14th SeSaMO Conference

PATHS OF RESISTANCE IN THE MIDDLE EAST AND NORTH AFRICA

University of Turin (Italy)

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SeSaMO

SOCIETÀ PER GLI STUDI SUL MEDIO ORIENTE

TITLE: **Law as Resistance**

CONVENOR(S):
- Roberta Aluffi (University of Turin)
- Gianluca Parolin (Aga Khan University)
- Serena Tolino (University of Hamburg)

ABSTRACT:

In line with the general theme of the 2019 Conference (Paths of Resistance in the Middle East and North Africa), the panel organisers wish to solicit papers engaging with issues of law as resistance in the region.

Law generally plays the role of the villain in most stories of resistance. We believe that there is more to be said. At least, there are instances of law as resistance (beyond and away from Fitzpatrick 2008).

We invite submissions engaging with any of these angles:

(Imperial fiqh) Is there space to argue that imperial jurists devised fiqh as a stronghold able to resist pressures from political authorities and their laws?

(Legal History) What evidence can we conjure to support the counter-intuitive statement that during colonial times law was also used to resist the coloniser?

(Law&Colonialism) Some have started to deconstruct the calls for sharia in contemporary contexts as direct challenges to current illiberal regimes. A form of 'protected' resistance?

(Law&Lit) If literature is an avenue to explore forms of resistance of and to the law, how can we read for example the account of Tawfīq al-Ḥakīm or the citizen-detective in 'detective' stories?

(Law&Language) The language of the 'modern', positive law has largely become the hegemonic language of law triumphant. Where can one find counter-hegemonic challenges to this state of affairs?

(Law&Gender): How law has been used as an instrument of resistance to challenge patriarchal norms and/or hegemonic forms of masculinity and femininity?

(Law&Feminism): What is the relation between feminist demands for legal reforms and the law? What are the conditions that allow for some of these demands to make their way into the law? And what are the conditions that hinder that?

CONVENOR'S ACADEMIC PROFILE:

Roberta Aluffi is a comparative lawyer working on law and religion and law and migration issues. Her research is particularly focused on the Moroccan legal experience in the last century.

Gianluca Parolin is a comparative lawyer currently looking into the transformations of the semiotics of law in Egypt over the past two centuries, and the intersections between law and popular culture in contemporary Egypt.

Serena Tolino is an Islamicist particularly interested in the history of Islamic Law and in law in contemporary Egypt. She is currently working on gender and sexuality in Islamicate contexts in both the past and the present.

PAPERS:

FIRST SESSION

1. When Legal Worlds Collide: Law as Resistance to Patriarchal Norms in the United Arab Emirates

Mary Ann Fay
Professor of History
Ph.D., Georgetown University

ABSTRACT
My paper demonstrates how law in the United Arab Emirates has been used to challenge abusive male power within the family. The essay follows a legal case in 2010 involving a woman who took her husband to court for physically abusing her and their adult daughter. The case reached the Federal Supreme Court, which upheld the conviction of the husband while acknowledging the right of a husband to discipline his wife – but not his adult daughter – "provided he does not leave physical marks." The ruling set off a nation-wide debate with conflicting opinions aired in the press, in letters to the editor and in essays by legal and religious scholars and clerics.
The paper explores the significance of the action taken by the unnamed woman who sought justice for herself and her daughter by defying the power and patriarchal authority of the husband/father within the family. The woman's action demonstrates the increased autonomy of UAE women and their ability to participate in the public realm.
I argue that the emergence of secular law along with the formation of the UAE provided an opportunity for women to assert their rights as citizens of the nation. In this particular case, we can observe how gender and the political realm intersect and the various ways that contrasting legal frameworks affect judicial decision-making.

2. Law and Feminism in Egypt: A Century of Struggle for Constitutional Equality

Serena Tolino

3. Colonial, Cultural, or Religious Remnants? The Issue of Females Passing on Citizenship and Resistance to the Status Quo

Jinan Bastaki
United Arab Emirates University

ABSTRACT
Many Arab countries do not give women the right of passing on citizenship to their offspring on an equal footing with men. While this has changed in some countries, in general where a female citizen marries a non-citizen, the passing on of citizenship is not automatic, as it is for male citizens who marry a non-citizen. While there has been some analysis of the arguments against permitting women to pass on their citizenship, this paper will explore the roots of this law in general, and analyze the law-based resistance to the issue of passing on citizenship in three countries: Egypt (where, in 2008, women were given the right to pass on

their citizenship), the United Arab Emirates (where, in 2012, the children of Emirati women who had married non-nationals were permitted to apply for citizenship), and Jordan, where the debate continues on the ability of women to pass on their citizenship.

Biography:
Dr. **Jinan Bastaki** completed her PhD from the UK in 2017, and is currently Assistant Professor of International Law at the United Arab Emirates University. Her research interests are forced displacement, refugees, gender, and citizenship.

4. Adattamenti e resistenze del diritto di fronte alla scienza: riflessioni intorno alla disciplina della maternità surrogata in alcuni Paesi islamici

Deborah Scolart

ABSTRACT:
Nel 2015 la Federal Shariat Court pakistana è chiamata a pronunciarsi su un caso di maternità surrogata. Il diritto pakistano non prevede norme esplicite che disciplinino il fenomeno della maternità surrogata e i giudici invocano un intervento legislativo che faccia chiarezza, cogliendo anche l'occasione per sottolineare come la disparità economica tra paesi sviluppati e sottosviluppati si risolva, anche in tema di questioni legate alla salute riproduttiva, in uno svantaggio per i secondi: qui è infatti più semplice reclutare donne disposte, in cambio di denaro, a svolgere la funzione di "utero in affitto" a vantaggio di famiglie più ricche residenti in paesi dove però la maternità surrogata è vietata o soggetta a severe restrizioni. La maternità surrogata è dai giudici osservata sia sotto il profilo della possibile violazione delle norme islamiche sulla filiazione sia come possibile strumento etero-prodotto capace di scardinare le strutture sociali del Paese.
Altrove, come in Iran, i giuristi più prosaicamente si interrogano su come conciliare le stringenti regole che sovraintendono alla determinazione del nasab paterno e fissano la maternità in capo alla donna partoriente con le possibilità offerte dalla scienza moderna per soddisfare il desiderio di un figlio nelle coppie con difficoltà riproduttive: un diverso approccio alle fonti può infatti portare ad aperture inattese, una rilettura della disciplina dei contratti consentire ciò che apparentemente sarebbe vietato.
La comparazione tra ordinamenti consente di valutare la capacità del fiqh di rispondere in maniera adeguata alle sfide poste dalla scienza in ambiti sensibili per il diritto, evidenziando resistenze, adattamenti e criticità.

PROFILO ACCADEMICO DEL/DELLA PROPONENTE:

Deborah Scolart, Ricercatrice di Diritto musulmano e dei Paesi Islamici. Università degli Studi di Roma Tor Vergata

SECOND SESSION

5. Islamic Law as a Means of Resistance Against Colonialism in the Legal Thought of Rashīd Riḍā

Eva Kepplinger

ABSTRACT
As its premise, the method of historical discurse analysis holds that texts always need to be understood and interpreted as products of a specific context. If any text is studied without this consideration, the text cannot be comprehended and located adequatly. Therefore, when e.g. legal thinking becomes formulated e.g. in the form of a legal decision, in order to gain an encompassing understanding it is necessary to look into the context that shaped the respective jurist´s thought. This paper deals with the legal thinking of the reformer Rashīd Riḍā (d. 1935). Since European imperialism had an impact on many aspects of the lives of the colonialized, which Riḍā dealt with on various levels, this paper argues that his legal thinking should be understood as a means that he used to resist colonialism. This paper analyses Riḍā´s legal thinking in the context of his general anti-colonial activism and argues that, following the historical discurse analysis, his legal thinking needs to be looked at through the lens of his anti-colonial position. One example of this is Riḍā´s *fatwā* in which, contrary to other Muslim´s opinions, he argued for Muslims in Bosnia to stay and not to emigrate to the Ottoman Empire after Bosnia had been annexed by the Habsburg Monarchy. The analysis of other fatwas and his legal thinking supports the hypothesis of this paper that the reformer Riḍā understood Islamic law as a means of resistance that he used against and in the context of the colonial reality in his days.

ACADEMIC PROFILE:

Dr. **Eva Kepplinger** studied Islamic Studies in Jordan and France and did her M.A. at Glouceistershire University, UK. She finished her PhD in 2017 at Vienna University with the title *The Impact of ash-Shaṭibī´s maqāṣid-Thinking on the Malikite School of Law*. From 2011 till 2017 she was a lecturer at the Muslim Teacher Training College (Vienna), where she taught several subjects in the field of Islamic studies. Since 2017 she has been a research fellow at the Department Islamic-Religious Studies at Friedrich-Alexander-University Erlangen-Nuremberg, Germany.
Her research interests are: Islamic intellectual history, Islamic legal thought and philosophy, ethics, reform movements and thoughts in the modern era.

6. The Salafi Conception of *al-Walā' wa'l-Barā'* and Muslims Integration into Western Societies: A Negative Impact.

Carlo De Angelo
(University of Naples "L'Orientale")

ABSTRACT
The purpose of my paper is to look at the presence of Muslims in the West from the viewpoint of Islamic religious rules elaborated by contemporary Muslim jurists who live or have lived in Islamic lands. It is possible to divide these *fuqahā'* into two main groups. The first main group consists of those jurists (many of whom close to the Muslim Brotherhood) who have adopted an integrazi-onist/interactionist approach. In fact, they developed a set of rules that govern the conditions of Mus-lims living in non-Islamic contexts (*fiqh al-aqalliyyāt*), whose aim is, on the one hand, to discipline the behavior of Muslims so as to safeguard their identity, and on the other to review the modes of relating to the non-Islamic State in which they live by encouraging them to develop a sense of be-longing and respect for it. Such development is, according to these jurists, an essential step toward ensuring that

Muslims think of themselves and behave as active citizens of the Western countries where they live. The second main group consists of those jurists who belong to the Salafi purist current. Because of their interpretation of *al-walā' wa'l-barā'* doctrine [loyalty (to Muslims) and disso-ciation (from non-Muslims)], they have adopted a separatist approach. Indeed, these *fuqahā'*, no dif-ferently from their colleagues who proposed the integrationist/interactionist perspective, identified Western countries as places of moral and spiritual perdition, with the difference, however, that they, in contrast with the former, believe that Muslims should not live in them and should stay clear of them. The possibility of residing in Western countries is allowed only in special cases (curing an illness, work, study etc). The stay in the *dār al-kufr* must however respect a series of rules like, the freedom to practice Islamic rituals, limit contact with the disbelievers to only when one tries to con-vert them to Islam (*da'wa*), without ever developing strong relations with them, criticize them openly without offending, etc. These circumstances add up to explain why the tendency to isolate themselves, is seen among Muslim communities in the West who make reference to Salafi purist doctrine. Despite the importance of this topic, little attention has been paid to the jurisprudence elaborated by these jurists. Because of this, the aim of my paper is to analyse the *fatāwā* that they issued concerning to the Muslims in the West. In particular, I will examine the responses of Ibn Bāz (*Majmū' fatāwā wa-maqālāt mutanawwi'a*, 30 vols.), Ibn 'Uṯaymīn (*Majmū' fatāwā wa-rasā'il*, 26 vols.), Fawzān (*Al-Muntaqā*, 2 vols.), and of the Saudi Permanent Committee for Scholarly Research and Fatwas (*Fatāwā al-laǧna al-dā'ima li'l-buḥūṯ al-'ilmiyya wa'l-iftā'*, 22 vols.).

7. La (r)esistenza come obbligo: l'invito alla religione nella giurisprudenza del Consiglio Europeo delle *Fatāwā* e della Ricerca (CEFR)

Chiara Anna Cascino

ABSTRACT

Il contributo propone una riflessione sul concetto di *esistenza* e *resistenza* a partire dall'analisi del saggio "La convivenza e l'obbligo della *daʿwa* verso Dio", pubblicato nel 2017 da Šayḫ Sālim ʿAbd al-Salām al-Šayḫī, nella rivista edita dal Consiglio Europeo delle *Fatāwā* e della Ricerca (CEFR).

La riflessione proposta prende il via dal ruolo dell'invito alla religione islamica nella giurisprudenza del CEFR: la *daʿwa* rappresenta un elemento centrale nell'interpretazione giuridica proposta dagli *ʿulamāʾ* del Consiglio, i quali allo scopo di promuovere la diffusione dell'islam operano una stretta correlazione tra il credo e l'esercizio della fede dei musulmani e lo sforzo nel praticare la *daʿwa*.

Il saggio in questione, incentrato sulla regolamentazione dell'invito alla religione in Europa, insiste sul bisogno di una *esistenza* attiva da parte dei musulmani europei che si tramuta in un obbligo di *resistenza* vera e propria a diversi fenomeni, come le distorsioni nate dalla disconoscenza della religione islamica, l'individualismo diffuso e le discriminazioni nei confronti dei musulmani. in altri termini, l'obbligatorietà dell'invito alla religione, nell'interpretazione del CEFR, diventa un atto di *resistenza* morale di fronte alle sfide delle società europee e del complesso rapporto tra musulmani e non credenti.

PROFILO ACCADEMICO DELLA PROPONENTE:

Chiara Anna Cascino è dottoranda presso il Dipartimento Asia Africa e Mediterraneo dell'Università degli Studi di Napoli "L'Orientale". Ambiti di ricerca e tematiche: diritto islamico, islam contemporaneo, islam in Italia e in Europa, movimenti islamisti.

8. La resistenza del diritto islamico nella colonizzazione spaziale. Sostenibilità e tradizione

Massimo Papa, Full Professor, Roma Tor Vergata

ABSTRACT

Il Comitato sugli usi pacifici dello spazio cosmico (Copuos) dell'Onu nel 2018, ha emanato una serie di linee guida per migliorare la sostenibilità a lungo termine dello spazio. Le novità introdotte che completano i 12 punti già approvati dal Comitato nel 2016, non sono vincolanti, ma devono essere incorporate nelle leggi e nei regolamenti nazionali degli 87 Stati che le hanno sottoscritte, alcuni dei quali rientranti nel novero degli stati musulmani. Fra di essi gli EAU, i quali - com'è noto – sono fra i Paesi in prima linea oggi nel finanziamento delle sperimentazioni e delle ardite missioni dirette alla conquista di nuove frontiere nello spazio. Come si pone la tradizione giuridica islamica con riferimento alla colonizzazione spaziale e agli emergenti concetti di sostenibilità in questo specifico settore? Può la visione cosmica, enucleata dalla dottrina islamica a partire dalle fonti classiche, rappresentare un freno, una sorta di resistenza, all'uso indiscriminato e selvaggio dello sfruttamento ambientale, nonché dello spazio? In che misura l'approccio etico propugnato dal diritto islamico nella salvaguardia dell'ambiente a vantaggio delle generazioni future, può contribuire all'enucleazione di norme e regole universalmente condivise, di quella che potrebbe essere definita una sorta di lex astralis? E, per converso, può quella stessa tradizione giuridica islamica, rappresentare una forma di resistenza all'implementazione in concreto dei risultati derivanti dalla colonizzazione spaziale? Le tradizionali regole giuridiche islamiche rischiano di essere messe duramente alla prova dalle inarrestabili scoperte scientifiche e tecnologiche che mirano ad obiettivi sempre più ambiziosi.

THIRD SESSION

9. (Did) literature fought the law(?) Representation of law in the Egyptian noir novel.

Alessandro Buontempo

ABSTRACT

In a multidisciplinary approach to law from the perspective of literary texts, Arabic literature represents a particular case. Let alone pre-Islamic poetry and classical literature, the quest for freedom and justice, the exposure of colonial, state and religious violence have been among the dominant themes of modern writing (as it is clear, for example, in the prison narratives, or *adab al-sijn*).

A fictional genre particularly interesting from this point of view is crime fiction. While it is still debated if it is possible to talk of original Arabic crime and police stories and which should be their main characteristics, the genre is rooted in the nahda and has a wide readership. More significantly, it is able to put on the foreground the workings of the judicial system, be it in form of riddles, spy stories, or take hybrid forms, as in true crime stories collections, diaries or noir novels. This last sub-genre, the *noir* (intended in broader terms as fiction based on the reconstruction of a crime, but where the thematic aspect, characterized by the themes of death and violence, is dominant) offers a vantage point from where to scrutinize fictional representations of law as resistance.

Egyptian works that fit the definition of noir novel, which have prestigious antecedents such as Mahfouz's *The Thief and the Dog* (1960), started being published since the mid 90s' and found success with the Ahmad Murad's *Vertigo* (2007). They mark a change in literary narratives on justice and authority, with the recur to elements and strategies proper to popular-entertaining literaure. By focusing on this production this paper aims at raising interrogatives as to what assumptions literature makes on the la, and how they are expressed; as to which are the peculiar rhetorical and narrative devices employed, and what attitude is manifested towards authorities and the judicial system.
By reading significant Egiptian noir novels against previous narratives on crimes and detections, this paper aims at making sense of patterns of rupture and continuity in the Arabic crime fiction. A study of Arabic literature that intersects the law could profit form reading the noir novel as a narrative on law and justice in times of change. At stake is to understand what idea of the law and of justice lies behind these counternarratives on Egypt authoritarianism and social malaises. At its turn, by hypothesizing a interaction between the legal and literary fields, this could help identify a common ground where legal and fictional discourses meet, not necessarily antagonistically.

PROFILO ACCADEMICO DEL PROPONENTE:
PHD from La Sapienza University of Rome (2015), teaches Arabic at the SSML Carlo Bo of Rome and is adjunct professor of Arabic language and literature at the G. D'Annunzio University of Chieti-Pescara. His main research interest are gender in Arabic literature (with a focus on masculinity and queer identities) and crime fiction in Arabic.

10. The Fiction of Law as Resistance in Tawfīq al-Hakīm's *Maze of Justice* (1937)

Gianluca Parolin

ABSTRACT
The fiction of 'modern' law as a form of resistance against both the Ottoman and the British colonial control in Egypt is upended in a poignant way in Tawfīq al- Ḥakīm's *Maze of Justice* (1937). Between fact and fiction, Tawfīq al-Ḥakīm chooses rural Egypt to stage resistance *to* that 'modern' law.
The paper considers how the author of *Maze of Justice* problematises 'modern' law as a function of class and centre/periphery dynamics, and thus focuses on how resistance to it is embodied in the cases narrated.
The system against which the various characters who are dragged to court in the rural areas of *Maze of Justice* resist is undoubtedly the flaunted 'modern' law, the *qānūn,* brought in from agents who come from Cairo and spend as little time as possible in the area. Less explicit are the grounds for the opposition to the *qānūn*, and in the name of what principle is resistance legitimated.
The 'modern' law and its enforcement agencies are unable to deliver on their basic promise of establishing 'law and order', as their inability to find the author of the murder at the heart of the main plot line proves.
It is however in the various cameo court cases that dot the narration where resistance to the *qānūn* takes its most vibrant form. In analysing a few of these cases, the paper argues that the grounds for the opposition to the *qānūn* are to be found in another 'law,' whose name is nonetheless left undefined—yet easily identifiable.

11. Rejecting Arguments from Authority in the Debates on Al-Silmi's Document

Fadi El Said Awad

ABSTRACT

Dans ce chapitre, nous allons examiner les débats autour de la deuxième version du document d'as-Silmī. En termes d'argumentation, ces débats consistent principalement à exprimer des refus du document (réfutation de l'argument d'autorité) et des réactions à ces refus. Nous allons donc explorer ce matériel pour montrer comment fonctionne la réfutation d'un argument d'autorité et son traitement théorique selon les différentes théories l'argumentation. Nous donnerons surtout les exemples issus de la théorie de la logique informelle et du *Dictionnaire de l'argumentation*.

Le document d'as-Silmī donne une autorité déontique sur les débats de l'assemblée constituante et les documents qu'elle rédige aux textes constitutionnels intérieurs. Selon l'article 2, c'est la HCC qui doit juger l'adhésion de l'assemblée à ces textes et c'est le CSFA qui doit faire la demande à la HCC de trancher en cas de conflit d'interprétation. Comme l'ambition de ce texte de donner à l'armée des pouvoirs exagérés était remarquable, les réactions l'ont été également. As-Silmī est obligé de renoncer. Il a annoncé le 16 novembre (deux jours avant la grande manifestation de 18 novembre) que son document n'est pas contraignant, ce qui veut dire qu'il n'aura aucune autorité déontique. Ce qui est intéressant à remarquer à ce stade est le fait que l'accord entre les islamistes et les civilistes sur le refus des articles 9 et 10 attribuant de nouveaux pouvoirs au CSFA n'a pas empêché le renouvellement de leur conflit entre État *madaniyyah* ou *islamiyyah*

12. Taking the State to Court. Utilization of Shari'a to Reorganize Freedom of Belief in Egypt

Reem Awny Abuzaid

ABSTRACT

In case no. 18354/58[1] heard by the Supreme Administrative Court (SAC), Mr. Raouf Hindi Halem, in his capacity as the guardian of Nancy and Emad Halem, contested the state position from freedom of belief. The events of the case started when Mr. Halem filed a case against the Minister of Interior and the President of the Civil Status Administration of the same ministry for refusing to issue official documents identifying the two children's religion as "Baha'i" in the mandatory religion category. In order to advance their arguments, litigants had to engage with the state position from freedom of belief which is essentially established on the interpretation of Shari'a. Inevitably, the litigant's submission ventured into a new language, of religious nature, which wasn't historically used by rights litigation to advocate individuals' rights. This journey of coupling rights language with a new foreign language, Shari'a, is the main interest of this research.

The research follows the battle before the Administrative Court that lasted nearly two years, during which the court annulled the Ministry of Interior's decision, and ordered it to issue Baha'is official documents with a dash instead of a "false" religion. A decision that has not been properly enforced, until now, and the majority of Baha'is conduct their lives and administer their affairs through informal interactions. Through the case journey, litigants served a strategic end to ultimately liberate or even abolish the mandatory religion category in official documents for all Egyptians, and to engage with the state and society's understanding of freedom of belief.

This research answers a central question on how does strategic litigation shape and develop

its legal language, idioms, strategies, and tools to be used in the engagement with the state in order to enhance individuals' rights, influence the juridical culture and the practice of law, and, ultimately, widen the scope of access to justice. Answering this question entails an engagement with the text and context of the Baha'i case in order to answer a question on what are the dynamics influence the litigation work in Egypt, and how do that determines the rights language, legal arguments, precedents, and legal references used in their submissions to the court. Examining this case, the research examines ways litigants shift from their rights-language to borrow from Shari'a to construct their legal arguments, which engages with the panel's question on the connection between law and language. Law, here, is perceived as an instrument of resistance to counter-hegemonic standards imposed by the state on our understanding and practice of freedom of belief.

Also, the research examines litigation work as an act of engagement with a continuous dialogue going between the state and society on the extent, and sometimes limitations, of citizens' rights. Engaging in this dialogue, litigants shift from their inherent tendency to use rights-language to accommodate other forms of legal languages in order to overcome the shortcomings of the context surrounding their cases. Typically, litigants would comfortably use an ambitious language established on the universal regime of human rights as a legal reference. However, responding to the limitations imposed by the state, litigants resort to a process of alteration and borrowing of other languages to use in their submissions, different activities to promote their case, and different strategies to protect their profession