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EXPLORING FLUID TIMES:
KNOWLEDGE, MINDS AND BODIES

VOLUME 10



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A NOTE FROM THE DOCTORAL SCHOOL

Dear all,

I feel very honoured to have been asked to introduce the most recent version of The SOAS Journal of Postgraduate Research (Volume 10). The Journal revolves around the theme of change, which is tackled in true SOASian fashion from a range of empirical, theoretical and disciplinary backgrounds and approaches.

Change, of course, is everywhere around us: from SOAS restructuring on a micro level, to BREXIT and climate change on more macro levels. In the context of higher education, research and knowledge production, we are not only confronted with neo-liberalisation and austerity, but acutely need to find ways to deal with 'fake news' and the fabrication of facts for dubious political ends.

At this particular time of change and political and economic challenges, doing a PhD and being an early career researcher is probably more difficult than any other time over the past decades. But, at the same time, doing a PhD now also comes with a set of responsibilities and opportunities to challenge some of the negative changes we have been witnessing, while trying to contribute to positive and constructive changes.

The publication of the journal coincides with the beginning of a new academic year, a year marked by many challenges inside SOAS, in the UK and globally. While we will continue to have discussions about restructuring, improvements in the Doctoral School, rules, regulations and procedures, it is so important to keep an eye on what brings us all together in the first place: our intellectual curiosity, our commitment to critical thinking and analysis, our political passions and struggles and our love of research and writing.

While I congratulate all of you who have contributed to this issue, I would like to extend my special thanks to the co-editors Monika Hirmer and Romina Istratii who made it all happen. Being involved in several journals myself (*Feminist Review* and *Kohl: A Journal of Body and Gender Research*), I know about the time and labour that goes into producing a journal. It involves many hours of careful reading, chasing authors, and editing. But is also involves vision and intellectual rigour and creativity. It is inspiring and uplifting to see that vision and commitment, and I hope that we will see many more high quality editions, either put together by Romina and Monika, or editors who will follow in their foot steps.

I wish you all a productive and healthy academic year of 2017/2018.



Nadjé Al-Ali

Head of Doctoral School

INTRODUCTION TO VOLUME 10

Dear Readers,

Welcome to Volume 10 of The SOAS Journal of Postgraduate Research (SJPR). We are especially pleased to have completed and published this volume because, on the one side, it is the result of much hard work by the entire Editorial Team and, on the other side, it comes with a number of innovations. In order to achieve the highest quality of manuscripts published, we introduced a double-blind review process for article assessment that approximates the rigour of professional academic journals. The Editors and Assistant Editors worked unrelentingly to coordinate this process and ensure that the authors benefited the outmost from it. Our aim was to achieve the highest quality of content that can showcase, once again, the independent and progressive research spirit of SOAS postgraduate students.

We, therefore, want to take the opportunity to acknowledge our two Assistant Editors, Iris Lim and Juliana Cordeiro De Farias Bosslet, who acted as the key points of reference for the review process. As per the double-blind review principle, we, as Editors, communicated only with the authors, while Iris and Juliana were in charge of matching anonymised articles to appropriate reviewers. They assigned articles and guidelines to the reviewers, and sent back to us the reviewers' comments, accompanied with their personal assessments and suggestions. The review sheets were then forwarded by us to the authors, who were asked to revise their papers accordingly. We want to thank Juliana and Iris for their diligent work, including their prompt and creative responses to many challenges that arose during the elaborate review process. We are grateful to have worked with such a committed team of assistants.

Equally, we must acknowledge our reviewers. It is common practice for academic journals not to reveal the names of reviewers, and we abide by this standard. However, we feel that it is mandatory to thank our reviewers for providing timely, informed and meticulous reviews on the manuscripts they were assigned. We strongly believe that their comments have been useful and instructive to the authors, most of whom welcomed them and worked within tight deadlines to address them, improving overall the quality and presentation of their papers.

Another innovation that has marked this volume is the introduction of a logo. The logo comes in the form of tree rings and preserves the colour theme that one can find on the SOAS official website and also in the official layout introduced for the first time in Volume 9. The logo was designed with much thoughtfulness to reflect the values of the SJPR, which can be summarised with the terms: decentring of knowledge, innovation and interaction. We shared these values with the designer and he proposed the idea of tree rings, as the natural continuation of the SOAS tree logo. The multiple circles that comprise the natural tree rings symbolise multiple loci/sites of knowledge-making. The discontinuity of these circular lines reflects interaction and untidiness, representing the exchange and interaction of knowledge from different disciplines, times, places, paradigms and epistemologies. We are so grateful to Daniel Desta, a graphic designer in Ethiopia, for creating such a meaningful logo design and providing us with multiple options to choose from. As researchers working in non-western countries, we have aimed, in this volume with the help of Daniel, and in the previous

volume with the assistance of Nirbhay Sen, to engage partners who are native to the societies we work with, who can bring ideas from a different centre to enrich our thinking and presentation. We hope that the experience of working with us has proven as resourceful to them as it has to us.

We wish you a pleasant reading as you go through the diverse contributions of this year's volume.

Your Editors,

Romina Istratii and Monika Hirmer

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The Journal would like to acknowledge the help of Jay Carr who facilitated Journal communications on campus. Thanks are extended also to the RSA members Clare Williams and Robyn Waite who clarified and supported Journal processes at all stages. The Journal benefitted immensely from the help of Peter Baran for his assistance in financial matters, Steve Redding for his multimedia and print services, Lisa Migo for facilitating Journal dissemination and online availability and Helen Porter who acted as point of reference for all matters concerning copyright and introducing articles into SOAS Research Online. Finally, we are thankful to Prof. Naje Al-Ali, Head of the Doctoral School, whose contribution has further enriched this Volume.

LETTER FROM THE EDITORS

Dear Readers,

This edition of the Journal is dedicated to the ubiquitously relevant concept of change. While it is from the ancient times of Heraclitus that humanity has recognised change as being the only constant in life, it is in our times that the need to take a step back and reflect upon the perpetually fluctuating state of the world appears to be most urgent. With multiple forces shaping and defining our uncertain times, it feels particularly urgent to explore contemporary political, economic, cultural, aesthetical and philosophical realities and their past and on-going reconstructions.

Debates around the nature of social change (or the lack thereof) have intrigued thinkers from time immemorial. Karl Marx, Arnold van Gennep and Pierre Bourdieu, who studied the concept of change in view of economic structures, personal life cycles and society respectively, are only some of the innumerable intellectuals theorising change, making them popular across a wide number of disciplines. Rather than concentrating on theories of change—conscious of the fact that even the metaphysics of theory and theorising are being questioned in our times—we have aimed in this Volume to explore and illustrate change in practice, by observing and illustrating how it operates, succeeds and fails in a variety of domains and analytical levels. In doing so, it is our aim to capture the multi-dimensional ‘happening’ of change in the topography of embodied, social and discursive subjects simultaneously.

In engaging with the theme “Exploring fluid times: Knowledge, minds and bodies” the current Volume presents works from a wide array of knowledge fields, such as digital media and technology, gender studies, human rights and law studies and historical and aesthetical disciplines. In proposing the theme of flux, our intention was to create room for papers engaging with different time periods, geographies and subject matters. Nonetheless, while the contributing authors come from various disciplinary frameworks and examine a multitude of topics in diverse regions, the majority have chosen to assess change within contemporary scenarios. Even those authors who engaged with eras long gone, made their analyses of change pertinent to current times by outlining the evolution of paradigms and the decentring of knowledge salient in contemporary philosophical conversations. All works are therefore relevant to our times, illustrating shifting realities also where they have not been articulated before.

It should also be noted that in line with our commitment to attract papers from diverse disciplines we felt that imposing a strict set of writing guidelines would be not only infeasible, but also stall author's creativity and particular objectives for their papers. Therefore, we did our utmost to keep the papers in the originally submitted form. While there is general consistency in the layout of the Volume, referencing styles vary according to author preference.

Karishma Mehrotra's article is undeniably one of the most relevant contributions to this Volume in terms of its engagement with change in fluid times. The author centers her attention on social media providers, and specifically Facebook, to argue that they are not merely platforms of connectivity that widen the possibilities of choice for users, as they are

conventionally depicted, but are also increasingly constructors of reality, absorbing new responsibilities equivalent to those of news agencies with the ability to shape presentations of the world for their users. Metrotha's argument combines gatekeeping theory with conventional (romanticised) and revised understandings of technology 'to expose how social network companies and their dissemination activities are powerful *media* actors in the construction of reality'. She exposes the accepted thinking among scholars that technology is almost synonymous with progress as being naive, since it ignores too hastily the rising gatekeeping role of such social media platforms. The author uses the example of Facebook to illustrate this rationale and attempts to show how this company has warped into a news distributor with great power over reality construction, an identity that it has yet to disclose for reasons that likely include a desire to avoid responsibilities associated with news distribution. As a concluding remark the author warns that: 'As technology ebbs and flows, media research must keep its eye on who controls the reality presented to the public, especially when technology has taken on the character of an objective and inherently-good middleman'. In a world of decentred knowledge, overcome claims of objectivity, multiple interpretations and representations, the plea of the author seems salient and urgent: be aware of who constructs the world each time, a construction that is not limited to the physical social realm, but extends increasingly to the digital world and the new paradigm-setters of the era, including the social media-tech company hybrids of the like of Facebook.

Simon Forbes' article is especially salient to our times of change and the theme of this issue. The author concerns himself with the controversial issue of homosexuality in Iran, which under the penal code of the country is still a prohibited and punishable act. Forbes relates the current situation in Iran to the conditions around homosexuality that existed in the UK and the USA in the 1950s and 1960s. At that time, homosexuality was considered a state curable through medical means. Being associated with the mental self-identification of the individual, the solution was to change the body in order to align it with one's internal gender identity. Forbes analyses the current penal code, newspaper and public discourse and human rights evidence in Iran to assess the situation of homosexuals. He shows that while executions and mandatory penalties have been contained, homosexuality is still considered a crime and punished strictly in Iran. In addition, as it happened in the 1950s and 1960s in western societies, there is a tendency to resort to medical solutions, most often through sex change operations. The author's account suggests convincingly that the current state and appraisals of homosexuality in the country may not reflect only local religious traditions and beliefs, but may have equally been influenced by 'pre-modern' and 'modern' paradigms of homosexuality imported from abroad. Albeit continuous intolerance in the country, the historical progression in western societies from intolerance to acceptance leads the author to conclude that perhaps change is eminent also in Iran.

Jonathan Beloff's paper may also be approached through the framework of fluid times and change, as he presents an increasingly unstable situation within the realm of research. The paper deals with the challenges that foreign researchers face in Rwanda as a result of a polarisation within scholarly circles around the Rwandan government's public policies. As the author shows, most academic accounts about post-genocide Rwanda and the government of Paul Kagame have been almost absolutist in their stances, with the majority tending toward a negative opinion. On the other hand, scholars who have produced more positive accounts are often suspected or defamed by fellow researchers on the premise of receiving benefits from government officials. There seems to be no middle-ground in

appraising government public policies. The author argues that this puts much pressure on new and upcoming researchers, who encounter this polarisation and must decide where they will choose to stand on the spectrum. What makes research by foreigners in Rwanda even more challenging is Rwandans' (government and public alike) distrust of foreign researchers. Many have little faith in foreign scholars, remembering their abandonment of the country during the 1994 genocide. Government officials in particular do not appreciate it when scholars interview them with hostility, already preconceiving the country and the state in the most negative terms. The author calls for less biased research that is based on empirical findings and avoids suspicions, and notes as a more positive result of this distrusting situation the increasing emergence of Rwandan researchers.

Asma Azhari's paper on the complex relationship between Islamic Law, International Human Rights Laws and the *kafāla* 'sponsorship' system and how these affect the diverse foreign working force that has been, and continues to be, attracted to Saudi Arabia, is particularly relevant in view of the changes that the author suggests in this domain. By providing numerous examples and skilfully juxtaposing the three regulatory systems, the author demonstrates that the *kafāla*, in placing disproportionate authority in the hands of the sponsoring employer over the migrant worker, fails to provide those basic securities and liberties to the employees that are instead stipulated by both, Islamic Law and International Law. Azhari not only argues that the *kafāla* subjects immigrants to substandard living conditions that are incongruent with International Human Rights Laws; she also shows that the sponsorship system, in not guaranteeing basic freedoms and protections to the worker, violates the values expressed by the Qur'an. Moreover, the author shows that Islamic Law and International Law are compatible with each other with special reference to migrant workers. Azhari calls for an immediate reformation of the migrant workers' policies in Saudi Arabia that not only foresees the abolition of the *kafāla* system and the alignment with Islamic and International Law, but also the promotion of increased awareness of human rights through an improved education system.

Sareh Javid presents a philosophical analysis of Iranian filmmaker Kiarostami's *The Traveller* by applying a Deleuzian framework. Filmed in 1974, *The Traveller* is set in a time during which major socio-political and economic changes pervaded Iran through programmes of modernisation and westernisation on the one side, and the forbearers of the Revolution (1979) on the other side. These, according to the author, 'resulted in a shattered and plural identity'. Films, Javid suggests, were one of the principal means for Iranians to rediscover the world from the perspective of shifted identities. As in many of Kiarostami's films, also *The Traveller* revolves around a child, giving Javid the opportunity to effectuate a wider exploration of the theme of child in Kiarostami's works. Applying Deleuze's idea of the cinema of seer, she examines how *The Traveller's* protagonist Qassem, as he moves from his familiar small town to the modern and unknown capital Teheran, becomes a 'seer' rather than a 'doer'. The disoriented protagonist observes, in order 'to rediscover the space he inhabits', and 'wanders around to find a new way, a new link to the world'. Resorting to Deleuze's idea that it is the role of modern cinema to make viewers rediscover and believe in the connection between human beings and the world, the author efficiently demonstrates that one of the functions of Kiarostami's first feature film is that of guiding, through the eyes of the protagonist, disoriented spectators along the complex processes of shifting identities that result from the forced modernisation pervading the country.

Kerman Daruwalla's article on the evolution of Zoroastrian priestly rituals in Iran is the last, but certainly not least, research paper of this collection and is equally salient to this volume's theme. The author captures and articulates changes that occur steadily in the performance of archaic priestly rituals in the Zoroastrian community. He observes that with globalisation and development, consequences of which have included emigration and exposure to foreign ideals and practices, the original priestly rituals have undergone changes. Priests have had to cater to a changing body of believers, but there has also been a steady decrease in the number of priests who are equipped to perform the original rituals, or those who are in the capacity do not have the necessary knowledge/level of training. With modernisation and development, sons of priests do not necessarily follow the path of their forefathers (as used to be the case), but are attracted to new professions and geographies. The author argues that in response to such and other changes, requirements for ordination have been loosened and rituals have been adapted, modified, or entirely replaced by innovative practices. The continuum that the author uses to describe the different extents of change in association with specific practices is enlightening and a coherent way to try to depict the inherently multidimensional mechanisms of change. The article not only manages to articulate on-going adaptations in the practised Zoroastrian tradition, but it also contributes toward a preservation of millennia-old rituals by describing what is currently being altered too fast, before it is for ever lost.

In addition to these articles revolving around the theme of change, an opinion piece, a book review and a translation make this a particularly fruitful and exciting volume.

Hassan Ould Moctar's opinion piece touches on similar themes as Mehrotra's, perhaps taking a step further in problematising models of the self in a world constructed by social media platforms driven by capitalistic interests. Hassan observes that with the rise of social media, a new 'model of commoditised selfhood' has emerged whereby one's individuality is based on the objectification of oneself through these platforms, turning oneself from consumer to commodity, and vice versa. The author sees this progression as a threat to the conventional understandings of a democratic polity, whereby class antagonism serves as a balancing factor to the inherently exploitative structure. Now the individual, perhaps unconsciously, willingly renders her/himself as a data source for digital companies whose only interest is profit maximisation. This process of commoditisation is of course disguised, he argues, which may explain why it succeeds. As Hassan notes, companies need 'a euphemistically legitimising narrative' in order to trap the individual into a constant cycle of posting private details about oneself on social media without feeling the inherent commoditisation of the self. This comes in the form of an invitation to 'share' information and liked materials with others, a subtle hollowing of the individual as consumer (and agent) and relegation to a commodity. Hassan concludes that "[w]e have now moved beyond the manufacturing of desire, to include broader and more fundamental modes of selfhood", facing us with a disturbing reality whereby the mythical agent as power-holder has disintegrated in the face of a new socially constructed individual, this time largely shaped by digital capitalists. His article overall alerts us to the subtle progressions in the ways the self is constructed discursively by processes larger and wider than the self, processes that might fundamentally threaten the democratic world as conventionally envisioned.

Rudder Jenkins reviews a recent publication dedicated to Christians and other non-Muslim communities in the early Islamic state. The author's choice to review this volume seems to be underpinned by his belief that it departs from more absolutist conventional views that failed to recognise the cultural and religious plurality of the early Ummayyad state, and provides more pragmatic and realistic accounts of the life of non-Muslim populations in the early Islamic state. The volume consists of eight contributions, through which Rudder takes us step by step, summarising the different arguments and approaches and noting their strengths and weaknesses. The author concludes that this volume is worth studying by students of disciplines that cover 'Islamic, Christian, Art Historical, Archaeological, Historical studies' as it not only showcases new methodological approaches, but it also accounts with more thoughtfulness for the controversies, lacunae and ambiguities related to the subject matter, approximating better the multidimensional realities that characterise the studied society and period.

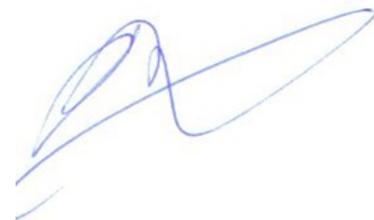
Heba Albeity's translation of Mansour Rahbani's poem "At the dawn of the third millennium" is reserved as last because of its more aesthetic touch. Moreover, it adds a twist to the present collection of works around the theme of change: dealing with a persistent *lack* of change in people's understandings and perceptions of each other, the poem exposes racism, repression and poverty as hindrances to the rising of a sentiment of universal human brotherhood. While maintaining the poetic sensitivity of the original text, the author conveys the urgency, expressed by the poet, to look beyond different creeds and colours, in a scenario where the encounters of different cultures are steadily on the rise. Situating the poem within the contemporary Lebanese and larger Arabic context, the author convincingly argues for the need to translate Arabic poetry in order to counter the dehumanisation that Arab subjects have undergone in western narratives ever since the 9/11 attack. Furthermore, Albeity notes that since much fine poetry, such as that of Mansour Rahbani and his brother, is written in colloquial languages, scholars have not devoted due attention to it, leaving it often untranslated or, when translated, misinterpreted. Lay audiences and scholars alike will benefit from a wider spread of translated Arabic poetry, not only in view of a much needed rectification of various current misrepresentations of the Arabic world, but also in view of the appeal to freedom and justice that is advocated in the works of the Rahbani brothers.

All in all, we feel that the contributions of this Volume provide innovative frameworks to understand, articulate and trace processes of change, opening new spaces for research and critical discussion. We hope that the present collection of papers will ignite reflections and discussions across a variety of disciplines that will prove to be as enriching and satisfying to the readers as it was for us the Editors to invite, select, review, edit and publish these essays.

With best wishes,



Monika Hirmer
Editor-in-Chief



Romina Istratii
Editor-in-Chief

THE CROSSROADS AND CONVERGENCES OF MEDIA AND TECHNOLOGY COMPANIES: FACEBOOK AS THE LATEST MEDIA GATEKEEPER

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ABSTRACT

In this essay, I will argue that the news *distributors* of today —technology companies, their algorithms and their editorial practices— are the new gatekeepers in the sphere of media. Previously reserved to a privileged few, content creation now errs on the side of a ‘human right’ in the age of the ‘writing public’.¹ Media researchers have revised gatekeeping theory, falling prey to the historically constructed myth of the technological utopia and obscuring new powerful actors in the media-technological world. We must not be blind to how knowledge dissemination —now disassociated from the activities of *production*— on the Internet is controlled by content distributors, redactors and selectors. The employees of these companies and their news feed algorithms are not objective forces of nature. Specific to today’s current media salience, the social network companies that distribute media content have power over discourse and the capability to shape our realities —phenomena we have primarily attributed to news producers in the newsroom. My case study is an almost too perfect archetype for this hybrid media-tech gatekeeper: Facebook, whose increasingly exposed split personality is destabilising its claims of being a strictly ‘technology’ company. Concurrent to these public debates, media studies researchers must begin to shift their definition of ‘media’ and analyse the blurring lines between ‘media’ and ‘tech’.

¹ Hartley, John, “Journalism as a Human Right: The Cultural Approach to Journalism”, *Global Journalism Research: Theories, Methods, Findings, Future*, 2008, Accessed February 08, 2017, <http://eprints.qut.edu.au/13331/>.

In August 2016, an audience member asked Facebook CEO Mark Zuckerberg if he intended to be a news editor. Zuckerberg responded by saying that Facebook could not possibly be considered a media company. After all, it doesn't produce any content.² Digital technology has dethroned news *production* centres as the only locus of media control. In this essay, I will argue that a new gatekeeper in the sphere of media consists in the news *distributors* of today—technology companies, their algorithms and their editorial practices. I will merge both literature about media (specifically gatekeeping theory) and literature about technology to expose how social network companies and their dissemination activities are powerful *media* actors in the construction of reality. My claims are that firstly, social network companies are powerful media actors, and secondly, media studies research must analyse the new blurred lines between media and technology. These aim to combat the media theorists who assume that the Internet restores power to the audience, and overlook the gatekeeping role of technology distributors.

Previously reserved to a privileged few, content creation now errs on the side of a 'human right' in the age of the 'writing public'.³ In awe of this mass explosion of content production agency, media researchers have revised gatekeeping theory to proclaim the mythic utopia of a completely connected digital world. Quick to romanticise the Internet, they believe agency has been restored to empowered masses.⁴ These pronouncements fall prey to the historically constructed concept of the technological utopia and its mystification of new powerful actors in the media-technological world. We must not be blind to how knowledge dissemination—now disassociated from the activities of *production*—on the Internet is controlled by content distributors, redactors and selectors. The employees of these companies and their news feed algorithms are not objective forces of nature. Specific to today's current media moment, the social network companies that distribute media content have power over discourse and the capability to shape our realities—phenomena we have primarily attributed to news producers in the newsroom. My case study is an almost too-perfect archetype for this hybrid media-tech gatekeeper, Facebook, whose increasingly exposed split personality is destabilising its claims to be a strictly 'technology' company. The company now faces a crossroads between Silicon Valley's values of open and free technology and media's constrictions of journalistic standards and obligations. Concurrent to these public debates, media studies research must begin to shift their definition of 'media' and analyse the blurring lines between 'media' and 'tech'.

GATEKEEPING THEORY AND JOURNALISM

Kurt Lewin brought about the concept of gatekeeping as a study of persons in 'key positions' along 'social channels' where 'desire and the resistance to change are expressed'.⁵ To apply gatekeeping theory, Lewin determined that 'one must identify those in control of the

² Segreti, Giulia, "Facebook CEO Says Group Will Not Become a Media Company", Reuters. August 29, 2016, <http://uk.reuters.com/article/us-facebook-zuckerberg-idUKKCN1141WN>.

³ Hartley, "Journalism as a Human Right: The Cultural Approach to Journalism".

⁴ Bruns, Axel, *Gatewatching: Collaborative Online News Production*, New York: P. Lang, 2009.

⁵ Serban, Silviu, "On the Origin of the Gatekeeping Theory and Its Application to Journalism", *Journalism Studies* 16.2 (2015): 13.

entrance and exit [of the channel] and must study the psychology of the gatekeepers, their system of values and beliefs that causes the decisions related to the traffic through each channel'.⁶ Silviu Serban applied Lewin's theory to the realm of journalism and established two main principles: 1) there are infinite events in the world, and 2) the press only has a limited capacity to reflect these events.⁷ Consequently, the consistent source of power in the media industry is control over news selection, not news production. Serban argues that we cannot overlook seemingly objective processes, such as news selection and their subjective qualities.⁸ The controllers of news selection have shifted with the changing face of gatekeepers in the journalism realm: from the wire editor to the press associations to the newspaper owners.⁹ The technological era has ushered in a new face to the news selector, but previous attempts to apply gatekeeping theory to the Internet's impact on the media have not appropriately pinpointed the emerging gatekeeper. Rather, theorists assume that full agency is restored to the audience premised on a false idea of a completely connected network.¹⁰

MEDIA GATEKEEPING THEORY APPLICATIONS IN THE CONTEMPORARY ERA

With the introduction of the Internet, many theorists have mistakenly championed the end of gatekeeping in journalism. John Hartley imagines a 'shift in the "value chain" of meanings, where what was accepted socially as the source of meaning –and thence legitimacy– has drifted from author (mediaeval), via text (modern), to consumer (now) ... now, meaning is sourced to popular readerships or audiences, and is determined by the plebiscite'.¹¹ The craze of citizen journalism, of "'many to many" communication', and of the writing public has convinced researchers to swing the pendulum of audience agency, assuming that the spread of production capabilities renders communication uncontrolled and anti-hierarchal.

Hartley and others, however, did signal potential new phenomena of gatekeeping in this presumed egalitarian and anti-hierarchal landscape. Hartley highlights the importance of a new form of editing called 'redaction'. Journalism as a profession, he finds, will now primarily involve sifting existing data and producing a digestible form of that data, rather than producing new information.¹² 'Editorial practices are required to make the potentially overwhelming and chaotic possibilities of such plenitude into coherent packages for users.'¹³ In fact, the entire 'public utility and commercial future of journalism,' Hartley argues, rests

⁶ Ibid, 14.

⁷ Ibid, 12.

⁸ Ibid, 15.

⁹ Ibid, 12.

¹⁰ Bruns, *Gatewatching*.

¹¹ Hartley, "Journalism as a Human Right", 18.

¹² Ibid, 19.

¹³ Ibid, 18.

on 'choosing, editing and customizing existing information for different consumers'.¹⁴ Hartley is correct to consider a shifting definition in the profession of journalism, but fails to discover the new player that fits this definition. In his acknowledgement of redaction potential with the platform Google News, he obviously labels the algorithm that produces such newsgathering as 'not a journalist but a sort of automated plebiscite'.¹⁵ By equating an algorithm with the 'plebiscite' he fails to appropriately transfer responsibility to the *human* actors in control of the algorithmic process —a point that will be stressed throughout the essay.

Axel Bruns is another media researcher who hints at new gatekeeping positions in the Internet age but fails to target the technological actors in those positions. In *Gatewatching: Collaborative Online News Production*, Bruns mimics Hartley's 'redaction' role with the analogy of a librarian, who is in control of 'storage and cataloguing'.¹⁶ Using the words of Anthony Smith, Bruns describes 'the librarian or the librarian's *computerized successor*' as a 'crucial guardian of knowledge'.¹⁷ Bruns uses the term 'gate-watching' rather than 'gatekeeping' to describe a shift from publishing content to '*publicizing* relevant content'.¹⁸ Contrasting to traditional journalism gatekeepers, Bruns envisions that librarians 'assist' users by screening as much information as possible to point users in the right direction, rather than 'spoon-feed[ing]' users.¹⁹ An example of Bruns' librarian is news syndication, or what he defines as the 'automated exchange of the latest news stories'.²⁰ Previously, this process relied on journalists acting as the middleman to provide breaking news, especially through wire stories. Now, the audience supposedly has 'direct access' to syndicated news sources, thanks to the 'networked structure of the Internet which enables the easy and effective exchange of news items'.²¹ Bruns draws on the words of Lasica: syndication 'turns your computer into a voracious media hub, letting you snag headlines and news updates as if you were commanding the anchor desk at CNN'.²² In this depiction of the Internet, the audience is 'in control' of selecting from the 'incoming syndication stream'.²³ 'The Internet and the new communication technologies are breaking the corporate stranglehold on journalism and opening an unprecedented era of interactive democratic media'.²⁴

By overlooking potential distortion in syndication or redaction, Bruns and Hartley espouse that agency is restored to the audiences in an unaltered transmission of news throughout an egalitarian network. They believe 'news audiences have begun to reclaim

¹⁴ Hartley, John, "The Frequencies of Public Writing: Tomb, Tome, and Time as Technologies of the Public", *Democracy and New Media*, 2003, 83.

¹⁵ Hartley, "Journalism as a Human Right", 19.

¹⁶ Bruns, *Gatewatching*.

¹⁷ *Ibid*, 15.

¹⁸ *Ibid*, 9.

¹⁹ *Ibid*, 15.

²⁰ *Ibid*, 239.

²¹ *Ibid*.

²² *Ibid*, 240.

²³ *Ibid*.

²⁴ *Ibid*, 5.

their place in the news cycle'.²⁵ 'Participatory journalism' and a 'multifaceted, multiperspectival coverage of news events' leads to Bruns' notion of a 'collaborative online news production'.²⁶ In David DeJuliis' application of gatekeeping to the modern digital world, he also argues that audience agency is channelled through Twitter feeds and Facebook posts, leading to a more open and diverse exchange of knowledge.²⁷ Facebook users make choices about what information to add, withhold and disregard, and how to shape, localise and manipulate the information they channel through their profile'.²⁸ Again, Facebook users are assumed to be the gatekeepers, ignoring the actors in control of the algorithm that disseminates the information that users produce. Any gatekeepers that do exist in DeJuliis' vision of the Internet are amongst the users themselves; he argues that the gated on Twitter are the average Twitter users, while the gatekeepers are the 12 most popular Twitter users—not Twitter itself.²⁹

Hartley is mistaken to believe that redaction is now controlled by an 'automated plebiscite', Bruns is naïve in his image of a less-controlling librarian, and DeJuliis overlooks the social media company in his image of empowered social media users. The three ultimately obscure the subjective qualities of the redactor, the librarian and the disseminator. Their mistake is not completely of their own making; it traces back to historical developments in the creation of the concept of 'technology'³⁰ and the Silicon Valley's internalised utopian façade. Bruns himself exposes that he has internalised this technological myth in his own research:

[G]atewatching builds on the commonplace assumption that the Web (and the Net) is an egalitarian, open-access medium which is particularly well suited to liberating the exchange of alternative, non-mainstream content and ideas ... the idea of gatewatching is inspired by the view that the Net inherently routes around any obstructions to the free flow of information—such as editorial interventions and access restrictions.³¹

How did this assumption become 'commonplace' enough for Bruns to believe it as unquestionably true? When did technology and progress become synonymous in our imagination?

THE CREATION OF THE IMAGINED INTERNET UTOPIA

The presumed correlation between technology and social good has a historical trajectory. Leo Marx marks the beginnings of this intertwining with the opening of the railroads and the

²⁵ Ibid, 9.

²⁶ Ibid, 2.

²⁷ DeJuliis, David, "Gatekeeping Theory from Social Fields to Social Networks", *Gatekeeping Theory from Social Fields to Social Networks* 34.1 (2015): 10-20.

²⁸ Ibid, 18.

²⁹ Ibid, 17.

³⁰ Winner, Langdon, "Do Artifacts Have Politics?" *Daedalus* 109, no. 1 (1980): 121, <http://www.jstor.org/stable/20024652>.

³¹ Bruns, *Gatewatching*, 3.

emergence of the 'perceived relation between innovations in science, the mechanic arts and the prevailing belief in progress.'³² The idea of progress became 'modernity's nearest secular equivalents of the creation myths that embody the belief systems of premodern culture'.³³ Langdon Winner argues that every moment of hyper-technological change brings about repetitive optimistic and deterministic sentiments. The factory system, the space program and the automobile were all purported to be 'democratizing, liberating force[s]'.³⁴ 'Every time a technology comes along, repeatedly we project our hopes for society ... We look to technology to liberate us', according to Berkeley professor Paul Duguid.³⁵ These, Duguid says, are based on 'unassailable assumptions [that] technologies are inherently good and technology will promote their inherently good ends'.³⁶

The modern-day technology centre, the Silicon Valley, has seamlessly adopted and embraced the age-old myth. The industry's birth came about during the 1960s counterculture movement, intertwining its goal of progress with the anti-authority and egalitarian thought of the moment.³⁷ During the industry's early development, Stewart Brand spread the misleading notion 'Information wants to be free', imagined digital technologies to be 'tools of liberation', and signalled the rise of 'digital utopianism'.³⁸ In applying this utopianism to the Internet, the creation of the World Wide Web promised a space where everyone had a voice. In the 1969 *A Declaration of the Independence of Cyberspace*, the author proclaims: '[w]e are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity'.³⁹ There is no authoritative control on the Internet, according to the supposition of these technology optimists.

At the core of this faith is the assumption that unmitigated connectivity can combat governmental overreach and other world problems. Steven Johnson, in *Future Perfect: The Code for Progress in a Networked Age*, argues that 'peer progressivism' will harness collective power and decentralised interconnectivity, leading to a 'liquid democracy' where citizen journalists on social media completely upend the political system.⁴⁰ Facebook's Zuckerberg has continuously adopted similar paradigms but takes the extreme utopianism even further. In 2008, Zuckerberg suggested that his social network could help end terrorism by allowing extremists to broaden their view. "It's not out of a deep hatred of anyone," the Facebook

³² Marx, Leo, "Technology: The Emergence of a Hazardous Concept", *Technology and Culture* 51, no. 3 (2010): 561-77, doi:10.1353/tech.2010.0009.

³³ Ibid.

³⁴ Winner, *Do Artifacts Have Politics*.

³⁵ "Information and Liberation", YouTube, November 10, 2014, <https://www.youtube.com/watch?v=sdwp6xN-T2U>.

³⁶ Ibid.

³⁷ Turner, Fred, *From Counterculture to Cyberculture: Stewart Brand, the Whole Earth Network, and the Rise of Digital Utopianism*, Chicago: U of Chicago, 2006.

³⁸ Ibid, 254.

³⁹ Barlow, John Perry, "A Declaration of the Independence of Cyberspace", Electronic Frontier Foundational January 22, 2016, <https://www.eff.org/cyberspace-independence>.

⁴⁰ Johnson, Steven, *Future Perfect: The Case for Progress in a Networked Age*, London: Penguin Books, 2013.

CEO said. “It comes from a lack of connectedness, a lack of communication, a lack of empathy, and a lack of understanding”.⁴¹

The lack of nuance and the zeal for technology as a panacea to the world’s problems is rife throughout the Valley. In *Zero to One: Notes on Startups, or How to Build the Future*, entrepreneur Peter Thiel defines technology as ‘any new and better way of doing this’.⁴² ‘Humans are distinguished from other species by our ability to work miracles’, Thiel states. ‘We call these miracles technology’.⁴³ Technological innovations are not god-sent miracles and doing things a ‘better way’ is not a feature inherent to technological systems. In this definition, Thiel ignores that the ‘better way’ must be decided upon through the value judgments of a human actor creating the technology. Similarly, media research’s belief in technology’s inherent progress is blind to the fact that the Internet is not a network with complete audience agency, but, rather, is controlled by human actors and their dissemination products. To understand how the human actors behind the screen of technology came to be objectified and faceless, we must return to the concept of ‘technology’.

THE INVISIBLE POWERS BEHIND THE FAÇADE OF THE INTERNET UTOPIA

As the concept took on its supposedly progressive mask, ‘technology’ also worked to obscure the subjective qualities of its creation. Marx argues that ‘technology’ went from defining purely mechanical items to referring to an entire system that intersects with social and political phenomena. The ‘sociotechnological system[’s]’ linguistic void was filled ‘by the relatively abstract, indeterminate, neutral, synthetic-sounding term *technology*’.⁴⁴ What this word has done, Marx argues, is mask its non-artifactual, social component with ‘an objective, autonomous character’.⁴⁵ (Note the parallel discovery made by Serban about how journalists’ philosophical attachment to objectivity masks the subjective nature of news selection).⁴⁶

The chief hazard attributable to the concept of technology, as currently used, is the mystification, passivity, and fatalism it helps to engender. [It] serves as a surrogate agent, as well as a mask, for the human actors actually responsible for the developments in question.⁴⁷

Before Marx’s analysis, Winner made similar cautions about the hazardous concept of ‘technology’: ‘[M]achines, structures, and systems of modern material culture can be accurately judged not only for their contributions of efficiency and productivity ... but also

⁴¹ Packer, George, “Change the World”, *The New Yorker*, January 08, 2015, <http://www.newyorker.com/magazine/2013/05/27/change-the-world>.

⁴² Thiel and Masters, *Zero to One: Notes on Startups, or How to Build the Future*, London: Virgin Books, 2015.

⁴³ *Ibid*, 2.

⁴⁴ Marx, “Technology”, 978.

⁴⁵ *Ibid*, 982.

⁴⁶ Serban, *On the Origin*.

⁴⁷ Marx, “Technology”, 984.

for the ways in which they can embody specific forms of power and authority'.⁴⁸ In Winner's theory of 'technological politics', man-made systems embody certain kinds of political relationships.⁴⁹ Technological innovations and innovators —just like 'legislative acts or political foundings' and their authors— establish 'a public order that will endure over many generations'.⁵⁰ Almost four decades later, University of California, Berkeley professor Paul Duguid is now making the same comparison. In a relevant lecture given at Berkeley, he argues that software code is not too different from legal code because of major technology companies' ability to use code to 'prescribe and limit and control people's behavior'.⁵¹ 'Technologists are becoming unacknowledged legislators of the world', Duguid argues.

The belief in technology as a sure-route to progress and the associated objectification of the human decision-making behind the screen of technology has led us to believe the Internet is a completed connected network where the audience holds the power. However, I will show how in reality technology companies control the dissemination of information on this network.

SOCIAL NETWORKS AND SOCIAL RESPONSIBILITY IN CONSTRUCTING HYPER-REALITIES

Media research has understood that a recent power changeover has taken place, where traditional news media's impact is diffused through new 'information delivery conduits'.⁵² This is no longer considered a discovery, but rather a starting point.⁵³ Social networks are the vital structure through which journalism is rendered meaningful by users.⁵⁴ In 2010, the Pew Research Centre found that 75 percent of people who read the news online consume it through social networks.⁵⁵ Out of all the time humans spend on the Internet, 22 percent is spent on social networking sites. Siapera, Papadopoulou and Archontakis⁵⁶ argue that 'if the advent of the Internet did not undermine the existing media system and journalism, then the rise of social media surely did'. In a short time, Facebook monopolised the social media arena, becoming the second most popular website after Google in 2011 with over 500 million users —one out of every 13 people on the planet.⁵⁷ As journalist Joshua Benton at the Nieman

⁴⁸ Winner, *Do Artifacts Have Politics*, 121.

⁴⁹ Ibid, 123.

⁵⁰ Ibid, 128.

⁵¹ "Information and Liberation".

⁵² Heikkilä, Heikki, and Laura Ahva, "The Relevance of Journalism", *Journalism Practice* 9, no. 1 (2014): 54, doi:10.1080/17512786.2014.928465.

⁵³ Ibid.

⁵⁴ Ibid, 50.

⁵⁵ DeLuliis, *Gatekeeping*, 15.

⁵⁶ Siapera, Eugenia, Lambrini Papadopoulou, and Fragiskos Archontakis, "Post-Crisis Journalism", *Journalism Studies*, 2014, 445-65.

⁵⁷ Curran, John, Natalie Fenton, and Des Freedman, "Misunderstanding the Internet", *Journal of Information Policy* 2, 2012, 123, doi:10.4324/9780203146484.

Lab contends, 'Facebook's algorithm is central to how news & information is consumed in the world today, and no historian will write about 2016 without it'.⁵⁸

This algorithm, as we have seen in our discussion of technological reification, is not an objective, unchangeable force that hands over all agency to the audience. James Curran, in countering media enthusiasts, describes how news consumption through social media actually limits the users' ability to decipher accurate information through all the noise.⁵⁹ Because social network exchange is driven by communication and not information, producers are motivated to share a version of themselves, not information that they deem to be accurate.⁶⁰ Simultaneously, consumers are gratified by passive 'news snacking' rather than active news consumption, allowing the exchange to be controlled by corporate media and network operators who make the decisions about how reality is presented to the audience.⁶¹ Curran is sceptical of these actors: 'How do Google and Microsoft prioritise certain tweets over others. Do they have democratic intent as their ambition, or profit from advertising as their purpose?'.⁶²

As technology companies take on the powerful role of media dissemination, they circumscribe a *version* of reality, instead of giving audiences direct access to the information.⁶³ For example, Google Search orders the world of knowledge for us, stripping us of the power to actively organise available information. Netflix curates our tastes, Yelp locks us only into the food that others have enjoyed, and Facebook binds us to a predetermined list of the news and events. The phenomenon is similar to what the Italian essayist Umberto Eco labelled 'hyper-realities', with his example of Disneyland —a 'place of total passivity' whose users 'must agree to behave like its robots' with no 'individual initiative'.⁶⁴ Instead, visitors accept the 'reconstructed truth' so they no longer 'feel any need for the original'.⁶⁵ In eliminating human exertion, these social networks also begin to snatch agency. As Siva Vaidhyanathan states in *The Googlization of Everything*, 'The structure and order of the choices offered to us profoundly influence the decisions we make ... Celebrating freedom and autonomy is one of the great rhetorical ploys of the global information economy'.⁶⁶ Our fantasy of communication freedom obscures real power structures:

Networks are not inherently liberatory; network openness does not lead us directly to democracy ... we must avoid assum[ing] the existence of a framework of politics in which in principle every voice could be heard, without giving attention to the very

⁵⁸ Buni, Catherine, "Facebook Won't Call Itself a Media Company. Is It Time to Reimagine Journalism for the Digital Age?" The Verge, November 16, 2016, <http://www.theverge.com/2016/11/16/13655102/facebook-journalism-ethics-media-company-algorithm-tax>.

⁵⁹ Curran, "Misunderstanding", 131.

⁶⁰ Ibid, 130.

⁶¹ Ibid, 125-28.

⁶² Ibid, 138.

⁶³ Ibid, 125-28.

⁶⁴ Eco, Umberto. *Travels in Hyper Reality: Essays*. San Diego: Harcourt, 2002: 48.

⁶⁵ Ibid, 48, 19.

⁶⁶ Vaidhyanathan, Siva, *The Googlization of Everything: (And Why We Should Worry)*, Berkeley: University of California Press, 2012: 89.

structuring of those frameworks and the ways in which the visibility of subjects is structured.⁶⁷

If we decide to hold technology companies accountable for their software code and their decisions, we must take Lewin's direction and analyse the new gatekeepers' 'psychology'. Today, one of the most significant pieces of software code controlling news selection and distribution is the algorithm that curates every individual Facebook newsfeed. The new gatekeepers are the employees who build this code and make the editorial decisions at this hybrid media-technology company.

FACEBOOK FRATERNISES WITH THE LABEL OF MEDIA COMPANY

Not surprisingly, Facebook initially resisted any acknowledgement of their power to construct reality by professing that news disseminators are protected from the liabilities of being a news producer. Last year, Facebook repeatedly described its role as a technology company, not a media company. "We define ourselves as a technology company", Facebook's product chief Chris Cox said at the WSJDLive conference in California. "A media company is about the stories it tells. A technology company is about the tools it builds".⁶⁸ Zuckerberg has exposed such ideas before: "When you think about a media company, you have people who are producing content, who are editing content, that's not us. We're a technology company. We build tools. We do not produce any of the content".⁶⁹ Technology news reports also struggle with Facebook's ambiguous new terrain, calling the company everything from 'a major player in the media universe' to 'a strange new class of media outlet'.⁷⁰ Even after the barrage of criticism about the social network's influence on the outcome of the 2016 U.S. presidential election, Zuckerberg found the notion that Facebook held any responsibility "crazy". "Voters make decisions based on their lived experience", he said at a Techonomy conference near San Francisco.⁷¹ Because Zuckerberg does not have the media literature foundations to contextualise his product, he fails to see how our lived experience is 'framed by, mitigated through, and made immediate by pervasive and ubiquitous media'.⁷²

The company has many reasons to resist a change in definition. One is that technology companies are usually valued at higher prices than media companies.⁷³ More importantly, though, Facebook is avoiding legal responsibility for the content it distributes. The Communications Decency Act's Section 230(c), or the Good Samaritan act of 1996, protects computer service providers from being labelled the publisher of the content its users'

⁶⁷ Curran, "Misunderstanding the Internet", 142.

⁶⁸ Guynn, Jessica, "Facebook: Don't Call Us a Media Company", USA Today. October 25, 2016, <http://www.usatoday.com/story/tech/news/2016/10/25/facebook-says-its-not-a-media-company/92744614/>.

⁶⁹ Ibid.

⁷⁰ Buni, "Facebook Won't Call Itself a Media Company".

⁷¹ Solon, Olivia, "Facebook's Fake News: Mark Zuckerberg Rejects 'Crazy Idea' that It Swayed Voters", The Guardian, November 10, 2016, <https://www.theguardian.com/technology/2016/nov/10/facebook-fake-news-us-election-mark-zuckerberg-donald-trump>.

⁷² Deuze, Mark, *Media Work*, Cambridge: Polity, 2011: 13.

⁷³ Buni, "Facebook Won't Call Itself a Media Company".

provide. As one of the ‘most important law[s] on the Internet’, the provision immunises social media platforms from liability and distances them from the responsibility that traditional media companies face for their content.⁷⁴ This resistance to liability is not much different from the journalist’s philosophical claim to objectivity. Similar to the way in which the 1996 act protects technology companies from being responsible for content written on their platforms, reporters use quotation marks as a ‘signalling practice’ to obscure their subjectivity in a story.⁷⁵ Journalists falsely distance themselves from their sources and their story as a ‘strategic ritual protecting [them] from the risks of their trade’.⁷⁶ Just as reporters have a ‘limited repertoire with which to define and defend their objectivity’, computer software engineers cannot hide under the veil of algorithmic objectivity to deflect subjectivities in their product.⁷⁷

As Facebook’s power on the Internet has grown, however, its veil is weakening. By December 2016, it seemed that Zuckerberg was changing his company’s public presence:

Facebook is a new kind of platform ... I think of Facebook as a technology company, but I recognize we have a greater responsibility than just building technology that information flows through. While we don’t write the news stories you read and share, we also recognize we’re more than just a distributor of news. We’re a new kind of platform for public discourse —and that means we have a new kind of responsibility to enable people to have the most meaningful conversations, and to build a space where people can be informed.⁷⁸

Realistically, Facebook will not be describing itself as a media company anytime soon. But media studies should not fall for the trap. How does Facebook act like a media gatekeeper? What news values do its algorithm and its leaders abide by? When do we see significant moments of editorial control at this company?

FACEBOOK AS A MEDIA GATEKEEPER

While the inner workings of Facebook’s algorithms are not public knowledge (another issue if we are to begin conceptualising the company as a media company), we can surmise much of its workings and apply some of Galtung and Ruge’s 12 news factors to the company’s selection process. For one, similar to traditional news selection, Facebook gives higher importance to culturally proximate and relevant events. Other news values, however, are probably ignored, including what Galtung and Ruge call ‘composition’, or the ideal diversity in news coverage that upgrades certain events despite their insufficiencies in other

⁷⁴ Ibid.

⁷⁵ Tuchman, Gaye, “Objectivity as Strategic Ritual: An Examination of Newsmen’s Notions of Objectivity”, *American Journal of Sociology* 77, no. 4 (1972): 660-768, doi:10.1086/225193.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Constine, Josh, “Zuckerberg Implies Facebook Is a Media Company, Just ‘Not a Traditional Media Company’”, TechCrunch, December 21, 2016, <https://techcrunch.com/2016/12/21/fbonc/>.

categories.⁷⁹ Harcup and O'Neill's more contemporary, revised list of news values may be more applicable to the algorithm's priorities, with the inclusion of entertainment and photo opportunities (and, even more appropriately in the modern moment, video opportunities).⁸⁰

The company's algorithm, however, is not the only component of the new media gatekeeper. Its leaders have continuously made decisions of editorial nature, leading to even more visibly blurring lines between media and tech. In October 2017, the company decided to allow more types of graphic or offensive content if it is deemed 'newsworthy' or 'important to the public interest'.⁸¹ In September, the company came under flack for censoring the iconic 1972 photo of the naked young girl fleeing napalm bombs during the Vietnam War.⁸² After reposting the article, a company statement stated: 'In this case, we recognize the history and global importance of this image in documenting a particular moment in time'.⁸³ Previous moments of media decision-making include the company's change in community standards after it blocked photos of women breast-feeding. The platform also removed a photo of a plus-size model because it was 'undesirable' and later reposted the photo.⁸⁴

The company has also oscillated between algorithmic decision-making and direct human interference, showcasing the inevitable integration of bias with this dual-component news editor. One of the most illuminating Facebook controversies centred on allegations that its Trending Topics section, managed by human editors at the time, was purposefully suppressing conservative news.⁸⁵ Afterwards, Facebook eliminated the human desk and left the trending selection to an algorithm, which consequently pushed out a false story about Fox News host Megyn Kelly and links to an article with a video of a man masturbating with a McDonald's sandwich.⁸⁶ Since the 2016 U.S. presidential election, Facebook has begun new efforts to limit 'fake' news from its algorithm feeds. Facebook will send the most popular potentially fake news stories to five news organisations who will then use Poynter's International Fact-Checking Network code of principles to assess if the flagged articles are

⁷⁹ Harcup, Tony, and Deirdre O'Neill, "What Is News? Galtung and Ruge revisited", *Journalism Studies* 2, no. 2 (2001): 274, doi:10.1080/14616700120042114.

⁸⁰ Ibid.

⁸¹ Bell, Karissa, "Facebook Is about to Become More NSFW", Mashable, October 21, 2016, <http://mashable.com/2016/10/21/facebook-reducing-censorship/>.

⁸² Isaac, Mark Scott and Mike, "Facebook Restores Iconic Vietnam War Photo It Censored for Nudity". The New York Times, September 09, 2016, https://www.nytimes.com/2016/09/10/technology/facebook-vietnam-war-photo-nudity.html?_r=0.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Hunt, Elle, "Facebook to Change Trending Topics after Investigation into Bias Claims", The Guardian. May 23, 2016, <https://www.theguardian.com/technology/2016/may/24/facebook-changes-trending-topics-anti-conservative-bias>.

⁸⁶ Thielman, Sam, "Facebook Fires Trending Team, and Algorithm without Humans Goes Crazy", The Guardian, August 29, 2016, <https://www.theguardian.com/technology/2016/aug/29/facebook-fires-trending-topics-team-algorithm>.

fake.⁸⁷ Facebook may not want to call itself a media company so that it doesn't have to be held liable for issues of free speech, censorship and journalistic integrity, but the company is already delving deep into the editorial and ethical conundrums most commonly contained in media newsrooms. While Facebook leaders make these decisions of media import, we must not be blind to the social responsibility that comes with being a media gatekeeper and a constructor of reality. Once we accept the company's new hybrid definition as a technology and media company, we can begin to evaluate the news and media values it espouses.

CONCLUSION

Academics must begin to apply foundational gatekeeper theories to a new set of actors: the media distributors. Facebook's algorithm and the company's employees who veto or censor content and write the standards and policies are replacing Mr. White as the modern-day news editor. Consequently, questions of reality and meaning construction are still important but must be refocused.

Facebook, like all technology companies, may become a thing of the past one day. But the issues of news selection and news distribution in an age of widespread news production will continue to be salient in the Internet age. As technology ebbs and flows, media research must keep its eye on who controls the reality presented to the public, especially when technology has taken on the character of an objective and inherently good middleman. To be sure, I do not mean to argue that the Internet has given no newfound agency to the audience. Rather, I aim to refute those who claim that all agency is restored to the Internet user, ultimately because they underestimate the rising power of the news distributor in the media landscape. Those who do so fall victim to the Silicon Valley imagination of an Internet utopia described by an egalitarian network and complete connectivity. In reality, our channels for connections are themselves the products of powerful actors. The collaboration and connection of the Internet has the potential to advance society. But just how society should seek the Truth out of this new system remains an unresolved conundrum in the new age.

⁸⁷ Constine, Josh, "Facebook Now Flags and Down-Ranks Fake News with Help from Outside Fact Checkers", TechCrunch, <https://techcrunch.com/2016/12/15/facebook-now-flags-and-down-ranks-fake-news-with-help-from-outside-fact-checkers/>.

BIBLIOGRAPHY

- Herman, Edward S. "The Propaganda Model Revisited." *Monthly Review* 48, no. 3 (1996): 115, doi:10.14452/mr-048-03-1996-07_8.
- Barlow, John Perry. "A Declaration of the Independence of Cyberspace." Electronic Frontier Foundation, January 22, 2016, <https://www.eff.org/cyberspace-independence>.
- Bell, Karissa. "Facebook Is about to Become More NSFW." *Mashable*, October 21, 2016, <http://mashable.com/2016/10/21/facebook-reducing-censorship/>.
- Bruns, Axel. *Gatewatching: Collaborative Online News Production*. New York: P. Lang, 2005.
- Buni, Catherine. "Facebook Won't Call Itself a Media Company. Is It Time to Reimagine Journalism for The Digital Age?" *The Verge*, November 16, 2016, <http://www.theverge.com/2016/11/16/13655102/facebook-journalism-ethics-media-company-algorithm-tax>.
- Constine, Josh. "Facebook Now Flags and Down-Ranks Fake News with Help from Outside Fact Checkers." *TechCrunch*, <https://techcrunch.com/2016/12/15/facebook-now-flags-and-down-ranks-fake-news-with-help-from-outside-fact-checkers/>.
- Constine, Josh. "Zuckerberg Implies Facebook Is a Media Company, Just 'Not a Traditional Media Company.'" *TechCrunch*, December 21, 2016, <https://techcrunch.com/2016/12/21/fbonc/>.
- Curran, John, Natalie Fenton, and Des Freedman. "Misunderstanding the Internet." *Journal of Information Policy* 2, 2012, 123, doi:10.4324/9780203146484.
- DeJuliis, David. "Gatekeeping Theory from Social Fields to Social Networks." *Gatekeeping Theory from Social Fields to Social Networks* 34.1 (2015): 10-20.
- Deuze, Mark. *Media Work*. Cambridge: Polity, 2011.
- Gibbs, Samuel. "Mark Zuckerberg Appears to Finally Admit Facebook is a Media Company." *The Guardian*, December 22, 2016, <https://www.theguardian.com/technology/2016/dec/22/mark-zuckerberg-appears-to-finally-admit-facebook-is-a-media-company>.
- Guynn, Jessica. "Facebook: Don't Call us a Media Company." *USA Today*, October 25, 2016, <http://www.usatoday.com/story/tech/news/2016/10/25/facebook-says-its-not-a-media-company/92744614/>.
- Harcup, Tony, and Deirdre O'Neill. "What Is News? Galtung and Ruge revisited." *Journalism Studies* 2, no. 2 (2001): 274, doi:10.1080/14616700120042114.
- Hartley, John. "The Frequencies of Public Writing: Tomb, Tome, and Time as Technologies of the Public." *Democracy and New Media*, 2003, 83.
- Hartley, John. "Journalism as a Human Right: The Cultural Approach to Journalism." *Global Journalism Research: Theories, Methods, Findings, Future*, 2008, <http://eprints.qut.edu.au/13331/>.

- Heikkilä, Heikki, and Laura Ahva. "The Relevance of Journalism." *Journalism Practice* 9, no. 1 (2014): 50-64, doi:10.1080/17512786.2014.928465.
- "Information and Liberation." YouTube, November 10, 2014, <https://www.youtube.com/watch?v=sdwp6xN-T2U>.
- Ingram, Mathew. "Sorry Mark Zuckerberg, But Facebook Is Definitely a Media Company." *Fortune.com*, August 30, 2016, <http://fortune.com/2016/08/30/facebook-media-company/>.
- Isaac, Mark Scott and Mike. "Facebook Restores Iconic Vietnam War Photo It Censored for Nudity." *The New York Times*, September 09, 2016, https://www.nytimes.com/2016/09/10/technology/facebook-vietnam-war-photo-nudity.html?_r=0.
- Johnson, Steven. *Future Perfect: The Case for Progress in a Networked Age*. London: Penguin Books, 2013.
- Eco, Umberto. *Travels in Hyper Reality: Essays*. San Diego: Harcourt, 2002.
- Marx, Leo. "Technology: The Emergence of a Hazardous Concept." *Technology and Culture* 51, no. 3 (2010): 561-77, doi:10.1353/tech.2010.0009.
- Matsakis, Louise. "Facebook Says It's Not a Media Company, But It Just Bought a Tool for Publishers." *Mashable*, November 11, 2016, <http://mashable.com/2016/11/11/facebook-is-a-media-company/>.
- Nunez, Michael. "Facebook-Not a Media Company-Will Bankroll Original Video." *Gizmodo*, December 14, 2016, <http://gizmodo.com/facebook-not-a-media-company-will-bankroll-original-vi-1790105706>.
- Packer, George. "Change the World." *The New Yorker*, January 08, 2015, <http://www.newyorker.com/magazine/2013/05/27/change-the-world>.
- Scott, Mark, and Mike Isaac. "Facebook Restores Iconic Vietnam War Photo It Censored for Nudity." *The New York Times*, September 09, 2016, <https://www.nytimes.com/2016/09/10/technology/facebook-vietnam-war-photo-nudity.html>.
- Segreti, Giulia. "Facebook CEO Says Group Will Not Become a Media Company." *Reuters*, August 29, 2016, <http://uk.reuters.com/article/us-facebook-zuckerberg-idUKKCN1141WN>.
- Serban, Silviu. "On the Origin of the Gatekeeping Theory and Its Application to Journalism." *Journalism Studies* 16.2 (2015): 13.
- Siapera, Eugenia. Papadopoulou Lambrini, and Archontakis Fragiskos, "Post-Crisis Journalism." *Journalism Studies* 16.3:449-65.
- Solon, Olivia. "Facebook's Fake News: Mark Zuckerberg Rejects 'Crazy Idea' that It Swayed Voters." *The Guardian*, November 10, 2016, <https://www.theguardian.com/technology/2016/nov/10/facebook-fake-news-us-election-mark-zuckerberg-donald-trump>.

Thiel, Peter A., and Blake Masters. *Zero to One: Notes on Startups, or How to Build the Future*, London: Virgin Books, 2015.

Thielman, Sam. "Facebook Fires Trending Team, and Algorithm without Humans Goes Crazy." *The Guardian*, August 29, 2016, <https://www.theguardian.com/technology/2016/aug/29/facebook-fires-trending-topics-team-algorithm>.

Tuchman, Gaye. "Objectivity as Strategic Ritual: An Examination of Newsmen's Notions of Objectivity." *American Journal of Sociology* 77, no. 4 (1972): 660-79, doi:10.1086/225193.

Vaidhyathan, Siva. *The Googlization of Everything: (And Why We Should Worry)*. Berkeley: University of California Press, 2012.

Winner, Langdon. "Do Artifacts Have Politics?" *Daedalus* 109, no. 1 (1980): 121-36, <http://www.jstor.org/stable/20024652>.

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THE RECONSTRUCTION OF HOMOSEXUALITY AND ITS CONSEQUENCES IN CONTEMPORARY IRAN

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ABSTRACT

There has been a substantial increase in recent years in studies on the condition of sexual minorities in Iran, whereas until about 12 years ago this was a somewhat neglected area. However, the focus of such studies has been on identity issues. By contrast, the purpose of this article is to focus on the objectification of such minorities by the authorities and the way they deal with them. This includes the likely impact of recent changes in the criminal law relating to homosexual conduct in Iran. The focus will be on homosexuality rather than transgender issues from 2000 onwards. Sources used include recent reports by human rights organisations, Iran's penal code and articles in the official and semi-official press in Iran.

I argue that the regime in Iran has adopted a hybrid of 'pre-modern' and 'modern' ideas and methods in dealing with 'homosexuality', with a shift towards more 'modern' methods in more recent years. 'Homosexuality' is being reconstructed in Iran and the previous distinctions between mental orientation and physical actions have become blurred.

This article has relevance to historical debates on constructionism. Moreover, it has practical impact as it is relevant to the raising of human rights issues, not only inside Iran, but also in other countries with relevance to Iranian refugees. The latter issue is particularly pertinent at the present time given Trump's attempt to ban all Iranians from entering the USA and anti-immigrant campaigns and policies in other countries, including the UK.

INTRODUCTION

There have been a number of academic studies on sexual minorities in Iran in recent years. The focus of such studies tends to be the question of identity and how individuals see themselves.¹ Afsaneh Najmabadi also looks in detail at official views of sexual minorities with strong emphasis on transgender people.² However, there is little research by academics on the treatment of sexual minorities by the Iranian criminal justice system, and where undertaken there are often major misunderstandings. For instance, Bucar and Shirazi suggest that cases involving consensual homosexuality are not likely to be tried in Iran because the burden of proof is so high.³ They disregard the most common form of proof for serious sexual offences, which is the same for non-consensual offences, as in Iran they are different forms of the same crime. They also make no reference to the new penal code, which was available at the time of publishing their work. Moreover, they rely heavily on Sunni sources, which are not accepted as authoritative in predominantly Shi'a Iran.⁴ There is clearly scope for further work on this subject.

Janet Afary makes brief reference to the policing of homosexuality in Iran.⁵ She argues that the current regime in Iran is not 'countermodern' and that Foucault's theories on the 'technologies of power' such as systems of surveillance can help us to understand the way power works in the current regime as much as during the preceding government.⁶ Darius Rejali makes a similar argument in his work on torture in Iran with regard to the emergence of 'modern' Iranian penal practices in the course of the 20th century, which carried on even though some 'pre-modern' forms of punishment were reintroduced after the fall of the last

¹ Janet Afary, *Sexual politics in modern Iran* (Cambridge: Cambridge University Press, 2009), 351-358; Pardis Mahdavi, 'Questioning the global gays(ze): constructions of sexual identities in post-revolution Iran' in *Social Identities* 8, No 2, (March 2012), 223-227; Katarczyna Korycki and Abouzar Nasirzadeh "Desire recast the production of gay identity in Iran" in *Journal of Gender Studies* 25, No. 1 (2016), 150-65; Ahmad Karimi 'Iranian homosexuals; social identity formation and the question of femininity' in *Culture & Psychology* 22, No. 2 (2016), 296-313; Ahmad Karimi, "Hamjensgara belongs to family; exclusion and inclusion of male homosexuality in relation to family structure in Iran" in *Identities: Global studies in culture and power* (2017), available at <http://dx.doi.org/10.1080/1070289X.2017.1286921> [accessed 20 February 2017].

² Afsaneh Najmabadi, *Professing selves: Transsexuality and same-sex desire in contemporary Iran* (Durham and London: Dukes Press Ltd, 2014).

³ Elizabeth M Bucar and Faegheh Shirazi, "The 'invention' of lesbian acts in Iran: Interpretative moves, hidden assumptions, and emerging categories of sexuality" in *Journal of Lesbian Studies* 16, No. 4, (2012), 418. I discuss this form known as the 'knowledge of the judge' rule below.

⁴ Bucar and Shirazi, *Lesbian acts*, 422, 424-425, 427-428.

⁵ Afary, *Sexual politics*, 358-359.

⁶ Afary, *Sexual politics*, 267; Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 1975), 30-32. Please see Bibliography for translations of non-English titles.

Shah in 1979.⁷ Foucault described such ‘pre-modern’ punishments as *supplice*, including torture, corporal punishments and public forms of execution calculated to inflict pain.⁸ Somewhat earlier than in Iran, in France by the 19th century *supplice* upon the body gave way to ‘modern’ practices, which were more hidden and more scientific and aimed to reshape the mind with less emphasis on bodily punishment.⁹ Parallel with this argument was Foucault’s description of the ‘sodomite’ as a *relaps*. This indicates an offender who had proved himself impenitent by repeating his offence, thus becoming liable to capital punishment and no more than the subject of a juridical process.¹⁰ However, from the late 19th century the *homosexuel* became an *espèce* (species) who was then objectified and pathologised and subjected to medical and psychiatric examinations and investigations.¹¹ Similar constructionist views have been expressed by others, with David Greenberg, for example, also postulating that the ‘medicalisation’ of ‘homosexuality’ took place towards the end of the 19th century.¹² I agree that there is a great deal of truth in this. However, I argue that the regime in Iran has developed a hybrid of ‘pre-modern’ *supplice* and more ‘modern’ and ‘scientific’ approaches to homosexuality and its punishment in combination, although as we shall see there may be a shift to a more ‘modern’ approach in recent years.

Using that central argument, the purpose of this article is to examine the official views and legislation on sexual minorities in Iran and how this impacts the lives of individuals either through punishment or medical treatment. To that end, key questions explored in this article include: How does medical knowledge contribute to control the bodies and minds of sexual minorities? How far are there any ‘premodern’ and ‘modern’ elements in the theory and operation of punishment of the body for same sex behaviour? How far have recent changes in the law impacted on cases?

I commenced research on this topic in 2005 and 2006 because I discovered that immigration departments in many countries, including the UK and the Netherlands, poured cold water on the suggestion that sexual minorities were persecuted in Iran or put in danger

⁷ Darius M Rejali, *Torture and modernity: Self, society and state in modern Iran* (Boulder: Westview Press, 1994) 121-122. For clarity I draw on Iranian historians in using the terms ‘modern’ and ‘pre-modern’ to refer roughly to the periods of Iranian history before and after the Constitutional Revolution of 1906 whereas Foucault uses the term ‘modern’ to refer roughly to the period since the late 18th century in France and Britain. Although some of Foucault’s claims may be open to question I agree that the term ‘modern’ signifies qualitative changes in a number of fields including scientific discourse, sexuality and penal practices and that ‘more modern’ does not necessarily mean kinder or less repressive. Afary, *Sexual politics*, 19ff, 111ff; Rejali, *Torture*; Foucault, *Surveiller et punir*, 14-15; Foucault, *Les mots et les choses: Une archéologie des sciences humaines* (Paris: Gallimard, 1966), 229, 238-39, 315.

⁸ Foucault, *Surveiller et punir*, 42-44. In the current Iranian context this includes such punishments as stoning, short drop hanging and whipping. Rejali, *Torture*, 121.

⁹ Foucault, *Surveiller et punir*, 17-18, 24.

¹⁰ Michel Foucault, *Histoire de la sexualité: La volonté de savoir* (Paris: Gallimard 1976), 59. The *relaps* rule also applied to witchcraft and heresy with which sodomy was associated. Lynne Huffer, *Mad for Foucault: Rethinking the foundations of queer theory* (New York: Columbia University Press, 2010), 73; Brian P. Levack, *The witch-hunt in early modern Europe* (New York and London: Routledge, 2013) 52, 93-94.

¹¹ Foucault, *La Volonté de savoir*, 59-62.

¹² David Greenberg, *The construction of homosexuality* (Chicago and London: University of Chicago Press, 1988), 397-433.

if repatriated.¹³ Reliable sources to counter such claims were very thin indeed. Fortunately, there are now many well-documented reports by human rights organisations that can be drawn upon to support such cases.¹⁴ However, these are largely neglected in academic studies so I intend to use them as key primary sources in this article. In spite of improvements in recent years, the situation has become critical again with Trump's ban on Iranian refugees, resulting in many Iranians who had been granted refugee status becoming trapped in transit in Turkey.¹⁵

There is not enough space here to do full justice to the subject and this article does not pretend to be comprehensive. As a result of limited space, I also cannot elaborate much on transgender issues. By contrast to homosexuality, these have been far better covered in other studies on Iran.¹⁶ My focus will be on the treatment of homosexuality by the criminal justice system in Iran during this century.

I will tackle first the terminology used in official circles. I then examine medical interventions that aim to cure homosexuals, comparing Iran with past practices in other countries such as the UK and the USA. I will then look at the criminal law including the recent changes in the new penal code. Finally, I look at how the law is enforced in practice by selecting and examining a small number of criminal cases. The last task will prove to be particularly challenging to research due to the lack of transparency in the Iranian criminal justice system.

Official sources include speeches and statements by leading Iranian politicians, a key religious text, legal codes and press reports. These sources are counterbalanced by reports by and personal consultations with human rights organisations. I also use official, and some direct confidential correspondences with individuals with knowledge of a relevant criminal case and, where not possible, such contacts made by another researcher visiting the country. In the latter case, I ensured that the source was reliable and that the information could at least partially be corroborated by other sources. Extreme care was put into ensuring confidentiality, given potential consequences.

TERMINOLOGY

The most commonly used term in official circles and in the press in Iran relating to homosexuality is *hamjensbāzy* or *hamjensbāz* when referring to the person. The term *hamjensbāz* is also used as an abusive epithet. According to Arsham Parsi, who is an advocate

¹³ Letter by H Anderson, Country Policy Team, British Home Office, to author, 19 October 2005; Letter from Rita Verdonk, Minister for Immigration and Integration, to Second Chamber of States-General of the Netherlands, 5403360/06/DVB, 28 February 2006.

¹⁴ Faraz Sanei, "We are a buried generation: Discrimination and violence against sexual minorities in Iran" (New York: Human Rights Watch, 2010); IHRDC, 'Denied identity: Human rights abuses against Iran's LGBT community' (November 2013); Outright Action International (OAI), "Human Rights Report: Being Transgender in Iran" (New York: OAI, 2016); "Human Rights Report: Being Lesbian in Iran" (New York: OAI, 2016).

¹⁵ Arsham Parsi, "Affect of US Immigration Moratorium on the lives of LGBT refugees in Turkey," 28 January 2016. Available at <http://irqr.ca/2016/?p=455> [accessed 29 January 2016].

¹⁶ Najmabadi, *Professing selves*; Raha Bahreini, "From perversion to pathology: Discourses and practices of gender policing in the Islamic Republic of Iran" in *Muslim World Journal of Human Rights* 5, No. 1 (2008).

for sexual minorities from Iran seeking asylum, the term is very rarely a term of self-description except among some of the older generation.¹⁷ They literally mean ‘same sex play’ or ‘player’. They are terms hard to translate and some suggest that the terms are linked to ‘predatory’ stereotypes or confined to the passive partner.¹⁸ However, *hamjensbāz* appears to be derived from the Anglo-American phrase and concept ‘practising homosexual’.¹⁹ This English phrase also has highly negative and pejorative overtones.

These Persian terms are of relatively recent origin and appear to have gained currency in the 1960s.²⁰ They relate to a very ‘modern’ and ‘scientific’ but still highly negative view of homosexuality, regarding it as having a medical and psychological rather than demonic origin. The terms were popularised in the works of Hasan Hasuri and later by other medical specialists such as Muhammed Muvahhidi.²¹ Hasan Hasuri was trained as neurologist in the USA and clearly brought with him highly negative theories on homosexuality that were highly prevalent at the time.²² *Hamjensbāzy* is, therefore, a broad term relating to actions, rather than feelings or desires.

Almost the reverse is true of a somewhat different term, *hamjensgerāy*. This term may have emerged a little later and was used in the Iranian press by 1973 and in a negative way.²³ The word *hamjensgerā* refers to people in the singular, while *hamjensgaryan* in the plural and can refer to men or women. It is often used as a term of self-description, by contrast to the more negative term *hamjensbāz*. Literally when employed it means ‘same sex orientation’, or ‘oriented’ in the case of an individual. It refers to feelings and desires rather than actual actions. Therefore, in their original meanings, *hamjensgerāy* seems to be related primarily to the mind, whereas *hamjensbāzy* to the actions of the body. Curiously though, in the new penal code they now use the term *hamjensgerāy* in place of *hamjensbāzy* to describe all same sex acts including sexual kissing and touching.²⁴

¹⁷ Telephone interview with Arsham Parsi, 14 March 2017.

¹⁸ Afary, *Sexual politics*, 352. Email from Hossein Alizadeh, regional coordinator at Outright Action International (OAI), to author, 08 November 2007.

¹⁹ Potkin Azarmehr, a researcher for Manoto TV, gave me this straightforward definition, personal communication, 10 September 2010.

²⁰ Two much older terms existed by the late nineteenth century, *bachchahbāzy* and *amradbāzy* referring to pederasty, Afsaneh Najmabadi, *Women with moustaches and men without beards: Gender and sexual anxieties of Iranian modernity* (Berkeley: University of Californian Press, 2005), 56, 60, 147-148; *-bāz* is also used in various non-sexual contexts including to describe soldiers, pigeon hobbyists and gamblers.

²¹ Najmabadi, *Professing selves*, 57-58.

²² *Ibid.*, 55.

²³ *Ibid.*, 57.

²⁴ Qanun-e Majazat-e Islami [Islamic Penal Code], 2013, Article 237.

Typically, it is the term *hamjensbāzy* that is used in public speeches and the legal media in Iran.²⁵ However, the term *hamjensgerāy* is also sometimes used. As one example, the former President of Iran, Mahmoud Ahmadinezhad, in response to questions about ‘homosexuals’ or ‘gays’ in the USA most notoriously stated “we do not have the hamjensbāz (translated to audience as ‘homosexuals’) like you have in your country” and that “absolutely such a thing does not exist as a phenomenon” in Iran.²⁶ In a subsequent interview the following year he attempted to clarify his remarks suggesting that it was the open practice of *hamjensbāzy* that was prohibited. Curiously he switched to *hamjensgerā* when denying the possibility of their execution other than for murder, rape or drug offences and that otherwise they were “not known to be hanged”.²⁷ In other words, Ahmadinezhad implied a distinction between *hamjensbāzan*,²⁸ who express and act upon their desires in some kind of public way as in the USA, and another type of *hamjensgerā*, who keep their actions private and secret.²⁹

Distinctions by officials are sometimes made in a different way. Arsham Parsi was told by an Iranian official at Geneva in October 2006 “there are two types of *hamjensgerā*.”³⁰ There are those who are sick. The official had no problem with them ... they deserved help. It was the other group he had a problem with - deviants who he believed corrupted Iranian society”.³¹ This diplomat expressed a relatively esoteric official view that comes not from Shi’a traditions but more ‘modern’ views of sexuality. Similar views were prevalent in Europe and North America in the 1950s and 1960s and earlier. This was expressed, for instance, in trials for homosexuality in the UK in the 1950s distinguishing between the ‘inverts’, who cannot help themselves and are ‘sick’ and can be sent for medical treatment, and the depraved ‘pervert’ merely acting out ‘lust and wickedness’, who should be sent to prison.³² Najmabadi suggests that this distinction sometimes works in a different way in Iran. Medical specialists since the late Pahlavi period often distinguish between *tarajens* (transsexual), people who can be helped, and *hamjensbāzan*, who are regarded as corrupt and depraved and worthy of

²⁵ For example by Ayatollah-e Ozma Seyyed Ali Khamenei, the head of state in Iran: ‘The Leader’s Remarks in Meeting with Chairman and Members of the Assembly of Experts’ 26 May 2016. Original Persian sound clip - relevant sentence from 12 mins 55 secs: <https://tinyurl.com/y8dmbb5p>. Official English translation: “They legalize homosexuality (*hamjensbāzy*) in countries, [and] not only legalize it, but [also] strongly boo those who have [any] objection to this; can corruption go any higher than this?” in <http://leader.ir/en/speech/15163/The-Leader’s-Remarks-in-Meeting-with-Chairman-and-Members-of-the-Assembly-of-Experts> [accessed 15 March 2017].

²⁶ Extract from CNN broadcast of Q&A after speech of Mahmoud Ahmadinezhad at Columbia University, New York, 24 September 2007 <https://www.youtube.com/watch?v=xou92apNN4o&t> [accessed 11 August 2017] Trans. Hossein Alizadeh, email to author, 08 November 2007.

²⁷ *Democracy now*: Interview between Mahmoud Ahmadinezhad and Amy Goodman and Juan Gonzalez, Part 2, 26 September 2008. https://www.democracynow.org/2008/9/26/iranian_president_mahmoud_ahmedinejad_on_iran

²⁸ Plural form.

²⁹ Ahmadinezhad, *Democracy now*, 2008.

³⁰ Arsham Parsi told me this was the Persian word used, Interview, 14 March 2017.

³¹ Craig and Mark Kielburger, “Speaking up for gay rights in Iran” in *Huffington Post*, 13 May 2009. Available at http://www.huffingtonpost.com/craig-and-marc-kielburger/speaking-up-for-gay-right_b_174776.html.

³² Aleardo Zanghellini, *The sexual constitution of political authority: The ‘trials’ of same-sex desire* (Routledge, 2015), 171-172.

punishment.³³ I would argue that the distinction is not always as neat and tidy. There are 'bad' *tarajens* who fall foul of the law³⁴ and 'good' *hamjengaryan*³⁵ who are repentant and comply with the law, or even volunteer for treatment. In the next section I will consider such treatments and their origins.

TREATMENTS OF MIND AND BODY

At the time of the emergence of the terms *hamjensbāzy* and *hamjensgerāy* in Iran, the predominant scientific view inside and outside the country was that homosexuality was a 'psychopathological condition' that could be cured.³⁶ Both the 1952 and 1968 versions of the influential Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association classed homosexuality along with other 'sexual deviations' and drug and alcohol addiction as a 'sociopathic personality disturbance'.³⁷ As Greenberg points out, psychological behaviourists had a strong influence at this time. They denied that sexual orientation could be innate. Therefore, it could be cured by 'reconditioning', which included 'aversion therapy' techniques.³⁸

Such views still influence the official opinion on homosexuality in Iran. Behind the Ayatollahs lurk today's medical experts. Specialists at the Shahīd Beheshtī University denounced the final removal of homosexuality from the DSM as 'unscientific' and due to political pressure.³⁹ As we shall see, their psychologists play a key role in the treatment and attempted cures of homosexuality. Summing up their general approach on changing behaviour, the social psychology department quotes a phrase from Kurt Lewin, a prominent American psychologist and behaviourist who died in 1947, though he personally did not write much on homosexuality:

³³ Afsaneh Najmabadim, "Verdicts of science, rulings of faith: Transgender/sexuality in contemporary Iran" in *Social Research in Social Research: An International Quarterly* 78, No2 (2011), 5.

³⁴ OAI, *Being Transgender in Iran*, 31-33.

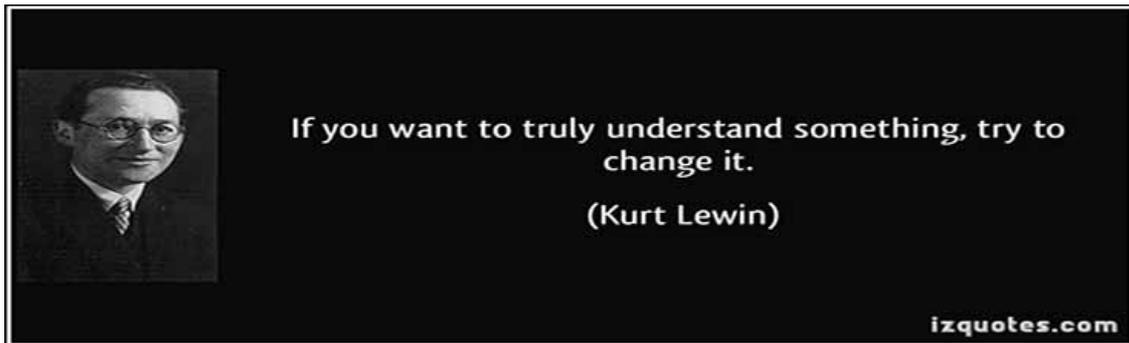
³⁵ Plural form.

³⁶ Martin Weinberg and Colin Williams, *Male homosexuals: Their problems and adaptations* (New York: Oxford University Press, 1974), 3-4.

³⁷ Diagnostic and statistical manual: Mental disorders (Washington: American Psychiatric Association, 1952) 7; DSM II: Diagnostic and statistical manual of mental disorders (Washington: American Psychiatric Association, 1968), 79.

³⁸ Greenberg, *Homosexuality*, 431.

³⁹ Najmabadi, *Professing selves*, 347, no. 72.



Motto of Social Psychology Department of Shahid Beheshti University

http://en.sbu.ac.ir/Faculties/Education_and_Psychology/phycologyresearch/Pages/Goals.aspx

Source of image, izquotes.com: <http://izquotes.com/quote/111460> [accessed 11 August 2017]

Attempts to cure homosexuality were frequent in the 1950s and 1960s, particularly in the UK, USA and West Germany, where male homosexual conduct was treated as a serious crime before the late 1960s. Some cases involved castration or brain operations.⁴⁰ Most usually they included aggressive hormone treatments and 'aversion therapy' techniques, including nausea-inducing drugs and electric shocks.⁴¹ Studies at the time suggested such treatments were successful in only a few cases and in some others there was even an increase in homosexual activity afterwards.⁴²

As is well known, sex change operations are not only legal in Iran, but officially encouraged. They date back from a *fatva* of Ruhollah Khomeini.⁴³ In many cases they clearly make a positive difference to peoples' lives. However, in many other cases such operations are performed involuntarily and on those who are not genuine transgender people. The Human Rights Watch organisation has evidence of a number of Iranian *hamjensgaryan* being subjected to such therapies in the present day, including hormone treatment and electric shocks. In addition, there are reports of forced sex changes.⁴⁴ Arsham Parsi, a specialist advocate for Iranian sexual minority refugees, estimates that up to 45% of the sex change operations are performed on *hamjensgaryan* to 'cure' them of their sexual orientation. The end result is typically serious distress to those forced to undergo such operations inappropriately. Some flee the country in order to escape such a fate.⁴⁵

One case of flight to escape this fate involved Maryam, a young female *hamjengerā*. She had had repeated problems with the authorities because of her sexuality in the capital,

⁴⁰ Norman St John Stevas, *Life, death and the law: A study in the relationship between the law and Christian morals in England and the United States* (London: Eyre & Spottiswoode, 1961), 227; Greenberg, *Homosexuality*, 432.

⁴¹ Tudor Rees and Harley Usill, *They stand apart: A critical survey of the problem of homosexuality*, (London: Heinemann, 1955), 127-130; Greenberg, *Homosexuality*, 431-432; Sexual Aversion' broadcast BBC2, 8 August 1996.

⁴² Gordon Westwood, *A minority: Report on the life of the male homosexual in Britain* (Edinburgh: R&R Clark Ltd, 1960), 48.

⁴³ IHRDC, *Denied identity*, 12-13; Najmabadi, *Professing selves*, 165-167.

⁴⁴ Sanei, *Buried Generation*, 38-41. See also Mohammed Yadegarfar and Fatemeh Bahrambardian, "Sexual orientation and human rights in the ethics code of the Psychology and Counselling Organization of the Islamic Republic of Iran" in *Ethics & Behavior* 24, No.5, 358-359.

⁴⁵ BBC Newsnight Report, 5 November 2014 <https://www.youtube.com/watch?v=xEfoPsWpxTc> [accessed 15 February 2017].

Tehran. She had been expelled from school shortly before taking her exams and she was prohibited from studying at any other school. Around the year 2000, at the age of 19, she finally found a job, but was again caught out and referred to her employer's 'Office of Guiding' in charge of the policing of morals in that company. She was assumed to be mentally ill and made to take medications to treat this. A reputable and sympathetic doctor disputed this diagnosis and said that she was simply a homosexual and had no mental illness, but her employer's 'Office of Guiding' refused to accept this. When she told her 'guides' that the treatment was having no effect, her employer dismissed her. She was arrested shortly afterwards by plain-clothes officers. They repeatedly burned her skin with cigarettes and practised psychological torture methods on her, including blindfolding. She could hear the screams of other prisoners being tortured in cruder ways. After a few days she signed a confession. She was then referred to two female psychologists at the University of Shahīd Beheshti. They tried to persuade her to undergo a sex change operation:⁴⁶

They tried to convince me that I was falsely inculcating myself with the notion that my attraction is only to females. At the end of this 'treatment', they offered to change my sexuality through surgery, and later ordered me to have it. "No", I said. "I'm Maryam, a girl, and I do not want to be a man!" The female doctor told me, "If you don't change your sexuality and you continue unlawful acts, your future will be a death sentence".⁴⁷

After enduring this treatment for six months, she attempted suicide. Fortunately her mother managed to save her by taking her to hospital. Shortly afterwards, she fled to Turkey and was awarded refugee status by the UNHCR soon after.⁴⁸

In another, more recent, case a twenty-four year-old male *hamjengerā* received both, a doctor's recommendation to change sex and a court order warning him that if he refused he would be considered for prosecution before a clerical court.⁴⁹ In Europe's distant past the unrepentant or recidivist 'sodomite' (Foucault's *relaps*) would be passed on by the clergy to the secular authorities for punishment. In contemporary Iran the medical expert can pass them on to the clergy for punishment. It is to this topic that I shall now turn.

LAW ON PUNISHMENT OF THE BODY FOR CRIMES OF THE BODY

Under the secular law of the regime of the Pahlavi dynasty sex between men was completely illegal and could be punished up to ten years imprisonment under certain circumstances. However, there were no legal penalties for sex between females. Since 1979 and the overthrow of the last Shah, sex between men can be punished with the death penalty under certain circumstances, while sex between women has been criminalised.⁵⁰

⁴⁶ Doug Ireland, "A tale of persecution in Iran" in *The Advocate*, 13 September 2006. Available at <https://www.advocate.com/news/2006/09/13/tale-persecution-iran> [accessed 5 March 2017]

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ IRQO, "The violations of economic, social and cultural rights of lesbian, gay, bisexual and transgender (LGBT) persons in the Islamic Republic of Iran," March 2013, 12.

⁵⁰ IHDRC, Denied identity, 5.

The penal code of Iran uses the term *lavāt*, which is related to the name of the prophet Lot (*Lūt* in the Qur'ān) and the story of Sodom. The association of this story with homosexuality is controversial, but suffice to say that the religious authorities in Iran interpret it in this way. One widely circulated and influential work that gives this interpretation is *Gonāhan-e Kabīrah* (Major Sins) by Grand Ayatollah Dastagheib who was a leading figure in the early years of Khomeini's regime but was assassinated in 1981.⁵¹ Such works are not merely religious tracts, but the basis for law. Dastagheib was uninfluenced by medical theories and did not use such terms as *hamjensbāzy* or *hamjensgerāy* in this book, although he did use the 'modern' phrase *enherāf-e jensī* (sexual deviance).⁵² He viewed such 'deviance' in purely religious terms citing a range of centuries' old Shi'a traditions on the subject prohibiting all forms of same sex conduct, particularly penetration.⁵³ The origin of *lavāt* was Satan who taught the *qawm-e Lūt* (tribe of Lot) such acts, which they then proceeded to do in front of each other. Executions are accordingly justified because where it becomes open *enherāf-e jensī* it then spreads throughout society, as was the case with the *qawm-e Lūt*, which resulted in divine destruction.⁵⁴ The judge can choose from a range of methods of *supplice*, including stoning or burning the person alive for this crime.⁵⁵ We shall now turn to the current provisions of the Iranian penal code, including the use of the death penalty.

Since 2013 a new version of the penal code has been put in force. As Nayyeri points out, this was the outcome of a process that intended to reform its provisions, although in practice such reforms have proved limited, and in some cases penalties have even been increased.⁵⁶ The previous version of the penal code defined *lavāt* as *vati'* (congress) between males, and specified that it can take the form of *dakhūl* (literally 'entering' or 'penetration' i.e. anal penetration) or *tafkhīz* (literally rubbing).⁵⁷ The old code used the phrase '*tafkhīz va nazāir*' (*tafkhīz* and the like or similar) suggesting a broad range of sexual acts, but the new code restricts the term *tafkhīz* to inter-femoral intercourse.⁵⁸ The present version of the code also restricts the definition of the term *lavāt* to *dakhūl* and treats *tafkhīz* as a separate but related crime.⁵⁹ Sex between women has never been classed as *lavāt*; rather, the term *mosaheqeh* and, once again, the new code give a more restricted definition.⁶⁰ This is derived from the Arabic term *sihaq* and again relates to genital 'rubbing', in this case between females. The term *zenā*

⁵¹ Ayatollah-e Ozma-e Syed-e 'Abdol-e Hossein-e Dastagheib-e Shirazi, *Gonāhan-e Kabīrah* [nd] [own translation]; Interview with Arsham Parsi, 14 March 2017; Arsham Parsi and Marc Colbourne, *Exile for love: The journey of an Iranian queer activist* (Halifax and Winipeg: Roseway Publishing, 2015), 12-13.

⁵² Dastagheib, *Gonāhan-e Kabīrah*, 208.

⁵³ Ibid, 203-211.

⁵⁴ Ibid, 208.

⁵⁵ Ibid.,207-208.

⁵⁶ Mohammed Hossein Nayyeri, "New Islamic Penal Code of the Islamic Republic of Iran" in *Human rights in Iran Unit: Research Paper Series* (University of Essex. 2012) p. 4. See also Faraz Sanei, *Codifying repression: An assessment of Iran's new Penal Code* (Human Rights Watch, 2012).

⁵⁷ Qanūn-e Mājāzat-e Islāmī (QMI 1991), Article 108. [own translation]

⁵⁸ QMI 1991, Article 121; QMI 2013, Article 235; IHRDC, *Denied identity*, 12.

⁵⁹ Qanūn-e Mājāzat-e Islāmī (QMI 2013). For convenience the old and new versions of the penal code will from now on be referred to respectively as QMI 1991 and QMI 2013.

⁶⁰ QMI 1991, Article 127; QMI 2013, Article 238; IHRDC, *Denied identity*, 12.

refers to anal and vaginal penetration between males and females who are not married to each other.⁶¹ This can also carry harsh penalties including even death by stoning for those who are married to others.⁶² However, Shi'a jurisprudence does allow 'temporary marriage' between a male and a female.⁶³ No kind of marriage is tolerated between two people of the same sex and therefore sexual relations between them are always illegal. As before, cases of rape or paedophilia involving penetration are not a distinct offence but are a form of *zenā*, if the victim is female, or *lavāt*, if the victim is male, and absence of consent is a defence to either charge.⁶⁴

As stated above, *hamjensgerāy* is now used in the new penal code. The old code did not use that word and only used *hamjensbāzy* in the context of the definition of *mosaheqeh*.⁶⁵ The context now refers to the punishment for sexual behaviour, such as 'kissing or touching as the result of lust (*shavat*)', as punishable by the suppliance of between 31 and 74 lashes with the whip at the judge's discretion.⁶⁶ Accordingly, in official doctrine *hamjensgerāy* now clearly refers to any kind of physical expression of same sex desire and not just the mental element.

With the implementation of a new penal code in 2013 the death penalty is now more restricted to homosexual behaviour in response to international criticisms on this issue in recent years. Under the old law, the mere fact of anal penetration between males was sufficient to warrant a mandatory death sentence.⁶⁷ Now, this only applies in certain circumstances. Firstly, the only cases where the death penalty would apply to both parties is where the insertive partner is married or he is a non-Muslim and the passive partner is a Muslim. Secondly, in cases where there is force and coercion only the insertive partner would be liable to the death penalty and no punishment would apply to the victim. Finally, in other cases a death sentence would apply to the passive partner only, whereas the insertive partner would be punished by 100 lashes for the first three offences and only by death if he had been convicted a fourth time.⁶⁸ The harsher treatment of passive partners is in part due to the greater social stigma attached to them and has the support of some Shi'a traditions.⁶⁹

A further change is that the new code places restrictions on investigations into consensual sex offences committed in private, though this does not amount to decriminalisation. In cases of *vuqu'-e jorā'm-e manāfiye 'effat* (crimes contrary to chastity) 'any type of investigation of and interrogation to discover the hidden affairs and things concealed from the public view shall

⁶¹ QMI 2013, Article 221.

⁶² QMI 2013, Articles 224-225.

⁶³ Afary, *Sexual politics*, 285-287.

⁶⁴ IHRDC, *Denied identity*, 22.

⁶⁵ QMI 1991, Article 127.

⁶⁶ QMI 2013, Article 237; IHRDC: English Translation of Books I & II of the New Islamic Penal Code available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

⁶⁷ QMI 1991, Article 110.

⁶⁸ QMI 2013, Article 136 & 234; IHRDC, *Denied identity*, 9-10.

⁶⁹ *Ibid*, 8.

be prohibited'.⁷⁰ This does not apply where there has been a confession or other admissible evidence or where there are allegations of coercion or deception or anything else impacting on consent.⁷¹

In many other respects there has not been much change. *Tafkhīz* and *mosaheqeh* are still punishable by 100 lashes for the first three offences and death upon conviction for a fourth time or on the first occasion where the 'active party' in a *tafkhīz* case is non-Muslim and the other party a Muslim.⁷² The forms of proof are the same. This can be four witnesses seeing the act, in practice rarely used, confession repeated before the judge four times, and finally the '*elm-e hakīm* (knowledge of the judge).⁷³ Other lesser offences have a lower standard of proof.

Anna Enayat is a Middle Eastern specialist at Saint Antony's College, Oxford. She points out that the 'knowledge of the judge' alone is sufficient to prove the crime of *lavāt*. This term was defined in the 1992 Iranian textbook of general criminal law as meaning 'the judge's certainty that a crime has been committed ...'. She adds: 'the 'knowledge of the judge' can be described as circumstantial or ordinary evidence. It has long been the most important method of proof for the crime of *lavāt*.⁷⁴ It includes the use of medical evidence for penetration. It is therefore a very 'modern' form of proof compared to the other two pre-modern forms.⁷⁵ I shall now consider how such cases operate in practice.

PUNISHMENT OF BODIES FOR CRIMES OF THE BODY SINCE 2000

It is extremely difficult to get information on individual sex cases. Faraz Sanei and Anna Enayat both tell us that normally the hearings are held 'in camera' with restricted access to the court and restrictions on reporting.⁷⁶ Mr K, a lawyer who had been involved with cases concerning consensual homosexuality, stated that such cases were rarely reported. He gave as the main reason, 'Islamic clerics insisted that these cases remain private to try and protect the Islamic society from being corrupted, and that publicity might cause other people to commit these sinful activities'.⁷⁷ While the reaction of the outside world is also a consideration, such a fear would appear to be the principal reason for such secrecy as was

⁷⁰ QMI 2013, Article 241; Trans IHRDC.

⁷¹ Ibid.

⁷² QMI 2013, Articles 136, 236, 239.

⁷³ QMI 2013, Articles 164-200, 211-113; IHRDC, *Denied identity*, 10-11.

⁷⁴ Anna Enayat evidence in RM and BB (homosexuals) Iran CG [2005] UKIAT 00117, available at http://www.ait.gov.uk/judgmentsfiles/j1766/00117_ukiat_2005_rm_bb_iran_cg.doc.

⁷⁵ Only these two forms are referred to in Gohhanan-e Kabir, Dastagheib, 207-208.

⁷⁶ Sanei, *Buried Generation*, 27; Anna Enayat in *ibid*.

⁷⁷ Mr K in RM and BB (homosexuals), Iran CG [2005] UKIAT 00117, 11-12.

the case in Early Modern Europe reflecting what might be seen as a 'pre-modern' attitude to such crimes.⁷⁸

Some cases of *lavāt* are reported in the officially sanctioned press and either portray the case as one of rape or in a few cases as involving blackmail. While this may be fair reporting of some cases, these publications will rarely question official information; therefore, reports need to be treated with extreme caution. They are often vague and uninformative. The Boroumand Foundation which monitors executions in Iran repeatedly cautions about taking such reports at face value, given repeated reports of 'trumped up charges' against political opponents, which included sexual offences and poor standards in the judicial process.⁷⁹

Mr K himself defended once a student in a case of consensual homosexuality that, typically, was not publicised. His client was sentenced to death in Tehran for *lavāt*. Mr K stated that the youth had been convicted by confession. Sperm had been found in his body indicating that he had been receptive and as such would still be liable for execution under the present law. The offences took place in a room in a student dormitory with his roommate but no information is known about the punishment for the latter. They had both been reported to the dormitory authorities by another student.⁸⁰

Two later capital cases, which also clearly involved consensual homosexuality, were, untypically, reported in the Iranian press in 2005. Both involved allegations of blackmail. The first of these cases was a report in '*Etemād*' about another case in Tehran in March 2005.⁸¹ No other source, official or otherwise, is known to exist about this case. The case came to light when the wife of a male wrestler discovered a video of her husband and a much older man having sex and took it to the authorities making a complaint. The husband was arrested and confessed. The older man was described as a *hamjensbāz* both, by the wife and her husband, evidently not considering himself to be one. The older man was very rich and gave the younger man a great deal of money. He said the video was made secretly for the purpose of blackmail in case the older man ceased such payments. The older man also confessed after interrogation. Both were sentenced to death.⁸² The fact that the younger man was married aggravated the offence and meant that he would still be liable for execution under the current law. So would the older man, provided that he was the receptive partner, although the article referred to him as a *motajāvoz*, which normally means rapist, suggesting he was the 'corrupter' and therefore the guiltier of the two.⁸³

⁷⁸ For instance in 17th century Scotland trials and executions for sodomy (as in Iranian law defined in Scottish Law as penetration between males only) and bestiality were often but not invariably carried out in secret for fear that the publicity would spread such crimes. George Mackenzie, *The laws and customs of Scotland in matters criminal* (Edinburgh: Andrew Anderson, 1699), 81-82, 279.

⁷⁹ See for example the disclaimer on the Hadi Safdari case: <https://www.iranrights.org/memorial/story/-4510/hadi-safdari>.

⁸⁰ Mr K Evidence to UKIAT 00117, 13.

⁸¹ 'Zānī bā afshāye yek film-e vīdeoye shōhar-esh rā beh 'edām kashānd' in '*Etemād*', 25 Esfand 1383, 25 March 2005 [own translation]; Sanei, *Buried generation*, 29.

⁸² Ibid.

⁸³ Ibid.

The second of these cases was in Bojnord in Khorasan province in the north-east of the country. Unlike the two previous cases, for this one it is known that the execution was carried out. This case is especially important compared to other cases as it is certain that it involved consensual homosexuality and that it led to an execution, a possibility discounted in some quarters, including those examining asylum cases in many countries. A man named Hadi Safdari was executed there for *lavāt* on 28 April 2005. This case was publicised in both Kayhan and the local Quds Daily newspapers, both fairly conservative publications in Iranian terms. No other sources are known about this case independently of the official press. Neither of these articles make any suggestion of rape and both suggest that again the case came to light due to video evidence. Once again, the claim was made that the video was made for blackmail.⁸⁴

The Quds Daily headline called the defendant ‘Jabbar Singh’, perhaps referring to the notorious villain ‘Gabbar Singh’ in the Bollywood classic *Sholay*, thus relating *hamjensbāzy* to organised crime.⁸⁵ The article stated that he had a previous conviction for homicide after murdering his wife, but was released from prison after 18 months with the consent of his dead wife’s family. The person filming the sexual encounter was not sentenced to death, but was sentenced to be whipped as he was merely filming the activity and not taking part in it. The article does not make any mention of any sentence for the other partner, although under the new law if he was receptive, he and not the insertive partner would be liable for execution.⁸⁶

Three months later, in July 2005, two youths, whom I shall call M and A,⁸⁷ were executed in a public square in Mashhad in the same province.⁸⁸ A number of contradictory official claims were made giving different ages to suggest that they were both over eighteen.⁸⁹ However, the youths were quoted as saying that they were both aged seventeen.⁹⁰ The lawyer of M stated that his client was sixteen at the time of sentence.⁹¹ The youths were also quoted saying that they had been subjected to beating and abuse.⁹²

⁸⁴ Boroumand Foundation, Repor, available at <https://www.iranrights.org/memorial/story/-4510/hadi-safdari>.

⁸⁵ ‘Hokm-e ‘edām-e ‘Jabbār-e Singh’ dar Bojnōrd ejrā shod’ in *Quds Daily*, 10 Ordibehesht 1384, 30 April 2005. [own translation].

⁸⁶ Ibid, in *Quds Daily*, 30 April 2005.

⁸⁷ Their real names are uncertain but were probably Mohammed ‘Asgari and ‘Iyād ibn Kāzim al Marhuni (aka Ayaz Marhoni).

⁸⁸ Simon Forbes, *Mashhad, Place of martyrdom* (August 2006). Available at http://irqr.ipower.com/English/files/MASHHAD%20PLACE_OF_MARTYRDOM.pdf [last accessed Jan 2017] See also Sanei, *Buried generation*, 28; IHRDC, *Denied identity*, 21.

⁸⁹ Forbes, *Mashhad*, 23.

⁹⁰ ‘‘Edam dar malā’-e ‘ām-e dū nūjavan-e Khorramsharī dar Mashhad/mohokūmān: az majāzāt-e ‘aml-mān bey-etelā’ būdīm’ in *ISNA Khorasan*, 28 Tir 1384, 19 July 2005 [own translation].

⁹¹ ‘Dar iyn ‘edām dū nūjavan dar Masshad vakīl yek az ‘edam shodaḡān: sinn-e mōvakīl-e man dar hokm-e divān’aliye keshvar 16 sāl zikr shodeh ast,’ in *ISNA Khorasan*, 2 Mordad 1384, 24 September 2005 [own translation]; *ISNA Khorasan*, 19 September 2005.

⁹² Ibid.

The Iranian Students New Agency (ISNA), quoting an official source, described their crime as one of *lavāt-e beh 'onf* (forcible sodomy).⁹³ Another account of the case appeared in Quds Daily just before the execution to help attract a crowd to witness this public *supplice*. It published a statement attributed to another teenager aged thirteen, explaining that his bicycle disappeared while in a shop and on his way to a class at 8pm in the evening. He was then approached by two males and was asked for a small amount of money and went to retrieve his bicycle. Once in a secluded place these two males and others drew knives and proceeded to perform *ā'māl-e khilāf-e akhlāq* (practices contrary to morals) upon him.⁹⁴

An alternative account attributed to local male and female sources states that the thirteen-year old, F, was known to M and A and that parts of this statement were contested in court.⁹⁵ A number of passers-by disturbed a group of teenage males having sex with each other and shouted out. A woman, who later became a witness in court, looked out of her window and saw F fellating M and called over her husband who was a police officer. She told the court that there was no sign of coercion. Following their arrest, M, A and F were all sent for a medical examination which proved that they had all recently engaged in anal intercourse making it a capital case. The sources claim that the judge did not believe the claims that F had resisted the other two and sentenced him to be whipped.⁹⁶ Unlike his co-defendants, he was under the age of fifteen at the time of the crime, so not liable for execution. This was of course not how the Iranian press reported the case.

Their punishment clearly resembled a 'pre-modern' *supplice*. In addition to the death by strangulation on the gallows, M and A were also sentenced to 228 lashes for theft, drinking alcohol and disturbing public order, an unusually high number of lashes to accompany an execution.⁹⁷ They also made a point of holding the execution in public, which is now only done in a minority of capital cases in Iran. The public nature of their actions may have been a factor, given the traditional beliefs about Lot's tribe mentioned above⁹⁸ and the fact that A was reportedly unrepentant when arrested. Moreover, some local sources stated that F's father was a senior officer in law enforcement.⁹⁹ Another source, a former official in the Iranian Foreign Ministry who has since fled the country, disclosed that the father was a senior officer in the Islamic Revolutionary Guards Corps whose functions include law enforcement.¹⁰⁰ This is an extremely powerful body in Iran. One of the sources of the

⁹³ Ibid.

⁹⁴ 'Bā hokm-e sho'ab-e 133 dādghāh-e kayfarye Mashhad anjām shōd: 'edam- dū khalāfkār dar Meidan-e 'Edālat' in *Quds Daily*, 19 Jly 2005 [own translation with input from Anna Enayat].

⁹⁵ Emails from Adfhere Jama, former editor of Huriyah magazine, to author, 12 July 2006, 14 July 2006. Interview with Jama, 01 December 2007. Jama had received messages from his sources and went to Mashhad to meet them in the spring of 2006. He was shown a group photograph including F. Some minor details of Jama's information were corroborated by the late Mansour Ahwazi, an Iranian Arab politician, who had not discussed the case with Jama but had his own contacts inside Iran; personal communication with author, June 2006.

⁹⁶ Email from Adfhere Jama to author, 12 July 2006.

⁹⁷ *Quds Daily*, 19 July 2015; *ISNA Khorasan*, 19 July 2015.

⁹⁸ Dastagheib, *Gonāhan-e Kabirah*, 208.

⁹⁹ Email from Adfhere Jama to author, 12 July 2006.

¹⁰⁰ I exchanged emails with the source in 2006 and his ISP was of the Iranian Foreign Ministry.

alternative account was reportedly arrested, beaten and raped for discussing the case with a foreign researcher in 2006 ending any outside contact on the case.¹⁰¹

Similar issues are raised in a much more recent case, although like most such cases it was not publicised in the Iranian media. Hassan Afshar was executed in a prison in Arak on 18 July 2016. According to an Amnesty International report he had no access to a lawyer nor was he allowed to be present in the court when sentence was passed. He had been arrested in December 2014, when he and two other youths had been accused *lavāt-e beh 'onf* with another teenage boy. Hassan Afshar was aged seventeen at the time and claimed that 'the sexual acts were consensual and that the complainant's son had willingly engaged in same-sex sexual activities before'.¹⁰² If that had been accepted by the courts, under the new law it was the passive partner rather than Hassan who might have faced a death sentence. However, this was not accepted and Hassan was the one sentenced to death.¹⁰³

The true nature of such cases remains controversial, especially as consent is often an issue also in Western rape cases, though the law in Iran is constructed very differently. A lawyer from Shiraz, Hossein Raeesi, who had worked on many *lavāt* cases, stated in 2013 that many cases alleged to be rape were in fact cases of consensual homosexuality and that such claims were often made by the passive partner to save themselves from execution.¹⁰⁴ The way the law is now constructed gives an added incentive for such claims and also for claiming blackmail, given the differences in the sentences of the active and the passive partner.

In addition to such capital cases, there are numerous reports of members of sexual minorities being subjected to the *supplice* of whipping for consensual homosexual conduct or because of the way they dress.¹⁰⁵ One such case was reported in *Rooznameye Sobhe Khabare Jonoub* (Southern Daily Morning News), a local paper based in Shiraz. A local assistant judge was quoted as warning families to better control the use of the internet by young people. A 'troop of *hamjensbāzan*' had been arrested for using the internet to make appointments for *ā'māl-e manāfiye 'effat* (practices inconsistent with chastity). Four defendants were sentenced to be whipped.¹⁰⁶ Later reports revealed that the convictions were the result of an entrapment sting by undercover agents in Yahoo chat rooms.¹⁰⁷ Evidence included printouts from these chat rooms and forced confessions after violence and the threat of worse torture. At least one had been fined by a court the previous year for attending a party for *hamjensgaryan* and was

¹⁰¹ Emails Jama to author, 14 July 2006, 21 July 2008.

¹⁰² Amnesty International, "Iran: Hanging of teenager shows authorities brazen disregard for international law," 3 August 2016 in <https://www.amnesty.org/en/latest/news/2016/08/iran-hanging-of-teenager-shows-brazen-disregard-for-international-law/>.

¹⁰³ *Ibid.*

¹⁰⁴ IHRDC, *Denied identity*, 22; Mohammed Mostafe'i, another lawyer who had worked on sex cases told me such disputes over consent were not uncommon in homosexual cases; personal communication, 10 September 2010.

¹⁰⁵ Examples: IHRDC, *Denied identity*, 23-25; OAI, *Being lesbian in Iran*, 16; *Being transgender in Iran* 32-33.

¹⁰⁶ 'Hoshdār-e mo'aven-e qazāiye dādgustariye Fārs: khānevadeha estefādeh-e javānan az īnternet rā kontrol konand' in *Rūznameye Sobh-e Khabar-e Jonūb*, 13 June 2004 [own translation].

¹⁰⁷ Sanei, *Buried generation*, 54-57.

warned following his second trial that if he were caught again he would be executed, just as a 'pre-modern' *relaps* would have been.¹⁰⁸

One of the judges told the newspaper that this was not the first case of this nature. Others, with an average age of twenty, had been caught using the internet for 'behaviours contrary to morals and contrary to law'.¹⁰⁹ This shows that the technology of the internet is a two-edged sword for sexual minorities in Iran. On the one hand, it provides new opportunities for people to meet each other and learn about their sexuality. On the other hand, it gives the authorities greater scope for surveillance and for entrapping individuals.

CONCLUSION

In spite of the limitations of this article, some preliminary conclusions can be drawn for further investigation. As I stated at the beginning of this essay, official attitudes and practices relating to sexual minorities are a hybrid of the 'pre-modern' and the 'modern'. Iran has clearly been influenced by 'medical views' of homosexuality that existed in countries such as the UK and USA. This was at a time when homosexuality was illegal in all these countries and during Iran's late Pahlavi period. This challenges the common and simplistic perception that the treatment of homosexuals in Iran is derived only from religious belief. Even the provisions of the penal code against same-sex behaviour, which are strongly influenced by traditional religious views, include both 'pre-modern' and 'modern/scientific' elements. The term *hamjensgerāy* is now used in legislation and in a way that blurs the past distinction with *hamjensbāzy* and, hence, between sexual orientation in the mind and engagement in actions by the body. Homosexuality is being reconstructed by the regime in Iran, modifying the constructions of the late Pahlavi period. This has implications for asylum seekers, since asylum is granted on the grounds of membership of a 'particular' and persecuted 'social group', as it is now clearer that Iranian law targets a particular type of person rather than particular acts.¹¹⁰

The modifications of the law show that international pressure and commentary can pressure the regime to modify the severity of punishments in such cases. However, it also shows the limitations of such likely changes in current political circumstances. It is still very difficult to gauge the extent of change in practice. However, I have shown that in some cases where death sentences were passed for consensual homosexuality, such sentences would not be passed now, whereas in other cases, such sentences may still be passed. Although executions and other mandatory penalties for these offences may have been restricted, homosexual behaviour remains completely illegal including acts of intimacy.

In combination with these developments in the legal framework, there may have been a shift to medical interventions rather than punishment, as used to be the case in countries such as the UK and USA in the 1950s and early 1960s, when arrests of homosexuals

¹⁰⁸ Doug Ireland 'They'll kill me – A gay Iranian torture victim speaks' in *Gay City News*, 20 September 2005; Sanei, *Buried generation*, 55-57.

¹⁰⁹ *Rūznameye Sobh-e Khabar-e Jonūb*, 13 June 04.

¹¹⁰ Guy S Goodwin Hill and Jane McAdam, *The refugee in International Law* (Oxford: Oxford University Press, 2007), 36.

increased dramatically. This is not necessarily a sign of greater tolerance. Those who refuse to comply with such treatments can of course be subjected to punishments, making participation far from voluntary. Moreover, some of these treatments may actually amount to physical and/or psychological torture. The most drastic of such methods can of course be a forced sex change, which many would consider to be gross abuse of their human rights and dignity. Currently, the future prospects for *hamjensgaryan* in Iran seem very bleak. However, as has happened with the USA and the UK authorities since the 1960s, the regime in Iran may come to realise that their intensified efforts to ‘cure’ or otherwise eliminate homosexuality are likely to fail, and ultimately could create the space for more tolerance.

BIBLIOGRAPHY

PRIMARY SOURCES

IRANIAN LEGAL SOURCES

Dastagheib Shirazi, Ayatollah-e Ozma. “Abdol Hossein.” *Gonāhan-e Kabīrah* [Major Sins] Volume I [nd.] [http://www.sahebzan.org/dl/ebook/gonahane-kabire\[www.l-k.ir\].pdf](http://www.sahebzan.org/dl/ebook/gonahane-kabire[www.l-k.ir].pdf) [accessed 16 March 2017].

Iranian Human Rights Documentation Center (IHRDC). English Translation of Books I & II of the New Islamic Penal Code <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html> [accessed 10 March 2017].

New Penal Code of 2013. “Qanūn-e mājāzat-e Islāmī” [Islamic Penal Code] (QMI 2013) <http://www.vijiran.ir/download/criminal-law-92.pdf> [accessed 19 March 2017].

Old Penal Code of 1991: “Qanūn-e mājāzat-e Islāmī” [Islamic Penal Code] (QMI 1991) https://www.unodc.org/tldb/pdf/Islamic_Penal_Code_in_Farsi.pdf [accessed 19 March 2017].

IRANIAN MEDIA

‘*Etemād, Tehran*: “Zānī bā afshāye yek film-e vīdeoye shōhar-esh rā beh ‘edām kashānd” [Discovery by a wife of a video film of her husband results in a death sentence] in ‘*Etemād*, 25 Esfand 1383 [15 March 2005]: http://www.etemaad.com/aspClinets/view_news.asp?id=125&Val=حوادث [accessed November 2015, dead link, last accessed August 2006].

Iranian Students News Association, Khorasan. “Dar iyn ‘edām dū nūjavan dar Mashhad vakīl yek az ‘edam shodagān: sinn-e mōvakīl-e man dar hokm-e divān’aliye keshvar 16 sāl zikr shodeh ast,” [Concerning the execution of two juveniles in Mashhad the lawyer of one of those executed said: “the age of my client was mentioned as 16 years in the judgement of the Supreme Court”] in *ISNA Khorasan*, 2 Mordad 1984 [24 July 2005] <http://branch.isna.ir/mainkhorasan/NewsView.aspx?ID=News-4292> [dead link, last accessed August 2006].

Iranian Students News Association, Khorasan. "Edam dar malā'-e 'ām-e dū nūjavan-e Khorramsharī dar Mashhad. Mohokūmān: az majāzāt-e 'aml-mān bey-etelā' būdīm" [Public execution of two juveniles from Khorramshahr in Mashhad, The condemned [said]: "We were unaware of the punishment for our practice [or act]."] in *ISNA Khorasan*, 28 Tir 1384 [19 July 2005]

<http://branch.isna.ir/mainkhorasan/NewsView.aspx?ID=News-4165> [dead link, last accessed August 2006].

Quds Daily, Mashhad. 'Bā hokm-e shu'ab-e 133 dādgāh-e kayfarye Mashhad anjām mī-shōd: 'edam- dū khalāfkār dar Meidan-e 'Edālat' [The sentence of Branch 133 of the criminal court of Mashhad is being carried out: the execution of two evildoers in the Square of Justice] in *Quds Daily*, 28 Tir 1384 [19 July 2005]

<http://www.qudsdaily.net/archive/1384/html/4/1384-04-28/page7.html#1> [dead link, last accessed August 2006].

Quds Daily, Mashhad. 'Hokm-e 'edām-e "Jabbār-e Singh" dar Bojnōrd ejrā shod' [Sentence of death on 'Gabbar Singh' carried out in Bojnord] in *Quds Daily*, 10 Ordibehest 1384 [30 April 2005] <http://www.qudsdaily.net/archive/1384/html/4/1384-02-10/> [dead link, last accessed September 2010].

Rūznameye Sobh-e Khabar-e Jonūb [(Southern Daily Morning News)], Shiraz, Fars. 'Hoshdār-e mo'āven-e qazāiye dādgustariye Fārs: khānevadeha estefādeh-e javānan az īnترنت rā kontrol konand'[Warning by an assistant judge of Fars [province]: "families must control the use of the internet by young people."] in *Rūznameye Sobh-e Khabar-e Jonūb* 24 Khordad 1384 [13 June 2004].

Supreme Leader's web site, Leader.ir. Khāmenei, Ayatollah-e Ozma Ali 'The Leader's Remarks in Meeting with Chairman and Members of the Assembly of Experts' 26 May 2016. Original Persian sound clip: <https://tinyurl.com/y8dmbb5p> Official English translation - <http://leader.ir/en/speech/15163/The-Leader's-Remarks-in-Meeting-with-Chairman-and-Members-of-the-Assembly-of-Experts> [accessed 15 March 2017].

WESTERN MEDIA

Doug Ireland. "A tale of Persecution in Iran." *The Advocate*, 13 September 2006; <https://www.advocate.com/news/2006/09/13/tale-persecution-iran> [accessed 5 March 2017].

Doug Ireland. "They'll Kill me – A Gay Iranian Torture Victim Speaks." *Gay City News*, 20 September 2005.

Extract from CNN Broadcast of Q&A after Speech of Mahmoud Amadinejad at Columbia University, New York, CNN, 24 September 2007; <https://www.youtube.com/watch?v=xou92apNN4o&t> [accessed 11 August 2017].

Interview between Mahmoud Ahmadinezhad and Amy Goodman and Juan Gonzalez, Part 2. *Democracy Now*, 26 September 2008; https://www.democracynow.org/2008/9/26/iranian_president_mahmoud_ahmedinejad_on_iran [accessed 3 March 2017].

Kielburger, Craig and Mark. "Speaking up for gay rights in Iran" in *Huffington Post*, 13 May 2009; http://www.huffingtonpost.com/craig-and-marc-kielburger/speaking-up-for-gay-right_b_174776.html [accessed 1 March 2017].

Newsnight Report. Broadcast on BBC2, 5 November 2014; <https://www.youtube.com/watch?v=xEfoPsWpxTc> [accessed 15 February 2017].

"Sexual Aversion." Broadcast on BBC 2, 8 August 1996.

HUMAN RIGHTS ORGANISATIONS

Amnesty International: "Iran: Hanging of teenager shows authorities' brazen disregard for international law," 3 August 2016; <https://www.amnesty.org/en/latest/news/2016/08/iran-hanging-of-teenager-shows-brazen-disregard-for-international-law/> [accessed 31 January 2017].

Boroumand Foundation. "Report on Case of Hadi Safdari, Executed 28 April 2005;" <https://www.iranrights.org/memorial/story/-4510/hadi-safdari> [accessed 10 March 2017].

Iranian Human Rights Documentation Center (IHRDC): "Denied Identity: Human Rights Abuses Against Iran's LGBT Community," November 2013.

Iranian Queers Organisation (IRQO). "The Violations of Economic, Social and Cultural Rights of Lesbian, Gay, Bisexual and Transgender (LGBT) Persons in the Islamic Republic of Iran," March 2013. http://www2.ohchr.org/English/bodies/cescr/docs/ngos/JointHeartlandAlliance_IRQO_IHRC_Iran_CESCR50.pdf

Parsi, Arsham. "Affect of US Immigration Moratorium on the Lives of LGBT Refugees in Turkey." *Iranian Queers Railroad (IRQR)*, 28 January 2016; <http://irqr.ca/2016/?p=455> [accessed 29 January 2016].

Parsi, Arsham and Colbourne, Marc. *Exile for Love: The Journey of an Iranian Queer Activist*. Halifax and Winipeg: Roseway Publishing, 2015.

Sanei, Faraz. "Codifying Peppression: An Assessment of Iran's New Penal Code." Human Rights Watch, 2012.

Sanei, Faraz. "We are a Buried Generation: Discrimination and Violence Against Sexual Minorities in Iran." New York: Human Rights Watch, December 2010.

OTHER SOURCES

Diagnostic and Statistical Manual (DSM 1) of Mental Disorders The American Psychiatric Association. Washington: American Psychiatric Association, 1952).

Diagnostic and Statistical Manual (DSM 2) of Mental Disorders The American Psychiatric Association. Washington: American Psychiatric Association, 1968.

Enayat, Anna and Mr K, evidence at United Kingdom Independent Asylum Tribunal for RM and BB (Homosexuals) Iran CG [2005] UKIAT 00117 11-12

http://www.ait.gov.uk/judgmentsfiles/j1766/00117_ukiat_2005_rm_bb_iran_cg.doc
[accessed November 2005].

Mackenzie, George. *The Laws and Customs of Scotland, in Matters Criminal*. Edinburgh: Andrew Anderson, 1699.

Rees, Tudor and Usill, Harley ed. *They Stand Apart: A Critical Survey of the Problem of Homosexuality*. London: Heinemann, 1955.

St John Stevas. *Life, Death and the Law: A Study in the Relationship between the Law and Christian Morals in England and the United States*. London: Eyre & Spottiswoode, 1961.

Verdonk, Rita. Minister for Immigration and Integration, Letter to Second Chamber of States-General of the Netherlands, 5403360/06/DVB, 28 February 2006.

Westwood, Gordon [alias for Michael Schofield]. *A Minority: Report on the Life of the Male Homosexual in Britain*. Edinburgh: R&R Clark Ltd, 1960. 48.

SECONDARY SOURCES

Afary, Janet. *Sexual Politics in Modern Iran*. Cambridge: Cambridge University Press, 2009.

Bahreini, Raha. "From Perversion to Pathology: Discourses and Practices of Gender Policing in the Islamic Republic of Iran." *Muslim World Journal of Human Rights* Volume 5, Issue 1 (2008).

Bucar, Elizabeth and Shirazi, Faegheh. "The 'Invention' of Lesbian Acts in Iran: Interpretative Moves, Hidden Assumptions, and Emerging Categories of Sexuality." *Journal of Lesbian Studies* 16, No. 4, (2012), 416-434.

Forbes, Simon. "Place of Martyrdom." *Mashhad*, August 2006.
http://irqr.ipower.com/English/files/MASHHAD%20PLACE_OF_MARTYRDOM.pdf

Foucault, Michel. *Histoire de la Sexualité: La Volonté de Savoir* [History of Sexuality: the Will to Knowledge]. Paris: Gallimard, 1976.

Foucault, Michel. *Les Mots et les Choses: Une Archéologie des Sciences Humaines* [Words and Things: An Archaeology of Human Sciences]. Paris: Gallimard, 1966.

Foucault, Michel. *Surveiller et Punir: Naissance de la Prison* [To Watch and to Punish: the Birth of the Prison]. Paris: Gallimard, 1975.

Goodwin, Hill; Guy, S and McAdam, Jane. *The Refugee in International Law: Third Edition*. Oxford: Oxford University Press, 2007.

Greenberg, David. *The Construction of Homosexuality*. Chicago and London: University of Chicago Press, 1988.

Huffer, Lynne. *Mad for Foucault: Rethinking the Foundations of Queer Theory*. Columbia University Press, 2010.

- Katarczynna, Korycki and Abouzar, Nasirzadeh. "Desire Recast the Production of Gay Identity in Iran." *Journal of Gender Studies* 25, No. 1 (2016), 50-65.
- Karimi, Ahmad. "Hamjensgara Belongs to Family; Exclusion and Inclusion of Male Homosexuality in Relation to Family Structure in Iran." *Identities* (online), 2017; <http://dx.doi.org/10.1080/1070289X.2017.1286921> [accessed 20 February 2017].
- Karimi, Ahmad. "Iranian Homosexuals; Social Identity Formation and the Question of Femininity." *Culture & Psychology* 22, No. 2 (2016), 296-313.
- Levack, Brian P. *The Witch-hunt in Early Modern Europe*. New York and London: Routledge, 2013.
- Mahdavi, Pardis. "Questioning the Global Gays(ze): Constructions of Sexual Identities in Post-revolution Iran." *Social Identities* 8, No 2, (March 2012).
- Najmabadi, Afsaneh. *Professing Selves: Transsexuality and Same-sex Desire in Contemporary Iran*. Durham and London: Dukes Press, 2014.
- . "Verdicts of Science, Rulings of Faith: Transgender/Sexuality in Contemporary Iran." *Social Research: An International Quarterly* 78(2), (Summer 2011).
- . *Women with Moustaches and Men without Beards: Gender and Sexual Anxieties of Iranian Modernity*. Berkeley: University of Californian Press, 2005.
- Nayyeri, Mohammed Hossein. "New Islamic Penal Code of the Islamic Republic of Iran." *Human Rights in Iran Unit: Research Paper Series* (University of Essex. 2012).
- Rejali, Darius M. *Torture and Modernity Self, Society and State in Modern Iran*. Boulder: Westview Press, 1994.
- Weinberg, Martin and Williams, Colin. *Male Homosexuals: Their Problems and Adaptations*. New York: Oxford University Press, 1974.
- Yadegarfar, Mohammed and Bahrambardian, Fatemeh. "Sexual Orientation and Human Rights in the Ethics Code of the Psychology and Counselling Organization of the Islamic Republic of Iran." *Ethics & Behavior* 24(5) (2014), 350-363.
- Zanghellini, Aleardo. *The Sexual Constitution of Political Authority: The 'Trials' of Same-sex Desire*. Routledge, 2015.

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THE LIMITATIONS OF RESEARCH SPACE FOR THE STUDY OF RWANDA

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ABSTRACT

Rwanda's recent stability and development are praised by many international leaders such as former U.S. President Bill Clinton and former British Prime Minister Tony Blair, as well as global institutions like the World Bank and the International Monetary Fund. However, the praise is not universal, with organisations such as Human Rights Watch and Amnesty International condemning Rwanda's lack of political and social development. The contrasting opinions on Rwanda's development since the 1994 Rwandan genocide, also referred to as the 1994 Genocide against Tutsis, foster a unique space for academic study. However, this space is limited by divisions within the academic community, which ultimately affect young and upcoming researchers, as well as Rwandan perceptions of knowledge gathering. Scholars focusing on Rwanda often fall within the spectrum of opinion on whether Rwandan public policies should be interpreted as part of its development or as a continuation of state authoritarianism and human rights violations.

This paper first identifies the major divisions and scholarly opinions and how this division affects new and upcoming researchers. The polarisation of the study of Rwanda and the relatively standard narrative with regard to the accomplishments of the Rwandan Government, influence how Rwanda interacts with established and new academic researchers. The seriousness of the continuous division fosters a condition of study that is perpetually heavily polarised, before active research can be conducted and analysed. Additionally, it is leading to a change of Rwandan perception away from foreign-based researchers towards domestic researchers.

INTRODUCTION

Post-genocide Rwanda engages political, development and social academics and researchers in order to better understand how this small African nation fell prey to genocide and has rebuilt itself since. Rwanda became best known because of its 1994 Rwandan Genocide, also referred as the 1994 Genocide against Tutsis, which witnessed the butchering of over 800,000 Rwandan Tutsis and moderate Hutus in just 100 days (Prunier 1995, 143, 213, 263). While the nation is often praised by international institutions and other states for its rapid social and economic development, high usage of foreign aid and policies against corruption since the end of the genocide (Zorbas 2011, 103, 109-10), its government, composed of the Rwanda Patriotic Front (RPF) alongside its leader, President Paul Kagame, is often mired in controversy, sparking debates within the academic community.

This research explores the current divide within the academic community. While others, such as Fisher (2015, 134-145) and Hintjens (2014, 133-149), provide a detailed analysis on the groupings, this study focuses on how the academic divide affects young and upcoming researchers and is leading to a change in the perception Rwandans' own interactions with foreign researchers. Early career scholars need to appease both, Rwandan elites, in order to gain fieldwork access, and the academic community, where the current anti-Rwandan Government norm is more salient. To illustrate a growing change in Rwanda-based research, this article first introduces the major divide within the current academic literature on Rwanda. This includes the standard narrative, which negatively interprets Rwandan public policy as violating human rights for the purpose of maintaining President Kagame and his RPF political party's control. The current academic divide influences young and upcoming scholars in how they should perform their study on Rwanda, and affects Rwandan perceptions of foreign researchers as well. Such perceptions have significant importance for the future study on Rwanda, as a growing number of Rwandans, whether in the government or in the general population, view foreign researchers with suspicion and distrust. These perceptions will ultimately lead to a significant drop in access to information on Rwanda. Thus, this changing attitude will continue to seriously negatively impact the information and knowledge on Rwanda for future researchers.

This study heavily relies on existing scholarly literature on Rwanda, as well as semi-structured interviews with unnamed Rwandan officials, in order to showcase their perceptions of foreign researchers. These interviews were conducted during four periods. The first occasion was during and after the celebration of Rwanda Day on September 22-23, 2012, (Musoni 2012). Rwandan Government officials visited Boston, USA to meet and discuss Rwandan public policies with Rwandans and non-Rwandans labelled as 'Friends of Rwanda'. The second was between January and June 2013 in Rwanda. The third was a five-month period between July and December 2014 in Kigali, Rwanda. The final collection of data occurred in August 2016. During each time, interviews were conducted with leading members of the Rwandan Defence Force and non-military or security government, institutions such as the Rwanda Governance Board (RGB), the Senate, the Ministry of Education, the National Commission for the Fight against Genocide (CNLG) and the Ministry of Foreign Affairs and Cooperation.

Informants were asked questions focusing on their individual perceptions of international politics, as well as foreign research on Rwanda. Each was given the opportunity to have their

names retracted from all publications related to this research. Their testimonies provide a more inclusive understanding of how the Rwandan Government views its relationship with foreign academics. The majority of this study's data stems from information collected during various fieldwork periods since 2008 and utilises triangulation methods to uncover major themes and Rwandan perceptions. In particular, triangulation was used to test the validity of the principles uncovered while conducting fieldwork, with relation to the current political academic literature on Rwanda. While most of the active research and analysis for this article was done during the above-mentioned periods, it also includes wider reviews and conclusions that emerged during my PhD research at the School of Oriental and African Studies.

DIVIDE WITHIN THE SCHOLARLY LITERATURE

Hintjens, Fisher and Rutazibwa (2014, 291-302) provide a clear understanding of the division within the non-genocide researchers, which consists of scholars not focusing on studying the 1994 Rwanda Genocide and instead researching on Rwanda's agriculture, political and economic development as well as internal social dynamics.. This includes researchers and scholars focusing on Rwandan political, economic, social and military affairs. Hintjens provides perhaps the simplest explanations of the distinction between the two sides of academic opinion. Fisher (2015, 134-145) expands on Hintjens by discussing the various research methodologies used for Rwandan study. Additionally, he examines the complex relationships between Rwandan officials and foreign researchers and questions the role of Western researchers in Rwanda. He refers to the government's power over Western researchers with regard to their ability to gain access to information and observes that Rwandan officials do not believe that foreign researchers have the 'right' or 'authority' to write on Rwanda (Fisher 2015, 139-142). The question of who has this authority is extremely important, as officials have established methods that can either make research relatively simple or really difficult. This is explored further in a following section. Rutazibwa (2014, 295-7) adds a unique insight by examining the necessity of the decolonisation of Rwanda studies in order for the country to be better understood through its own development model rather than in perspective of Western norms.

One side of the literature produces the standard narrative found within the academic community on Rwanda: this consists of a majority of scholars who view the current RPF-dominated government as relying on authoritarianism and ethnic divisionism, and committing human rights abuses within and outside of Rwanda. Notable scholars of Rwanda, such as University of Antwerp's Professor Filip Reyntjens (2004; 2013), political scientist Rene Lemarchand (2009) from the University of Florida, Associate Professor of Peace and Conflict Studies at Colgate University Susan Thomson (2012; 2013), International Development Senior Lecturer at the University of Birmingham Danielle Beswick (2010; 2011; 2012), Smith College's Professor Catharine Newbury (1998), and many others, have written and crafted the standard narrative of Rwanda's lack of growth and progress in terms of human rights and political development in perspective of a universal liberal standard. Some scholars hold their opinions as an absolute, which makes it difficult for them to engage in an open academic debate on Rwanda. A notable example is the conference titled *Rwanda under the RPF* which was held at the School of Oriental and African Studies in 2013. The argument

between Professor Reyntjens and Rwandan Senator Tito Rutaremara was extremely divisive, with each accusing the other of participating in human rights violations. Reyntjens was accused by Senator Rutaremara of assisting in the formulation of former Rwanda President Juvenal Habyarimana's Constitution. He responded to the allegations by accusing Senator Rutaremara for participating in massacres in Rwanda during and after the Rwandan Civil War (1990-1994) and during the Congo Wars (1996-1997 and 1998-2003). Some observers privately commented that they did not believe that the round of accusations and lack of academic debate was the fault of the conference's organisers and convenors. Rather, the collapse of professionalism stemmed from the divisive nature of the study of Rwanda.

Opposite this standard narrative of Rwanda, is the literature of scholars who hold positive opinions of Rwanda's political, social and military development. They often praise Rwandan Government policies that have helped in rebuilding the post-genocide collapsed economy through agricultural reform, promoting women's empowerment and stabilising the nation (Hintjens, 2014). Some of these researchers include: Clark (2013a), Crisafulli and Redmond (2012), Ensign (2010), Kinzer (2008) and Waugh (2004). It is important to note that authors such as Melvern (2011), Kinzer, Crisafulli, and Redmond are not seen universally as academic scholars or researchers. Rather, they are seen as either journalists or non-academic researchers, which hinders the acceptance of their studies by a larger public. Journalistic accounts are problematic in the appraisal of the pro-Rwandan Government community because of a tendency among journalists to tell a certain story without testing the validity of their observations or beliefs. While their literature does contain some important insights and knowledge it is, nonetheless, non-academic: the quality of information, research and writing might be at a level comparable to academic scholarship, but analysis is relatively weak, lacking the critical engagement typically found among academics. This stems from the amount of training academics have to undertake in order to be able to prove the validity of their arguments in peer-reviewed materials. Additionally, some writers, such as Crisafulli and Redmond, write overly positive materials that praise Rwandan Government policy instead of critically analysing these policies and providing a more balanced account. Their book *"Rwanda, Inc. How a Devastated Nation Became an Economic Model for the Developing World"*, suggests that they developed a predetermined conclusion about Rwanda before their research began. There are multiple quotes from informants as well as conclusions that are not properly analysed or compared with other scholarly literature. While the majority of scholars seem to fit within this polarisation, there are some who try to take the middle ground between the two groups. Writers such as Campioni and Noack (2012), Samset (2011, 265-283) and Wilen (2012, 1323-1136) try to showcase Rwanda's progression but also illustrate some of the problems that still exist.

Within the academic literature on Rwanda exists an evident polarisation on how to research, analyse and decide the effectiveness of Rwandan public policy since 1994. While there are a number of scholars who focus their writings to provide analysis without bias, the majority of scholars have uniformly crafted a negative perception of Rwandan development. Their standard narrative is forced upon early career researchers, who are called to choose their stance along the spectrum of Rwandan study. The literature and this coerced self-classification by the researcher inevitably create pre-fieldwork biases, which impact and shape how upcoming academics understand Rwanda prior to conducting their research. Perhaps, most importantly, it creates a question for upcoming researchers to consider,

namely: how will their understanding and knowledge collection be conducted and interpreted by their fellow existing and new academic peers? A central issue for them is whether they will follow the standard, primarily negative, narrative, which might hinder the research process, or whether they will put themselves at risk of becoming alienated from the academic community by drawing non-conventional conclusions relying on Rwanda-based fieldwork data, or even writing positively about the government. The current trend of new scholars and students following the standard narrative seems to be leading Rwandans towards shifting their opinions about foreign researchers and whether to cooperate with them or not.

DIFFICULTIES FOR DEVELOPING SCHOLARS

Young researchers on Rwanda face great difficulties, as they need to distinguish their research as authoritative and find an audience within the current divided academic community. If they choose to write against the anti-Rwandan Government opinion (the current RPF alongside President Kagame), they need to find supporting networks to establish themselves as credible researchers and be viewed in major publications and at conferences as independent from government influence. This often creates difficulties in collecting and properly analysing data. Thus, many young scholars wish to follow the current standard narrative on Rwanda, as it is beneficial in securing future career possibilities. Conforming to the standard narrative is unintentionally aided by the Rwandan Government, which already limits available space for scholars to conduct research. The lack of space for research unofficially confirms the standard anti-government narrative. Jesse (2012, 266-74; 2013) writes on the difficulties researchers have in gaining access to performing their research in Rwanda. She writes that while some researchers are predisposed to be biased about the RPF's control over the government, many attempts to gather their data without prior biases. However, the institutional mechanisms to gain proper permissions, including research permits, are difficult to obtain. This leads to frustration and, unintentionally, it influences researchers to harbour an anti-Rwandan Government opinion prior to starting their research. Rwandan officials have furthermore negatively impacted how foreign researchers gather information and craft the conclusions of their research on Rwanda.

An example of government restrictions causing harm can be illustrated by my attempt to gain a research permit to continue conducting research on Rwandan foreign policy. One unnamed Rwandan official within the Ministry of Education commented on how nervous s/he felt for granting me permission to interview government elites, despite having received approval from those officials. The fear stemmed from uncertainty on whether I was or could potentially become a critic of the regime. If, indeed, I was a critic, the official could get into trouble with some unknown higher government or political official for having previously granted me access to conduct research in the country. Whether their topic is political, post-genocide reconstruction, economic development or social redevelopment, foreign researchers are put under pressure by Rwandan officials. This has increased since *Remaking Rwanda: State building and Human Rights after Mass Violence* (2011), which, Clark (2013) comments, enraged Rwandan officials after its publication. Thomson (2013, 3-28) is the most notable example, as she writes of her sentencing to an ingando educational facility while

performing research on Rwanda's post-genocide social reconstruction. Foreign researchers in Rwanda, whether they experience the same treatment as Thomson did, still fear their research being influenced by government restrictions. Some, such as Clark, argue that Rwandan intimidation of foreign researchers is not as simple as researchers being watched, restricted or harassed just because they are from outside Rwanda. He argues that research in Rwanda can be conducted without hindrance if special attention is placed on respecting the opinions of Rwandans. He suggests that research methodology, particularly interview questions, should be 'discreet, patient and respectful in the field', as well as allowing the researcher to 'build close relationships with local respondents, researchers and (where possible) government officials' (Clark 2013).

The difficulty of interacting with locals within Rwanda might stem from a general negative perception of the academic community. While conducting research, I encountered difficulties with informants who feared that my research might be overly critical of the regime or depict extremely negatively some particular public officials. Rwandan informants' fear of the consequences of my research, as well as their perceptions of foreign researchers, will be discussed in the following section. However, it is important to note here that ordinary Rwandans, including government officials, are aware of the divide within the academic community and the choices young researchers have to make concerning the standard negative narrative.

Another important factor to be considered by early career scholars is the possibility of being perceived by fellow academics as being too close to the RPF, President Kagame or other structures of the Rwandan Government. Researchers who receive access can be perceived by others as forming pro-government conclusions in order to remain 'liked' by the government, as opposed to conducting unbiased research. Clark's relationship with Rwandan Government officials is a notable example. His fellow scholars discredit his objectivity and professionalism because of his personal relationships with Rwandan officials. One accusation states:

Clark betrays a surprising ignorance about the difficult living conditions in the Rwandan countryside and everyday resistance to RPF rule. If you hobnob with government elites – many of whom benefit from and have a decidedly rosier perception of the authoritarian regime than does the country's impoverished majority – you cannot see the many dark sides of the supposed Rwandan success story apparent since the 1994 genocide.

De Lame et al. 2013

The emphasis on the association between Clark and some government officials suggests that he has published only positive illustrations of Rwandan public policies. However, this accusation is mono-sided, as it must be considered that he has previously published pieces that criticised the Rwandan Government, such as a commentary on the 2010 Rwandan elections. This allegation of Clark's blind support of the Rwandan Government conflicts with his past criticism of Rwanda's political system (Clark 2010).

CHANGING RWANDAN PERCEPTIONS ABOUT FOREIGN RESEARCHERS

The divide with regards to how to conduct research in Rwanda introduces not only challenges for young researchers, but affects Rwandan perceptions of foreign researchers coming to Rwanda as well. During the fieldwork research periods in 2013 and 2014, I confronted many government officials with the fact that foreign researchers face difficulties in gaining access in Rwanda and officials' fear of possible repercussions. Many did admit that the government, whether as RPF government officials or mid- and low-level bureaucrats, hold a negative opinion about academics, which has affected their opinions about researchers. Some expressed belief in Rwanda's need to reengage with academics in order to provide a better depiction of Rwandan public policies. However, many still expressed distrust stemming from three central factors. The first factor relates to the continuing effects of international abandonment experienced by many Rwandans. This holds true for the former Rwandan refugees who resided in the surrounding region and compose a significant portion of the leaders and bureaucrats of the current Rwandan government. Combining several historical events experienced by Rwandans, mostly Tutsis, a theme of abandonment by the international community becomes evident. The most notable events include: the ethnic-based violence in 1959; the forced immigration of Tutsis just before, during and after independence in 1962; the several pogroms during the First (1962-1973) and Second (1973-1994) Republics under Hutu-ethnic supremacy; and finally, the 1994 genocide (Prunier 1995, 41-90). During each period, the international community either ignored or simply was not concerned about the violence and divisions within Rwanda (Uvin 1998, 40; 2001, 187). The 1994 genocide, most known in Rwanda's bloody history, holds particular importance, as many Rwandan government officials lost family members during the genocide and witnessed its immediate effects following their invasion of the country at the end of the Rwandan Civil War. While Rwanda was never ignored by academic researchers during its history, the involvement of scholars in politics in the past, as well as the ostensible abandonment of Rwandan refugees prior to 1994 cause distrust amongst the current elites.

As previously noted, current officials perceive Reyntjens as a participant in the drafting of former President Habyarimana's 1978 constitution, which reinforced ethnic divisionism and the refugee status of mostly Rwandan Tutsis (Prunier 1995, 74-88). While there were some researchers studying Rwandan refugees, such as Prunier in 1986 (1995, 131-158) and Watson (1991), the exiled population was largely ignored by foreign scholars. This had an effect on current Rwandan officials, who interpret the lack of academic research on the refugee camps as abandonment by the academic community. Their perception is based on a historical lack of concern among academic researchers, who showed interest only after the genocide. Additionally, they are suspicious about scholars who were interested in the refugees but fled after the genocide.

The second reason for Rwandan distrust stems from what is perceived as past betrayal by academics and researchers. This includes scholars who come to Rwanda solely in order to enhance their careers, with little desire to help change existing governmental, educational and private sector bodies or to share their knowledge with Rwandans. Within the current Rwandan academic environment, early career researchers tend to adopt the critical standard narrative, crafting their conclusions to fit already established criticisms prior to or during fieldwork. Many Rwandan officials privately comment that they have encountered several young or established scholars with predetermined conclusions prior to their meetings and

interviews. They consider that these researchers are criticising Rwandan public policy only in order to place themselves within the current standard narrative and are not forming critical perspectives on the basis of research conducted in Rwanda. In addition to this criticism of researchers' biased approach to Rwanda, there is also the opinion that criticism of Rwandan public policies is orchestrated for the sake of criticism. The tendency of criticising for the sake of criticising departs from the desire to solve existing problems. One official described the difference: "I do not like meeting with Western professors [academics] as they try to attack rather than engage. They then leave. They do not care about helping [to] improve Rwanda. They just want to gain what they want through criticising seemingly everything we do and then leave. Why don't they talk to us differently to tell us their views and how we can improve [our policies] with respect?"¹ This type of engagement has the effect of many Rwandan officials believing that foreign researchers travel to Rwanda to find faults to confirm the standard narrative, rather than to help the country's development.

A final factor to be considered is that negative perceptions of Rwanda among foreign researchers are fuelled by the criticism that the current government is inexperienced in governance. While Rwanda gained independence in 1962, the current government formed only after the genocide in 1994 (Prunier 1995, 23; Pottier 2002, 14-6). While the power structure of the RPF's dominance of the Rwandan Government began after the 1994 genocide, it took years for the internal government structures to be rebuilt. Even more so, it could be argued that the government became functional in 2003 after the drafting of a new Constitution to replace the previous one that had been drafted during the Arusha Accords in 1993 (Kinzer 2008, 228; Republic of Rwanda 2003). Choosing as beginning year either 1994 or 2000 is relatively insignificant, and does not change the fact that the current government has had a relatively short history. In the present context, many bureaucrats are still developing their skills in properly executing the policies set forth by their ministries. Much of the existing academic literature seems to assume that state development and current governmental systems have existed for much longer periods. This issue is not unique to Rwanda, as it is noted by Western institutions, governments and academics with regard to other developing states, especially in Africa. Ayoob (1995) discusses the perception of third world states best in terms of political development and the need for Africa to go through the growing pains of state formation and development. It is very difficult to compare the treatment of Rwandan academics with other non-European and non-North American researchers, as there is a relatively small pool of non-Western researchers. However, the number of Rwandan researchers is growing, and they are being seen in a more positive light by Rwandan leaders and government workers when compared to their Western colleagues.²

One Rwandan mid-level official provided an illustration of how the government's short history has impacted the formulation of public policies. He commented, "Look, this government [power holders as well as bureaucratic institutions] is 20 years old [since the end of the 1994 genocide]. If we compare that to human beings, we are barely adults! We are going to make mistakes and be stubborn, as we are still learning what to do and how to act."³ This remark suggests an expectation that the country will change and will experience

¹ Anonymous Rwandan state official, interview, August 2014.

² Anonymous Rwandan research coordinator at the Kigali Genocide Memorial, interview, August 2014.

³ Anonymous Rwandan State Governance employee, interview, May 2013

successes, improving after negative policies. Here is the assumption that with the passage of time, and with knowledge gained from successful or unsuccessful public policies, the government will improve. Thus, foreign researchers should not take the present conditions to signify continuing trends. Rather, they should focus on analysing changes and shifts in public policy. A Rwandan civilian explained this dynamic by stating that “Rwanda is experimenting with home-grown solutions. What we are now will not be tomorrow, as we will become better, thanks to seeing what works. But Western academics come here, attack and seem to expect that [this] is all what we will be”.⁴ His observation reveals again why government officials might distrust academic criticism. Rwanda’s development is still ongoing, which is not considered by academics when they criticise government public policy. This does not necessarily mean that Rwandan officials and bureaucrats wish to ignore critiques of the RPF, President Kagame and the overall government. Rather, they want foreign researchers to provide those critiques in a helpful manner and with awareness of the historical events that shaped the nation.

Recently, there has been a growing trend among Rwandan officials of increased negative perceptions of foreign scholars, leading to greater difficulties for young as well as established researchers. This, alongside Jesse’s details about complications faced by researchers, introduces a significant challenge for future research on Rwanda. There are already government members who completely dismiss the need for foreign scholars to travel to Rwanda to conduct research on it for the intended desire to disseminate information. One high-ranking official within the ruling RPF political party stressed this by stating “I see people [academics] who come here to Rwanda to learn about us and publish on us as losers. They aren’t doing anything constructive for Rwanda, so why should we bother even dealing with them?”⁵ When confronted about why he was willing to be interviewed by me he responded, “It’s no trouble for me to tell you how Rwanda is developing and how we are attracting investors. It doesn’t mean I like doing it or will read what you write about Rwanda.”⁶ While some officials are more than willing and want to talk to foreign researchers, the number is decreasing and they are becoming much more selective.

There are two possible scenarios of how knowledge collection and research will change in Rwanda. The first possibility is the undesirable outcome of fewer foreign researchers being able to travel or properly conduct research on Rwanda. In all likelihood, this will lead to the reinforcement of the standard narrative, as accessible data for new researchers will be from those sources. Furthermore, it will contribute to increasing the divide within the academic community, as researchers with access to Rwanda might be perceived increasingly as instruments of the government and not independent researchers. A possible second outcome may be an expansion of Rwandan researchers who can foster knowledge about their own country. There are glimpses of this pathway already, as seen through the Research, Policy and Higher Education programme of the Aegis Trust, a British-based non-governmental organisation that operates the Kigali Genocide Memorial, which provides grants for

⁴ Anonymous Rwandan Employee of the Kigali Genocide Memorial, interview, August 2014.

⁵ Serge Kamuhinda, former Chief Operating Officer at the Rwanda Development Board, interview, September 2016.

⁶ Serge Kamuhinda, former Chief Operating Officer at the Rwanda Development Board, interview, September 2016.

Rwandan researchers and enforces their ability to publish (Aegis Trust 2016). While distrust of foreign researchers is based on feelings of historical abandonment, previous experiences with scholars and the government's early stages of development, there is an increased desire to encourage the expansion of Rwandan scholars, rather than foreign scholars, to conduct research, analyse, and publish in the area of Rwandan public policies, as well as other topics such as social, political and economic development.

CONCLUSION

The study of Rwanda creates an extreme polarisation within the academic community. Scholars and writers are often placed within the categories of either being in favour or against Rwandan public policies and their implementation, rather than attempting their best to remain neutral in their analysis and conclusions. Scholars who write positively about Rwanda typically place the nation's development within the specific historical context of the 1994 Rwandan genocide. Doing this provides the ability to credit the Rwandan Government for its accomplishments in economic development and relative domestic stability. Additionally, it provides Rwanda with the ability of having the time to grow and change to produce a stronger and better nation. Academic critics who construct the standard narrative on Rwanda view recent developments mostly in the context of a moral understanding of the importance of human rights and the authoritarianism of the current government, and what they perceive as true development. This division has not benefited Rwanda, the international understanding of the country's progress and challenges, or the new and upcoming scholars. Rather, it has hindered the ability to collect information, as new and rising researchers have to either follow the standard narrative that criticises Rwandan public policy or be possibly labelled as having a pro-RPF bias, and thus their research is not seen as credible by critics. Alongside this dichotomy, the Rwandan Government has made it difficult for researchers to gain the proper documentation to conduct their study.

While this article illustrates the polarisation of the study of Rwanda, it also illustrates why Rwandan officials distrust foreign researchers. Such distrust is causing possibly more harm than good, as restrictions on researchers helps provide justification of the negative narrative against them. However, a change with regard to what is considered by some Rwandans an acceptable way to collect and produce knowledge, is leading to an increasing number of Rwandans as researchers.

BIBLIOGRAPHY

- Aegis Trust. "Aegis Offers Grants to Rwandan Researchers." November 01, 2016. <http://www.aegistrust.org/aegis-offers-grants-to-rwandan-researchers/> [Accessed February 04, 2017]
- Alvarez, Jose E. "Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory." *European Journal of International Law* 12, no. 2 (2001): 183-246. doi:10.1093/ejil/12.2.183.
- Ayoob, Mohammed. *The Third World Security Predicament: State Making, Regional Conflict, and the International System*. Boulder: L. Rienner Publishers, 1995.

- Baird, Dugald. "Rwanda Bans BBC Broadcasts over Genocide Documentary." *The Guardian*, October 24, 2014. <http://www.theguardian.com/media/2014/oct/24/rwanda-bans-bbc-broadcasts-genocide-documentary> [Accessed June 01, 2016]
- Beswick, Daniel. "Peacekeeping, Regime Security and 'African Solutions to African Problems': Exploring Motivations for Rwanda's Involvement in Darfur Peacekeeping, Regime Security and 'African Solutions to African Problems.'" *Third World Quarterly*, 31, no. 5, (2010): 739-754.
- . "Aiding State Building and Sacrificing Peace Building? The Rwanda–UK Relationship 1994–2011." *Third World Quarterly*, 32 no. 10, (2011): 1911-30. doi: 10.1080/01436597.2011.610593
- . "The Role of the Military in Rwanda: Current Dynamics and Future Prospects." In M. Campioni & P. Noack (eds.), *Rwanda Fast Forward: Social, Economic, Military, and Reconciliation Prospects*, 249-264. New York, NY: Palgrave Macmillan, 2012.
- Campioni, Maddalena, and Patrick Noack, eds. *Rwanda Fast Forward: Social, Economic, Military and Reconciliation Prospects*. London: Palgrave, 2012.
- Clark, Phil. "Must Academics Researching Authoritarian Regimes Self-censor?". *Times Higher Education (THE)*. November 28, 2013. <https://www.timeshighereducation.com/features/must-academics-researching-authoritarian-regimes-self-censor/2009275.article>. [Accessed June 02, 2016]
- . "Rwanda: Kagame's Power Struggle [Editorial]". *The Guardian*. August 5, 2010. <https://www.theguardian.com/commentisfree/libertycentral/2010/aug/05/rwanda-kagames-power-struggle> [Accessed May 20, 2016]
- Crisafulli, Patricia, and Andrea Redmond. *Rwanda, Inc.: How a Devastated Nation Became an Economic Model for the Developing World*. New York: Palgrave Macmillan, 2012.
- DeLame, Danielle, Howard French, Villia Jefremovas, Rene Lemarchand, Timothy Longman, Jens Meierhenrich, and Susan Thomson. "Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda." *The World University Rankings*. December 19, 2013. <https://www.timeshighereducation.com/comment/letters/truly-hostile-environment/2009939.article>. [Accessed May 20, 2016]
- Doyle, Michael D. "Kant, Liberal Legacies, and Foreign Affairs." *Philosophy and Public Affairs* 12, no. 3 (Summer 1983): 205-35.
- . "'Liberalism and World Politics'." *American Political Science* 80, no. 4 (1986): 1151-169.
- Ensign, Margee M., and William E. Bertrand. *Rwanda: History and Hope*. Lanham: University Press of America, 2010.
- Fisher, Jonathan. "Writing about Rwanda since the Genocide: Knowledge, Power and 'Truth'." *Journal of Intervention and Statebuilding* 9, no. 1 (2015): 134-45.
- Hintjens, Helen. "Post-genocide Identity Politics in Rwanda." *Ethnicities* 8, no. 1 (2008): 5-41.

- . 'As if there were Two Rwandas': Polarised Research Agendas in Post- genocide Rwanda. In H. Hintjens and D. Zarkov (eds), *Conflict, Peace, Security and Development: Theories and Methodologies*, New York: Routledge, 133–149.
- Jessee, Erin. "Conducting Field Work." *Canadian Journal of Development Studies/Revue Canadienne D'études Du Développement* 33, no. 2 (2012): 266-274.
- . "Rwanda's Subtle Forms of Intimidation." *Times Higher Education*. December 19, 2013. <https://www.timeshighereducation.co.uk/comment/opinion/rwandas-subtle-forms-of-intimidation/2009974.article> [Accessed February 04, 2017]
- Keohane, Robert. "Moral Commitment and Liberal Approaches to World Politics'." In *The Globalisation of Liberalism*, edited by Eivind Hovden and Edward Keene. London: Palgrave, 2002.
- Kinzer, Stephen. *A Thousand Hills: Rwanda's Rebirth and the Man Who Dreamed It*. Hoboken, NJ: John Wiley & Sons, 2008.
- Lemarchand, René. *The Dynamics of Violence in Central Africa*. Philadelphia: University of Pennsylvania Press, 2009.
- Martin, Kingsley. "Winston Churchill Interviewed in 1939: "The British People Would Rather Go down Fighting." January 6, 2014. <http://www.newstatesman.com/archive/2013/12/british-people-would-rather-go-down-fighting>. [Accessed February 04, 2017]
- Melvern, Linda. "Hotel Rwanda – Without the Hollywood Ending." *The Guardian*, November 17, 2011. <http://www.theguardian.com/commentisfree/2011/nov/17/hotel-rwanda-hollywood-ending>. [Accessed May 20, 2016]
- Musoni, Edwin. "Rwanda Day Opens in Boston." *The Times New Rwanda*. September 22, 2012. <http://www.newtimes.co.rw/section/article/2012-09-22/57724/> [Accessed June 01, 2016]
- Newbury, Catharine. "Ethnicity and the Politics of History in Rwanda." *Ethnicity and the Politics of History in Rwanda* 45, no. 1 (March 1998): 7-24. http://www.jstor.org/stable/pdf/4187200.pdf?_=1465073821139.
- Prunier, Gérard. *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. Oxford: Oxford University Press, 2009.
- . *The Rwanda Crisis: History of a Genocide*. New York: Columbia University Press, 1995.
- Samset, Ingrid. "Building a Repressive Peace: The Case of Post-Genocide Rwanda." *Journal of Intervention and Statebuilding* 5, no. 3 (2011): 265-83.
- Republic of Rwanda. Ministry of Justice (Kigali). *The Constitution of the Republic of Rwanda, 2003*. Kigali: Republic of Rwanda, Ministry of Justice, 2003.
- Reyntjens, Phillip. "The Consolidation of Authoritarianism under the Guise of Elections." Presented at Rwanda under the RPF: Assessing Twenty Years of Post-Conflict Governance, SOAS, University of London, London. <https://www.soas.ac.uk/cas/events/conferences/file87020.pdf>

- . "Rwanda, Ten Years On: From Genocide to Dictatorship." *African Affairs* 103, no. 411 (2004): 177-210. doi:10.1093/afraf/adh045.
- . *Political Governance in Post-Genocide Rwanda*. Cambridge: Cambridge University Press, 2013.
- Rutazibwa, Olivia. "Studying Agaciro: Moving Beyond Wilsonian Interventionist Knowledge Production on Rwanda." *Journal of Intervention and Statebuilding* 8, no. 4 (2014): 291-302.
- "Rwanda under the RPF: Assessing Twenty Years of Post-Conflict Governance." SOAS, University of London. <https://www.soas.ac.uk/cas/events/conferences/file87020.pdf>
- Thomson, Susan M. *Whispering Truth to Power: Everyday Resistance to Reconciliation in Postgenocide Rwanda (Africa and the Diaspora)*. Madison: University of Wisconsin Press, 2013.
- . "Peasant Perspectives of National Unity and Reconciliation: Building Peace or Promoting Division?" In *Rwanda Fast Forward: Social, Economic, Military and Reconciliation Prospect*, edited by Maddalena Campioni and Patrick Noack. 96-110. New York: Palgrave Macmillan, 2012.
- Uvin, Peter. *Aiding violence: the Development Enterprise in Rwanda*. West Hartford, CT: Kumarian Press, 1998.
- . "Difficult Choices in the New Post-conflict Agenda: The International Community in Rwanda After the Genocide." *Third World Quarterly* 22, no. 2 (2001): 177-89.
- Watson, Catharine. *Exile from Rwanda: Background to an Invasion*. Washington, D.C.: U.S. Committee for Refugees, 1991.
- Waugh, Colin M. *Paul Kagame and Rwanda: Power, Genocide and the Rwandan Patriotic Front*. Jefferson, NC: McFarland & Co., Publishers, 2004.
- Wilén, Nina. "A Hybrid Peace through Locally Owned and Externally Financed SSR-DDR in Rwanda?" *Third World Quarterly* 33, no. 7 (2012): 1323-336.
- Zorbas, Eugenia. "Aid Dependence and Policy Independence: Explaining the Rwandan Paradox." In *Remaking Rwanda: State Building and Human Rights after Mass Violence*, edited by Scott Straus and Lars Waldorf, 103-17. Madison, WI: The University of Wisconsin Press, 2011.

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THE *KAFĀLA* 'SPONSORSHIP' SYSTEM IN SAUDI ARABIA: A CRITICAL ANALYSIS FROM THE PERSPECTIVE OF INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW

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ABSTRACT

This article will explore the complex relationship between Islamic law, international human rights laws, and the Saudi adaptation of its sponsorship system regarding migrant workers, known as *kafāla* in Arabic. It will argue that Islamic law is compatible with international human rights law with specific reference to migrant workers' protection, and that Saudi Arabia with its continuous application of the *kafāla* opposes its own basic law. By analysing the above issues, it is hoped that by the end of this paper, the reader will achieve a clear understanding of the dangerous implications of the *kafāla* in perspective to Sharīa and international law. The topic of *kafāla* is rarely touched in the Saudi scholarly sphere; thus, it is hoped that this article will provoke more research on the subject. The article aims to establish a distinction between the *kafāla* deficiencies and Islamic law and to suggest that they are inconsistent with each other; therefore, such defects are caused by the application of the *kafāla* rather than an imperfection in Sharīa. The paper will conclude with some recommendations, namely the immediate reformation and abolishment of the system by replacing it with a new sponsorship system that can protect in practice migrant workers' rights.

INTRODUCTION

And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.¹

With its strategic location in the Arabian Peninsula, Saudi Arabia holds two of the most sacred destinations for Muslims around the world: Makkah and Al-Madinah. It considers itself an Islamic state that follows the *Hanbalī* school of Islamic jurisprudence.² However, statutory laws are issued to address legal questions, which were not described clearly in *Sharīa* and they must not diverge from its directions.³ One of these legal matters that were passed as statutory law is the *kafāla*.

The Saudi government has formed a system that controls the mobility of migrant workers inside the Kingdom. After the abolishment of slavery, a new scheme has been established to monitor these workers' conditions.⁴ Conceptually, the *kafāla* 'sponsorship' does not differ from other immigration policies around the world; however, its regulations make it distinctive.⁵ It has been criticised for its cruelty. This has reflected on the Kingdom's international position. While Saudi Arabia enforces its migration control to monitor its state sovereignty through the *kafāla*, analysts argue that the system is a breach of international human rights.

Nevertheless, there is no substantive research done on the *kafāla* within the context of Islamic law and international law specifically. There are several scholarly works that discuss the *kafāla* as a system and its violations to human rights in different Middle Eastern countries, but none of these works examined its relationship to Islamic law and international law. This subject should be given more attention. Questions of compatibility between international human rights and Islamic law are commonly asked, but comparative legal research on the *kafāla* is lacking.

Saudi Arabia considers itself an Islamic state and its primary constitution sources are the *Qur'ān* –'Islamic Holy Book'– and the *Sunnah* –'Prophet's tradition'; however, it could be suggested that the application of the *kafāla* in Saudi Arabia conflicts with Islamic law. This results in a paradox. This paper aims to tackle this controversy by breaking down the issues surrounding the *kafāla* regulations in Saudi Arabia, and by critically analysing the stances of international law and Islamic law towards the *kafāla* in a comparative legal matter. The paper will argue that the *kafāla* with its on-going regulations and their application in Saudi Arabia conflicts with Islamic law and International law. Furthermore, it will provide

¹ Qur'ān, Surat Al-'Isrā', verse (70).

² Sunni Islam is majorly influenced by the four schools of Islamic thought and Jurisprudence which are Malīkī, Shāfi, Hanafī and Hanbalī.

³ Majed Alzahrani, "The System of Kafala and the Rights of Migrant Workers in GCC Countries- With Specific Reference to Saudi Arabia" [2014] 16(2) *European Journal of Law Reform*.

⁴ Martin Baldwin-Edwards, "Labor Immigration and Labor Markets in the GCC Countries: National Patterns and Trends", http://eprints.lse.ac.uk/55239/1/Baldwin-Edwards_2011.pdf [accessed 9 September 2015].

⁵ Heather Murray, "Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries" [2012] 45(2) *Cornell International Law Journal* 461.

recommendations, namely the reformation of the sponsorship system to ensure better protection of migrant workers' human rights, which would mean also a correct application of the *Sharīa*.

THE ROLE OF THE *KAFĀLA*: HISTORICAL AND LEGAL BACKGROUND

'*Wa kafalahā Zakariā'*:⁶ this is one of the various instances of *kafāla* indication in *Sharīa* both in the *Qur'ān* and the *Sunnah*. In the *Sunnah*, for example, the Prophet was reported using the word *kafāla* to refer to the good deed of sponsoring and guarantying the welfare of an orphan, which would result in being rewarded by existing side by side with the Prophet (in his company) in heaven.⁷ In the Arabic language, the noun *kafāla* comes from the original word 'k-f-l'; which could have different meanings: to provide for, to be responsible for, or to be the legal guardian.⁸ However, the word *kafāla* itself means guarantee.⁹ This guarantee may refer to numerous aspects of life. It could be in money '*al-kafāla fī al-māl*, or it could be in a person '*al-kafāla fī al-nafs*'; therefore, the *kafāla* as a term in Arabic could be employed in different contexts with different meanings.¹⁰ In *fiqh* –Islamic Jurisprudence– *kafāla* is interpreted in the same way; for instance, the four schools of Islamic jurisprudence define *kafāla* as a guarantee, which means that the '*kafil*' and the sponsored will be united by the same burden and pact. Therefore, the *kafāla* in general is a form of contract between two parties, which unites them as one.¹¹ However, as will emerge in this paper, the concept of *kafāla* analysed is considered in a different context.

EMERGENCE

The *kafāla* is a sponsorship system that applies to migrant workers in several Middle Eastern countries. It emerged with the discovery of oil and emerging development in the area. Simply put, the system ties the migrant worker to the *kafil* (sponsor).¹² Between 1950 and 2005, the Gulf Cooperation Council's (GCC) population grew tremendously; it increased from 4 million in the 6 countries that make the GCC to over 40 million, with 12.5 million of them being foreigners.¹³ Since the mid-1950s, the Arab States, and the Gulf countries in particular, have been the destination of many refugees. Consequently, their number

⁶ Surat 'Āli 'Imrān verse (37), *Qur'an*.

⁷ Jamila Baragach, *Orphans of Islam: Family, Abandonment, and Secret Adoption in Morocco* (Rowman and Little Field 1964).

⁸ Hans Wehr in Anh Nga Longna, *Walls Built on Sand* (WestviewPress 1997).

⁹ Nicholas Foster, "Islamic Law of Guarantees" [2001] 16(2) *Arab Law Quartely*.

¹⁰ Ibrahim Al-obaidi, *Al-Kafeel: Al-Athar Al-Mutarateba Ala Aqd Al-Kafala AlMalliyya Fe Al-Sharia Al-Islamiya wa Al-Qanun Al-Imarati* (1st edn, Islamic Affairs and Charitable Activities 2014).

¹¹ Ibid.

¹² AnwarAlkhateeb, "Alaraby", http://www.alaraby.co.uk/opinion/2015/7/12/Kafala_system_in_GCC_reformations_and_pressures [accessed 1 September 2015].

¹³ A Kapiszewski, "Arab Versus Asian Migrant Workers in the GCC Countries, United Nations Expert Group Meeting on International Migration and Development in the Arab Region, Population Division", www.un.org/esa/population/meetings/EGM_Ittmig_Arab/P02_Kapiszewski.pdf. [accessed 2 September 2015].

increased from 1.3 million to 2 million in the 1980s.¹⁴ Moreover, population growth, economics, security and international relations are dynamics that affect each region's emigration and immigration policies.¹⁵ The GCC region has the highest labour migration because of the oil-based economy. As a result, the GCC states began initiating strict nationality and citizenship laws to ban immigrants from any political or socio-economic rights and to preserve the national identity.¹⁶ Legislators in the GCC actively drafted a system to assure the interests of the local citizen over the migrant.¹⁷ Thus, the *kafāla* system was born to govern the rights of the citizens and to control the entrance of migrants; a Saudi citizen can request for a foreign worker to come and to work for them, and in return, the *kafīl* must be responsible for the worker as guarantee for the government.¹⁸ The system shifts the legal burden directly to the Saudi nationals; it helps the authorities to monitor migrant workers through their sponsors.¹⁹

THE KAFĀLA SYSTEM IN THE SAUDI LEGAL FRAMEWORK

As Saudi Arabia perceives itself as an Islamic state, its laws are primary based on the Qur'an and the Sunnah.²⁰ However, as any sovereign country, the government has introduced laws that aim to guard it against threats to its political territory. The *kafāla* is one of these laws, although it has been criticised for its cruelty and its inconsistency to international human rights. It may come as a surprise that there is no single legal source that identifies the *kafāla* system in Saudi Arabia. It could be described as a collection of policies premised on Saudi Labour law and Residency regulations.

PROTECTION OF MIGRANT WORKERS UNDER INTERNATIONAL LAW

Firstly, under international law a migrant worker generally refers to overseas workers who may be short- or long-term migrants.²¹ The long-term group are those who typically migrate with their families to live permanently in a new state, in most cases due to socio-economic

¹⁴ Alzahrani, (n.3).

¹⁵ R. Appleyard, *Emigration Dynamics in Developing Countries, Volume IV: The Arab Region* (Ashgate Publishers 1999).

¹⁶ Ibid.

¹⁷ Worldbankorg, "World bank: Migration and Remittances Factbook", <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/MENA.pdf> [accessed 8 August 2015].

¹⁸ Anh Nga Longva, "Keeping Migrant Workers in Check: the Kafala System in the Gulf" [1999] (211) *Middle East Report* 20-22.

¹⁹ Sara Hamza, "Migrant Labor in the Arabian Gulf" (2014), University of Tennessee Honors Thesis Projects, http://trace.tennessee.edu/utk_chanhonoproj/1710.

²⁰ See 'the Basic Law of Governance' of Saudi Arabia on <http://www.mofa.gov.sa/sites/mofaen/ServicesAndInformation/aboutKingDom/SaudiGovernment/Pages/BasicSystemOfGovernance35297.aspx>.

²¹ Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Clarendon Press 1997).

reasons; the second group are short-term workers who move overseas for a brief employment period with a possibility of their work contract being renewed or extended²². Migrant workers in the GCC are usually identified with the short-term category.²³ Further, these workers are considered 'contract' workers, whose employment arrangements are usually organized between the country of employment and their national state.²⁴

Unfortunately, while this group of workers is commonly considered 'indispensable' by receiving countries, they are also perceived to be 'disposable'.²⁵ Therefore, the international community has emphasised the need to ensure and protect the rights of this group. Following Cholewinski, the structure of the international protection law for migrant workers and their families could be analysed by a three-component model.²⁶ The first component is a United Nations Charter-based system which could be described as three provisions: (1) authorising individuals or organisations to submit complaints to the Human Rights Council in the UN to evaluate and to address any violations occurring around the world;²⁷ (2) authorising special reporter[s] and human rights independent expert(s) to study any human rights obstacles that complicate the life of migrant workers, such as any complexity for non-documented migrant labourers who want to return to their country of origin;²⁸ (3) performing review reports by the UN Human Rights Council on UN Member States reports, which comprise the so-called quadrennial periodic review, a review that ends with recommendations by the Council on how to improve a certain analysed situation.²⁹

The second component consists a number of international human rights and labour conventions.³⁰ There are several treaties that focus on migrant workers' rights, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)³¹ the International Covenant on Civil and Political Rights (ICCPR),³² the Convention on the Elimination of All Forms of Discrimination Against

²² Ibid.

²³ DG Papademetriou and PL Martin, *The Unsettled Relationship: Labor Migration and Economic Development* (New York: Greenwood Press 1991).

²⁴ Ibid.

²⁵ Lori Nessel, "Human Dignity or State Sovereignty? The roadblocks to full realization of the UN Migrant Workers Convention", in Vincent Chetail and Celine Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar Publishing Limited 2014).

²⁶ Ryszard Cholewinski, "The Human and Labor Rights of Migrants: Visions of Equality in David Weissbrodt and Justin Rhodes, United Nations treaty bodies and Migrant Workers", in Vincent Chetail and Celine Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar Publishing Limited 2014) 303.

²⁷ UN Human Rights Council, *Resolution 5/1: Institution Building of the United Nations Human Rights Council*, [2007] at para 85.

²⁸ UN Commission on Human Rights, *Resolution 1999/44: Human Rights of Migrants*, [1999], para 3.

²⁹ Cholewinski in Weissbrodt and Rhodes (n.26).

³⁰ Ibid.

³¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 2220 UNTS [1990] (entry into force:2003).

³² International Convention on Civil and Political Rights, 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (entry into force: 1967).

Women (CEDAW),³³ the International Covenant of Economic, Social and Cultural rights (ICESCR),³⁴ the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)³⁵ and the International Labor Organization (ILO).³⁶ The preface of the ILO constitution highlights the importance of governing the rights of migrant workers; therefore, there are many instruments adopted by the ILO, which focus on the rights of workers, such as the elimination of all forms of forced labour³⁷ and the elimination of discrimination.³⁸ Many member states of the ILO have ratified several conventions. Regardless of ratification, however,³⁹ all member states have a commitment, stated in the ILO declaration on fundamental principles and rights,⁴⁰ to endorse and appreciate the foundation of the labour standards set out in the rest of the ILO conventions.

Finally, 'regional instruments' comprise the third component of the international protection law of migrant workers;⁴¹ the European Convention on the Legal Status of Migrant Workers is one such example.⁴²

While there are many ILO and Human Rights treaties that focus on migrant workers' issues, the ICRMW is the only convention that concerns this group of workers explicitly.⁴³ Most of the 45 states that have ratified the convention are migrant-sending states.⁴⁴ It generally combines all the human rights declared in other treaties in one instrument that addresses migrant workers and their families.⁴⁵ Saudi Arabia has not yet ratified this convention, something which will be considered carefully in following sections.

Saudi Arabia is a member state of the ILO and has ratified 16 conventions of it. Moreover, in addition to the ILO conventions, there are several other conventions that it adheres to, which consider the rights of workers, including those who are migrants. However, only by ratifying the ICRMW would protection for migrant workers in Saudi Arabia be fully guaranteed. It may also be noted that the Saudi government has only ratified ICERD and CEDAW.⁴⁶

³³ Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS [1979], (Entry into force: 1981).

³⁴ International Covenant on Economic, Social and Cultural Rights, 993 UNTS [1966], (Entry into Force:1976).

³⁵ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 [1966], (Entry into force: 1969).

³⁶ David Weissbrodt, "United Nations treaty bodies and Migrant Workers", in Vincent Chetail and Celine Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar Publishing Limited 2014) 303.

³⁷ Convention concerning Forced or Compulsory Labor (ILO no.29), 39 UNTS 55 [1930], (Entry into force: 1932).

³⁸ Equal Remuneration Convention (ILO No. 100), 165 UNTS 303 [1951], (Entry into Force: 1953).

³⁹ Weissbrodt and Rhodes (n.36).

⁴⁰ ILO Declaration on Fundamental Principles and Rights at Work, 37 ILM 1237, [1998], para 2.

⁴¹ Cholewinski (n.21).

⁴² Weissbrodt and Rhodes (n.36).

⁴³ Nessel (n.25).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Alzahrani (n.3).

ISLAMIC LAW AND MIGRANT WORKERS' PROTECTION

To evaluate the role of Islamic law in the protection of migrant workers within the context of the application of the *kafāla*, a general understanding of its nature and its compatibility with human rights laws is an imperative.

Human Rights in their entirety have never been a by product of modern life nor an innovation of the West. Islam has the precedence in calling for human rights, their protection, and the conception of the individual, society, and the state as the guardians of human rights in the sense that human rights are essentially religious duties.⁴⁷

Baderin has observed that jurisprudence in Islamic law contains a pluralistic understanding of its major sources. This observation is crucial in a comparative legal analysis sphere, for it allows for variation in juristic opinions and beliefs.⁴⁸ However, the failure to differentiate between the methods and sources of Islamic law creates the erroneous belief that Islamic law is utterly 'divine' and 'unchallengeable'.⁴⁹ For instance, in a Human Rights Watch (HRW) report of Saudi's human rights violations, it is implied that one of the legal issues in the Saudi law is 'the absence of codified *Sharia* laws'.⁵⁰ This suggests some confusion about the nature of Islamic law. In fact, there is a difference between *Sharia* and *fiqh*; the former is the 'divine' and primary source, which is the holy *Qur'an* and *Sunnah*, and the latter is the human understanding and method of analysing the two 'divine' sources of Islam, which makes *Sharia* unchallengeable, but *fiqh* based on human interpretations.⁵¹

Therefore, it could be argued that *Sharia* protects migrant workers' rights and dignity as part of the human rights guaranteed in Islamic law. The positive legal instruments granted by international law regarding civil and political rights are demonstrated in the provisions of the ICCPR.⁵² The latter covers many rights that are directed to all human beings including migrant workers. A comparative legal analysis will be undertaken hereafter, which will demonstrate that the objectives of the ICCPR articles, specifically the ones related to migrant workers' protection, are in effect governed by the *Sharia*.

ICCPR ARTICLES RELATED TO MIGRANT WORKERS' PROTECTION WITH PERSPECTIVE TO ISLAMIC LAW

Article 7 is concerned with 'the prohibition of torture or cruel, inhuman or degrading treatment or punishment'.⁵³ In *Sharia*, a human person has a special dignified position among all species. Furthermore, the *Qur'an* and the Prophets' *Sunnah* as sources of *Sharia* defend

⁴⁷ Ibid.

⁴⁸ Mashood Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003).

⁴⁹ Ibid.

⁵⁰ Human Rights Watch, "As if I am not Human: Abuses Against Asian Domestic Workers in Saudi Arabia", https://www.hrw.org/sites/default/files/reports/saudiArabia0708_1.pdf [accessed 1 September 2015].

⁵¹ Baderin (n.48).

⁵² Ibid.

⁵³ ICCPR, Article 7, (n.32).

human safety and security for all living things in many instances, and have banned brutality even against animals.⁵⁴ Bassiouni has observed that the prohibition of harassment and cruelty is mentioned in the Qur'an 99 times.⁵⁵ Moreover, Caliph Omar Ibn AbdulAziz is reported to have said the following:

I wonder at your asking permission from me to torture people as though I am a shelter for you from God's wrath, and as if my satisfaction will save you from God's anger. Upon receiving this letter of mine accept what is given to you or let him give an oath. By God, it is better that they should face God with their offenses than I should have meet God for torturing them.

This was a response the Caliph gave to a request made by his administrators to torture those who refused to pay their taxes; his reply is an example of Islamic teachings that follow the path of Prophet Mohammad. In fact, Islam prohibits all forms of racism and assures the equality of all humans: 'O mankind, we have created you from a male and a female and have made you into nations and tribes for you to know one another...'.⁵⁶ This verse indicates how the Qur'an promotes diversity among people, which is clearly contrary to national arrogance against migrants, which could be instead a result of the *kafāla* regulations.

Moreover, Article 8 postulates freedom from slavery and forced labour.⁵⁷ In the Saudi case, many opponents have described the *kafāla* system as a slave-like structure, which ties the migrant to the national. However, Article 8 bans signatory states from exercising slavery and/or forced labour; this prohibition of slavery is considered to be one of the main foundations of customary international law, although it was practised as a source of income in most of the world, including the Arabian Peninsula.⁵⁸ After the revelation of Islam, slaves were treated as fellow human beings with special rights; the Prophet set free slaves who had been treated in the most cruel ways.⁵⁹ The *Qur'an* mentions in many verses the liberation of slavery as amends for several Islamic wrongdoings,⁶⁰ such as the example that follows:

Allah will not call you to account for what is futile in your oaths, but will call you to account for your deliberate oaths...for expiation, feed ten indigent persons . . . or clothe them; or give a slave his freedom. If that is beyond your means, fast for three days.⁶¹

⁵⁴ Baderin (n.48).

⁵⁵ M.C Bassiouni, "Sources of Islamic Law, and the Protection of Human Rights in the Islamic Criminal Justice System", in Baderin (n.48) 76.

⁵⁶ Qur'an, Surat Al-Ĥujurat, verse 13.

⁵⁷ ICCPR [Article 8](n.32).

⁵⁸ Baderin (n.48).

⁵⁹ Ibid.

⁶⁰ Baderin (n.48).

⁶¹ Qur'an, Surat Al-Mā'idah, verse 89.

In reference to this *hadith*, Yamani asserts that although Islam did not directly abolish slavery because in the time of the Prophet Mohammad slavery had a worldwide socio-economic importance, it created new notions that paved the way to its abolishment.⁶²

Additionally, regarding forced labour, the *Sharia* provides special rights for workers concerning their incomes and working hours.⁶³ It includes direct teachings and instructions of the relation between the employers and employees. The *Qur'an* emphasises the importance of fairness in the distribution of wages and in trade, also by aligning income levels to the amount and value of the work performed by the worker.⁶⁴ Moreover, in the *Sunnah* it is reported that the Prophet commanded that the employee must know his earnings before working; he even ordered that employers must pay his worker(s)' salaries before the sweat from their work dries up on their skin.⁶⁵ Abu Huraira narrated that the Prophet stated the following: 'I will be against three persons on the Day of Resurrection: [...] 3. And one who employs a labourer and gets the full work done by him but does not pay him his wages'.⁶⁶ Unlike the *kafala* system, Islamic law illustrates a work relationship based on mutual cooperation between the worker and the employer, and not one that is premised on dominance and submissiveness; the *Qur'an* and the *Sunnah* could not be more precise about the critical necessity of treating employees and workers with humanity and fairness without any injustice or forced labour.⁶⁷

Article 9 of the ICCPR is concerned with the right to liberty and the security of the person.⁶⁸ According to Article 9(1) the due process of law is the only exception in which a person may be denied his/her freedom; on the other hand, article 9 is aimed to direct governments in guaranteeing security and not to divest the people of their liberties. Moreover, Article 9(1) of the Human Rights Charter broadens the prohibition of deprivation of liberty to special cases, such as immigration control.⁶⁹ Islamic law has guaranteed this right: it is a governor's duty to secure his people's liberty and security, and no one can be deprived of his/her liberty without a valid justification.⁷⁰ However, the *kafala* is a disproportionate system, which gives the *kafil* the power to control the liberty of the sponsored worker violating international law on human rights standards and Islamic law.

Article 12 of the ICCPR includes 'The Rights to Freedom of Movement and Choice of Residence'⁷¹ and it is integral to the migrant worker's protection. Without this right being guaranteed, liberty is a hypothetical privilege. Any person who is a lawful resident or citizen of a state shall have the right to move and to choose where to live within the territory;

⁶² AhmedZaki Yamani, "Social Justice in Islam" [2002] 41(1), *Islamic Studies*, <http://www.jstor.org/stable/20837162>. [accessed 17 August 2017]

⁶³ Alzahrani (n.3).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Sahih Bukhari*, Vol. 3, Book 34, No. 430 in Alzahrani (n.3).

⁶⁷ Alzahrani (n.3).

⁶⁸ ICCPR [Article 9](n.32).

⁶⁹ Baderin (n.48).

⁷⁰ *Ibid.*

⁷¹ ICCPR [Article 12](no.32).

paragraph (2) asserts that a person has the right to leave the country.⁷² A migrant worker therefore should be guaranteed this right without restriction to his/her liberty, provided that they are legally in the hosting country. Nonetheless, it is normal for states to be concerned about their security and sovereignty, which could lead them to limit such rights and liberties to immigrants. While it is a state's duty and concern to regulate its political territory, it is also a state's responsibility to protect the migrant workers' rights once they reside in the country lawfully. The *Qur'ān* mentions: 'It is He (God) Who Has made the earth tractable for you (mankind), so traverse through its tracts and enjoy of the sustenance which He (God) furnishes; but unto Him is the Resurrection'.⁷³ According to Pande's study on the *kafāla* system in Lebanon, which is similar to the one enforced in Saudi, passports are usually confiscated by the sponsors, which creates automatic restrictions on the migrant workers' mobility and freedom of movement.⁷⁴ This is due to the misuse of power by the *kafil*. The *kafāla* as a system fails to protect the migrant workers' lawful right to freedom of movement under both Islamic and International law.

ICESCR ARTICLES RELATED TO MIGRANT WORKERS' PROTECTION WITH PERSPECTIVE TO ISLAMIC LAW

This convention refers to the economic, social and cultural rights of the people of the signatory countries. It was ratified by 41 out of 57 member states of the Organization of Islamic Cooperation (OIC) but not Saudi Arabia. This means that the majority of Islamic states of the OIC accepts the terms of the covenant and believes that they are consistent with Islamic law. The right to work, the right to enjoy fair conditions of work, the right to social security and social insurance and the right to an adequate standard of living, are some of the rights governed by ICESCR related to the welfare of immigrant workers.

Article 6⁷⁵ postulates the right to work, making it not only lawful, but endorsing it as the only possible way to make a living.⁷⁶ A state may not be able to secure a job for everyone, but it is its duty to make working chances available; moreover, this right has been mentioned in the UDHR in Article 23(1)⁷⁷. Islam *inter alia* assures the right to work and stresses the importance of this right in the *Sharia* sources:⁷⁹ 'And made the day for livelihood'.⁸⁰ In this *Qur'anic* verse, God declares that He has assigned the day as the time for labour to earn a living. It follows that the same right should be ascertained for migrant workers. The problem with the *kafāla* in the context of this Article is that it controls the sponsored employee's

⁷² Baderin (n.48).

⁷³ *Qur'an*, Surat Al-Mulk, verse 15.

⁷⁴ A Pande, "'The Paper that You Have in Your Hand is My Freedom': Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon" [2013] 47(2) *International Migration Review* 414-441.

⁷⁵ ICESCR (Article 6), (n.34).

⁷⁶ Baderin (n.48).

⁷⁷ *Universal Declaration of Human Rights*, (Article 23), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

⁷⁸ Baderin (n.48).

⁷⁹ *Ibid*.

⁸⁰ *Qur'an*, Surat An-Naba', verse 11.

movement and the choice of employment by conditioning those on the *kafil's* legal permission.

Article 7 refers to the right to fair and favourable conditions of work.⁸¹ In terms of provisions, it guarantees positive working conditions, including in relation to working hours and resting periods.⁸² Moreover, many ILO conventions cover the provisions of this Article.⁸³ As mentioned earlier, Saudi Arabia is a member state of the ILO and has ratified 16 conventions that include: Convention No.1 on the hours of work (industry), Convention No.14 on weekly rest (industry), Convention No.106 on weekly rest (Commerce and offices). These conventions are consistent with the conditions stipulated by the committee of the ICESCR in Article 7.⁸⁴ *Shari'a* provides for such terms of equity, humanity and fair treatment.⁸⁵

Woe to those who give less in measure and weight. Those who, when they receive from men demand full measure; but when they have to give by measure or weight, give less than due.⁸⁶

As evident in this verse, the *Qur'an* forbids injustice in aspects concerning giving and taking; the word 'woe' emphasises the hideousness of the act of unjust remuneration; this verse serves to sanction the promotion of fair trade and fair compensations to workers according to their assigned job.⁸⁷ Additionally, according to Islamic expectations, the employer has the duty to terminate the contract of a worker in the case that the latter so wishes it. He must do so fairly and justly: 'Deal not unjustly and you shall not be dealt with unjustly'⁸⁸. It is undeniable that Islamic law protects the human rights of migrant workers. Hence, the continuous application of the *kafāla* in its current form, which violates the human rights of this group of workers, is contradictory to Islamic values.

RETHINKING THE KAFĀLA

It emerges from the analysis above that the application of the *kafāla* system cannot be described as just according to International and Islamic Law; it actually creates a dilemma that allows both sponsors and workers to manipulate the law. Such defects place the Kingdom of Saudi Arabia in a critical position internationally. Several local and international human rights organisations have already compiled studies and produced reports on the *kafāla* system and its violations. The Saudi labour committees and bodies are especially

⁸¹ ICESCR (Article 7), (n.34).

⁸² Baderin (n.48).

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Qur'an, Surat Al-Muṭaffifin, verses 1-3.

⁸⁷ Baderin (n.48).

⁸⁸ Qur'an, Surat Al-Baqarah, verse 279 in Baderin (n.48).

aware of the complications that result from the current system; they regularly receive large amounts of cases concerning such issues.⁸⁹

According to the Saudi National Society for Human Rights (NSHR), the long experience of Saudi Arabia with the sponsorship scheme has revealed many deficiencies, which have been described as follows:

1. It causes administrative and regulatory complexities: several governmental sectors and public institutes are preoccupied with regulating the provisions of the *kafāla*, from visas to stamps and agreements. Other sectors' work focuses exclusively on investigating workers' problems, and ensuring that the sponsor maintains his contract and financial obligations toward the sponsored workers.⁹⁰ This slows down the government's progress in its attempt to gratify both parties and to protect their rights, hurting also the government's budget.
2. Failure of the *kafāla* to fulfil its purpose: even though it offers many advantages and places control in the hands of the employer, it has not deterred an increase in illegal activities by some workers. The control it places in the hands of employers has led many sponsors to violate the employees' basic human rights, which led many to try to escape the brutality by becoming illegal residents.⁹¹ However, like Al-Ghanim, many would argue that Labour law and Residence regulations are enough to control the actions of the *kafil to sponsor and to protect the sponsored migrant worker*.⁹² Additionally, some GCC citizens, including Saudis, are concerned about the rising number of migrant workers in the country, and that they might influence the demography, social customs and culture substantially.⁹³ Subsequently, they consider the *kafāla* to be a necessary regulating system for entry-exit procedures and residence.⁹⁴ This is clearly incorrect. The *kafāla* policies have not deterred some sponsors from practising arbitrary judgments and taking arbitrary actions.⁹⁵ Moreover, the core principle of the *kafāla* is to 'guarantee' the sponsored status in the country by the sponsor: the sponsor is responsible for all of its worker's actions and law violations inside Saudi territories; nevertheless, in effect this is not respected most of the time.⁹⁶ If employers were given the option to keep such power and control by taking full responsibility of the employees' acts, they would likely not accept such a burden; the

⁸⁹ Alyaum, "Ending the Kafala: Advantages and Disadvantages", <http://www.alyaum.com/article/3136286> [accessed 9 September 2015].

⁹⁰ National Society for Human Rights, Saudi Arabia, "A Study Regarding the Abolishment of Kafala Regulations and Correction of the Relationship between the Employer and the Migrant Worker", http://nshr.org.sa/wp-content/uploads/2013/10/76_PDF1.pdf [accessed 8 September 2015].

⁹¹ Ibid.

⁹² Kaltham Al-ghanim, "Kafala System Remains Resilient in the GCC" (*Oxgaps.org*, October 2015), https://www.oxgaps.org/files/analysis_al-ghanim.pdf [accessed 16 August 2017].

⁹³ H Malaeb, "The *Kafāla* System and Human Rights: Time for a Decision", [2015] 29(4) Arab Law Quarterly 307-342.

⁹⁴ Ibid.

⁹⁵ NSHR (n.91).

⁹⁶ NSHR (n.91).

government would become the sole accountable of any violations by migrant workers.⁹⁷ This makes the *kafāla* a burden to the sponsor, sponsored, and the government.

3. Hesitation of competent workers to come to work in Saudi: the Kingdom needs expat experts to work in many fields; nonetheless, the temptation of good wages may not be enough to convince them to enter a country where their freedom and passports might be confiscated by their sponsors illegally.⁹⁸
4. The deficiency of the regulations concerning the correction of *kafāla* outcomes: the government has in the last three years passed unsuccessfully new instructions to force the *kafil* to respect the sponsored worker's rights.. While various methods for the alien worker to claim his/her rights and even sue their sponsor have been provided, statistics show that most of the workers do not complain, as they fear the sponsors' power given to them by law; many workers are concerned that the sponsor may report them for falsely accusing the employer of illegal activities, resulting in their deportation.⁹⁹

Moreover, the NSHR argued in a relevant study that the *kafāla* is indeed in violation with the principles of the *sharia*. Islamic law prohibits exploitation and injustice, and the continuous application of the *kafāla* leads to contradictions with Islamic law.¹⁰⁰ In addition, this system of sponsorship violates many international legal treaties.¹⁰¹ It is legally accurate that Saudi Arabia should be only concerned with the international conventions that it signed and ratified, but human rights conventions are a special case. Even if a state is not a signatory country, it does not mean that it should not be concerned with the human rights standards in its territory, considering that it still is a member of the international community.¹⁰²

Likewise, the *kafāla* as a sponsorship system in the Middle East has been the subject of much debate and several studies. One should mention the work of Malaeb, in which she discusses the *kafāla* in the GCC countries from an international legal perspective and calls for immediate reformations. In this paper, the Saudi case specifically was put under the microscope under the rationale that is important to break down the issue of the *kafāla* and to analyse the role of *Sharia* –if any– and its stances with respect to international legal standards regarding migrant workers.

Other *kafāla* related studies are available, such as the one conducted by Pande, which has focused on domestic migrant workers in Lebanon. These migrant workers have faced dreadful conditions in the host country because of a system that is similar to the Saudi one, especially in that it places considerable power on the sponsor. Her work underscores the argument that it is hard to control the actions of the *kafil* (as discussed earlier) when employers are given authority over migrant workers.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² NSHR (n.91).

CONCLUSION

This article attempted to discuss the *kafāla* system from a different perspective rarely taken before. The *kafāla* has been criticised for its provisions and application nationally and internationally. This article analysed how the *kafāla* as a statutory law in Saudi Arabia violates the *Sharīa*. It was argued that this system puts the country in a critical position internationally. The problem is, however, that there has been little research concerning the application of the *kafāla* under Saudi law. Most of the Saudi sources indicate that it violates the terms of Islamic law without giving a specific analysis of the matter and calling for an immediate reformation.¹⁰³ Careful examination is vital for the progress and protection of human rights according to international law and Islamic law. Thus, this study has aimed to distinguish between the application of the *kafāla* and the content of the *Sharīa*. It was found that Islamic law is compatible with international human rights with special reference to migrant workers. This paper has attempted to introduce new perspectives on this subject and to push forward the issue of ratification of conventions to guarantee an ideal application of the law and protection of migrant workers.

Lack of awareness is one of the major causes behind the slow improvements in protection laws concerning the human rights of migrant workers in Saudi Arabia. This combines with constant abuse by sponsors and their ignorance of workers' human rights. As Baderin has observed, most of the population of Islamic states lacks a clear understanding of human rights.¹⁰⁴ This lack of knowledge results in major violations, therefore, human rights education is fundamental to limit such abuses.¹⁰⁵ The government should promote an understanding of the importance of human rights inside the *Sharīa* context. Such comparative studies are crucial for the ordinary population.¹⁰⁶ The government should include in school curricula subjects that teach justice and human rights in Islam with emphasis on the equality of all persons. More research in economic, social, legal and religious fields is needed to focus on the migrant workers' rights and how to promote a fairer system.¹⁰⁷

The *kafāla* system should be abolished and replaced with a new governmental scheme that is only specialised in the affairs of migrant workers. One of the problems with the *kafāla* regulations is that there is no specific body that regulates all immigrants' matters.¹⁰⁸ While there are the Ministry of Labour and the Ministry of Internal Affairs, the *kafāla* laws are scattered everywhere with no specific codified document to be referred to, which creates favourable conditions for the *kafīls* to abuse the rights of migrant workers. A new body regulated by the Ministry of Labour should be established.¹⁰⁹ This new governmental

¹⁰³ Most of the Saudi sources are newspaper and online articles. There has been no Saudi scholarly research in support of the *kafāla*. In fact, there is not enough if any Saudi research on the topic in general; hence, the importance to encourage researchers to conduct more scholarly research in the subject.

¹⁰⁴ Baderin (n.48).

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Alzahrani (n.3).

¹⁰⁸ NSHR (n.91).

¹⁰⁹ Ibid.

institution should: (a) be responsible for all groups of migrant workers whether domestic or private employees; (b) organise the migrant workers' market in accordance with the Saudi market; (c) create plans and programmes that align the Kingdom's interests to alien workers' needs and circumstances; (d) collect and publish annual statistics; (e) organise processes between the Kingdom and migrant sending countries; (f) ensure the protection of the human rights and the welfare of the workers.¹¹⁰

Finally, international ratification is vital. Saudi Arabia should join the rest of the conventions of the ILO related to workers' rights and protection.¹¹¹ It should also ratify the ICRMW and proceed with its ratification to the ICCPR and ICESCR. As already explained, the terms of these conventions do not diverge from the context of the *Sharia*; therefore, they should not be perceived as a challenge to Saudi Arabia's participation.

BIBLIOGRAPHY

ISLAMIC SOURCES

- Qura'n, Surat Al-'Isrā', verse (70)
- Qur'an Surat 'Āli 'Imrān verse 37
- Qur'an, Surat Al-Ĥujurāt, verse 13
- Qur'an, Surat Al-Mā'idah, verse 89
- Qur'an, Surat Al-Mā'idah, verse 89
- Qur'an, Surat Al-Baqarah, verse 256
- Qur'an, Surat Al-Muṭaffifīn, verses 1-3
- Qur'an, Surat Al-Baqarah, verse 279
- Qura'n, Surat An-Naba', verse 11
- Qur'an Surat An-Nūr, verse 27
- Qur'an, Surat Al-Mulk, verse 15
- Qur'an, Surat Yūnus, verse 99

SAUDI LEGAL SOURCES

- Basic Law of Governance, Royal Order no. A/91, 1992, (English Translation found at Saudi Embassy). https://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx [accessed 6 September 2015]

¹¹⁰ Ibid.

¹¹¹ Alzahrani (n.3)

Domestic Workers List, (Arabic). [http://portal.mol.gov.sa/ar/MolLists/Documents/](http://portal.mol.gov.sa/ar/MolLists/Documents/Laboreducation.gov)

Laboreducation.gov. "FAQs." Protection of Wages Program.

<https://www.laboreducation.gov.sa/faq/>

Musaned.gov. "Complaints and Disputes.

<https://www.musaned.gov.sa/en/licenseddestinations/complaintsdisputes>

Refworld.org. "Residence Regulation of Saudi Arabia (English Translation)." [Article 5].

<http://www.refworld.org/pdfid/3fb9f0d44.pdf>. [accessed 6 September 2015]

Sagiagovsa. "Saudi Labor Law.(English)" [Article(5)].

http://www.sagia.gov.sa/Documents/Laws/labor_law_en.pdf [accessed 6 September 2015]

Saudi Government Passport Department. "Residency Violations."

[http://www.gdp.gov.sa/sites/pgd/ar-](http://www.gdp.gov.sa/sites/pgd/ar-SA/Procedures/PunishmentsList/Pages/default.aspx)

[SA/Procedures/PunishmentsList/Pages/default.aspx](http://www.gdp.gov.sa/sites/pgd/ar-SA/Procedures/PunishmentsList/Pages/default.aspx) [accessed 6 September 2015]

INTERNATIONAL CONVENTIONS/DOCUMENTS

Convention Concerning Forced or Compulsory Labour (ILO no.29), 39 UNTS 55 [1930], (Entry into force: 1932)

Convention Concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, ILO no. 143, 1120 UNTS 323, [1975], (Entry into force: 1978)

Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS [1979], (Entry into force: 1981)

Equal Remuneration Convention (ILO No. 100), 165 UNTS 303 [1951], (Entry into Force: 1953)

ILO. "Ratifications by Country: Saudi Arabia."

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103208 [accessed 6 September 2015]

ILO Declaration on Fundamental Principles and Rights at Work, 37 ILM 1237, [1998] ILO.

"Case No 2227." The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM). http://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:2897583 [accessed 6 September 2015]

International Convention on Civil and Political Rights, 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (entry into force: 1967)

International Covenant on Economic, Social and Cultural Rights, 993 UNTS [1966], (Entry into Force:1976)

International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 [1966], (Entry into force: 1969)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 2220 UNTS [1990] (entry into force:2003)

Migration for Employment Convention, ILO No. 97, 120 UNTS 70, [1949], Entry into Force: 1952]

UN Commission on Human Rights, Resolution 1999/44: Human Rights of Migrants, [1999]

UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, (Article 79), A/RES/45/158 [1990] (Entry into force: 2003)

UN Human Rights Council, Resolution 5/1: Institution Building of the United Nations Human Rights Council, [2007]

Universal Declaration of Human Rights, (Article23), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)

ACADEMIC SOURCES

Pande, A. "The Paper that You Have in Your Hand is My Freedom': Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon" [2013] 47(2) *International Migration Review* 414-441

Ahmed Zaki Yamani. "Social Justice in Islam." *Islamic Studies* [2002] 41(1). <http://www.jstor.org/stable/20837162> [accessed 17 August 2017]

Aldackmi, M. *Nizam Al-a'mal AlSo'edi Aljadid fe Mizan Altahlil alFaq'hi*. Dar Hafiz, 2009

Alhageel, S. *Human Rights in Islam and their Applications in the Kingdom of Saudi Arabia*. King Fahd Library Cataloging-in-Publication Data, 2001

Al-obaidi I, *Al-Kafeel: Al-Athar Al-Mutarateba Ala Aqd Al-Kafala AlMalliyya Fe Al-Sharia Al-Islamiya wa Al-Qanun Al-Imarati*. 1st edn. Islamic Affairs and Charitable Activities, 2014

Alrasheed, M. *A History of Saudi Arabia*. Cambridge University Press, 2002

Alzahrani, M. "The System of Kafala and the Rights of Migrant Workers in GCC Countries- With Specific Reference to Saudi Arabia." *European Journal of Law Reform* [2014] 16(2)

An-Na'im, A. "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives." V3, 1990. <http://aannaim.law.emory.edu/pdfiles/dwnld11.pdf>

Appleyard, R. *Emigration Dynamics in Developing Countries, (V4), The Arab Region*. Ashgate Publishers, 1999

Baderin, M. *International Human Rights and Islamic Law*. Oxford University Press, 2003

Baldwin-Edwards, M. "Labour Immigration and Labour Markets in the GCC Countries: National Patterns and Trends." http://eprints.lse.ac.uk/55239/1/Baldwin-Edwards_2011.pdf [accessed 9 September 2015]

- Baragach, J. *Orphans of Islam: Family, Abandonment, and Secret Adoption in Morocco*. Rowman and Little Field, 1964
- Chetail, V, and Bauloz, C. *Research Handbook on International Law and Migration*. Edward Elgar Publishing, 2014
- Cholewinski, R. *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment*. Clarendon Press, 1997
- Chouri, N. "Asians in the Arab World: Labor Migration and Public Policy." *Middle Eastern Studies* [1986] 22(2), 252-273
- Emon et al. (eds). *Islamic Law and International Human Rights*. Oxford University Press, 2012
- Ernst, J B. *Migrants in the Gulf: A Critical Assessment of the Social, Cultural, and Economic Implications of Migrant Workers in the Countries of the Gulf Cooperation Council*. University of Arizona, 2011
- Foster, N. "Islamic Law of Guarantees." *Arab Law Quarterly* [2001] 16(2)
- Malaeb, H. "The 'Kafala' System and Human Rights: Time for a Decision." *Arab Law Quarterly* [2015] 29(4), 307-342
- Hamza, S. "Migrant Labor in the Arabian Gulf" (2014), University of Tennessee, Honors Thesis Projects. http://trace.tennessee.edu/utk_chanhonoproj/1710
- Kamrava, M, and Babar, Z. *Migrant Labor in the Persian Gulf*. Columbia University Press, 2012
- Longna, A N. *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* . Westview Press, 1997
- Longva, A N. "Keeping Migrant Workers in Check: The Kafala System in the Gulf." *Middle East Report* [1999] (211), 20-22
- Murray, H. "Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries." *Cornell International Law Journal* [2012] 45(2), 461
- Papademetriou, D G, and Martin P L. *The Unsettled Relationship: Labor Migration and Economic Development*. New York: Greenwood Press, 1991
- Thiollet, H. "Migration as Diplomacy: Labor Migrants, Refugees, and Arab Regional Politics in the Oil-Rich Countries." *International Labor and Working-Class History* [2011] 79(1), 103-121
- Ulrichsen, KC. "Internal and External Security in the Arab Gulf States." *Middle East Policy* [2009] 16(2), 39-58
- Vlieger, A. "Shari'a on Domestic Workers: Legal Pluralism and Strategic Maneuvering in Saudi Arabia and the Emirates." *Journal of Islamic Law and Culture* [2011] 12(2), 166-182

REPORTS & STUDIES

Human Rights Watch, "As if I am not Human: Abuses Against Asian Domestic Workers in Saudi Arabia." https://www.hrw.org/sites/default/files/reports/saudiarabia0708_1.pdf [accessed 1 September 2015]

International Labour Organization. "ILO Study Focuses New Attention on Adopting a 'Rights-Based Approach' to Meet the Needs of the World's 105 Million Migrant Workers." http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_125324/lang-en/index.htm [accessed 10 August 2015]

Kapiszewski, A. "Arab Versus Asian Migrant Workers in the GCC Countries, United Nations Expert Group Meeting on International Migration and Development in the Arab Region, Population Division." www.un.org/esa/population/meetings/EGM_Ittmig_Arab/P02_Kapiszewski.pdf [accessed 2 September 2015]

National Society for Human Rights, Saudi Arabia. "A Study Regarding the Abolishment of Kafala Regulations and Correction of the relationship between the Employer and the Migrant Worker." http://nshr.org.sa/wp-content/uploads/2013/10/76_PDF1.pdf [accessed 8 September 2015]

National Society for Human Rights, Saudi Arabia. "Conformity of the Saudi Rules and Regulations with the Conventions on Basic Human Rights." http://nshr.org.sa/en/wp-content/uploads/2013/12/81_PDF11.pdf [accessed 9 September 2015]

Unrwa.org, UNRWA. <http://www.unrwa.org/palestine-refugees> [accessed 6 August 2015]

World Bank Organization. "World Bank: Migration and Remittances Factbook." <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/MENA.pdf> [accessed 8 August 2015]

ONLINE SOURCES & WEBSITES

Alkhateeb A, Alaraby. http://www.alaraby.co.uk/opinion/2015/7/12/Kafala_system_in_GCC_reformations_and_pressures [accessed 1 September 2015]

Alreyadh Newspaper. <http://www.alriyadh.com/999334> [accessed 9 September 2015]

Alyaum. "Ending the Kafala: Advantages and Disadvantages." <http://www.alyaum.com/article/3136286> [accessed 9 September 2015]

Al-Jazeera Youtube. "Inside Story: Should Saudi Arabia End its Kafala System." <https://www.youtube.com/watch?v=5kXr7dFOMRU> [accessed 8 September 2015]

Arabian Business. <http://arabic.arabianbusiness.com/politics-economics/2015/jun/20/390327/#.Ve-U8GSrTEa>

Ibn Hisham, as-Sirah an-Nabawiyah. www.islamweb.net

ICNA Council of Social Justice. "Labor Rights in Islam." <http://icnacsj.org/2014/05/labor-rights-in-islam-sh-abdool-rahman-khan/> [accessed 7 September 2015]

Kaltham Al-ghanim. "Kafala System Remains Resilient in the GCC" (*Oxgaps.org*, October 2015). https://www.oxgaps.org/files/analysis_al-ghanim.pdf [accessed 16 August 2017]

Okaz. <http://www.okaz.com.sa/new/Issues/20140921/Con20140921724577.htm>

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KIAROSTAMI'S *THE TRAVELLER*: A CINEMA OF THE SEER

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ABSTRACT

This essay offers a fresh perspective on Kiarostami's cinema by exploring *The Traveller* (1974) using Deleuze's time-image model. I define the film as consisting of three parts: 1) the Malayer part where Qassem (the protagonist) is able to act 2) the bus sequence which actually metaphorically represents the transition from tradition to modernity and 3) the Tehran part where 'the link between man and the world breaks' and the character becomes a 'seer' confronted by the 'intolerable' which is represented in the film by an empty stadium. Through close textual analysis of the *mise-en-scène* of the film, my goal here is to consider the formal and structural elements used to deliberately engineer the memorable 'feel' of the evacuated stadium sequence in the last scene.

Abbas Kiarostami's first feature film was shot before the Iranian Revolution of 1979. Although Kiarostami's films have been the subject of many studies, *The Traveller* (1974) has rarely been mentioned in the literature. The previous studies mainly investigated his films made after the revolution and hardly dedicated a paragraph to *The Traveller*. The aforementioned film is of significance because it has many characteristics, which were later developed to the perfection by Kiarostami and re-emerged in his later films. Moreover, in general the philosophical analysis of Iranian films can be hardly found in the previous studies. The aim of this article is to uproot these characteristics and analyse them through a philosophical lens, namely time-image model, provided by Gilles Deleuze. To analyse *The Traveller* I will use the cinematic characteristic that Deleuze identified as 'the cinema of the seer', namely 'pure optical situations' in Italian neorealism, in which the situations do not extend into actions and hence are 'fundamentally distinct from the sensory-motor situations of the action-image in the old realism'.¹ This study is a complementary study to the previous ones, which mainly studied Iranian cinema socio-politically, and tends to fill this gap, i.e. the lack of analysis of Kiarostami's films (in particular) through a philosophical framework.

As mentioned above, *The Traveller* was filmed in 1974 when the Iranians experienced many socio-political and economic changes, i.e. an economy upheaval and social changes with Reza Shah's program of modernisation in the 1950s and Mohammad Reza Shah's westernisation plan during the 1960s and 1970s, which resulted in a shattered and pluralised identity. I believe that the modernisation of Iran led to a shift in Iranian identity that made Iranians rediscover the world again and Iranian films were one of the immediate mediums for this purpose. *The Traveller* provides a visual glimpse of Iranian life in the 1970s, an era when revolution was in the air and the westernisation of Iran was happening rapidly.

Abbas Kiarostami's films are notable for his use of children as the main characters, where they are put in situations and struggles that adults can hardly face. Here a discussion of *The Traveller* entails a broader exploration of the role of child in Kiarostami's cinema, and the emergence of this type of character in a new form of optical drama. My concern is to explore Kiarostami's first feature film and to bring Gilles Deleuze's theory of cinema into conversation with Iranian cinema. In this essay, I discuss in what ways Kiarostami's *The Traveller* presents Deleuze's notion of the cinema of the seer. I discuss how *The Traveller's* character becomes a seer rather than a doer, and propose that this film is the beginning of raising a new type of character in Kiarostami's cinema. I draw on Deleuze's definition of modern cinema and its role to make us rediscover and believe in the link between man and the world when the link is broken, in order to address the function of Kiarostami's cinema – a modern cinema in Deleuzian sense – in the process of forced modernisation in Iran.

Deleuze devoted two major works to cinema: *Cinema 1: The Movement-Image* (1893)² and *Cinema 2: The Time-Image* (1895).³ Since their publication, these cinema books have held an influential position in film studies. During the last few decades, Deleuzian theory has been

¹ Gilles Deleuze, *Cinema 2: The Time-Image*, trans. Hugh Tomlinson and Robert Galeta (London: Continuum, 2005), 3.

² Gilles Deleuze, *Cinema 1: The Movement-Image*, trans. Hugh Tomlinson and Barbara Habberjam (London: Continuum, 2005).

³ Gilles Deleuze, *Cinema 2: The Time-Image*, trans. Hugh Tomlinson and Robert Galeta (London: Continuum, 2005).

applied to various cinemas from different regions and with different themes.⁴ David Martin-Jones expertly employed Deleuze's philosophy in order to analyse various national cinemas and reconsidered Deleuze's writing on cinema in the context of 'world cinemas'. He proposed a hybrid model where movement-image and time-image are simultaneously in operation in films considering varied examples including the earliest days of cinema in France, Bollywood blockbusters, European spaghetti westerns, Argentine melodramas, South Korean science fiction films and Hong Kong action films. Martin-Jones provides a constructive critique of what he perceives to be Eurocentric conclusions drawn by Deleuze in his cinema books. Furthermore, cinemas from other nations are described using Deleuze's ideas such as the discussion of Ousmane Sembene's *Borom Sarrett* in Rodowick's Gilles Deleuze's *Time Machine* (1997), and Patricia Pisters's attempts to highlight the challenges of Deleuzian analysis of political films examining contemporary African Films.⁵

During the last few decades, Deleuzian theory has been applied to various cinemas from different regions and with different themes.⁶ In the case of Iranian cinema, there are a few published works available in which Deleuze's time-image model has been used to formally analyse Iranian films.⁷ In an elaborated study, *Iranian Cinema and Philosophy: Shooting Truth*, Farhang Erfani employs the Deleuzian notion of 'national cinema' to analyse a more popular film such as Majid Majidi's *The Colour of Paradise* (1999) –made after the Iranian Revolution of 1979. He proposes that the Iranian Revolution shattered the narrative fabric of society and opened up a world of possibilities for Iranian artists to explore, so that it makes sense to talk also about the more popular and conservative films in the context of Iranian national cinema. Iranian cinema from its introduction until 1969 -which is considered the start of Iranian new wave- was mostly an imitation of Indian and Egyptian cinemas, 'nothing worthy of being called "national cinema"'.⁸ Government and religious authorities have always tried to control elements related to politics, religion, and national culture.⁹ The censorship in cinema

⁴ For instance, see David Martin-Jones, *Deleuze and World Cinemas* (London: Continuum, 2011). Patricia Pisters, "Arresting the Flux of Images and Sounds: Free Indirect Discourse and the Dialectics of Political Cinema", in *Deleuze and the Contemporary World*, ed. Ian Buchanan and Adrian Parr, (Edinburgh: Edinburgh University Press, 2006).

⁵ Patricia Pisters, "Arresting the Flux of Images and Sounds: Free Indirect Discourse and the Dialectics of Political Cinema", in *Deleuze and the Contemporary World*, ed. Ian Buchanan and Adrian Parr, (Edinburgh: Edinburgh University Press, 2006).

⁶ For instance, see David Martin-Jones, *Deleuze and World Cinemas* (London: Continuum, 2011). Patricia Pisters, "Arresting the Flux of Images and Sounds: Free Indirect Discourse and the Dialectics of Political Cinema", in *Deleuze and the Contemporary World*, ed. Ian Buchanan and Adrian Parr, (Edinburgh: Edinburgh University Press, 2006).

⁷ See for instance: Shohini Chaudhuri and Howard Finn, "The Open Image: Poetic realism and the New Iranian Cinema", *Screen* 44,1. (Spring 2003): 35-57, and Vared Maimon, "Beyond Representation: Abbas Kiarostami's and Pedro Costa's Minor Cinema", *Third Text* 26 (3), May (2012): 331-344.

⁸ Richard Tapper, "Introduction", *The New Iranian Cinema, Politics, Representation, and Identity*. (London: I.B. Tauris & Co Ltd. 2002), 4.

⁹ Ibid.

has existed before and after the 1979 Iranian Revolution and many argued about the positive and negative aspects of it.¹⁰

Kiarostami's career as a filmmaker started with making short films for the state-funded Centre for the Intellectual Development of Children and Young Adults (CIDCYA), which Iranians simply call Kanun. Kanun was founded in the early 1960s to publish books and build libraries and to make films for and about children. In 1969, he accepted the proposal of his friend, Firuz Shirvanlu, to collaborate in setting up a film unit within Kanun. In 1970, Kiarostami made his first short film *Nan va Kucheh* (Bread and Alley) in Kanun. Kanun turned out to be a major centre for the new-wave filmmakers of Iranian cinema, of which Kiarostami was one of the pioneers. Cinema was industrialised during the second Pahlavi period (1941-79) producing over 90 films per year. Film production consisted of two major cinemas: the commercial tough-guy genre (filmfarsi), popular with low-quality films, which often juxtaposed Iranian traditions with modern Western traditions, and the new-wave films which had a critical approach to Pahlavi authoritarianism and were very successful at film festivals. Almost all of the new-wave films had a fear-driven narrative and were produced by the collaboration of modernist dissident writers and westernised directors who were constantly exposed to the best of literatures and cinema.¹¹ Most existing studies on Kiarostami's films focused on the films he directed after the Revolution which made him 'possibly the best-known post-revolutionary Iranian filmmaker'.¹² By 1995 his films had already been presented at international film festivals such as Chicago and New York film festivals. He won several awards including Bronze Leopard for *Where Is the Friend's Home?* at Locarno International Film Festival in 1989, Best Film Award of Un Certain Regard for *Life and Nothing More...* at Cannes in 1992 and Silver Hugo for *Through the Olive Trees* at the Chicago International Film festival in 1994. However, it was the 1997 Palme d'Or for his *Taste of Cherry* that brought Kiarostami an international reputation and made him one of the major renowned Iranian filmmakers. Yet, Kiarostami's films had already attracted the attention of Iranian festivals and critics as early as in 1970, when he won the Jury special award at the 5th Tehran International Film Festival for children and young adults for his first short film *Bread and Alley* (1970).

This convinced me to examine his earlier films formally and aesthetically, so as to understand whether Kiarostami's formalism –its associations with non-professional actors, contemporary social topics dealing with ordinary people, combining fictional drama with documentary, self-reflective character, and location shooting– was already in place and applied to those films. I would like to examine in particular his debut, *The Traveller* (1974), in order to know Kiarostami's films beyond international recognitions. I believe that

¹⁰ Hamid Reza Sadr, "Children in Contemporary Iranian Cinema: When we were Children", in *The New Iranian Cinema, Politics, Representation, and Identity*, ed. Richard Tapper (London: I.B. Tauris & Co Ltd. 2002). Saeed Zeydabadi-Nejad, *The politics of Iranian Cinema: Film and Society in the Islamic Republic*, (London: Routledge 2010). Richard Tapper, "Introduction", *The New Iranian Cinema, Politics, Representation, and Identity*, ed. Richard Tapper (London: I.B. Tauris & Co Ltd. 2002), 1-26.

¹¹ Hamid Naficy, *A Social History of Iranian Cinema, Volume 2: The Industrializing Years, 1941-1978*. (Durham: Duke University Press 2011) and Hamid Dabashi, *Close up: Iranian cinema, past, present and future*. (London: Verso 2001), xxiii.

¹² Negar Mottahedeh, *Displaced Allegories: Post-Revolutionary Iranian Cinema*, (Durham: Duke University Press, 2008), 90.

Kiarostami's films made from 1974 to 1999 fit perfectly in Deleuze's time-image framework: the role of the child seer in the time-image, the loosening of sensory-motor connection, the emergence of a pure optical situation or any-space-whatever, and the broken link between man and the world becoming an object of belief. By choosing *The Traveller*, I intend to show that all the diegetic and non-diegetic components of Kiarostami's cinematic styles had already been initiated in his filmic debut.

Using the concept of time-image to interpret Kiarostami's films, I argue that for Iranians, Iranian cinema became a particular place to rediscover the world in its 'immanence' in the process of an inorganic transition from tradition to modernity. I argue that, in representing the modernity crisis in Iran, Kiarostami's *The Traveller* (1974) presents what Deleuze terms 'the cinema of the seer', forming a new kind of 'optical drama' to replace 'traditional drama', in which the paralysing effect of cultural alienation has created an impotent character that 'sees' rather than 'acts'.

In the preface of the English edition of *Cinema 2: The Time-Image*, Deleuze explains that the Second World War resulted in an 'any-spaces-whatever', a term by which Deleuze refers to the spaces in the course of 'demolition or reconstruction' to which European people 'no longer know how to react' or how 'to describe'.¹³ The experience of living in such spaces necessitated the European to rediscover the world. Cinema was a privileged location for this communal reflection. For Deleuze, the need for the communal reflection to rediscover the world led to the emergence of Italian neorealism and the French new-wave. Thanks to the 'any-spaces-whatever', a new type of characters appeared. The characters were 'seers' rather than 'doers', and they saw rather than acted. A new type of characters (mutant characters) also appeared, such as 'a child in the ruined city, a foreign woman in the inland, and a bourgeois woman who starts to "see" what is around her' in Rossellini's trilogy: *Stromboli* (1950), *Germany Year Zero* (1948), *Europe51* (1952).¹⁴

We can define cinema, according to Deleuze, 'as the system that reproduces movement by relating it to any-instant-whatever'.¹⁵ This 'any-instant-whatever' is unique to cinema, making it distinct from other art forms such as ballet and mime, which need movements to function. Unlike ancient philosophers, Deleuze favours the world of 'Becoming' over the eternal static 'Being'.¹⁶

Most studies consider that the Revolution of 1979 created unusual situations (it changed Iranian Islamic identity and created a space for Iranians to rediscover their identity as Muslims) that were influential in Iranian films,¹⁷ but I doubt that it was merely the Iranian Revolution that caused such a radical shift in Iranians' image of themselves (as instead did the Second World War in Europe), as many other crucial factors also contributed to this. The country suffered from an identity crisis after the Reza shah's forced modernisation. The process of modernisation and development was traumatic for Iranians, which resulted in

¹³ Deleuze, *Cinema 2: The Time-Image*, xi.

¹⁴ Ibid.

¹⁵ Deleuze, *Cinema 1: the movement-image*, 6.

¹⁶ Deleuze, *Cinema 1: the movement-image*, 6.

¹⁷ For example see Farhang Erfani, *Iranian Cinema and Philosophy: Shooting Truth*. (New York: Palgrave Macmillan 2012).

'rural unemployment and an acceleration of the movement of people from the villages to the cities'.¹⁸ The Shah's strategies benefited the cities more than the villages. The self-conscious urban middle-class found it rather difficult to be reconciled with their often-rural background.

I believe the abrupt transition from tradition to modernity was the main reason that displaced the Iranians' identity. This transition includes historical events such the Constitutional Revolution 1906-1911, the 1953 CIA engineered coup that overthrew the democratically elected government of Mohammad Mosaddiq and the subsequent period of brutal dictatorship that overwhelmed Iranian intellectual and artistic life,¹⁹ and the rapid modernisation of Iran during the reign of Mohammad Reza Shah starting from the 1950s. The Islamic Revolution itself could be considered a natural reaction to this inorganic rapid modernisation. According to Dabashi, the project of modernity ultimately failed due to several reasons:

[...] among them the colonial prevention of the formation of a self-conscious national bourgeoisie and the catastrophic consequences of the economic placement of Iran in a disadvantageous position in the productive logic of global capitalism. But equally important in the contour of this failure was the moral collapse of any successful formation of individual subjectivity.²⁰

This may have caused the cinema to become a place for rediscovery of the Iranians' shattered self, since 'this cinema has succeeded in resubjecting the Iranian self where the project of modernity has failed'.²¹ Although the Iranian Revolution of 1979 was profoundly influential in Iranian films, it was not the only historical event that caused Deleuze's favoured type of character to appear in Iranian cinema. There are more historical events, most importantly the 'inorganic' and fast modernisation of Iran that led to the emergence of the new kind of characters. For this, I turn to Kiarostami's *The Traveller* (1974), which well predates the Iranian Revolution of 1979. By examining this film, I intend to show that the 'cinema of the seer' was already in place in his film before the Revolution.

THE CHILD SEER IN *THE TRAVELLER*

The story of *The Traveller* takes place in two cities in Iran in 1974: Malayer, a small town in the west of Iran, and Tehran, the capital. The protagonist (Qassem), a schoolboy from Malayer, travels to the capital, the modern Tehran, to see a football match in a stadium, and he is determined to overcome all obstacles in his way. Here, I focus on Deleuze's notion of the 'cinema of the seer' to examine the depiction of the experience of modernity through a child's eyes, who becomes a 'seer' when he suddenly encounters modern environments. The first 40 minutes, in which the protagonist is able to act since his 'link' to the world has not been broken yet, still relies on the world of the subject. The second part begins with

¹⁸ Michael Axworthy, *Revolutionary Iran: A History of the Islamic republic*, (Oxford: Oxford University Press, 2013), 74.

¹⁹ Hamid Dabashi, *Close up: Iranian Cinema, Past, Present and Future* (London: Verso 2001).

²⁰ Ibid. 11.

²¹ Ibid. 13.

Qassem's bus journey to Tehran, which metaphorically represents the shift from tradition to modernity. The third part begins when the protagonist comes to the modernised Tehran and finds himself trapped in a space in which he no longer knows how to react.

Deleuze's transition from *Cinema 1* to *Cinema 2*, from movement-image to time-image, is caused by the crisis of the 'action-image'²² in the aftermath of the Second World War. The situation and action unity can no longer be achieved in the tattered remnants of the post-war world. The action-image as the dominant form of the movement-image (classical Hollywood) was replaced by time-image. At the start of the first chapter of *Cinema 2*, Gilles Deleuze argues that a 'pure optical situation' originated in Italian neo-realism creating a 'cinema of the seer and no longer that of the agent',²³ in which 'the character has become a kind of viewer'.²⁴ In this pure optical situation 'perception struggles to progress to action'.²⁵ The sensory-motor, which links the action-image in traditional realism, has been loosened by the rise of situations in which the character faces 'something too powerful or too unjust'.²⁶ In such an intolerable situation the character does not know how to respond and 'records rather than reacts'.²⁷ The seer becomes an observer of the time passing.²⁸ From the pure optical situation the time-image, thus comes into being along with the seer.²⁹ Deleuze considers the role of the child as a witness extremely significant in the emergence of time-image. Deleuze states that:

The role of the child in neorealism has been pointed out, notably in De Sica (and later in France with Truffaut); this is because, in the adult world, the child is affected by a certain motor helplessness, but one which makes him all the more capable of seeing and hearing.³⁰

Kiarostami's frequent use of children as his main characters is one of the characteristics of his earlier cinema. Kiarostami worked for the institute for the *Intellectual Development of Children and Young Adults*, or Kanun for short. Kanun turned out to be a major centre for the new-wave filmmakers of Iranian cinema, in which Kiarostami was one of the pioneers. Many previous studies of Iranian cinema suggest that one of the reasons behind the frequent use of

²² Deleuze's *Cinema 1* deals with the different movement-images of classical cinema: perception-image, affect-image and action-image. The movement-image describes a quality of cinematic images that existed from early on, from 1895 to 1945, when motion was the essence of cinema. Movement-image is based on action and connection with the viewer through sensory-motor schemata. The action-image is produced when the movement is translated into actions. According to Deleuze after World War II, the action-image faced a crisis and the movement-image gives way to time-image. In time-image duration no longer translates into action. Deleuze considers Italian neorealism as a moment of crisis in movement-image. For an in depth analysis of the movement-image and time-image see: David. N. Rodowick, *Gilles Deleuze's Time Machine*. (Durham: Duke University Press, 1997).

²³ Deleuze, *Cinema 2: The Time-Image*, 123.

²⁴ Ibid. 3.

²⁵ David Martin-Jones, *Deleuze and World Cinemas*, (London: Continuum, 2011), 72.

²⁶ Deleuze, *Cinema 2: The Time-Image*, 17.

²⁷ Ibid. 3.

²⁸ David Martin-Jones, *Deleuze and World Cinemas*, 72.

²⁹ Ibid.

³⁰ Deleuze, *Cinema 2: The Time-Image*, 3.

children as the main protagonist in the aftermath of the Revolution is a direct consequence of censorship imposed by the government.³¹ Thus, directors' fascination for children character has been widely interpreted as playing around regulations and limitations. Although this argument is plausible, it may not be entirely true because children were already favoured by most of the films produced in Kanun in the 1970s (before the Revolution). However, especially in the case of Kiarostami, who learned his art particularly by making films for and with children, children have a different function.

There is a shift in the child's point of view in *The Traveller* as the child doer transforms into the child seer when Qassem reaches Tehran, where he is overwhelmed by the experience of encountering modernity, loses his function in the new situation. Then, the visit to the pure optical situation of the child occurs in the streets of Tehran and the football stadium, where Qassem ceases to function due to his lack of control over his circumstances and his environment in the modernised Tehran, whereas he had effectively functioned in his small town. The film is a meditation on the social and cultural experience of the Iranian modernity and its troubled situation. *The Traveller* foregrounds the national experience of disintegration, contradiction, ambiguity and anguish by focussing on the child's experience in two different cities through a journey.

This journey functions as a metaphor for the Shah's unpopular 'modernisation' projects. The small town of Malayer, where Qassem lives in, is the situation in which he knows how to react in order to overcome all obstacles in his way, whereas Tehran becomes the limit situation in which Qassem is incapable of acting. Through Qassem's journey to Tehran, *The Traveller* explores the pure optical situation, which is at once an adventure in a modern environment and a threat to his identity.

The bus journey to Tehran takes place at night. Qassem sits on the bus, watching the scenery passing by; he keeps his attention on the road whilst heading toward his goal. This 3 minute scene is the initiation of a system of the cinematic element –an observer character in a car– , which is consistently used by Kiarostami in his later films such as *Life and Nothing More*, *Taste of Cherry* and *Ten*.

In *The Traveller*, the wandering route through the mutating city of neorealism takes place in and around the Amjadiyeh stadium. Although the character has a goal to achieve (watching the football match), as soon as he enters the stadium, there is a sense of an aimless journey. When Qassem arrives in Tehran, he has to join an endless queue for tickets. After a long wait, he reaches the box office but the tickets are sold out and he is pushed out of the area. He wanders around the stadium trying to find a way in. Finally, he was able to buy a black market ticket at double price and by this decision he puts his return journey at stake. He has a conversation with a man in the stadium seating area and he realises that the match will start in 3 hours. Now inside the stadium, he aimlessly wanders. In these standout

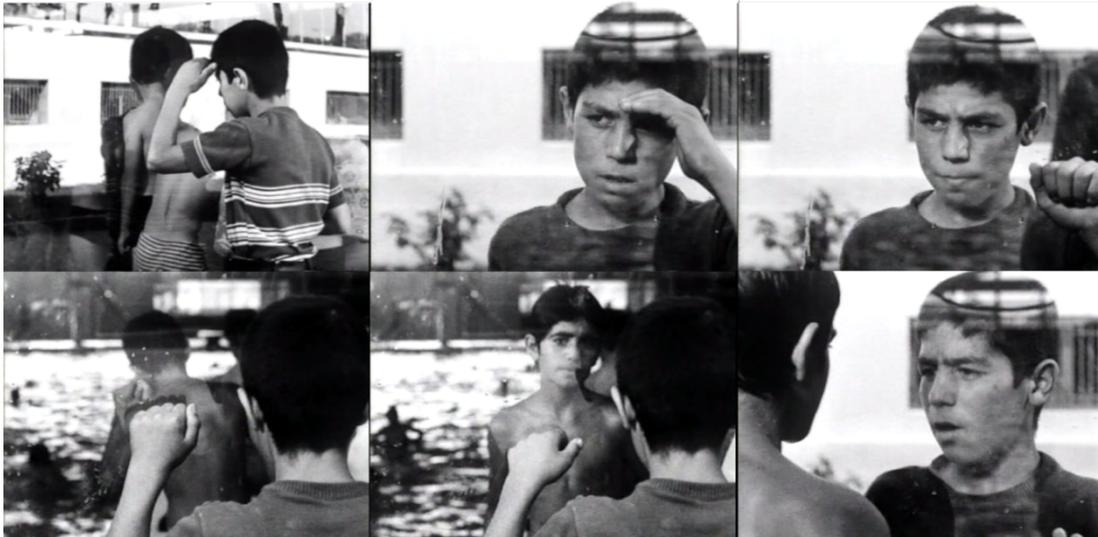
³¹ Hamid Reza Sadr, "Children in Contemporary Iranian Cinema: When we were Children", in *The New Iranian Cinema, Politics, Representation, and Identity*, ed. Richard Tapper (London: I.B. Tauris & Co Ltd. 2002). Saeed Zeydabadi-Nejad, *The politics of Iranian Cinema: Film and Society in the Islamic Republic*, (London: Routledge 2010). Richard Tapper, "Introduction", *The New Iranian Cinema, Politics, Representation, and Identity*, ed. Richard Tapper (London: I.B. Tauris & Co Ltd. 2002), 1-26.

moments inside the stadium, there is a sense of a journey³² and a limit situation in response to which Qassem is unable to react.

Qassem's walk through different spaces in the arena (running section, shot put field, a boxing venue under construction and a swimming pool) reveals Kiarostami's interest in exploring the relationship between bodies and space, which is another hallmark of his cinema. For Kiarostami, the body is closely integrated into the space in which it is held. The interest in the relationship between bodies and space constitutes the central part of his film *The Wind Will Carry Us* in which the body is so deeply intertwined with the space that the film becomes an indecipherable union of the two. Instances are the protagonist's wandering through the narrow streets of the village, or the girl milking a cow in a dark grave-like cellar whose face is not shown to us. However, this relationship between body and space is a feeble one in *The Traveller*, as the character's endeavour to bodily inhabit the space is constantly interrupted by the space itself. For example, in one scene, Qassem tries to communicate with a boy on the other side of the window through the swimming-pool glass window. He knocks at the window and persistently encourages a reluctant Tehrani boy to come close to the window. Qassem asks: "how deep is the pool?" But he cannot be heard because the glass window divides the space into two: the interior, which represents a modernised mutant space where the Tehrani children are diving and swimming, and the exterior where Qassem stands. The window itself acts as an obstacle that prevents Qassem from identifying himself with a Tehrani boy. The window can be interpreted as the broken link between Qassem and his surroundings. This relatively resistant space to integration indicates that the modernised capital has become an unwelcomed space for the bodies which inhabit other cities. The intolerable situation the child-seer witnesses in this respect is the modernity crisis and the gap between rich and poor.

Qassem is so tired after his overnight journey that he lies down on the grass and takes a nap. He has a terrible dream of his punishment witnessed by his close friend Akbar, his mother and other classmates. This dream can be seen as indicative of his tormented state of mind about the moral consequences of his wrongdoings (stealing money from his own mother, deception of school mates by taking photos with a camera without film and selling the football goals which belonged to his local football team). He only wakes up when the game is over, and runs down the empty stadium.

³² This is similar to what we see in the Italian neorealist's films such as *Rome the Open City* in which the characters aimlessly move from one location to another and from one situation to another, just to rediscover the space that they inhabited.



Abbas Kiarostami, six stills for *The Traveller* (1974), black & white thirty-five-millimetre film, seventy-one minutes, © Kanun-e Parvaresh-e Fekri Kudakan va Nojavanan.

The film shows that a new type of character was needed in the grip of a mutation, a mutation of a modernised Iran, 'a new type of character for a new cinema'.³³ The reason for the emergence of this type of character, who is a seer, is 'because what happens to them does not belong to them and only half concerns them'.³⁴ Deleuze claims a pure optical situation 'makes us grasp, [...] something intolerable and unbearable'.³⁵ The rapid development led to the formation of a strange city of Tehran in the 1970s. The juxtaposition of old and new, rich and poor and rapid development resulted in a trauma for those involved. In Tehran newcomers from the small cities encounter a city of concrete with its ugliness and beauty. They 'discover something unbearable, beyond the limit of what they can personally bear'.³⁶ In this respect, the film functions as a purely visual situation in which the breaking of the sensory-motor connection leads to a break in the link between man and the world, man becomes a seer confronted by something intolerable in the world.

KIAROSTAMI'S BELIEFS: THE CRISIS OF THE 'BREAK IN THE LINK BETWEEN MAN AND THE WORLD'

Deleuze in chapter seven: 'Thought and Cinema' of *Cinema 2* explores the relationship between thought and cinema trying to answer how thought concerns cinema. He considers the experience of thought in modern cinema as a result of the change in the image. The basic difference between movement-image and time-image in Deleuzian philosophy is that sensory-motor is in operation in movement-image or in other words the situation extends to actions, whereas in time-image the causal links are broken and thus the sensory-motor connection between stimulus and response is suspended. In time-image, image represents something that is too strong to reduce to what happens or what is seen, felt or perceived: 'the

³³ Deleuze, *Cinema 2: The Time-Image*, 19.

³⁴ Ibid.

³⁵ Ibid. 17.

³⁶ Ibid. 2.

image is ceased to be sensory-motor'. When the sensory-motor connection breaks in an image, it leads to a break in the link between man and the world. The resulting image gives rise to 'any-spaces-whatever' which becomes a pure optical and sound situation. The break in sensory-motor connection between situation and action 'makes a man seer who finds himself struck by something intolerable in the world, and confronted by something unthinkable in thought'.

Kiarostami's realism cannot be merely interpreted as its commitment to record reality. All those characteristics, which define his cinema –the use of non-actors, contemporary social and political events dealing with common people, the mixture of fiction and documentary and location shooting– must be linked to something else.

For Deleuze, neorealism was the space for rediscovering the world in its immanence. In Deleuzian philosophical landscape, neo-realism is not simply a matter of style but its real concern is the status of reality itself. Unlike neorealism, classical realism had a naive approach to reality and at the ontological level it failed to appreciate temporality and change. In neorealism as the paradigm of time-image, characters on screen are no longer acting based on a simple cause-and-effect system, but rather the reality they face is more ambiguous and complex. The sensory-motor perception is not merely a purely empiricist perception but rather it follows the Bergsonian emphasis on impression (sense perception), responsive movement (motor).³⁷

Kiarostami's setting in *The Traveller* retains its reality but it no longer represents the situation in which the image reveals actions. What Qassem encounters is not a 'serious injustice but the permanent state of daily banality'.³⁸ Kiarostami takes this daily banality further in his later films *Taste of Cherry*, in which a middleclass man without any given reasons decides to commit suicide, or in *The Wind Will Carry Us*, in which the middle class filmmaker goes to an isolated village apparently to shoot a mourning procession following the death of an elderly woman whom we never see.

In *The Traveller*, the viewer is simply presented with the lack of causal links, and the sensory-motor break that stops the character from reacting. Qassem can see better that he can react to the intolerable situation he faces in Tehran. He starts to wander and what he feels or perceives does not expand to actions. The camera constantly remains at the boy's height, representing events from Qassem's point of view and keeping the viewer at this diminished perspective, forcing them to share in the dynamics of various onscreen interactions, whether between Qassem and people in Tehran or Qassem and space. We are also invited to observe the everyday and insignificance along with Qassem. We are prevented from seeing any long shots of the football field when Qassem enters the stadium. Instead, what the film shows us is Qassem's wanderings and his constant attempt to find a connection to the modern environment whether it be his excitement when he enters a boxing stadium under construction or his curiosity about the depth of a pool. All these create a psychic situation within him that result in his dream about the punishment awaiting him at school. Here, as

³⁷ Deleuze, *Cinema 2: The Time-Image* and Valentine Moulard-Leonard, *Bergson-Deleuze Encounters: Transcendental Experience and the Thought of the Virtual*, (Albany: State university of New York Press, 2008).

³⁸ Ibid. 164.

described by Deleuze, 'the "psychic" situation which replaces all the sensory-motor'³⁹ and the break in the link to the world makes him a child seer who 'in the adult world...is affected by a certain motor helplessness'.⁴⁰ The most striking sequence is the high angle shot in the last scene of *The Traveller* showing only a quarter of the stadium's seating section; Qassem enters the stadium only to find it empty, he pauses for a second and runs through the empty stadium. Here, for the first time, the camera distances itself from Qassem but not enough to see the whole stadium –we only see a quarter of the stadium– to capture the impossible, unthinkable and intolerable that makes Qassem to run as fast as he can. Deleuze draws on Artaud's perspective of cinema and its relation to the thinking, and his conclusion that modern cinema gives rise to a different experience of thought by the recognition of powerlessness: 'What cinema advances is not the power of thought but its "impower", and thought has never had any other problem'.⁴¹

The Traveller reveals this powerlessness of thought. Incapable of achieving his thoughts with a logical deduction, Qassem bears witness to the impossibility of his own thinking. Kiarostami reveals this powerlessness at the heart of thought or the 'figure of nothingness' in this film by creating a pure optical and sound situation. He achieves this by not showing the scenes that the viewer logically or habitually expects to see in films. For example, after a long journey full of obstacles, when Qassem finally arrives in the stadium, there is no shot of the football field and at the end of the film there is not even a football match.



Abbas Kiarostami, three stills for *The Traveller* (1974), black & white thirty-five-millimetre film, seventy-one minutes, © Kanun-e Parvaresh-e Fekri Kudakan va Nojavanan.

Viewers simply intuit the shift in the film's atmosphere when Qassem reaches the stadium. The main components of *mise-en-scène* that evoke a certain mood are music, framing and the pacing of the film. The wandering sequence is shot with a low-angle camera and is accompanied with a musical score composed by Kambiz Roshanravan.⁴²

Kiarostami creates meaningful structural relationships between different elements of the film. Within the wandering scene, the mixture of framing and the ambient sounds construct an intermediate and insular unsafe space within the diegesis. But one specific arrangement occurs only once: during the shots after Qassem's unsuccessful attempt to talk to a Tehrani boy in the pool.

³⁹ Deleuze, *Cinema 2: The Time-Image*, 165.

⁴⁰ Ibid. 3.

⁴¹ Ibid. 161.

⁴² Although Kiarostami rarely uses music in his films, for his first feature film he asks Kambiz Roshanravan to compose music. He later uses the same musical score for *Close-Up*.



Abbas Kiarostami, eighteen stills for *The Traveller* (1974), black & white thirty-five-millimetre film, seventy-one minutes, © Kanun-e Parvaresh-e Fekri Kudakan va Nojavanan.

After the nightmare sequence, a wide pan shot features Qassem in the middle of the frame running toward the lit entrance to the stadium. This sequence is shot again with a low-angle camera (at the boy's height) to assign a monstrous character to the huge structure of the stadium while Qassem is running up the stairs.

The lit entrance itself can be a metaphor for Qassem's hope and of a gate to his dream, which is to watch the football match. In terms of *mise-en-scène*, this arrangement functions to establish the environment as a discrete, bordered space: the low-angle shot partly showing the stadium structure deemphasises the space's geographical connections to its surroundings and creates 'any-spaces-whatever'. Lighting also provides an unrealistic environment and implies that Qassem's hope is still alive. But as soon as we are shown the other side of the lit entrance, we realise that his hope is dead as we encounter an empty stadium. The increasingly realistic last shot suggests that his dream is now corrupted by its return to reality. The focus on the evacuated space leads to what Deleuze calls 'pure optical and sound situation', in which it is no longer possible to separate Kiarostami's mode of filming from its objects of depiction. The empty stadium does not function as a setting that presupposes or

promotes a specific action that Kiarostami's films then captures. Instead, what is filmed is the very crisis of action, the inability to act or respond in situations that overwhelm Qassem's capacities.

In a sequence consisting of 58 cuts, Qassem acts amorally to collect enough money for his journey to Tehran by deceiving his schoolmates and pretending to take a photo of them using a camera with no film. This sequence recalls the self-reflexive character of Kiarostami's films: Qassem actually represents Kiarostami himself. The sequence consisting of repetitive shots of children's portraits, Qassem's camera, Qassem's hand while putting money in his pocket and Qassem's friend, remind us of Kiarostami as a filmmaker who is employed by Kanun to make films for children. He does call for questioning the role of a filmmaker: am I doing something morally wrong by being paid to make films for children? Am I making a positive contribution to society? Can we arrive at truth by fabricating lies in cinema?⁴³ This method is not to eliminate fiction, but as Deleuze argues: 'to free it from the model of truth which penetrates it, and on the contrary to rediscover the pure and simple story-telling function which is opposed to this model'. The character of Qassem represents Hassan Darabi in 'another order of time', to which he simultaneously belongs and does not belong. By this mixture –a non-actor playing himself and the self-reflective character of Qassem– Kiarostami achieves a new mode of story-telling, which reaches its peak in *Close-Up*, where it shakes the very detachment between fiction and reality, real and imaginary, actual and virtual, and past and present. His mode of filmmaking manifests 'the power of the false' in Deleuzian terminology:

... what is opposed to fiction is not the real; it is not the truth which is always that of the masters or colonisers; it is the story-telling function of the poor, in so far as it gives the false the power which makes it into a memory, a legend, a monster.⁴⁴

The sequence depicting Qassem's act of deception insists on 'the power of the false', where the false ceases to be a lie or appearance, but allows the character to cross a limit and become another. This sequence transforms Qassem 'in an act of story-telling which connects him' to a Qassem past or to come.

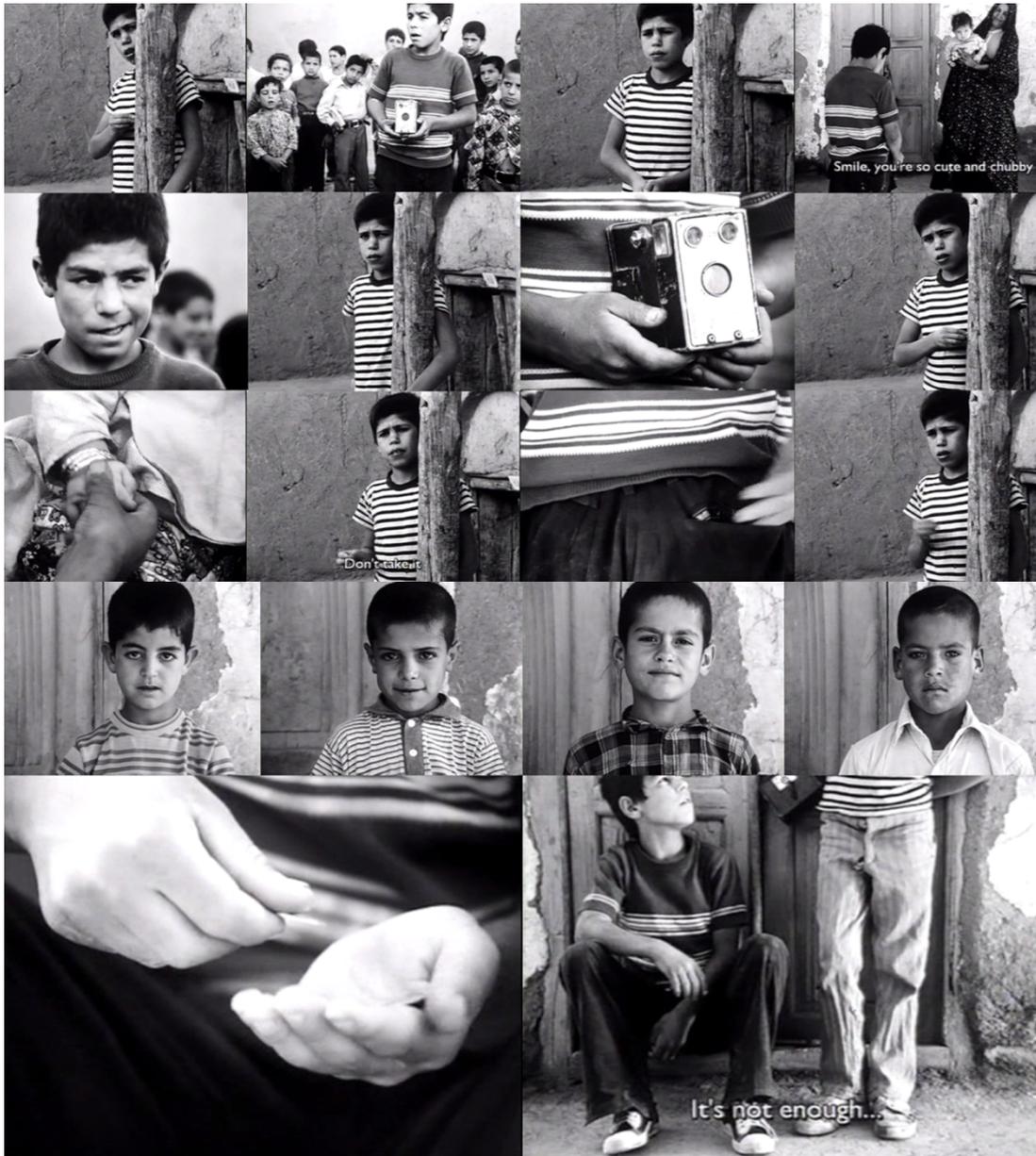
The film gets its title from its concept, the journey from tradition to modernity, from act to rediscovery. The film's structure does not only highlight the crack in the film's time-space as opposed to the chronological structure of the film, but also adds a solid sense of 'before' and 'after' in the character of Qassem. What the film prompts is not, thus, a chronology of events, but an 'incessant passage from one state to another'.⁴⁵ an act of becoming in which Qassem constantly transforms and oscillates between what he no longer is and what he is in the process of becoming. In Kiarostami's films we are invited to go on a spatial journey through the line of time.

⁴³ Kiarostami in one of his interviews addressed this question: "we can arrive at the truth. In cinema anything that can happen would be true. It doesn't have to correspond to reality; it doesn't have to 'really' be happening. In cinema, by fabricating lies we may never reach the fundamental truth, but we will always be on our way to it. We can never get close to the truth except through lying". Quoted in Christopher Gow, *From Iran to Hollywood and Some Places In-Between: Reframing Post-Revolutionary Iranian Cinema*, (London: I.B. Tauris, 2011), 101.

⁴⁴ Deleuze, *Cinema 2: The Time-Image*, 145.

⁴⁵ Deleuze, *Cinema 2: The Time-Image*, 148.





Abbas Kiarostami, eighteen stills for *The Traveller* (1974), black & white thirty-five-millimetre film, seventy-one minutes, © Kanun-e Parvaresh-e Fekri Kudakan va Nojavanan.

The Traveller projects movement as duration, as the whole; it puts everything into a dynamic, heterogeneous relation, and is capable, in Giles Deleuze's words, of providing an 'immanent analysis of movement'.⁴⁶ Generally speaking, in Kiarostami's films no direct path exists for protagonists to follow.

As Deleuze described, the break in the sensory-motor connection resulted in a break in the link between man the world. The powerlessness of thought, then, is given rise to the man who sees better than he reacts. This situation in which the seer is struck by 'something intolerable in the world and confronted by something unthinkable in thought',⁴⁷ is where the

⁴⁶ Deleuze, *Cinema 1: The Movement-Image*, 6.

⁴⁷ Deleuze, *Cinema 2: The Time-Image*, 164.

powerlessness of the thought functions to reveal the thought. Deleuze elaborates on how the experience of thought functions in modern cinema.

The socio-political indications are also considerable. In *The Traveller*, Kiarostami consciously reacted to this flux of Becoming, to grasp the actual meaning of immanence and change. It was the transition from tradition to modernity that rapidly and inorganically altered 'the whole' and everything in the whole. It was this transition that changed an agent who 'does' to an agent who 'sees'. The rapid transformation from one multiplicity to another makes the world ungraspable for Qassem. If Kiarostami's films are the cinema of the seer, it is because we need to see everything again.

Deleuze argues that in a modern world, we no longer believe in the world and we lose our faith in love, life and death. When the link between us and the world is lost, it is the link itself that becomes an object of belief. In a pure optical and sound situation, we have been dispossessed of reaction in the world. We now need something to reconnect us to what we 'see and hear' and this is the belief in the link that replaces our reaction. The function of the image is, thus, precisely to reconnect what we can see and hear with its exteriority. Projecting alternative spaces, modern cinema can retrieve the lost link between us and the world and elevate our soul to the level of belief. 'The cinema must film, not the world', Deleuze states, 'but belief in this world, our only link ... [r]estoring our belief in the world - this is the power of modern cinema'.⁴⁸

In modern times, we need reasons to believe in this world. This is the function of image-concept (modern cinema) to replace the model of knowledge with belief. During the modernisation of Iran, *The Traveller* served and still does serve this function of image-concept: i.e. Kiarostami recognises this modern fact that 'belief can only replace the model of knowledge only when it becomes the belief in this world'. To restore our link to this world is the main theme in almost all of his films during the period of 1974 to 1999. Confronted by forced, inorganic modernisation, revolution and war (between Iran and Iraq –September 22, 1980–August 20, 1988), Kiarostami's characters' (adult/child) link to the world constantly breaks in the face of the intolerable. His later films explore the break between man and the world in 'a permanent state of daily banality' by focusing on the insignificant and unimportant. Kiarostami shows us that the way out of this is to believe in the very link between man the world; to believe in friendship in *Where is the Friend's House?*, or in life and death in *Life and Nothing More*, *The Wind Will Carry Us* and *Taste of Cherry*, or in love in *Through the Olive Trees*.

What he seeks in his films is thus the 'reasons to believe in this world'. In the last part of *The Traveller*, Kiarostami searches for a link to this world, a belief. His character must find the link to this world within this world. Qassem tries to find his link to the transformed world: modern Tehran. He is not successful since the link does not become 'an object of belief'.

The aim of this article was to demonstrate the philosophical themes, which formally and aesthetically construct Kiarostami's first feature film *The Traveller*. I have attempted to bring a Deleuzian philosophical framework into conversation with this particular film; an attempt that has been rarely made in the previous studies on Iranian cinema. I argued that the socio-political situation of Iran and the influence of modernisation on Iranians necessitated the

⁴⁸ Ibid. 166.

creation of a new type of character: a character (Qassem), who observes to rediscover the space he inhabits. Deleuze calls this new type of character the child seer. This character does not take action in any situation because he does not understand the situation itself. Rather, he wanders around to find a new way, a new link to the world. At the end, I would like to mention once more that I have tried to carry out an analysis that is complimentary to the previous studies in order to fill a gap that I felt exists in the research on Iranian cinema: a philosophical investigation that analyses Iranian cinema thematically and aesthetically.

BIBLIOGRAPHY

- Axworthy, Michael. *Revolutionary Iran: A History of the Islamic republic*. Oxford: Oxford University Press, 2013.
- Chaudhuri, Shohini and Finn, Howard. "The Open Image: Poetic realism and the New Iranian Cinema". *Screen* 44,1 (Spring 2003): 35-57.
- Dabashi, Hamid. *Close up: Iranian cinema, past, present and future*. London: Verso, 2001.
- Deleuze, Gilles. *Cinema 1: The Movement-Image*, trans. Hugh Tomlinson and Barbara Habberjam. London: Continuum, 2005.
- Deleuze, Gilles. *Cinema 2: The Time-Image*, trans. Hugh Tomlinson and Robert Galeta. London: Continuum, 2005.
- Erfani, Farhang. *Iranian Cinema and Philosophy: Shooting Truth*. New York: Palgrave Macmillan, 2012.
- Gow, Christopher. *From Iran to Hollywood and Some Places In-Between: Reframing Post-Revolutionary Iranian Cinema*. London: I.B. Tauris, 2011.
- Maimon, Vared. "Beyond Representation: Abbas Kiarostami's and Pedro Costa's Minor Cinema". *Third Text* 26 (3), May (2012): 331-344.
- Martin-Jones, David. *Deleuze and World Cinemas*. London: Continuum, 2011.
- Mottahedeh, Negar. *Displaced Allegories: Post-Revolutionary Iranian Cinema*. Durham: Duke University Press, 2008.
- Moulard-Leonard, Valentine. *Bergson-Deleuze Encounters: Transcendental Experience and the Thought of the Virtual*. Albany: State university of New York Press, 2008.
- Naficy, Hamid, *A Social History of Iranian Cinema, Volume 2: The Industrializing Years, 1941-1978*. Durham: Duke University Press, 2011
- Patricia Pisters, "Arresting the Flux of Images and Sounds: Free Indirect Discourse and the Dialectics of Political Cinema". In *Deleuze and the Contemporary World*, edited by Ian Buchanan and Adrian Parr, 175-193. Edinburgh: Edinburgh University Press, 2006.
- Sadr, Hamid Reza. "Children in Contemporary Iranian Cinema: When we were Children". In *The New Iranian Cinema, Politics, Representation, and Identity*. edited by Richard Tapper, 227-237. London: I.B. Tauris & Co Ltd., 2002.

Tapper, Richard, ed., *The New Iranian Cinema, Politics, Representation, and Identity*. London: I.B. Tauris & Co Ltd. 2002.

Zeydabadi-Nejad, Saeed. *The politics of Iranian Cinema: Film and Society in the Islamic Republic*. London: Routledge, 2010.

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After completing my BA in Visual relations at Art & Architecture University in Tehran, I came to UK where I studied a master degree in Graphic Design & communication at UCA. After spending a year as a freelance artist and graphic designer, I took a PG diploma in History of Art at UCL. During my time at UCL, I developed my curiosity in the relations between Western philosophy and Eastern modern arts. This led me to enter SOAS for my second master degree in History of Art & Archaeology.

Awarded the competitive Kamran Djam PhD scholarship, I have started my PhD under the supervision of Dr. Tania Tribe at SOAS in 2012. My PhD thesis is a philosophical reading of Kiarostami's cinema in which an effort has been made to identify philosophical positions, themes and questions that are being revealed through his films.

EVOLUTION OF THE ZOROASTRIAN PRIESTLY RITUALS IN IRAN

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ABSTRACT

Zoroastrianism, rooted in Indo-Iranian pre-history, has been practised in Iran continuously for at least three thousand years.¹ It was the dominant religion of pre-Islamic Iran, but after the defeat of the Sasanian Empire by the Arabs in the 7th century CE, it has survived as a minority community in Iran, India and the diaspora. The Zoroastrian religious sphere is dominated by the hereditary priesthood responsible for performing the rituals commissioned by the laity, called the *Behdins* ('of the good faith'). The priests are bearers of the millennia-old oral tradition wherein all the ritual texts are memorised and are recited during the liturgical ceremony.

However, this cultural heritage is severely endangered. With increasing urbanisation and emigration, the Iranian Zoroastrian population has whittled down to less than 20,000. Within the short span of a few decades, many age-old religious practices which had survived relatively unaltered since the Sasanian times have been lost. Due to the dwindling priesthood, the intricate higher liturgical ceremonies have been completely abandoned. Other fundamental changes have taken the form of substitution (e.g. disposal of dead by burial versus by exposure), dilution (reduced proficiency required for priestly ordination), relaxation (ritual purity requirements) and innovation (initiation of female priests).

These changes have not been studied systematically and the knowledge of traditional practices has not been formally recorded. The present study tries to address this gap by documenting the changes in the Zoroastrian rituals and practices in Iran as attested in historical documents and based on contemporary accounts.

¹ This paper builds on the material previously submitted by the author as part of an assignment at SOAS.

BACKGROUND

Zoroastrianism was the state religion of Iran for more than a thousand year period, starting sometime during the Achaemenid era (550 – 330 BCE), followed by the Parthians (247 BCE – 224 CE), and finally the Sasanians (224 – 651 CE). After the fall of the Sasanian Empire, Zoroastrianism ceased to be the state religion, but it continued to be the religion of the majority for a few centuries. However, since the priesthood was no longer supported by the state, a breakdown in the elaborate priestly structure that existed earlier occurred steadily. There are a handful of Middle Persian texts dating to the 8th– 10th century CE period which discuss the precarious position of the priests due to the intensified conversion to Islam and the inability of the increasingly impoverished lay community to commission any rituals. During this time, many Zoroastrians left for India and in time came to be known as the Parsis (i.e. from Pars).

By the turn of the millennium, Islam had been firmly established as the majority religion of Iran, and over the next few centuries, the Zoroastrian population in most major towns was decimated through forced conversions and migration. By the mid-second millennium, the only pockets with any significant Zoroastrian population were the two desert towns of Yazd and Kerman. These remained their stronghold areas till the beginning of the twentieth century, after which many Zoroastrians started migrating to urban areas, chiefly Tehran, for better economic prospects. The turn of the second millennium saw another wave of emigration, this time mainly to Europe and North America. The Zoroastrian population of Iran has steadily continued to decline over the past few decades and is currently estimated to be less than 20,000. This has led to a rapid change in the religious practice, with the discontinuation of many traditional rituals and the evolution of new forms of worship.

FRAMEWORK

Changes have taken different forms, but have generally followed a pattern of moving from strict adherence in the past to a slightly symbolic or lenient interpretation in the present. To better understand the different aspects of the evolution of the rituals and practices, the following 5-point framework² spanning from minor modifications to a complete change is presented:

1. Reduction/Relaxation: Same practice but with reduction in the stringency
2. Modification: Similar practice but with certain key alterations
3. Substitution: Change in practice by replacing few elements but retaining core essence
4. Abandonment – Discontinuation of the practice altogether
5. Innovation – Completely new practice introduced without prior precedence

² This categorisation is based on the classification by Michael Stausberg found at: <http://www.iranicaonline.org/articles/zoroastrian-rituals>.



Figure 1: Degrees of change in the practice going from slight modification to complete innovation

It should be noted that many of the observed changes do not necessarily fit within one category but could exhibit two or more different features. For instance, the earlier extended purification rituals exhibit some elements of reduction (e.g. simplification of the ritual ablution *nahn*), as well as abandonment (e.g. the nine-day long purification *barašnom*, usage of consecrated bull's urine *nirang*).

Another aspect to be considered is that the scope of the present article is primarily limited to the changes that have taken place in the priestly practices. It does not trace the evolution of practices outside of the purview of the priesthood such as the worship at the *pirs* or shrines (in and around Yazd) and the *sofreh* rituals which have developed over a much longer period of time.

Each of these categories will be explained with one key example. The scriptural evidence for the practice will be first presented wherever possible, and then the changes will be examined as attested in the historical and contemporary sources. Before looking at each category in detail, important sources of knowledge are surveyed in the next section.

SOURCES

The primary corpus of Zoroastrianism is the Avesta which comprises mainly of priestly liturgical texts, which are to be committed to memory and recited within the ritual, in praise of the god Ahura Mazdā, or 'Wise Lord'. The core of these rituals is the Yasna ('worship, sacrifice'), which has some parts dated to the second millennium BCE, making it the oldest surviving evidence of any Iranian language. In addition, there is a large corpus of Middle Persian texts from the late Sasanian and early centuries of Islamic Iran, which give us valuable insights on the religious practice from that time.

For the historical record, the *Rivāyats*, a series of epistolary exchanges between the Zoroastrian priests of Iran and India, present a bulk of evidence of the Iranian practice from the period of the 15th to 18th centuries. The exchange began with the *Rivāyat* of Narimān Hošang in 1478 and ended with the *Rivāyat Ithoter*³ of 1773.⁴

Mary Boyce's seminal work⁵ based on her stay in the Zoroastrian villages in Yazd during 1963-64 remains the main source of information from that time. Subsequent inquiries in the 1970s by two independent researchers for their doctoral thesis,⁶ also provide valuable details.

The contemporary account is based on multiple sources, chief among which is an article

³ *Ithoter* 'seventy-eight' in Gujarati, from the number of questions and answers contained in the *Rivāyat*.

⁴ For an excellent survey of all *Rivāyats* and their dates see the essay "The Dates of the Persian *Rivāyats*" in Hodivala, *Parsi History*, 276-349.

⁵ Boyce, *Persian Stronghold*.

⁶ Fischer, *Zoroastrian Iran: Myth and Praxis* and Amighi, *Zoroastrians of Iran: Conversion*.

in Persian by Katayoun Mazdapour on current Zoroastrian rituals,⁷ and the anecdotal accounts provided to the author by Mobad Mehraban Firouzgary, the current head priest of the Zoroastrian community of Tehran.

CATEGORIES OF CHANGE IN THE ZOROASTRIAN PRIESTLY RITUALS

1. REDUCTION OR RELAXATION

This refers to a practice where the required adherence has been reduced (e.g. tending to the consecrated fires only 2-3 times as opposed to 5 times daily, number of texts to be memorised by a priestly initiate), or the practice where the stringency in conforming to certain norms has been relaxed (e.g. requirement for purification after coming in contact with pollution, segregation of females during menstruation).

EXAMPLE: THE PRIESTLY INITIATION NOWZUD

The Zoroastrian priests follow the millennia-old oral tradition wherein all the ritual texts are memorised and recited during the liturgical ceremony. The priesthood is patrilineal and as part of initiation, the son of the priest is required to learn the entire corpus of Avestan ritual texts by heart and then perform it within the ritual.

The *Rivāyat Ithoter* of 1773 documents the priestly initiation in Yazd. The *mobedzāde* (initiate) who becomes *nowzud* (novice priest) must have learned the Yasna and the Visperad texts by heart and he must be familiar with the traditions in their entirety, and only after this can the *mobedzāde* become a *nowzud*.⁸

This practice continued well into the first few decades of the 20th century. Before the 1920s, almost all sons from a priestly family strictly followed their parental religious practice, and their training was mostly at home. Around 1930, the Dinyary Primary School in Yazd was attached to the *Ataš Behram* (fire-temple of highest grade) to provide formal education for the priestly initiates. Such routine initiations into priesthood lasted until about the early 1940s.

Things changed soon after the Second World War and the advent of the new Pahlavi regime, which brought about material prosperity and higher means of academic education, leading many offspring of priestly families to seek other lucrative professions. By the late 1970s, the number of priests had dwindled to such an extent, that the *Anjoman-e Mobedan* (Assembly of Priests) decided that the immediate solution was to relax the stringent requirements for initiation.

Since 1981, the *Nowzud* ceremony has undergone some radical changes. Any age limit for initiation has been overlooked due to the scarcity of candidates. The prerequisite for qualifying is now limited to memorising a limited portion of the 72-chapter Yasna text (Ch. 1-21 and 28-34 *Ahunavaiti Gatha*) and the Khorde (small) Avesta, along with acquiring

⁷ Mazdapour, *Tadavom Adab*.

⁸ Vitalone, *Revayat Ithoter*, 155.

knowledge of the religious principles.⁹ This is a significant relaxation from the stringent requirements mentioned in the *Rivāyats* and rigidly practised till the first-half of the 20th century.

2. MODIFICATION

The term modification implies that certain aspects of the practice have been altered to incorporate new elements while retaining the main components of the earlier practice. Examples include the original higher liturgical ceremonies, which had been completely abandoned for the past 50 years, but were recently revived in a more symbolic form.

EXAMPLE: HIGHER LITURGICAL CEREMONIES

The Zoroastrian high rituals include the long liturgy Yasna (worship, sacrifice), and its more solemn variants like the Visperad (*vispe ratavō* 'all the Gods') and the Vīdēvdād (*vidaēva dāta*, law of those against the demons). They are classified as 'inner rituals' as they are performed only within a ritual precinct demarcated by furrows, and can only be performed by fully ordained Purifier Priests (*Yaozdathragars*) who have undergone the long purification ablution (*Barašnom*).¹⁰

These inner rituals were performed in an unbroken tradition dating to at least the time of the Sasanian dynasty (224 - 651 CE). Recent findings by some scholars indicate that the long liturgy and its variants achieved their present form much earlier, likely in the Achaemenid period (ca. 500 BCE), and possibly even earlier, implying that these rituals have had an uninterrupted tradition of performance for over two and a half thousand years.¹¹

The Yasna ritual occupies a central role in the Zoroastrian worship and was usually celebrated daily, while the more solemn variants like the Visperad, Videvdad and Vištaspa Yašt were performed only on special occasions. These rituals were further combined together to form longer ceremonies, like the Nirangdin, an 18-day long ceremony in which the *gomez* or urine of the bull was consecrated to create *nirang* for ceremonial use. It involves two priests undergoing the nine-night ablution (*barašnom*), followed by six days of the Yasna ritual performance and culminating with a Vīdēvdād ceremony.¹²

The Rivayats attest to a thriving culture of ritual performance in Iran. They present a thorough explanation on the nuances of the various rituals including the Nirangdin.¹³ In response to the various lapses and omissions by their Indian counterparts, the Iranian priests exhort that every *Dastur* (high priest) ought to know how to consecrate the all-night long Vīdēvdād ritual and an injunction to celebrate all six Gahambars of the year. This adherence to ritual practice continued at least up to the mid-20th century. Mobed Mehraban Firouzgary, the high priest of Yazd, recalls the Vīdēvdād being performed regularly in the 1940s in the Yazd *Dastooran Mohalle* (Priestly Quarters).

⁹ Firouzgary, *Inner Ceremonies*, 5-6.

¹⁰ Modi, *Religious Ceremonies*, 207-08.

¹¹ Cantera, *Sacrifice Yasna*.

¹² Modi, *Religious Ceremonies*, 203-04.

¹³ Dhabhar, *Persian Rivayats*, 347-57 presents a detailed account of the Nirangdin as prescribed in the *Rivāyats*.

However by the latter half of the 20th century, these rituals were gradually curtailed and then completely abandoned in Iran due to the lack of qualified priests. Mary Boyce, during her stay in Iran, documented that the *Yašt-e Nirangdin* ceremony was performed for the last time in 1961 at the *Gahambar Khana* in Yazd, where seven priests well-versed in the *Vīdēvdād* ritual came together for the consecration ceremony. After this time, the capability to perform a *Nirangdin* ceremony seems to have been lost due to the lack of qualified ritual priests, which led to the inability to procure consecrated *nirang*, the fundamental and essential sacred implement mandatory for all higher liturgical ceremonies. In most cases, the use of *nirang* was abandoned completely or substituted by wine or fruit juice for certain purposes.¹⁴

Michael Fischer, who spent time in Iran during his doctoral fieldwork, reports that in January 1971, Dastur Mehreban Siavush had invited him to observe the *Yašt-i Visperad* ritual.¹⁵ Even though the ritual normally required a pair of priests, the Dastur performed this three-hour ritual alone as there were no other qualified priests available. The Dastur mentioned that only seven priests remained in all of Yazd who were able to perform this ritual.¹⁶

Contemporary accounts mention that by 1980 there were no qualified priests and all the inner rituals had either been completely forgotten or have been overtly simplified.¹⁷ In most places the *Yazišn-gah* i.e. the place dedicated for the inner rituals, and the various ritual implements used therein, are in an abandoned state. In the 1980s, the Tehran *Anjoman-e Mobedan* recognised the loss of the traditional rituals and made efforts to revive the core rituals, although some merely in symbolic form. The core *Yasna* ritual is now condensed to the recital of only the first 21 *has* (chapters) and is accompanied by a curtailed ritual performance. Similarly, during the six seasonal festivals (*gahambars*), the *Yašt-e Gahambar*, which was earlier celebrated with the *Yasna* ritual intercalated with the *Visperad*, is symbolically recreated in a concise *Yasna* recitation accompanied with the pounding of the *haoma* plant. Thus, while the major original higher liturgies have been abandoned, aspects of the earlier symbolism have been retained in their modified version.

3. SUBSTITUTION

Certain practices, like the disposal of the dead by exposure to the sun and scavengers, have been replaced by burials, which have carried over some of the elements of the underlying principles of the earlier system.

EXAMPLE: FUNERARY PRACTICE

Zoroastrian funeral ceremonies are premised on two objectives: first to isolate the centre of impurity, i.e. the dead body, and second to destroy it expediently. The *Vīdēvdād*, which in part deals with the impurities attached to dead bodies, gives an injunction against burying the dead in order not to defile earth, and have it devoured by birds instead (Ch. 3.8, 7.3).

¹⁴ Boyce, *Persian Stronghold*, 91-92.

¹⁵ The *Yasna* ritual extended by 24 sections of the *Visperad* text generally recited during the *gahambars*, the six seasonal festivals of the Zoroastrian calendar year.

¹⁶ Fischer, *Mute Dreams*, 26.

¹⁷ Mazdapour, *Tadavom Adab*, 152.

Even before the funeral, the dead body is not placed directly on the ground, but on a slab of stone. From there it is carried into the tower of silence (*dakhma*), a circular raised well-like structure built on elevated ground, for excarnation. The birds devour the flesh, the bones dry in the sun and are then deposited into the central well inside the *dakhma*, ensuring thus that the centre of pollution is quickly annihilated.

That this practice is archaic is attested by the Greek historian Herodotus, who lived in the fifth century BCE. In Book I of his *History* (I.140), he mentions that the Persians followed the practice of exposing their dead to the birds and dogs, but also in some cases they covered the dead bodies with wax and then buried them in the ground. The rationale in both practices was to not let the *Nasu* (corpse), a major pollutant, come in contact with the earth.

The *Rivāyats* give a detailed account of the *Tana* ceremony, the foundation-laying of the *dakhma* and its construction.¹⁸ This is accompanied by a discussion on how to prevent ground and ground water pollution resulting from contact with the dead body. The minute technicalities stressed in the *Rivāyats* signal very strict adherence to the purity laws, especially when dealing with a corpse. The *Rivāyats* also discuss the performance of the death rituals of *Sagdid* (the rite of being 'seen by a dog'), the *Yašt-e Gāhān*¹⁹ and the subsequent placement of the body in the *Dakhma*.²⁰

An almost exact adherence to the above practice is observed in Mary Boyce's account of a funeral in Sharifabad village in the 1960s, including the *Sagdid* ceremony, the recital of the *Ahunavaiti Gatha*, and the procession of *nasa-salars* (corpse bearers) to the *dakhma* with the mourners walking behind them in pairs joined together with a *paivand* (connection).

However with development and urbanisation in the 20th century, the *dakhmas* became increasingly closer to city limits, severely curtailing their use. In most of the larger towns the traditional practice of exposure was abandoned in favour of burials; in Tehran to the *Qasr-e Firuzeh* cemetery in 1937, in Kerman in the year 1939 and in Yazd in the year 1957. In Yazd and Kerman, in addition to cemeteries, orthodox Zoroastrians continued to maintain a *dakhma* until the 1970s, when they were shut down by law.

It is noteworthy that the principle of not defiling the earth has been carried over to the new practice; the burial is done in such a way that does not put the corpse directly in contact with the ground. The body is placed on a metal stretcher, the legs of which keep the body off the ground. The bed of the stretcher is made of strips of metal so that the body, while supported, is also open to the elements from the bottom. Metal being non-porous, it does not conduct pollution or disease-bearing microbes. The sides of the grave are cemented and a cement cover is placed on the top so that dirt does not fall onto the body.²¹

¹⁸ Dhabhar, *Persian Rivayats*, 102-03.

¹⁹ The rite of isolating the pollution by the recitation of the Avestan hymn *Ahunavaiti Gatha* before the corpse is taken to the *dakhma*.

²⁰ Dhabhar, *Persian Rivayats*, 159-165.

²¹ Fischer, *Myth Praxis*, 64.

4. ABANDONMENT

This refers to ritual practices or customs which have been entirely discontinued in the present day without being replaced by another ritual or custom. Examples include the long intricate purification rituals required for cleansing pollution and also before performing any higher liturgical ceremonies.

EXAMPLE: THE LONG ABLUTION *BARAŠNOM*

The *barašnom* is the greatest ceremony of purification for those who have come into contact with the worst form of impurity, i.e. dead matter, especially with a dead body. It consists of triple cleansing with *gomez* (bovine urine), dust and water, followed by nine nights' seclusion, during which three simpler cleansings take place. The *Vidēvdād* (Ch. 8-9) has a large portion dedicated to the description of the *barašnom*.

The *Rivāyats* provide detailed explanations to questions regarding how a person undergoing the *barašnom* purification should act during the nine nights' retreat, and the correct way of administering it.²² This importance accorded to the *barašnom* is apparent in the *Rivāyat Ithoter* where 15 out of the 78 questions pertain to it.²³

The *Barašnom-e no-šwa* (ablution of nine nights), as it was referred to in Iran, was still actively practised until the first half of the 20th century and it was the custom for every person to undergo it at least once in a lifetime, either personally or by proxy in case individuals could not undertake it themselves. Up to the 1950s, the *barašnom* was administered to all Zoroastrians of the region in the city of Yazd itself, which had a dedicated *Barašnom-Gāh*. However, after 1960, the use of this old *Barašnom-Gāh* was discontinued, but the rite continued elsewhere to a more limited extent.²⁴

Contemporary accounts also attest to the purification rites being active until the mid-20th century, followed by a gradual discontinuation after that period. Mobed Mehraban Firouzgary states that the purity laws were regularly observed in the 1940s in the Yazd *Dastooran Mohalle*. The neighbourhood *Barašnom-e no-šwa* places were in use for purification rites to qualify the priests for the *Yazišn-gah* (inner) rituals. However, in the last 50 years, all the existing *Barašnom-gāhs*, and in general, all rituals which called for the use of the consecrated *nirang*, have been closed down or demolished.²⁵

5. INNOVATION

Certain new practices have been adopted in response to the changing socio-economic norms and, partly, as a response to the dearth of traditionally qualified priests. Instances of this include the weekly congressional prayers in lieu of the ritual performance, and the ordination of female priests and those from the laity.

²² Dhabhar, *Persian Rivayats*, 358-9.

²³ Vitalone, *Revayat Ithoter*, 17.

²⁴ Boyce, *Persian Stronghold*, 118.

²⁵ Firouzgary, *Inner Ceremonies*, 1-5.

EXAMPLE: INITIATION OF FEMALE MOBEDYARS (ASSISTANT PRIESTS)

The priestly profession has been a male prerogative from at least the Sasanian times and was always passed down from father to son. In view of this traditional gender exclusivity in priesthood, it is quite extraordinary to find references in Avestan texts that grant access for religious education and even priestly roles to both genders. In the mixed Avestan-Pahlavi text *Nērangestān*, we find some evidence suggesting that persons of either gender, or even minor children, could act as chief priests. Similarly the Pahlavi text *Šāyest nē-Šāyest* ('allowed and not allowed') permits women to be chief priests, although with restriction to rituals performed on behalf of female patrons only.²⁶

However, later Zoroastrian texts testify to a state of gender-specific priesthood, where women are excluded from even the most basic religious roles and where the priestly functions are monopolised by men. In contemporary practice the priesthood continues to be hereditary and is passed on through the male line from father to son with the option of skipping up to three generations, after which it is forfeited.

In Iran, since the late 1970s, the number of priests has dwindled to such an extent, that the *Anjoman-e Mobedan* took the decision to augment the numbers from the laity. Hence the concept of *Mobedyars* was introduced, wherein the members of the laity were trained in outer rituals and essential ceremonies like the *Sedre-Pušī* (investiture), weddings and death rituals. However, they could not participate in the performance of high rituals like the *Yasna* or other priestly initiation ceremonies.

The traditionally male-dominated priesthood has been further relaxed in recent years to allow for the initiation of female *Mobedyars*. In March 2011, the *Anjoman-e Mobedan* conferred the title of *Mobedyar* to 8 ladies among 15 candidates who had undergone stringent and extensive religious training in the Avesta and had passed the tests set by the council of priests. Their official curriculum requires fluency in the recitation of the entire *Khorde Avesta* and portions of the *Yasna* which are necessary for performing outer rituals, learning the translations, interpretations and philosophy of the scriptures as well as the religion, and learning the performance of outer rituals.

While the initiation of female priests can be seen as a recent innovation, it could well be put into historical context and be seen as a step towards the restoration of the equality of both genders in the ritual sphere.

CONCLUSION

As it has been illustrated, changes have taken many forms depending on both the internal context (i.e. the situation of the practitioners themselves), and external factors (laws and societal pressures, many beyond the immediate control of the community). And while it could be argued that change in the ritual sphere has remained a constant, it is difficult to deny that the rate of change has accelerated in recent decades, to the extent that certain core practices which have had an unbroken tradition of observance for thousands of years, have been abandoned over the past 50 years.

²⁶ Hintze, *Priestly Authority*, 52-54.

Increased urbanisation in the 20th century has led to a shift in the dominant Zoroastrian population out of the earlier stronghold villages in Yazd and Kerman to urban centres, chiefly Tehran. The main fallout of this trend is the dispersion and integration of the Zoroastrians into the mainstream population, which in turn has made adherence to the age-old practices difficult and even infeasible in many cases.

Secondly, there has been a large-scale emigration out of Iran for better economic prospects. During the first half of the 20th century, most of the migration was to India, which has had the largest concentration of Zoroastrians anywhere in the world. However, after the Islamic Revolution of 1979, there has been an acceleration of emigration to Europe and North America. Both these factors have been the major cause of depletion of the traditional priesthood, as children of priestly families looked beyond their traditional roles to other professions and geographies. This and the general population decline have been the primary reasons for the abandonment of many age-old customs and practices.

In recent decades, there has been a cognisance of the loss of tradition and increasing efforts are being attempted to reverse the trend. The Tehran *Anjoman-e Mobedan*, for example, has in recent decades taken steps to return to the essential liturgies, even though merely to a symbolic extent. Nevertheless, given the trend, it remains absolutely critical to capture and to document the remnants of this ancient culture before it is irreversibly changed.

BIBLIOGRAPHY

- Amighi, Janet Kestenberg. *Zoroastrians of Iran: Conversion, Assimilation, or Persistence*. New York: AMS Press, 1990.
- Boyce, Mary. *A Persian Stronghold of Zoroastrianism. Based on the Ratanbai Katrak lectures, 1975*. Oxford: Clarendon Press, 1977.
- Cantera, Alberto. "The 'Sacrifice' (Yasna) to Mazdā: Its Antiquity and Variety." In *The Everlasting Flame: Zoroastrianism in History and Imagination*, by Sarah Stewart et al., 61-76. London: I B Tauris, 2013.
- Dhabhar, Bamanji Nusserwanji. *The Persian Rivayats of Hormazyar Framarz and Others. Their Version with Introduction and Notes*. Bombay: K. R. Cama Oriental Institute, 1932.
- Firouzgary, Mobed Mehraban. "Ceremonies Restricted to the Yazišngah or 'Inner Circle' Ceremonies." *FEZANA Journal*, Winter 2014: 1-8.
- Fischer, Michael. *Mute Dreams, Blind Owls, and Dispersed Knowledges: Persian Poesis in the Transnational Circuitry*. Durham and London: Duke University Press, 2004.
- Fischer, Michael. *Zoroastrian Iran: Between Myth and Practice (unpublished PhD dissertation)*. University of Chicago, 1973.
- Hintze, Almut. "On the Prophetic and Priestly Authority of Zarathustra." In *Gifts to a Magus: Indo-Iranian Studies honoring Firoze Kotwal*, edited by Jamsheed K. Choksy & Jennifer Dubeansky, 43-56. New York: Peter Lang, 2013.

Hodivala, Shapurshah Hormasji. *Studies in Parsi History*. Bombay: J. N. Petit Parsi Orphanage, Captain Printing Works, 1920.

Mazdapour, Katayoun. "Tadavom Adab Kohan Dar Rasmha-ye Ma'asr-e Zartuštian Dar Iran (Continuity of the Old Ceremonies in the Contemporary Zoroastrian Traditions in Iran)." *Farhang* (volume 49-50), April 2002: 147-179.

Modi, Jivanji Jamshedji. *The Religious Ceremonies and Customs of the Parsees 2nd Edition*. Bombay: J B Karani's Sons, 1937.

Vitalone, Mario. *The Persian Revāyat 'Ithoter'. Zoroastrian Rituals in the Eighteenth Century*. Napoli: Instituto Universitario Orientale, 1996.

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WHITHER THE RIGHTS OF THE DIGITAL SUBJECT?

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Imagine a world in which every expression of personal joy, grief, or accomplishment, every utterance of moral outrage, political dissent, or claim of triumph, every beautiful view contemplated and special moment experienced, and every personal emotion, intimate memory and philosophical inquiry, were all to be mediated by a private company. Moreover, the only interest this company has in such a vast array of human experience is for it to be harvested to generate advertising revenue. What might the scope of democratic citizenship be in such a world?

In what follows I argue that the paradigm of the individual self that is promoted by social media platforms lays bare contemporary liberalism's subservience to capital accumulation purposes. This is evident in the emergence of a model of commoditised selfhood, in which the only agency afforded to subjects is through rendering oneself an object, in this case a commodity.¹ Within this paradigm, the individual –the cornerstone of Western free market liberalism– is reduced to a lucrative data source to be sold on to advertisers. The technological companies at the helm of the modern phase of capitalism have thus produced their ideal subject: simultaneously consumer and company product, and therefore lacking the structural antagonism to which the proletarian labourer is predisposed. Our willing and enthusiastic embrace of this role signifies a marked departure from the rights traditionally assumed to accompany membership in a democratic polity.

SOCIAL MEDIA SUBJECTS AND DEMOCRATIC PROSPECTS

There has already been much discussion of the manner in which individuals are conditioned to reflect the ethos and needs of late capitalist society.² In her book, *Undoing the Demos: Neoliberalism's Stealth Revolution*, Wendy Brown expands on the implications of this conditioning for the practice of democracy.³ She does so by charting the manner in which neoliberal rationality has succeeded in remaking both the state and the individual in its own image. This has occurred through the expansion of economic metrics to all aspects of existence, including what were previously non-monetised spheres. She argues that the subjection of all things public and private to the model of the market has profoundly

¹ For the purposes of this paper, terms such as agency, subjectivity, and selfhood are loosely informed by Paul Kockelman's (2006) typology, in which agency refers to the degree of causal control exercised over certain conditions, or the wielding of means towards ends, subjectivity refers to the holding of conscious, intentional mental states like belief and desire, and selfhood refers to the way in which such actions and mental states belong to one, or how they collectively make up one's identity. See: Paul Kockelman, 'Agent, person, subject, self' in *semiotica* 162-1/4 (2006), 1-18.

² For one prominent example, see: Mark Fisher, *Capitalist realism* (London: Zero Books, 2012).

³ Wendy Brown, *Undoing the demos: Neoliberalism's stealth revolution* (New York: Zone Books, 2015).

negative implications for the prospects of collective self-rule. This is because the institutional forms and modes of citizenship necessary to sustain any meaningful form of democracy are completely undercut when all individual and state activity is cast in terms of rankings, credit ratings and return on investment.

The social media phenomenon provides a pertinent illustration of how this occurs at the individual level of *homo oeconomicus*, who thinks and behaves ‘as human capital seeking to strengthen its competitive positioning and appreciate its value’.⁴ Brown makes this point by asserting that the social media enumeration of ‘likes’ and ‘shares’ represents an infusion of market metrics into our individual psychology and personal relationships. She offers this as an example of how neoliberal rationality manifests within more and more areas of life, and juxtaposes it with ‘more directly monetized practices’.⁵ However, this placing of social media within the non-monetary sphere overlooks the fact that each of these ‘likes’ and ‘shares’ also provide the algorithmic raw material of the companies’ revenue streams. This framing, therefore, risks understating the importance of social media, and technology firms more broadly, to the mechanism by which liberal democracy is collapsing beneath the weight of neoliberal rationality. What might a closer inquiry into society’s relationship to digital capitalism reveal about this trend?

TERMS, CONDITIONS AND STAKES

Although it is difficult to predict the role that Facebook will play as social media become steadily more integrated into our lives, the company’s business model seems to have set a general standard for our relationship to social media platforms.⁶ At present, the terms of this relationship are such that the more information users hand over -the more that we disclose about ourselves- the greater the advertising revenue generated for the company. In return, users are granted free access to the service. The trade-off in this equation is that we are afforded less and less input into how our relationship to the platform evolves. How many of us recall consenting to the merging of our YouTube and Google profiles?⁷ Or to having the details of our Gmail accounts used to create a Google profile for us in the first place? This conspicuous absence of choice and user input stems from the oft-quoted observation that users of free online services are not consumers, but products. As such, we are theoretically no more vested with agency and rights than is any other commodity.

According to the market ethos of the digital era, then, the individual is a product whose profitability depends upon the level of detail that one broadcasts about oneself. Of course, the exhibitionism demanded of us by financial imperatives requires a euphemistically

⁴ Ibid. p. 33.

⁵ Ibid. p. 34.

⁶ For an insight into Facebook’s advertising model, see: Robert Hof, “Facebook’s new advertising model: You”, *Forbes*, 5 December 2011 <https://www.forbes.com/sites/roberthof/2011/11/16/facebooks-new-advertising-model-you/#49d4352dac7c>. It also appears that the company is intensifying this core aspect of its business model. According to *Fortune*, the company now depends upon advertising for 98% of its quarterly revenue, up from 97% last year (“Facebook now has an almost advertising-only business model”, *Fortune*, May 2017; available at <http://fortune.com/2017/05/05/facebook-digital-advertising-business-model/>).

⁷ User profiles for the two sites were merged following Google’s acquisition of YouTube in 2006.

legitimising narrative. We are hence encouraged to publish and distribute personal information under a guise of 'sharing'. The paradoxical reality, however, is that the more details we make public about ourselves, the more we privatise our own personal and social space. And given the depth and diversity of the relationship that ties the average citizen to their electronic device, this intrusion can be said to extend into our psychic as well as social structures. Mark Fisher may have touched upon one of the most salient aspects of the social media phenomenon when he observed that at no time in history has capital been as deeply integrated into our everyday existence, into our very psyches, as it has now become through the ubiquity of smartphones.⁸ Following Facebook's acquisition of VR technology platform Oculus Rift, there is strong reason to assume that private capital will move toward more immersive and holistic psychosocial mediation in the future.

This increasing overlap between psychic, social and digital spheres serves to explain how individuals have become such willing participants in what is a discreet but lucrative form of exploitation. An example provided by Jamie Hakim may shed some light on this.⁹ He discusses a marked and quantifiable increase since 2008 in the time and effort that young men from a variety of class backgrounds in the UK have been devoting to the attainment of an 'ideal' body, and he highlights in particular their meticulous Instagram documentation of this pursuit. This phenomenon has arisen, he argues, as a compensation mechanism for the divergence between expectations and outcomes that has become ever more pronounced under the UK austerity regime. The adoption of 'body-work' –hitherto the domain of modernity's others– by this demographic serves as indication of how power is being reconfigured in the era of neoliberal austerity. However, like Brown, he neglects another important element of this story, namely that these young men are all voluntarily, if unconsciously, engaging in the generation of unremunerated economic value. This becomes apparent once we take into consideration Sam Lavigne's observation that in contemporary conditions, digital data provision of any kind can lay a foundation for wealth creation. In his words, 'data itself is labour'.¹⁰ This is clear from the above example, in which young men hone and project a particular data self that happens to be tailored to companies which, on the basis of this projection, can market men's health magazines, protein supplements, gym membership discounts, etc., back to them.

THE SLIP OF THE MASK

The circular dynamic on display here encapsulates the paradigmatic individual self which is envisioned for us by Silicon Valley culture. A binary consumer-product subjectivity has been forged, and it is a reflection of a further expansion of capital's area of return. We have now moved beyond the manufacturing of desire, to include broader and more fundamental modes of selfhood. Clearly, the subjects of this process are afforded no input into the manner in which it develops, much less into whether or not it should be occurring in the first place.

⁸ Mark Fisher, author of *Capitalist realism*, (Zero Books), speaking at the CCI Collective Conference in London, 2016 <https://www.youtube.com/watch?v=deZgzW0YHQI>.

⁹ Jamie Hakim, "'Fit is the new rich': male embodiment in the age of austerity" in *Soundings*, 61(2015), 84-94.

¹⁰ Sam Lavigne, "The networked assembly line" in *The New Inquiry*, 20 December 2016. <https://thenewinquiry.com/essays/the-networked-assembly-line/>.

They are instead expected to embrace it with open arms on grounds of novelty and convenience. There is thus no scope for making demands and claiming rights within the ontological framework of this new sphere of production.¹¹

What we are witnessing, then, is not just the discarding of the liberal archetype of the free individual. Rather, this archetype has been inverted and its binary opposite laid out as the fertile ground upon which profits are to be reaped in the digital era.¹² The notion of consumer rights may have helped in reframing the citizen to fit within the liberal democratic marriage of capitalism and democracy. However the 21st century degradation of consumer-citizens into consumer-products represents the abandonment of all attempts at reconciling these two antagonistic poles of modernity. Wendy Brown is correct in her observation that democracy need not be violently overthrown; it can just as easily, and with far more subtlety, be hollowed out from within.¹³ The sacrifice of the mythological individual by the harbingers of contemporary capitalism may come to be regarded as a significant milestone in this process.

BIBLIOGRAPHY

Brown, Wendy. *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York: Zone Books, 2015.

Fisher, Mark. *Capitalist Realism*. London: Zero Books, 2012.

Fisher, Mark speaking at the CCI Collective Conference in London, 2016. <https://www.youtube.com/watch?v=deZgzW0YHQI>

"Facebook now has an almost advertising-only business model," *Fortune Magazine*, 5 May 2017. <http://fortune.com/2017/05/05/facebook-digital-advertising-business-model/>

¹¹ Needless to say, this observation does not preclude the prospect of organising around progressive politics within these platforms. As Angela Nagle has observed, the hegemonic status of digital era market ideology means that 'it happily accommodates transgression, gender fluidity, self-expression, and an abundant choice of niche online subcultural identities' (Angela Nagle, "The New Man of 4chan", *The Baffler*, 2016). In this light, however, the reason that it is possible to disseminate and discuss radical alternatives within corporate-controlled online space may have less to do with freedom of speech, and more to do with the fact that such content ultimately does not pose any threat to the structure in which it is distributed. In any case, it cannot be denied that social media platforms have facilitated new spheres of political possibility and radical debate. The point here has rather been to highlight the latent tension between the emancipatory potential of horizontal information-sharing and the mode of commoditised selfhood espoused by its most prominent mediums.

¹² This may also shed light on the regressive labour policies pursued by other industries within the tech sector. Once the denial of rights and agency inherent to the 'individual as product' business model becomes synonymous with societal progress, a powerful normative framework is created in which other regressive business models can be pursued. Thus for Uber and Deliveroo, the worker is no longer an employee, but a freelance consultant, bereft of the rights that labour struggles have succeeded in conferring upon the former status. See: Andrew Leonard, "Why uber must be stopped" in *The Salon*, 31 August 2014. http://www.salon.com/2014/08/31/why_uber_must_be_stopped/; Jamie Goldrick, "A taste of the future" in *Rabble*, 20 July 2016 <http://www.rabble.ie/2016/07/20/a-taste-of-the-future/>.

¹³ Wendy Brown, *Undoing the demos: Neoliberalism's stealth Revolution* (New York: Zone Books, 2015).

Goldrick, Jamie. "A Taste of the Future," *Rabble*, 20 July 2016.

<http://www.rabble.ie/2016/07/20/a-taste-of-the-future/>

Hakim, Jamie. "'Fit is the new rich': Male embodiment in the age of austerity," *Soundings* 61 (2015), 84-94.

<http://www.ingentaconnect.com/content/lwish/sou/2015/00000061/00000061/art00007>

Holf, Rober. "Facebook's new advertising model: You," *Forbes*, 5 December 2011.

<https://www.forbes.com/sites/roberthof/2011/11/16/facebooks-new-advertising-model-you/#49d4352dac7c>

Kockelman, Paul. "Agent, person, subject, self," *Semiotica* 162-1/4 (2006), 1-18.

<http://www.brown.uk.com/brownlibrary/kockelman.pdf>

Leonard, Andrew. "Why Uber Must be Stopped," *The Salon*, 31 August 2014.

http://www.salon.com/2014/08/31/why_uber_must_be_stopped/

Nagle, Angela. "The New Man of 4chan," *The Baffler*, 2016.

<https://thebaffler.com/salvos/new-man-4chan-nagle>

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CHRISTIANS AND OTHERS IN THE UMAYYAD STATE, EDITED
 BY ANTOINE BORRUT AND FRED MCGRAW DONNER,
*LATE ANTIQUE AND MEDIEVAL ISLAMIC NEAR EAST. THE
 ORIENTAL INSTITUTE: CHICAGO, 2016. PGS. 213.*

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The present edition consists of eight contributions originally presented in June 2011 at a workshop named "Christians, Jews, and Zoroastrians in the Umayyad State". The edition represents the inaugural publication in the new book series entitled *Late Antique and Medieval Islamic Near East (LAMINE)*, which is published by the Oriental Institute at the University of Chicago. Borrut and McGraw open the volume with a concise introduction to the overall purpose of the edition and a general summary of each contribution, elucidating the history of the available scholarship on non-Muslims in the early Islamic world. They acknowledge that one of the main purposes of this edition is to further highlight the 'blurred' lines that existed between various 'religious communities' during the specified period, contrary to prevailing sentiment in past scholarship.

1. NOTES FOR AN ARCHAEOLOGY OF MU`AWIYA: MATERIAL CULTURE IN THE TRANSITIONAL PERIOD OF BELIEVERS, BY DONALD WHITCOMB, *THE ORIENTAL INSTITUTE. PGS. 11-27.*

Whitcomb's contribution is unique; he extends the 'understanding of modern archaeology for the sake of developing an understanding of the early Islamic period' (p.12). He attempts to use archaeology to study a specific person (Mu`awiya), time, place, etc., against the usual focus of archaeology, which has conventionally been to draw broad and general de-personalised conclusions. Whitcomb begins by showing the architectural similarities between the praetorium and *dar al-imara*. He notes the intriguing similarity between a 'new architectural form of the *dar al-imara*, which may be traced back to Mu`awiya's rule' (p. 13) and that of a church. In doing so, Whitcomb attempts to argue for an era of cultural transformation during the rule of Mu`awiya by comparing three cities (Damascus, Caesarea and Jerusalem) that fell under his control. For Damascus, Whitcomb alludes to the practicality of the design to meet the needs of Christians and Muslims. The similarity of the Damascus complex to the 'Hagia Sophia and Augustaion/Chalke complex of Constantinople' is intriguing. Mu`awiya is identified by Whitcomb as 'more of a believer than a Muslim' (p.23), and from his 'archaeology of Mu`awiya' makes a convincing argument for a transitional phase during the rule of Mu`awiya in opposition to an 'explicitly Islamic state' under `Abd al-Malik. The larger question, which Whitcomb acknowledges, is whether this archaeological approach can answer matters of ideology or identity.

2. THE MANSUR FAMILY AND SAINT JOHN OF DAMASCUS: CHRISTIANS AND MUSLIMS IN Umayyad TIMES, BY SIDNEY H. GRIFFITH, *THE CATHOLIC UNIVERSITY OF AMERICA*. PGS. 29-51.

Sidney Griffith sets out to clarify the oft confusing and perennially argued biography of the Mansur family and their most famous offspring, John of Damascus. Griffith solidifies the key involvement of the Mansur family in the governance of Umayyad rule, and the likelihood that they were either Aramaean or Arab not Roman/Byzantine or *al-Rum*; the author also assesses the difficulties of determining whether key references relate to John or his father, Sarjun ibn Mansur. It is exceedingly difficult to be sure what role John played in governance, at what date he left to be a monk at Mar Sabas, or when he died. This has been thoroughly detailed by Griffith and others, but what Griffith does elucidate is that John's:

Scholarly aim was to systematically present in summary fashion and defend the orthodoxy of the six councils...in the Umayyad milieu in which during his lifetime the crescendo of the twin processes of Islamicization and Arabicization were going forward under caliphal guidance (p. 36).

Griffith's salient point resonates with the fact that John was concerned with theological matters that were acutely specific to his current context. John was inherently linked to the Mansur family, which carried with it negative connotations and effected John's reception during his lifetime. Griffith convincingly points to this combination of facts in explaining the lack of contemporary evidence for John's life and the confusing way in which it took several centuries for his work to be properly received.

3. CHRISTIANS IN THE SERVICE OF THE CALIPH: THROUGH THE LOOKING GLASS OF COMMUNAL IDENTITIES, BY MURIEL DEBIE, *ECOLE PRATIQUE DES HAUTES ETUDES*. PGS. 53-71.

Muriel Debie sets out to show that intra-Christian relationships existing before and during Umayyad rule were more all-encompassing (not simply ecclesiastical) than what many modern scholars have described. Specifically, Debie focuses on the Syriac Orthodox and Chalcedonian Christians in Edessa (Gumoye' and Mansur families, and Theophilus of Edessa). This contrasts with many studies that focus on the late Greek writers in the Arab milieu (Anastasios of Sinai and John of Damascus), as well as the Melkite expression of Christianity in Arabic (Theodore Abu Qurrah). Debie positions the Gumoye family contra the Mansur family of Damascus in setting up her argument that interrelations of different Christian groups greatly affected the way contemporary historians wrote and how modern historians now view these figures. Debie's concluding discussion on how the assumption that Theophilus of Edessa is the 'common source used by both Theophanes in his Greek chronicle and also by a number of Syriac chronicles' (pgs. 65-66) is an illumination of this issue.

Debie's argument underscores the need for modern scholars to be more attentive to the complex situations that might be influencing the content and transmission of source material.

4. PERSIAN LORDS AND UMAYYADS: COOPERATION AND COEXISTENCE IN A TURBULENT TIME, BY TOURAJ DARYAEE, UNIVERSITY OF CALIFORNIA-IRVINE. PGS. 73-81

In his brief contribution, Daryaee seeks to add insight into the complicated and misunderstood relationship between the Umayyads and Persian elite. He proposes that a mutually beneficial relationship existed and that the Umayyads may have treated the Persian elite differently than others under their control. This thesis is supported by numismatic evidence, and specifically, two separate examples of coinage. First, Daryaee argues that copper coins of *Fars* were represented with the name of one local Iranian elite and argues that this shows that the Umayyads tolerated co-regency with some level of local autonomy. Secondly, Daryaee provides examples of coins made for the Governor of Sistan that are representative of Islam and Islamic tradition, but use Zoroastrian terminology to express these ideas, which may have been more palatable to the users. By means of these examples Daryaee makes an interesting case for the Umayyads being more congenial with their Persian subjects than has been thought conventionally.

5. NON-MUSLIMS IN THE MUSLIM CONQUEST ARMY IN EARLY ISLAM, BY WADAD AL-QADI, THE ORIENTAL INSTITUTE. PGS. 83-127.

Wadad al-Qadi provides a thoroughly sourced contribution that aims to explore if and in what capacity non-Muslims served in the Muslim Conquest Army. His proof texts convincingly confirm the fact that non-Muslims served in the Muslim army and provide detailed evidence that non-Muslims from a plethora of ethnic and religious backgrounds served in a multitude of ways in aid of the Muslim conquest. Especially interesting is the comparison al-Qadi makes in regards to the practical questions of how, when, and in what capacity non-Muslims served, especially in the early years of the Arab Conquest.

6. AL-AKTHAL AT THE COURT OF 'ABD AL-MALIK: THE QASIDA AND THE CONSTRUCTION OF UMAYYAD AUTHORITY, BY SUZANNE PINCKNEY STETKEYVICH, GEORGETOWN UNIVERSITY. PGS. 129-155.

Stetkevych's sets out to show the importance assumed by poetry, and specifically Al-Akthal's poetry, in the solidification of Umayyad authority. By examining three of Al-Akthal's *qasidas*, Stetkevych brings to life the game that was played in the court of Abd al-Malik. She convincingly demonstrates that al-Akthal's poetry was 'conferring and confirming—but also, when necessary, challenging—Islamic, and particularly Marwanid/Umayyad, legitimacy and thereby articulating an ideology of legitimacy specific to Islamic caliphal rule' (p. 153). Stetkevych shows the uniqueness of the situation considering al-Akthal is a Christian, but also points out the inherent necessity of the subject in this context to not be a Muslim. For non-specialists in this field, Stetkevych's contribution provides intriguing insight into something that may be challenging for the Western mind to comprehend.

7. 'UMAR II'S GHIYAR EDICT: BETWEEN IDEOLOGY AND PRACTICE, BY MILKA LEVY-RUBIN, THE NATIONAL LIBRARY OF ISRAEL. PGS. 157-172.

Levy-Rubin seeks to introduce the question of whether 'Umar II's Edict was proscribed by him or added by later generations. She begins with the assumption that it is genuine and aims to determine what his *ghiyar* said about his ideology. In effect, Levy-Rubin does not

provide much evidence for her position that 'Umar II's Edict is genuine (she cites Ch. 3 of her book on the subject), but only offers a rebuttal of Yarbrough's position (see below). Her arguments are interesting and plausible (as Yarbrough admits), but the evidence is far from conclusive. Specifically, much of the strongest evidence comes from sources several centuries after 'Umar II and, as Levy-Rubin admits, is viewed as reconstructionist by some. Her argument hinges on the idea that 'Umar II's ideology aimed to separate non-Muslims from Muslims (different from Arab Conqueror and conquered) by imposing humiliating regulations on non-Muslims. According to Levy-Rubin, 'Umar II's *ghiyar* policy would have only effected a relatively small number of non-Muslims and mostly in *amsar al-muslimin*.

8. DID 'UMAR B. 'ABD AL-'AZIZ ISSUE AN EDICT CONCERNING NON-MUSLIM OFFICIALS? BY LUKE YARBROUGH, SAINT LOUIS UNIVERSITY. PGS. 173-206.

Yarbrough's contribution stands in direct contrast with the aforementioned argument of Levy-Rubin. He has offered a very concise and analytically creative survey of the relevant information available as to whether 'Umar II issued an edict barring non-Muslim officials. Yarbrough's paper is intellectually honest and stimulating; it attests that the current evidence allows for a variety of different readings in contradiction to each other and sometimes within the same readings. He sets up his argument by providing the minimalist (skeptical) and maximalist (accepting) viewpoints on the sources for 'Umar II's supposed edict. It is fitting that Yarbrough concludes that the 'evidence is intractable' (p. 198), and illuminates the inherent risk within scholarship of having to choose one source as more reliable against another.

CONCLUDING REMARKS

This volume contributes to the ever-burgeoning interest in the Arab Conquest, rise of Islam and the plurality of religious contexts that described some of the most important eras of human history. The level of scholarship and range of contributions make this volume relevant to scholars of broader Islamic, Christian, Art Historical, Archaeological, Historical studies and a variety of other disciplines. Most importantly, the volume's broad scope highlights the continuous lacunae within this scholarship, many of the presuppositions still being debated, and the inherent connectedness of subject matter related to the Umayyad State.

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LITERARY TRANSLATION AS A PATHWAY TO THE 'HUMANISATION' OF EASTERN CULTURE: MANSOUR RAHBANI INTRODUCES THE EAST TO THE WEST THROUGH HIS POETRY

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MANSOUR RAHBANI: AT THE DAWN OF THE THIRD MILLENNIUM, UNDATED

بصباح الألف الثالث
بعد في جوع
وفي أطفال مشردين
وبكي ودموع

At the dawn of the third millennium
Still there is hunger,
Homeless children,
Lamentation,
And tears shed

خلينا ننهي الحروب يا دول القوية
لا للفقر
لا للقمهر
لا للعنصرية

O powerful countries, let us end the wars,
No to poverty
No to repression
No to racism

انت مين؟
أنا ما بسأل لكن حزنك قلبي مين
ولا يعرف أي لون وأي دين
يعرف انك خي
خي بالإنسانية

Who are you?
I ask you not, but your sadness tells all
I do not even see your colour or religion
I only know you are my brother;
My brother in humanity

بصباح الألف الثالث
في منفيين
في ناس بالمعتقلات صرلين سنين
خلينا بمطلع ها العصر
والدنية مشتاقه
ننهى الظلم
ننهى الخوف
وع العدل تتلاقى

At the dawn of the third millennium
Still there are people in exile
People linger in camps for years
At the dawn of our time,
While the world is yearning,
Let us end iniquity
End fear
And come together in justice

أنا من ها الشرق جاية
الإيمان أرض
ضيعنا مطلع الشمس ولون الزمان
من عنا لكل الشعوب منودي تحية
جيل يفغل وجيل يطل على وقع الحرية

From the East I come,
From the land of faith,
From our villages the sun rises and Time takes its colour
From here we extend our greetings to all nations
As a generation departs, another comes forth with the beat of freedom.

انت مين؟
أنا ما بسأل لكن حزنك قلبي مين
ولا بعرف أي لون وأي دين
بعرف انك خي
خي بالإنسانية

Who are you?
I ask you not
But your sadness tells all
I do not even see your color or religion
I only know you are my brother;
My brother in humanity

TRANSLATION AS A PATHWAY TO HUMANISATION

The Arab World has been experiencing challenging geopolitical and socioeconomic conditions since the breakout of the 2011 Arab uprisings. Countries like Libya, Syria, Yemen, Iraq and Lebanon have been either in de facto civil wars or in confrontations with the Islamic State (ISIS) or internal militias and other radical groups. Other Arab countries are suffocated

from inside by sectarianism and fanaticism and threatened by potential wars from outside. This caused a large number of Arabs to leave their countries not only for survival, but also in pursuit of better living conditions. According to the UNHCR's report issued in mid 2015, the total number of world refugees has reached 15.1 million, its highest level in 20 years, with the Syrian Arab Republic ranking as the largest source of refugees.¹ In other words, a large part of the Arab population has become either immigrants or potential immigrants.

This fact is changing the demographics of both the Arab world and the West simultaneously, and accordingly affecting bilateral cultural relations. One way to comprehend the cultural relations between nations is to study their cultural interactions, which are manifested in waves and trends of translation. For example, following the September 11 attacks translating Arabic literature into English flourished as a trend in large part due to the cultural tension that occurred in the aftermath. However, Sinan Antoon, a distinguished Iraqi poet, novelist, scholar and associate professor at the Gallatin School of Individualized Study, New York University, finds that most of the English translations of Arabic literature are 'cultural interrogation' of Arabic culture and do not necessarily express a real interest in it.² Edward Said also criticised the omission of literature and the humanities in the Near & Middle East studies in his *Orientalism* and asserted that the mentioned "omission" of Arabic literature "dehumanized" Arabs.³ In view of the unfolding events linked to terrorist attacks in recent years, stereotypical Western perceptions of Arab culture may be understandable due to the imposed misrepresentation of the mainstream Western media, which biased the average person in addition to disengaging him/her from the rest of the world. It is evident that a discourse of intolerance has stifled cultural exchanges. Therefore, it seems apposite to produce translations of Arabic poems as it can shed light on the aesthetics of Arab culture and may contribute to its 'humanisation' as a counterweight to the stereotypical image. Introducing Arabic literary works, in this case the Rahbani Brother's work to both, English-speaking lay audiences and academics, aims to serve as platform for more exposure to Arabic literature and a strategy to 'humanise' it without the 'cultural interrogation' Antoon referred to.

MANSOUR RAHBANI ADVOCATES THE REBIRTH OF THE DREAM OF FREEDOM

The poem written by Mansour Rahbani does not appear in any of his collections, which might suggest that he intended it to be sung, rather than read.⁴ Although the poem is undated, it is believed that it was written around the year 2000, when the album that includes the song was released. The opening of the poem 'at the dawn of the third millennium' further confirms this premise. It addresses the human family and emphasises its unity as it reflects the humanitarian status quo of the people of the world as one nation.

¹ UNHCR 2015.

² Sinan Antoon in a lecture in the American University in Cairo, AUC 2014.

³ Said 1979, P. 291.

⁴ The poem was sung by the Lebanese Singer Carole Samaha and was published on her official YouTube Channel on the following URL: <https://youtu.be/4JepjWaqPZU>.

Hence, its message is very important in the current times when the fear of terrorist attacks is conditioning people all over the world. Apart from the conflict zones in the Arab region, many Western countries became a target of accelerated terrorist attacks. For example, the United Kingdom experienced several terrorist attacks, such as the Westminster attack, the Manchester Arena bombing, the London Bridge attack and the Buckingham Palace incident.⁵ A shift in the way we view the world as a unified humanity is much needed to secure the ideal of a global interconnected world. In fact, no real change will occur without if we do not strengthen our sense of responsibility towards the world and our sense of belonging to each other, regardless of our differences.

Therefore, when Rahbani composed his poem, there was urgency in depicting the paradox of entering the third millennium while still being in a world that is filled with 'hunger', 'homeless children' and 'lamentation'. The poem explicitly calls for 'powerful countries' to end wars because there is nothing such as a 'justified war'. This call suggests that it is a time when we have to decisively reject all pretexts for war, including 'poverty', 'repression' and 'racism'. Under no circumstances should we let 'religion' or 'colour' determine how we see humans or how we relate to them. Because 'sadness' is what brings people together and makes them brothers 'in humanity', it is also a universal identification and language. Hence, asking one: 'who are you?', asking to know his/her religion, language, or race is pointless because it should not matter. In fact, this is a revolutionary redefinition of the conventional conception of identification that limits people to the geographical borders and racial ties they get associated with and conditioned to when they are born. This redefinition can liberate people, for it allows them to be what they choose to stereotypical labels and social classifications.

In addition, the poem is a reminder of the current situation of civil rights in the world; we still see 'people in exile' and others who 'linger in camps for years'. Although the reason behind their imprisonment cannot be inferred here, we sense the long waiting and see their tiresome depersonalisation in the image of them behind bars. Such an image visualises repressed nations who lived in 'fear', and inciting us -as a unified human family- to live up to our responsibility and take action, 'end iniquity' and 'come together in justice'. Furthermore, Mansour keeps reminding us of our time and connects it to the insistent longing of the world for liberation.

Contrary to its current association with ignorance, barbarism and terrorism by Western media Mansour attempts to introduce the East to the world as the 'the land of faith' in the last part of the poem. Faith here is a spiritual conception that is unrelated to any religious or ideological belief, which is consistent with the overall vision of the Rahbani works. In fact, the only values the Rahbani Brothers, also known as the Rahbanis or the Brothers, advocate in their works are, dreaming, a vision or of goodness, beauty, love, justice and freedom. This is the 'faith' referred to because it is the faith they embrace and from which the 'sun rises'. The ability to see clearly accompanies the rising of the sun after hours of darkness that conceal vision. Therefore, the sun rising here symbolises the uncovering of the truth of the East. As we see it with such a human eye, we refrain from 'dehumanising' its culture and people. In fact, a human vision is much needed to see the land of the East, just as any other human land; a source of inspiration and knowledge that leads to enlightenment, civilisation

⁵ BBC 2017.

and justice. Last but not least, the poem sends a positive message to the whole world to affirm that the new generation will not accept to quit dreaming for freedom and will witness its rebirth.

DIVING IN THE RAHBANI WORLD

Mansour Rahbani or *Manṣūr Al-Raḥbāni* makes the second pole of the Rahbani Brothers along with his brother Assi Rahbani (1923- 1986). Mansour was born in 1925 in Antelias, which is located five kilometres to the north of Beirut.⁶ The Rahbani Brothers are the only Arab artists who transcended their personal selves and egos and succeeded in creating a collective self under which they signed both their names 'the Rahbani Brothers' or 'al-Akḥawayn Raḥbāni'. The Rahbani Brothers are well known by Arab audiences as the founders and pioneers of musical theatre in the 20th century in Lebanon and the wider Arab world. However, their contribution to the Arabic artistic scene in the 20th century unquestionably reached beyond the theatrical aspect, as they were songwriters, poets, musicians and composers in addition to being playwrights/dramatists. As a matter of fact, it is unanimous that their production was simultaneously prolific in the spheres of music, poetry, drama, films, television series and programmes, while constantly maintaining a high quality at all fronts.

Therefore, Samim AlSharif, among many others, considers them to be one of the "most important artistic phenomena" that emerged in the Arabic scene in the second half of the 20th century because of the unity and consistency they managed to create within their works.⁷ According to Muhammad Dakrūb and Nizār Murūwah, the singularity of the 'Rahbani phenomenon', which emerged in the late 50s and lasted until Assi Rahbani's death in 1986, is manifested in their protest of conventional artistic traditions such as *Tatrib* resulting in the "development of Arab art".⁸ Most importantly, the Rahbani text is "not a historical text that is ruled by incidents and constants" but has a "comprehensive" feature, which makes it "unrestricted to the time of its presentation and is not ended in the place of its presentation".⁹ In fact, it is integrated in the daily life of the Lebanese as it is implanted in the collective popular memory. Rajaa Chouairi established that the "discourse" and "imagery" of the Brother's theatre has "penetrated deeply the language and the discourse of people, schools, history books and everyday life".¹⁰ In fact, part of his academic fieldwork was dedicated to monitoring expressions, sayings and references, found even across newspapers, to the Rahbani work.¹¹ This is because the Rahbani Brother's works have always been a true expression of Arabs' concerns, joys, fears and aspirations. In other words, they have been faithful carriers of the 'Arabic Plight' or what is referred to in Arabic as 'al-Hamm al-ʿArabi'. In fact, some critics consider them to be the embodiment of 'Arabic conscience' or

⁶ This is inferred from my readings of different sources on the lives and childhoods of the Rahbani Brothers.

⁷ Aliksan 1987, P. 287. Aliksan quotes from *Jaridat Tishrin*, issue 1001 dated 27-12-1978.

⁸ Dakrūb and Murūwah 1998, P.115.

⁹ Raḥbāni 2003, As in Henri Zughayb's introduction.

¹⁰ Chouairi 2006, P.19-20.

¹¹ Ibid.

'al-ḡamīr al-ʿArabi' in addition to being a "Lebanese artistic and human conscience".¹² Hence, finding relevance between their works and the Arab sociopolitical realities is quite easy, especially when considering the balance they maintained between their idealistic visions and their practical causes, which advocate social change.

As a matter of fact, the Rahbani's view of theatre and its role in transformation and social change is expressed in the play *Nās Min Waraq* in a dialogue between Maria, who is an actress in a traveling theatrical troupe and performed by the Arab diva Fayrūz, and Dīb, one of the men organising the electoral campaign of the parliamentary candidate 'Ḍāhir al-Bandar'. Attempting to distract him from implementing his boss' orders to stop the performance, claiming that it is disturbing him while preparing for his electoral speech, Maria tries to convince Dīb that he is a good actor and that he should join the troupe. Promising to give him the role of a member of parliament on stage, she explains to him that the actions of actors don't harm anyone as the actions of people in real life do; "On the stage you can sell a country, but there is a difference; the country wouldn't be sold in reality. You can kill people on stage, but the dragger doesn't hurt. You can oppress, but your oppression doesn't harm anyone".¹³ Even though it doesn't affect reality directly, Maria refers to the transformational power of words on stage, Maria reaffirms; "Despite of that, words on the stage, thunder, resound and change".¹⁴ This statement shows that 'change' is what the Brothers see theatre evoking in society and what they hope to achieve through their theatrical works. Not only that, it also reflects their wish to revive faith in the long-term role that theatre can play in transformation and social change.¹⁵

After the death of Assi Rahbani on 1986, Mansour continued to work alone. He composed a number of twelve works for theatre, the musical composition *The Holy Mass*, two works for television and published six collections of poems or *diwans*. He was known for his fascination with history, which was evident in his depictions of historical figures and contemporary interpretations of historical incidents. The orchestration of his plays, their stage direction and scenography in addition to the universalism of the text made them meet international theatrical standards. Mansour continued to work and produce poems, musical compositions and plays until his death in January 2009.

SIGNIFICANCE OF TRANSLATING THE RAHBANI WORKS

The fact that the Rahbanis have written in colloquial Lebanese had significantly affected the study and translatability of their works. Christopher Stone, the most known English-speaking scholar to write about the Rahbani phenomenon, talked about 'the academic marginalisation of theater' and referred it to the problematicity of the 'use of colloquial language in literature', both in Europe and the Arab World:

¹² Aliksan 1987, P. 22.

¹³ Raḡbānī 2003, from the play 'People of Paper' or 'Nās Min Waraq'.

¹⁴ Ibid.

¹⁵ The methods the Brothers implemented in their works to achieve the mentioned transformation and social change will be the subject matter of the author's PhD dissertation.

While the use of colloquial language in literature written in European languages has not been completely unproblematic (Anderson 1991), it remains a highly contentious issue in the Arab World for a variety of political, cultural, and religious reasons.¹⁶

Because of its 'divergence' from the Classical Arabic in which the Qurān is written and according to which its standards are judged, Arabic-speakers "do not usually consider their spoken language to be worthy of being written down".¹⁷ The fact that Arabic-speakers look down at spoken languages delayed and sometimes hindered the collection of Arabic theatrical works written in dialects. Therefore, traditionally there has existed a big controversy around collecting the theatrical works of the Rahbanis in print. However, their works were collected and printed in over 20 volumes by the Lebanese poet Henri Zughayb in 2003. The reasons cited above have also caused the lack of translations of their full works into Western languages.

In addition, the nonexistence of the texts of plays made them inaccessible and difficult to study. Moreover, having been written in colloquial Lebanese, it is unsurprising that most of the research, which has been done on the Rahbani Brother's Theatre so far, is in Arabic. In fact, this is Stone's main explanation for why research on theatre "has been even more shunned in academic circles than has theatre in the West".¹⁸ Musical theatre written in dialect was even 'more ignored critically' than theatre written in classical Arabic.¹⁹

Furthermore, the nonexistence of Rahbani printed texts until 2003, along with the mentioned 'marginalisation', complicated the translation of their theatrical works into other languages even further. For texts, which are unavailable in their original language, are unlikely to be found in other languages and, therefore, may not be known by others who do not speak their original language. As a result, the works have become vulnerable to misrepresentations by Western scholars who studied them imperfectly. Christopher Stone's *Popular Culture and Nationalism in Lebanon: The Fairouz and the Rahbani Nation*, the main English source on the Brother's Theatre, is a good example of such misrepresentations. Even though his book serves as a guidebook that exposes researchers to a wide range of scholarship commenting on the phenomenon, it does not highlight the unique characteristics they brought to the theatrical experience in the Arab world. Disregarding extensive and independent literary analysis of the works of the Brothers, the poetic aesthetic aspect of the experience is overshadowed and even restricted by the historical contextualisation in Stone's study. Most importantly, Stone's misconception of the Brothers' works is objectified in his argument that their artistic project was prone to incite tension within Lebanon.²⁰ Stone himself refutes this argument when he states in his article "Fayrouz, the Brothers, and Jerusalem, and the Leba-stinian Song" that despite being Christian, Fayrūz and the Brothers are 'never consciously or publicly associated with Lebanon's right-wing Christian nationalists and in fact saw themselves as forces of unity and inclusion'.²¹ Such

¹⁶ Stone, *Nation, Popular Culture and Nationalism in Lebanon: The Fairouz and Rahbani*. 2008, P. 6.

¹⁷ Stone 2008, P. 7.

¹⁸ Ibid. P. 7.

¹⁹ Ibid. Stone quoting from Shawul 1989, P. 471.

²⁰ Stone, *Fayruz, The Rahbani Brothers, Jerusalem, and the Leba-stinian Song* 2005, P. 157.

²¹ Ibid.

contradictions and misconceptions of English sources on the phenomenon underscore the need for introducing the works to, non-Arabic audiences and academics. However, introducing the Rahbani works to these audiences requires the production of adequate literary translations of the works themselves.

Even though some poems written by Mansour Rahbani had been translated into English, no official English translation of the above poem is found or known to exist. The song has been poorly subtitled in English. In addition, an unofficial English translation was found online.²² Not only did it have major mistranslations, (e.g. it mistranslated 'beauty' for 'sadness'), but it also missed out the poetic aspect and sense of the text.

The translation presented here attempts to reflect the meaning of the poem, as well as capture its poetic spirit. For example, the part reciting 'Who are you? I ask you not, but your sadness tells all' sounds more poetic than the translation found online, which had it as, 'Who you are is something I would not question, but your beauty told me who you are'.²³ As it is hard not to see the colour of someone or to deduce his/her religion from certain factors, translating the verb 'know' literally was avoided and replaced by 'see', since it conveys the intended meaning. Using the first person, Mansour wanted to affirm that even though I, a human being, can see the differences between humans, I act as if we do not see it. In other words, we choose not to 'see' our differences despite the fact that we are capable of seeing. That's what makes the 'unseeing' here such an admirable gesture, 'I do not even see your colour or religion', especially with the stress of the word 'even' before the statement. The mystery of the magical gesture is resolved when the explanation comes, 'I only know you are my brother'. In addition, the choice of words was careful and accurate in order to deliver the imagery, the poetic state and mode of the poem. For example, the word 'linger' gives the sense of the long waiting and the connotation of dullness of 'stillness'. Moreover, the word 'yearning' depicts the intensity of the feeling of longing for the end of iniquity and fear, and meeting justice. Last but not least, the order of sentence was changed sometimes in view of maintaining the inner musicality and smoothness of the poem. For instance, 'Still there are people in exile' replaced 'there are still people in exile'.

In conclusion, the importance of translating literary texts written in dialects consists in breaking down taboo around them in addition to taking them seriously. As for the broader translation of Arabic literature into English, it can contribute to 'humanising' Arabic culture and can serve as a counterbalance to conventional stereotypical images. Not only does it encourage the production of other translations, but it also motivates authors to keep writing as critics and researchers to continue finding literary works valuable to study.

BIBLIOGRAPHY

Aliksan, Jān. *al-Raḥbānīyūn wa-Fayrūz: alf 'amal fannī, khamsūn 'āman min al-'aṭā'*. Damascus: Dār Ṭalās, 1987.

²² The translation can be found on the link below: <http://lyricstranslate.com/en/bi-sabah-el-alf-el-talet-بصباح-الثالث-الألف-dawn-third-millenni.html>.

²³ Ibid.

AUC. "Translation as Mourning." Lecture by Sinan Antoon. YouTube video, 1:21: 41, April 22, 2014, <https://www.youtube.com/watch?v=f9ehd8nbFFY>

"Carole Samaha - Bi sabah el alf el talet (English translation)." Lyrics Translate, January 2, 2013, <http://lyricstranslate.com/en/bi-sabah-el-alf-el-talet-%D8%A8%D8%B5%D8%A8%D8%A7%D8%AD-%D8%A7%D9%84%D8%A3%D9%84%D9%81-%D8%A7%D9%84%D8%AB%D8%A7%D9%84%D8%AB-dawn-third-millenni.html>

Chouairi, Rajaa. *The Sword Breaks, the Song Continues: Literacy in the Raḥbāni Brothers' Work of Art*. Prod. Hofstra University. Ann Arbor, Michigan, 2006.

Dakrūb, Muḥammad, and Nizār Murūwah. *Fī al-mūsīqā al-Lubnānīyah al-'Arabīyah wa-al-masraḥ al-ghinā'ī al-Raḥbānī*. Beirut: Dār al-Fārābī, 1998.

Raḥbani, al-Akhawayn. *al-a'māl al-masraḥīyah al-kāmilah 'The Complete Theatrical Works'*. Edited by Hinrī Zughayb. Vol. 1. Jūnīyah: Dīnāmīk Ghrāfik lil-Ṭibā'ah wa-al-Nashr, 2003.

Said, Edward W. *Orientalism*. Vol. 1st. New York: Vintage Books ed., 1979.

Samaha, Carole. "Be Sabah El Allf El Talet," YouTube video, 6:42, February 25, 2013, <https://youtu.be/4JepjWaqPZU>.

Stone, Christopher Reed. "Fayruz, the Raḥbani Brothers, Jerusalem, and the Leba-stinian Song." In *Jerusalem - Idea and Reality*, edited by T. Mayer and Mourad, 155-167. London: Routledge, 2005.

—. *Nation, Popular Culture and Nationalism in Lebanon: The Fairouz and Raḥbani*. London: Routledge, 2008.

"Timeline of British Terror attacks." *BBC*, June 19, 2017, <http://www.bbc.com/news/uk-40013040>

UNHCR. "UNHCR Mid-Year Trends 2015." *United Nations High Commissioner for Refugees*. Geneva, 2015, http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/Mid-Year_Trends_2015.pdf

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