td>Winter 2014</td>
<td>Yemen’s Times of Turmoil</td>
</tr>
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</tr>
<tr>
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<td>Winter 2013</td>
<td>Struggling for Syria</td>
</tr>
<tr>
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<td>Fall 2013</td>
<td>Gender Front Lines: Egypt, Syria, Tunisia, Turkey</td>
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<td>Summer 2013</td>
<td>Christians: Egypt, Iraq, Lebanon, Palestine</td>
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