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Abstracts of Presentations

Raef Zreik

The Dark Side of Rights

In the last hundred years, everything has been questioned, twisted, interrogated and deconstructed: from God to the nation, the family to the school. Still, human rights seem to stand intact in this storm, as an island of agreement within a stormy sea of political disagreement, as the last enchanted resort in a disenchanted world. The paper will discuss the risks emanating from this way of thinking about human rights, and will shed a light on the kind of political imaginary that feeds this image and asks what are the risks in thinking about human rights this way?

Raja Bahlul

Universalism about Human Rights

The aim of this presentation is to answer a legitimate question about the meaningfulness of the notion of human rights in an age, which is characterized by identity politics, ethno-centrism, cultural wars and protectionism, populism, sectarianism, and a generous measure of anti-rationalism and relativism, to boot. It will be argued that there is a place for universalism about Human Rights—a modest type of universalism, one that need not fall prey to the hegemonic claims of Western Modernity.

The basis of the proposed modest type of universalism is the idea that the discourse of dignity and human rights is ultimately rooted in basic, and arguably universal, needs which revolve around the imperative for living a decent human life. It will be argued that, while a highly specified definition of ‘decent human life’ may be hard to agree upon, this does not mean that we are completely in the dark as to what it means to live a decent human life.

Asem Khalil and Saja Majdoubeh

Human Rights in Palestine and Globally: A Shifting Concept in a Changing World

This paper discusses the concept of fundamental rights since the inception of the Universal Declaration of Human Rights and the changing understanding of these rights despite the consistency in the texts, through jurisprudence worldwide. While some courts consider the restriction of a right legitimate -and therefore subject to a proportionality test so as to take into account the specificity of the State- other courts consider the same rights to be absolute and linked to the free will of a human being with human dignity - and thus cannot be waved for any general objectives or policies. The paper aims to project these changing concepts of fundamental rights

to Palestine, where the Basic Law contains a long list of fundamental rights and freedoms. The decisions of the High Court in its constitutional capacity as well as the High Constitutional Court will be reviewed with the aim to clarify the status of fundamental rights in Palestine in the light of the changes that have taken place since World War II, including changes in the courts' understanding of fundamental rights.

Reem Bahdi

Dimensions of Dignity in the UDHR and the Political Practice

This paper focuses on the competing conceptions of human dignity that were advanced by drafters of the Universal Declaration of Human Rights. The drafting debate reveals various competing conceptions: dignity as state sovereignty, dignity as culture, dignity as universal rights, and dignity as stability etc. The paper examines the relationship between these conceptions and hypothesizes about their significance. It asks whether the relationship between dignity as rights and dignity as stability has been uncoupled since 1948 and whether dignity as sovereignty and culture have regained currency in today's world political practice.

Jason Beckett

Accountability as Complicity

International law is formed of two complementary systems, one spectacular in its weakness, the other almost invisible in its strength. Human Rights is a prominent part of the former system. Human rights (and law and development) are simply the modern iteration of the dynamics of difference and identity; structuring and justifying the continuing, colonial, division between the civilized and the barbaric; the haves and the have-nots; the plunderers and the plundered. HRs work by appearing to fail, for their function is not to improve the lot of the oppressed but rather to explain and naturalise it. And with that to naturalise the wealth of their oppressors; and the civility that wealth can purchase.

Samera Esmeir

Between War and Peace: Reflections on the Fate of Revolution in the Project of Human Rights

The preamble to the 1948 Universal Declaration includes a passage that merits reflection: *“whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”* With this passage, a hierarchy is established between rebellion and human rights, positing the latter as the more desirable practice. Other international legal documents, including of international humanitarian law, have also sidelined the concept and the practice of revolution. This paper offers a reading of both human rights and humanitarian law to reflect on the fate of revolution and rebellion under the regime of human rights. In its efforts to establish world peace, this regime no longer articulates a space for revolution, and mediates all anti-colonial struggles through the language of international war and peace. The Question of Palestine has not remained immune to these shifts. Its centring on the right to self-determination and on statehood is partially the result of these changing political sensibilities that international law brought about in the second half of the twentieth century.

Said Zeedani

Who are the Foes and the Allies in the Battle for the Protection of Human Rights?

Enemies of human rights, as stipulated in the Universal Declaration of Human Rights in 1948 and the documents subsequent to it, although for different reasons and to varying degrees, comprise all those who does not view the individual human being as possessing supreme value, and as the ultimate goal of society or the state. In my opinion, these enemies are of four main types: (1) all types of authoritarian rulers, who claim to possess the knowledge and virtue that the public lacks; (2) radical nationalists, religious fundamentalists and proponents of the idea of racial superiority; (3) some major states and corporations, especially transnational corporations, which give priority to interests (economic and else) over human rights; and (4) advocates of moral relativism, who deny the existence of absolute or universal ethical values (including human rights) in principle.

In contrast, the strongest and most dedicated human rights protectors are mainly, if not exclusively, the advocates of the liberal egalitarian school, who proceed from considering the individual human being, male or female, not the community/nation, creed, doctrine, or state, as a supreme self-value and an ultimate goal for both the community system and state system. With the emphasis that parliamentary democracy and the welfare state are among the fundamental obligations of this liberal school.

Marina Almeida da Rosa and Mateus Oliveira Perez

The Margin of Appreciation Doctrine Recreating Colonial Patterns Towards Migrants: The Evolution of the ECHR's Decisions

The migratory crisis on Europe allows the application of political and legal measures based on colonial presuppositions, that is, to restrict the rights of those considered subaltern. In this sense, the Margin of Appreciation Doctrine has emerged in the European Court of Human Rights to, again, control the presence of immigrants, mainly from former European colonies, allowing their rights to be “restricted”, such as the non-refoulement principle. Thus, the presentation analyses to what extent the decision in Sufi and Elmi is an alteration to the colonial position of the ECHR, towards guaranteeing alterity and emancipation, or if allowed, from another perspective, that migrants have their rights violated under the pretext of security.

Sanaa Al-Sarghali

En-gendering Constitutions as a Way to Protect Women's Rights

Palestine is an emerging state that faces double transition (democracy and statehood). Neighbouring states have faced similar transitions, with mixed results. Relying on other Arab models for transitions is perilous, yet this seems to be the favoured pattern in Palestine. While this paper suggests that relevant contexts need to be given enough consideration, it argues that a broader perspective is necessary.

Proposing a change in women's rights is crucial, as almost all international human rights instruments assume gender equality and prescribe anti-discrimination, religious leaders often claim that these norms conflict with religious obligations. The cultural specificities of a country are often presented as not being compatible with universal rights and this tendency occurs more prominently in situations of conflict.

This paper will focus on the under-researched area of constitutional protection of women and will provide tools to facilitate the engendering of constitutional mechanisms in Palestine. The study will analyse the tools used in Tunisia, and how Palestine can use such tools and if they require contextual adaptation.

Ralph Wilde

Beyond the State Sovereignty Paradigm

Traditional conceptions of global governance based solely on mutually-exclusive sovereign states cannot accommodate authority exercised by non-sovereign actors, such as that exercised by Israel over the Palestinian Territories. Although human rights law has for some time made way for non-sovereign responsibility in some circumstances, fundamental problems and tensions remain underexplored and unresolved. Notably, how can and should substantive obligations in human rights law be calibrated between the different actors involved when more than one actor exercises authority over any given situation? And does having Israel subject to human rights law extraterritorially somehow legitimate and even further the occupation?

This question will be addressed by focusing on political and legal ideas about the legitimacy of the foreign state's presence extraterritorially in and of itself, how these ideas relate to what are in many ways mirror opposite ideas about the legitimacy of the state's presence in its own territory, and how the relationship between these two sets of ideas plays out when considering the dialectic between the responsibility of the two states with respect to the human rights situation in the same territorial area. It will be suggested that the self-determination entitlement in international law, which has hitherto not been identified and appreciated when the matter has been addressed by experts and courts, plays a crucial role.

Reem Al-Botmeh

Shari'a Courts and the Rise of Legalistic Procedures

In the Palestinian legal structure, there exists a special system of litigation in matters of personal status such as marriage and inheritance. These are handled by Shari'a courts whose practices are derived from Islamic jurisprudence. Historically, the idea of reforming the laws relating to these areas has led to the encroachment of civil legal structures into the realm of Shari'a courts. This began with the codification of family law at the beginning of the last century under the Personal Status Law, and ended with the establishment of a Shari'a public prosecutor and an increase in lawyer litigation in Shari'a courts. The Palestinian Authority has undertaken a series of fundamental changes in the institutional and procedural structure of Shari'a courts, including a court hierarchy similar to civil legal institutions.

The demands of the feminists and human rights organizations regarding the law and its courts are based on substantive legal claims concerning the extent to which the law conforms to international standards concerning women's rights and access to justice, and to procedural issues. Based on fieldwork, this paper will follow the dynamics of procedural law encroachment into Shari'a courts and its effects on rights and access to them.

John Reynolds

Internationalism in the Image of Law: Anti-Colonial Solidarity and the Russell Tribunal on Palestine

The Universal Declaration of Human Rights, in Article 1, refers to the reason and conscience with which we as human beings are endowed, and beseeches us to act toward one another in a spirit of solidarity and kinship ('brotherhood'). One of the ways in recent history through which politically conscious humans have sought to act in this spirit towards oppressed and besieged communities — in defiance of official institutional power dynamics, biases and silences — is through the formation of people's tribunals and juries of conscience. This paper seeks to reflect on the

experience of the Russell Tribunal on Palestine (2010-2014) as an attempted enactment of the UDHR's spirit of internationalist solidarity, and on the virtues and flaws that arise from its emulation of legal form/process. The paper will also appraise the contribution of the Russell Tribunal project in relation to anti-colonialism/decolonisation by examining the particular roles played by its anti-apartheid, African-American and Indigenous participants.

Sujith Xavier

The Human Rights Complex: A Site of Emancipation for People of Colour?

This paper peruses the insistence by critical race theorists (Patricia Williams) and Indigenous scholars (Robert A. Williams) about the value of human rights enshrined in the UDHR. It questions the relevance of the human rights project in our current moment. Then asks why do people of colour turn to the UDHR (and human rights) as a site of emancipation? These questions will help illuminate a nuanced and historical perspective rooted in colonialism, imperialism, and settler colonialism about the UDHR.

Usha Natarajan and Kishan Khoday

Natural Resources and the Palestinian Environment: Human Rights and the Unsayable

Human rights reveal inequities in the causes and impacts of environmental degradation. Yet through their compatibility with globalized capitalism, human rights also enable a flawed development model at the root of environmental degradation. This dominant development model also perpetuates inequalities of power and wealth within and between states, dispossessing peoples from sovereignty over their natural resources and investing control in transnational elites. Palestine is an extreme example of elite control of natural resources dispossessing peoples from sovereignty, economic prosperity, and environmental sustainability. We argue that the language of human rights obfuscates the impossibility of reconciling globalization with its ecological limits.

Fateh Azzam

In Defiance of Binaries: The Human Rights Potential for Political Emancipation

Debating whether human rights are a useful arena of Palestinians' struggle for liberation might serve as a promotion of a binary, pitting politics against law. Such questions are warranted since rights are indeed simultaneously moral, legal and political. However, the lack of effective enforcement mechanisms of human rights treaties ensures the primacy of politics over all else.

The battle for Palestinian human rights has been successful in the international arena, evidenced by overwhelming support in international forums, but not in Palestine, which is still living in the colonial age. Political action has also achieved some gains internationally, evidenced by broad political support, but again, we are still living daily colonization.

If human rights have failed to liberate Palestine so far, other avenues have failed as well. What is needed is a political and social movement that incorporates human rights as its core demand and broadens its message beyond Palestine to work with allies in the anti-colonial, anti-racism movement that is growing worldwide.

Ammar Dwaik

International Law as a National Liberation Tool?

A trend emerged recently of including more international law terms within the discourse of the Palestinian national movement, including Hamas (according to its new covenant). Palestinian leadership, represented by the PLO and the president, considers “internationalizing the conflict” and an increased recourse to join international organizations and treaties, as the cornerstone of the new strategy for achieving liberation and ending occupation. This strategy emerges after the admission of the failure of negotiations to achieve the same, and the abandonment of armed options. This new approach raises several questions about the effectiveness of international law as a tool for national liberation, taking into account the experiences of national liberation movements in the second half of the last century, and the nature of international law, which lacks enforcement mechanisms independent of national will. It also raises questions about the extent to which the leadership has utilized and benefited from international law at its various levels (general international law, international human rights law, international humanitarian law and international criminal law). The paper argues that international law is an important platform, which should be utilized towards ending the occupation, but it is insufficient by itself, and must be accompanied by action on the level of international civil society, as well as on the level of bilateral action with states as the main international law actors. There are great prospects within the framework of international law that have not yet been utilized, structural reforms must also be made to the political system, as well as to the national movement's discourse and to the strategies of local struggle in support of the new strategy.

Sahar Francis

The Palestinian Captive Movement between Liberation and Legal Defence Strategies

The paper will discuss the role played by Palestinian political prisoners in resisting the suppression and subjugation practiced by the Occupation Forces through laws and procedures imposed inside prisons. Their struggle utilised various tools, the harshest of which were individual and collective hunger strikes. The main claim is that the demise in the role of the captive movement is a result of the demise of the Palestinian project as a national liberation project. Therefore, any legal defence strategy to ensure freeing political prisoners should be part of a comprehensive national project.

Shawan Jabarin

Socio-economic Issues and Human Rights in the Phase of National Liberation

The presentation deals with socio-economic rights within the structure of human rights law from the perspective of various schools and socio-economic systems. It will project these rights (practically and analytically) to the national liberation struggle, which often neglects these rights in favour of political rights. The paper argues that this neglect leads to the weakening of the elements of steadfastness and social resilience. In addition, it promotes and strengthens economic centres of power and “complicit” businesses, which negatively affects the protection of political and civil rights. The argument emphasizes that the situation resulting from an imbalance among rights harms the centrality and complementary nature of all rights, especially during national liberation. Of course, the debate on national liberation and occupation will go beyond the limits of human rights law and will include an analysis of other legal organizations (international law, international humanitarian law) with a focus on human rights.