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THIRD WORLD APPROACHES *to* INTERNATIONAL LAW *Review*

TWAILR: Reflections #45/2022

The Sea is in front of You, and the Enemy is behind You: The Paradoxical Borders of the Right to Freedom of Speech

Shahd Hammouri

> *oh father, my tongue is a horse who threw me over*
> *It has worn me out a lot, but it has guided me*
> *it has led me and taken me*
> *as it told stories*
> *as per the whim of my heart*
>
> ~ Ahmad Fouad Nijm, *As per the whim of my heart* (sang by Sheikh Imam)

Ahmad Fouad Nijm was an iconic Egyptian poet, known for his revolutionary spirit and literary talent. From a small room on the rooftop of a house in al Giza, Cairo in the 1960s his words came to life in the voice of his comrade Al-Sheikh Imam. Both artists come from impoverished families, and found their way to poetry and music through a mixture of strong will, and a mystical pull of luck. Nijm's first poems were written while he was a prisoner, his later poetry is defined by a sarcastic and humorous commentary on the Egyptian people's misfortunes. Throughout his life, he paid a heavy price for his artistic expression 'as per the whim of his heart' – from imprisonment to poverty. One always risks paying a price when contesting the status quo, but the 'right of freedom of speech' supposedly minimizes such costs.

To say that 'A has the right to freedom of speech' is a statement that can be subject to a wide range of critiques. One critique is that doctrines of human rights are generally premised on a top-down approach that risks parading the right on paper without partaking in the economic, political and social drivers that sustain the

attainment of this right. This critique can be spiced by some reminders of the Eurocentricity of the conception, and its historical contingence. The transplant of this notion into the constitutions of the global South as a token of 'civilization' was hasty to say the least, risking its instrumentalization as a tool to support some forms of speech over others. Nijm was critical of all the different faces of excessive power under the different rulers of Egypt during his lifetime, but the notion of 'right to freedom of speech' is not one that protected him per se. The substantive reach of the 'right to freedom of speech' seems in practice to infer the protection of certain liberal values, spoken with the use of specific terminologies accepted by the international status quo – making the right substantively shallow and foreign to outspoken activists of the global South whose struggles with power are translated in a different light.

Building on this critique, this short piece explores the substantive limitations of the right to freedom of speech through the narration of my own experience of self-expression and self-censorship as an early career Jordanian academic, teaching law in Britain with a 'long tongue' as we say in Arabic, which connotes (in my own understanding) speaking one's mind openly. I argue that the limitations of the right to speech are the limitations of the terminologies used by the liberal mindset within the special and disciplinary boundaries they are accepted in. Such limitations place the subject in a paradoxical situation that limits their capacity for political engagement led by intellectual reflection, ascertaining a tragic separation between the intellectual and the political. In this discussion, my position is that the language of international law is not inherently the direct mirror of politics, rather it is the translation of the boundaries of the ideal that would uphold the status quo in its equilibrium. In other words, underlying the following conversation is an affirmation that legal language is inherently interlinked with politics alongside a host of other imaginative ideals that shape law and its practice.

To undertake this venture, I explore the idea that the substantive borders of the right to freedom of speech stem from a paradoxical absence in vocabulary across different communities. Herein, I demonstrate three such borders: 1) the translation of critical perceptions on economic order in the local struggles of my own country; 2) the translation of the vocabulary of Arab struggle in the international legal community; 3) the translation of my identity as a woman to both communities (the national and the international academic).

Border 1: speak not of the dark sides of neoliberalism in your own state

In late March 2022, over 30 people were arrested in Jordan in anticipation of planned protests to mark the anniversary of the 24th March movement for economic welfare (which itself had also met with a harsh state security agenda from the outset in 2011). Many of them were teachers brutally arrested in front of their families. The teachers' union was only established in 2011 after over 20 years of demands, and the government's decision to grant the teachers their union was a policy concession in the bid to steer the Arab Spring away from Jordan in 2011. In a country where there are clear prohibitions against the formation of any political party that has substance, the popularity of the teachers' union gives it notable political power. Its members are chosen democratically and are largely representatives of middle- and lower-class employees. Over the past few years, the union organized actions to demand equitable pay and dignified work for the teachers. Their movements were continuously shut down by the government. The union lacks the privilege of international support, and monetary capacity, rendering it an easy subject of oppression.

Last time I was in Jordan, I went to one of their protests. I had never seen such a level of security around a protest, despite the obvious physical harmlessness of the teachers. As I carefully marched, attempting to take pictures without being noticed by the police, I witnessed the heart-wrenching scene of teachers being lined up to enter the police van. Being arrested in Jordan means that you lose any job security you had. The threat of prison is also a threat of hunger for the teacher and their family. I was almost arrested when the police noticed that I was filming, but my London hipster attire threw a puff of privilege on my presence that perhaps led the police to overlook me, despite arresting a teacher filming just right next to me.

An undergraduate law student in the global North who took modules on international economic law and post-colonial theory can easily tie the knots to understand the larger picture leading to the protests. Jordan's economy is intertwined with that of the US, forgoing economic sovereignty: we have an abundance of questionable free trade agreements and free trade areas, and our Jordanian Dinar is pegged to the US dollar. The IMF is the mastermind of our economy, and we drool over foreign direct investment. Our king was featured in the Credit Suisse leaks and the Pandora Papers; financial structures of exploitation have been facilitated by the trends towards deregulation in the ethos of free market agendas. We adore 'free trade' – you can easily attain the newest international products in our markets, but you would struggle to find any local products. My mother buys Waitrose (a British brand) cat litter for our cats. Jordanian foreign policy is reflective of US and Persian Gulf states' security needs, and any alternative national positions on foreign policy are automatically dismissed. We have numerous US military bases; we are a good customer

of weapons and have even managed to start our own small weapons production. Meanwhile, as is typical in such contexts and indeed economically foreseeable, audacious inequality has been consolidating for over a decade. Our unemployment rate is at a record 19% according to the World Bank, with many estimates suggesting that in reality it is much higher. A good part of the population cannot afford basic commodities. Our public education runs on low standards of knowledge and low institutional capacity. This is all compounded by the undervaluation of the lives of Palestinian, Syrian and Iraqi refugees who make up over a third of the population. To sustain the status quo, a security-oriented policy and the affirmation of tribal sentiments in a manner that stresses differences rather than cohesion among the people has been the state's go-to answer. Discussing the above with an eye towards structural responsibility is a taboo perspective of thought, one which I have seen many friends and acquaintances lose their livelihoods for expressing.

Jordan is represented as a friendly liberal state, in line with (Western) international values. 'I hear Jordan is doing great' is a sentence I often here in England. Jordan is a buffer state in the midst of a zone of proliferated international interest and inter-imperial agendas. We have borders with Iraq, Syria, Palestine, Israel and Saudi Arabia. On paper we are sold as the friend of the liberal mindset, a 'civilized' nation unlike our messy neighbors. What is often forgotten is that we are asked to forgo our neighbors, and are taught to think we are different – despite the easy observable fact of the unity of the whole area of the Levant, historically and culturally.

I have a passport which says that I am the responsibility of the Jordanian government, with a dash of privilege due to my affiliation with western institutions, seemingly reflected in my hipster attire. I have been teaching international economic law this last semester, and I was lucky enough to be in a place where the course design is *de facto* critical. I have dissected with my students the international legal, political and economic structures that make my country's misery a reality. From a small cold village in the global North, I am given the microphone and the freedom to articulate the full picture. I do so with full awareness that the translation of my words into my local context, in a Jordanian classroom, would be like drawing a go-to-jail card in monopoly, despite my relative privilege. One can say that to speak against the liberal status quo in its context is to risk forgoing your 'freedom of speech' card. My speech is spatially limited in a space where its political potentialities as an act of resistance are limited.

Border 2: speak not of political struggles that drift far from the liberal mindset of the international legal community

> *If I speak I am condemned, if I stay silent, I am dead*
> ~ Herbert Kretzmer, *Who Am I?* (*Les Misérables* musical)

On the flip side, as a new member of the international legal academia, there are clear limitations on how far I can translate my abstract theoretical contemplations into political positions. I have observed that the community of critical legal theory shares a distaste for action on social reality despite its relentless critique of the liberal status quo. Positions in solidarity with those affected by a tragic war that is recognized as such by the dominant liberal discourse are available in abundance. Yet, taking positions in solidarity when it comes to tragic wars that happen to touch upon the lives of those less white, I am advised by colleagues more senior to practice caution if I want to have a career in the field. Deconstruct all you like, reach the highest ends of critique – but dare not take a position of solidarity on issues not approved by the wave of the liberal status quo.

The past few months have seen the escalation of violence by the Israeli occupation in Palestine: relentless Israeli attacks on religious sites and worshippers during Ramadan, destruction of homes, murders of Palestinian children, the targeted killing of an iconic journalist and the assault on her funeral, the racist incitement of the settlers, and so on. In the wake of this, I felt the recurrence of the same sense of exclusion and perceptions of near-madness that I felt emanating against me, as a person of Palestinian origins, from international lawyers during the prior wave of Israeli hostility in 2021 in response to the unity intifada. Overwhelmed by the need to partake in mundane discussions to assert, once more, that Israel is a colonial state, and yes even its recognition in 1948 was wrong. The UN normalized an act of colonization and adopted a Zionist rhetoric that is inherently racist against my ancestors. Tired of the fact, that once again, very few people care, and I will stand helplessly tweeting along with millions of others.

In late March 2022, 26-year-old Diaa' Hamarshe shot five civilians in the street. He was killed shortly after by the Israeli police. Two other Palestinians took to the streets and carried out similar acts in the same week. The Israeli prime minister responded, with a patriarchal tone, advising Israeli citizens to carry their own arms in the streets. Because killing more of the people we occupy and treat as inferior is the wise response to their anger at our endless acts of domination, especially, in their holy month, where they historically rebel against their oppression. There are two ways of looking at this, and they both exist in parallel. On a micro-level, civilian causalities in a war are tragic; the people killed were ordinary people without much power. On a

macro-level, the accumulation of trauma over one lifetime leads one to severe psychological frustration; what about that collective societal accumulation over five generations? I am acutely aware of the paradox that this is considered radical in my scholarly field and yet is common sense and presumed knowledge in my home country.

The IHRA definition for antisemitism pushed by extreme right-wing sentiments – and enthusiastically embraced by conservatives and liberals alike tripping over each other to placate Israel and its apologists – equates the critique of the state of Israel with antisemitism, leaving many scholars who stand in solidarity with Palestine at the risk of persecution and delegitimization by Zionist lobbies. This has even spread out to the music scene, with lobbies pushing for the rapper Lowkey to be banned from Spotify. How can I communicate how insulting it is to call a Palestinian a terrorist, without being attacked myself? And alienated from the field? Without being called just another angry Arab woman. To translate a struggle against a settler colonial state, to translate the struggle and anguish of the whole area of the Levant over generations, I struggle to find words in the community of international law.

Border 3: do not speak loudly in the face of patriarchy

> *The sea is in front of you, and the enemy is behind you*
> ~ Tareq ibn Ziyad (c. 718 AD)

To be an independent woman with a critical mindset from my community is an inherently paradoxical situation in and of itself that is difficult to express. It is a position born in the aftermath of a radical political rupture or an 'event' that led to a void caused by the absence of continuity in collective thought. On one end, along with many women in my region, we are trying to dismantle the deeply-rooted presumptions of patriarchy that normalize the heartbreak of the women in our community. While on the other we are simply holding on – to avoid falling into the traps of liberal mindsets on the positioning of women in the society and narratives calling for the 'saving' of Muslim women. To engage in feminist discourses, one finds oneself reverting to English, risking further alienation from one's own community and self. An easy, overused counterargument in the face of an angry Arab woman is: these thoughts are transplanted in your mind by foreign bodies. At the same time, to normalize my womanhood in Anglophone terms is a reductive experience, for feminism in the west has its own set of imaginative limitations.

Getting a scholarship for a PhD in Britain was my ticket out. Education is a respectable thing for a woman to do, and now having finished it, my social credit as a

potential wife is hitting a new high. As a youngster, I was always called out for being outspoken, and I was sold the dream of opting to integrate my existence under the shadow of a man instead of 'becoming' my own person. Perhaps a part of me wanted to get the PhD because I was aware of the following paradoxical situation: I needed a western institution to validate my thoughts in order to be able to have a conversation on somewhat equal grounds with the men of my family. A family friend who called me out for having delivered a public speech with a t-shirt that was half-sleeve rather than full-sleeve at the age of 16 is now asking for my opinion on politics. However, even with a PhD, there is so much I cannot translate about womanhood. Attempting to challenge norms of ownership over women's bodies in Arabic for example is a venture that women of my region struggle to perceive and translate in their own words without forgoing their sense of identity. In the words of another family friend: 'Oh dear, you should marry a westerner, no Arab man will accept what you say'. It seems, in her perspective, that my feminist positions have no acceptable terms in the language of our community or within the spaces of our shared identity.

While there is a growth of feminist sentiment in my region, it is always at the risk of the liberal and classist trap. In other words, at the risk of becoming a discourse focused on the problems of higher-class women from a liberal perspective. Nonetheless, the label of 'feminist' sustains a distasteful aura that can be used to undervalue my political positions, even from the perspective of other women. Herein, if I were to engage in political activism in my own region, I would be asked to hide the deconstructive ethos of the feminism I described above and to opt instead for a reductive advocacy of women's rights in accepted liberal terminologies. Paradoxical.

Conclusion

The borders of freedom of speech are paradoxical. Such limitations are drawn alongside the liberal status quo, and the 'acceptable' forms of speech. They are not direct but hidden in the intimate layers of signs and social codes. The effects of overstepping those borders are also paradoxical: if I critique the status quo of my state, I am left with nothing but fleeing to the west or accepting the inevitability of jail; if I solidify my critique of the liberal status quo in political positions, I might be asked to leave western institutions; if I speak against the predispositions on the position of women, I risk alienation from my sense of identity. Risks are inevitable, but their paradoxical nature in different spaces, and the difficulty of translation without entrapment is what renders the space of free speech – not only for me, but for many of us – acutely limited.

The hegemonic structures of thought are deeply entrenched in our minds. Resisting such limitations requires distilling existing terminologies and frameworks of

thought. To do so, one needs to protect thought prior to the protection of speech, and the normalization of engaged intellectualism before stating a right to 'freedom' of speech. Without engaging in a genuine freedom of thought that is not afraid to reimagine the world, the gap between intellectual discourses and political action will remain a tragic blind spot for humanity. This will continue to limit spaces of resistance between the local and the international, within the local, and within any given social and political community.

> *The bitter word is like a sword, cuts wherever it passes*
> *The sweet word is easy and comfortable, it tricks but harms*
> *The word is a helpless debt that can only be repaid by she/he who is free*
>
> ~ Ahmad Fouad Nijm, *The Bitter Word*, sang by Al Sheikh Imam

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