

Al-Mutafaqim

The Pessoptimist, State Security, and the Exception-Rule in Legal Practice

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A Field of Thorns

What follows offers little more than the telling of a tale. Strictly speaking, it is not an academic article. Nor is it a work of literary criticism in the fullest sense of the term. What follows, if one were to look for a clear definition, is but an attempt at the delineation of a condition. While a number of critical measures and clear-headed judgments may have informed my attempt, I have also allowed myself a fair measure of creative and syntactic indulgence, the better to attain a vision of the world that is larger and more daring than that of the legalistic approach. Perhaps it is true that the real world is richer and more mysterious, in many unfathomable ways, than any imaginary one. If this is indeed the truth, then it is no truer than when it applies to the subject of our tale, the measures and dictates of security in the state of Israel as they encroach upon the basic everyday, personal, and national rights of “the remaining handful of Palestinian Arabs.”

She replied, “The village chief informed us how they had told him: ‘You fought and were defeated; therefore both you and all your property have legally become ours. By what law do the defeated claim their rights from the conqueror?’”¹

Literature is capable of undoing bitter reality, completely dismantling it, if only on paper. It is able to do so by appealing to metaphor, symbolism and ambiguity. It is able to suspend belief and all pressing questions, using irony and all sorts of incongruities. The creative writer is free to do that which the lawyer can only despair of doing: force onto the stage a completely deranged person, one who, on the strength of his stupidity and dimwittedness alone, is able to

dispossess generals and officers of their stiffness and roughness, like the soldier in *The Good Soldier Svejk*.² The creative writer is able to discern that which the legally minded cannot because he or she is free to recreate the hypertext beneath the legal text, the transcendent reality that grounds the realities of the legislator, the executive, and the judge. The lawyer who breathes in the atmosphere of positive laws, on the other hand, can only adhere to the letter of the law, the surface text. All the lawyer can do is deliberate or at best argue over the interpretation or the application of an already written text.

In the world of the imagination, the last word, the final authority dispensing with sentences, so to speak, is the author. No investigative committee, no legal or judicial body has to be involved; to the impressions of such official bodies, to their scrutiny and their decisions, every lawyer must heed.³ That is, of course, not to belittle the potential for personal influence in the process. For these and other reasons, one cannot help but feel put off by the field of legal studies, or, for that matter, other similar fields of specialized human activity. Such fields can afford very little room for maneuvering and we end up with only a narrow view of the world. Consequently, the scene is blurred, the form supersedes the content, and the detail replaces the whole. The lawyer cannot force facts or advance claims unless they are legally admissible, otherwise they are considered irrelevant or of no legal substance. Where the lawyer can be free only to play the role prescribed for him or her, the writer is free to write or rewrite the script, to decide how it begins and where it ends; he or she can determine the roles and choose the cast, the make-up, the stage, and the sound track. Unlike the writer, the man of law has no such privilege.

There is a crucial problem inherent in every legal or juridical deliberation: It is the necessary prior determination of the boundaries of such a deliberation, the predetermination of how freely the debate can proceed, and hence, the circumscription of the field of play. The lawyer can only move within the letter of the law, with barely enough room for interpretation. The text of the law is a sacred given; it is not to be altered. Were the lawyer to transgress and engage in general intellectual debate - a rare happening, indeed - the debate would have to turn on the sanctity of the law, questioning its origins and the ethical, historical, and philosophical assumptions that lend it the force of legitimacy. The lawyer, however, remains, as do most academics, subjugated to all forms of restrictions and prohibitions. This is especially the case when the lawyer stands before the court defending a case. The supremacy of the rule of the law becomes an absolute given, not to be undermined at any cost, as that which signifies the final authority among the people as represented in the parliament or other bodies, and as the condition of possibility for the lawyer's professional practice. On another plane altogether, the creative writer draws his or her characters from outside of the Population Registry, and with them, is able to break the covenant of the law. In the face of all norms and normative practices, the creative writer can transgress the boundaries of the law, thus refusing to succumb to law's authority. This situation is not unlike that of aggrieved victims who understandably flaunt all rules when the law sanctions the shedding of their blood, after stripping them of their dignity and their natural rights.

Between the well-defined article of the law and its immutable letter and the expansive, creative vision of literature and its limitless horizons of

imaginative creation and style, there yawns a bottomless pit. To attempt to straddle both worlds and bridge the abyss is not unlike walking in a field of thorns, and I shall not go as far as saying a field of mines! For the lawyer who speaks or writes in a literary fashion is by definition a bad lawyer. Likewise, the writer who creates only within the boundaries of an already set legal text dims all creative horizons. Is it then possible to attempt in my tale to bridge the gap and straddle both worlds?

I am not so sure. But one thing is clear. Amid the increasingly suffocating measures of security, it is no longer tenable to barricade oneself behind discourses of legality in the hope of understanding and thus, articulating the nature of our condition. As an all encompassing art and a means of crossing boundaries and transcending forms, literature can express that which the law cannot articulate. Literary vision can reach beyond legal vision and be canny where the latter is unsuspecting, and can do this without the cumbersome task of providing material evidence. This is true of the vision of literature even when it is most fallible. *The Secret Life of Saeed The Pessoptimist*, or simply *The Pessoptimist* as it is well known, is an excellent case in point.

For There is Nothing New under the Sun

There is a metaphysical view of the world that is extreme and purist, which goes as far as to deny the materiality of all existence and relegates it to pure illusion. There is also the counter materialist view that sees matter as the essence of all existence, and even as that which determines the process of any change. Between the two, there is the possibility of a vision that

is grounded in the real but has its flights of imagination. It soars up high, only to return with the stuff of myth and legend and a freshly conceived mode of discourse.

The first metaphysical stance, which denies everything, even the existence of its perpetrators, goes so far as to claim that all that transpires, all that is said or done, is in fact but the echo of what has already been said and done in the past. What was said will be said again and what will be said has already been said. According to this view, the possibility for change, and for changing the world, is not even postulated; the reality of existence is of no more substance than a vague concept or a repeatable illusion. How is it possible to change that which does not even exist? In T. S. Eliot's words:⁴

Time present and time past
Are both present in time future,
And time future contained in time past.

As an epic of the everyday struggle of common people, Maxim Gorky's novel, *Mother*, provides a good illustrative case of the second view, the more material, social realist stance.⁵ It begins with dispersed sparks and significant events and moves toward a heated climax before it reaches the all-encompassing possibility of change: the Revolution.

The third view can be found variously expressed in the diverse body of creative work by writers who possess strong ideological and political tendencies. *The Pessoptimist*, like most of Emile Habiby's other writings, falls within this category. The proponents of this view may put forth purely fictitious accounts and otherworldly creations, but the metaphysical undertones in their writings remain mainly tactical, a means to an end but not the end itself. Such is the case with the creatures from outer

space in *The Pessoptimist*, or the City of Eldorado, the utopian city in Voltaire's *Candide*,⁶ or the city of Makundu in Gabriel Garcia Marquez's *One Hundred Years of Solitude*.⁷ It is also the case with the terrestrial and underground creatures in the work of H.G. Wells, an English socialist and a utopianist.⁸ It is even possible to extend the list to include Dante's *Divine Comedy*⁹ and Abu al-'Ala' al-Ma'arri's *Risalat al-Ghufran (A Treatise on Forgiveness)*.¹⁰

This trend in literature refuses to see the world as nothing but eternal misery, even under the worst of conditions. It does not subscribe to the view that "there is nothing new under the sun" or that humanity has not improved over the course of history. What drives these writers is the desire for change and the firm belief in their ability to change. Their recourse to the fantastic, their blending of the imaginary and the real, and their opting for a more magical-realist mode of narrative, these are all but a means toward expressing a larger truth, without having to produce material evidence, furnish proofs of existence, or cite fieldwork findings. It is all but an attempt to redeem the vision behind the dry detail. For the inspired writer is capable of entering into an otherworldly experience not unlike that of the prophets, qualitative differences notwithstanding. That is, the inspired writer may experience a readiness to receive inspiration, visions and divinations, which keep intensifying until they induce the writer to enter into an epiphany, a moment of sudden revelation.¹¹

Is the Pessoptimist then able to see that which professors of law and practitioners cannot? Or has he gone off the deep end? Does he simply exaggerate when he issues judgments not at all based on carefully considered evidence and authenticated documents?

Necessary Briefing, Necessary Indulgence

Things had so arranged themselves that I found Emile Habiby materializing as my interlocutor in these reflections, eight years after his death. The outcome of this curious incident was my decision to turn *The Pessoptimist* (*Al-Mutasha'il*) on its head, using the very same strategies it employs in effecting linguistic and historical subversion. I have therefore devised a different type of neologism, using the very same terms, pessimist (*mutasha'im*) and optimist (*mutafa'il*), while reversing the order of the syllables. In the same spirit of metalinguistic playfulness, we arrive at the term *al-mutafa'im*, or the *optipessimist*. This reversal is not sheer word play or whimsical linguistic indulgence; while it retains the original binary opposition, it seeks to embody in one word scores of grave developments and serious setbacks over the past thirty years or so, that is, since *Saeed The Pessoptimist* first appeared in print. You may also consider the word, if you so wish, as the fruit of free associations over a free-falling reality. Furthermore, we may consider that sometimes the glottal stop *hamza* (such as the ['] in *al-mutafa'im*), in many Palestinian and Arab dialects, is a transposition of the Arabic letter *qaf*. The word for pen, *qalam*, for example, becomes *'alam*, which also means pain, and the word for law, *qanun*, becomes *'anun*, which also means the one who is writhing with pain. By the same token, and *mutatis mutandi*, the term *al-mutafa'im* (the optipessimist) may, through reverse transposition, re-emerge as *al-mutafaqim*, or that which becomes increasingly serious or aggravated, the ever aggravated. Does this bespeak the reality of our present situation?

One might wonder why I had to appeal to riddles and transpositions before I could arrive

at a title for our tale. Has "Saeed the Ill-Fated's" condition so deteriorated that we are now reduced to accepting the appellation of *Al-Mutafaqim*, or the Ever Aggravated? My excuse in appealing to these riddles of language is that the foundation of our tale, Emile Habiby's inspired work, has to do with the decision to confront calamity and defeat with the powers of the imagination and the creative play of language. Thus, we face hardship with an unflinching, naked eye. Indeed, some critics have seen language itself as the main protagonist in Habiby's novel *Ikhtiyya*. The same is true, in my opinion, of *The Pessoptimist*, as in most of Habiby's writings where language invariably plays a major role. Language is a self-regulating organism; it has its own life, evolving and devolving. It lives and dies following its own inner laws. This is of course not to deny the crucial role of external forces and of language environments. However, language is not merely a means of communication. It has its own powers of creation.

A curious example of the creative interplay between language and its environment is the phenomenon known as "bird language," as our ancestors have called it. Bird language is an instance of the creative use of colloquial registers whereby letters are methodically transposed according to a manner previously agreed upon by two interlocutors. A codified mode of speech is thus produced, one that would leave a third party befuddled. It was no less than Habiby himself who, when addressing the ultra right MK Gh'iola Cohen (whom he liked to call Ghoula Cohen) in the wake of her incitements against the Arabs and her call for forcing more restrictions on them, he asked her: "What more are you asking for? Will it please you if we spoke only in bird language?" Bird language, even if

it is restricted to colloquial registers, is clearly a means of circumventing restrictions placed on the freedom of speech by the powers that be.

The Rule and the Exception to the Rule, or the *Sha'idha*

The State: A means by which to exert political control over a class society.¹²

If we were to accept this basic definition of the state, if only for the sake of argument, the question that would inevitably arise would be: Exactly by what means does the ruling class exercise its control?

Legal and judicial systems are no doubt two such means. At least this should be the case in any state that recognizes the rule of law. But these are not the only means. The modern state does not exercise its prerogatives only through the traditional tripartite division of powers; there is also the fourth power, mass media, which is inextricably intertwined with the vested interests of the upper echelons. There are also other powers in the making, the discussion of which, however, must await separate treatment. Perhaps I could still mention the phenomenon of an “imperialism of virtue,” to which Edward Said refers in one of his articles¹³ and which must represent a fifth power in the making in our age of globalization.

It is perhaps at this point that I must further clarify my use of the terms “law” and “statutes.” I mean simply those laws and statutes enacted by the parliament, as well as secondary legislation, judicial case law, and other sources. In the case of all such laws, regardless of their source, the instance of application inevitably deviates from the written text. Exceptionalism in the practice of law, especially in security-

sensitive cases, ultimately takes on a reality of its own, so much so that exceptions have become a central component of legal reality. Deviance from the law, ranging from the daily conduct of individual state officials to the legal consideration of Arabs’ collective rights, has become so rampant that it is now the rule. What should be exceptional (*al-shadh*) has become the rule (*al-qa'ida*). We may thus, after the example of *The Pessoptimist*, forge a new term: *al-sha'idha* or the exception rule, which could be used to describe how in legal practice what is exceptional and deviant has by far surpassed, in both scope and praxis, the rule of the law.

Baqiyya, the Pessoptimist’s wife, says to him, before she disappears in the waters of Tantura with her only child:¹⁴

And I want to tell you also, husband, that... I also know that those who make the laws will ignore them if it is in their interests to do so.

And so we begin to see how people decide to name things for what they really are, doing so in secret if not openly:¹⁵

The communists soon began to call the Custodian of Abandoned Properties, the Custodian of Looted Properties. We cursed them, the Communists, in public but repeated what they said in private.

The massacre at Kufr Qassem provides us with one of the most glaring cases of deviance in the application of the law. The fact that one of the officers responsible for the massacre was issued a fine of only one *grush* (cent) - what has come to be known as “the Shadmi *grush*” - is an irrefutable example of the chasm between the written text of the law and its application. In one of the issues of *Hadashot*, before it went out of circulation, the journalist and caricaturist Kobi Niev drew a sarcastic cartoon of a seated judge

with the caption saying: “I can see you only killed an Arab. You are therefore sentenced not-guilty!” Discrimination against Arabs is not restricted to the courts of appeal or to occasional reports in the media; they have become our daily bread. What reaches the public is but the tip of the iceberg; the rest becomes a matter of gritting one’s teeth.¹⁶

To attempt to provide evidence of discrimination against Arabs or the radical opposition solely on the basis of legal texts is to overlook the bulk of such discriminatory practices. This is the case first because such practices are verifiable or quantifiable mostly through indirect means such as statistics and the like, which turn the realities of these practices into matters for inference and deduction, and hence, are easily argued against and refuted. Second, some aspects of these practices remain invisible or unverifiable, as in the case of decisions delivered on the basis of the courts’ understanding of witnesses’ testimonies. Third, a good number, if not the majority, of such cases of discriminatory practice remains undocumented, especially so when it is a matter of state security. Discriminatory practices such as personal searches or interrogations at the airport or at permanent or makeshift checkpoints, around street corners, or at the entrances to shopping malls or public institutions are but a fraction of what goes unheeded and undocumented every single day. This is when the creative writer comes in and plays a crucial role by observing that which goes unnoticed by recording the stubborn reality, which refuses to be reduced to mere jottings via dry documentary apparatus.

except on Saturdays, when they let us go about freely and as we please, that we become easy prey

as we stroll by carefree and unsuspecting and fall easily into road ambushes set up by troopers who seem to be there only on Saturdays.¹⁷

“Security”: A Matter of Numbers

The definition of the state of Israel in the so-called “Declaration of Independence” as “Jewish and democratic” was and still remains, and perhaps will always be, one of the most controversial issues, subject to endless political as well as legal debates. The Knesset or Israeli Parliament passed a series of laws, which basically aim to secure the Jewish identity of the state and to guarantee its practical translation into a series of privileges. Among such laws are the Law of Return - 1950, the Law of State Education - 1953, and the Nationality Law - 1952, not to mention a longer series of governmental decisions and policies that sanction discriminatory measures explicitly or implicitly under the pretext of awarding benefits for performing military service or some such expedient. Just for being Jewish, a person enjoys complete and unconditional legal privileges, whether it is the right to immigrate to Israel or the right to full citizenship or immediate eligibility for exemption from certain taxes or for housing aid - all to entice Jewish individuals from the Diaspora to immigrate to the Promised Land.¹⁸ Moreover, lavish privileges are bestowed on the settlers who live in the 1967 Occupied Territories. The converse is true of the Palestinian Arab, who is denied all such privileges and, even more so, denied rights that are his or hers by written law.

Has the Big Man ever stopped to ask why I was born only an Arab and could have only this as my country?¹⁹

In Habiby's *Ikhtiyya*, giving birth among the Arabs becomes a demographic issue and a so-called threat to the Jewish identity of the state. It has become the subject of an endless obsession:²⁰

They have heard about it all the same...those misgivings about suspect motives, what causes the Arabs to procreate so much, what an unspeakable indulgence? We were so beleaguered that it became easy to spot those harboring the misgivings behind their shut windows as they counted every moan and groan and wondered whether we slept with our women on the orders of Abu 'Ammar!

On another occasion, Habiby provides us with a description of the "crimes" discovered by the investigators while interrogating Abu 'Abbas, who then had to lead them to the different sites where he committed his "breach of security crimes." Out of the series of crimes, there emerges the oldest of them: "slipping out of his mother's womb without permission."²¹

To define the state, even on an abstract level, as "Jewish" constitutes a complete negation of its other definition as "democratic." Were we to disregard the most basic definition of democracy, or were we even to ignore the pitfalls of Israeli democratic practices, we would still end up with a democracy-in-suspension. To borrow a term from the Law of Contracts, Israeli democracy is a "condition subsequent," self-nullifying as long as it includes the provision for its own voidability. This provision for voidability is forever lurking like a serpent behind the door; it is the ever-looming threat of the non-Jews, namely the Arabs, becoming, sooner or later, the majority in the state of Israel.²² What security departments and other affiliated institutions have come to term "the demographic threat" basically amounts to the

sanctioning of any measures that would preserve the Jewish majority in the state.

What concerns us here is the fact that the Jewish identity of the state, whether it is a matter of the nature of the state or of numbers, has come to represent the number one security issue. And despite all the debates among Jews themselves over the status of non-Jewish citizens, the presupposition of a Jewish identity of the state already necessitates total rejection of the possibility of their becoming a minority. Saeed the Pessoptimist saw it all:²³

Since I realized that birth control was a proof of loyalty, we had no more children.

Securing the Citizen-Subject

Saeed realizes that those who lay down the law – Members of Parliament as well as all other decision-makers – are capable of amending the very same laws to suit the dictates of national security:²⁴

You know full well, old friend of a lifetime, of my extravagant loyalty to the state, to its security and its laws, whether promulgated or still to be so.

If non-Jewish procreation represents a threat to the security of the state and to its very foundation, excessive loyalty constitutes yet another kind of threat. Saeed, who has become more Catholic than the Pope, as the saying goes, raises a white flag on the rooftop of his house in Haifa. He does so in an immediate, involuntary response to broadcasted appeals on the Voice of Israel, in Arabic. The appeals were directed to the Palestinians of the West Bank, Gaza and Jerusalem and to the inhabitants of the Syrian Golan Heights during the occupation of 1967. The "Big Man" considers what Saeed does

an act of rebellion, tantamount to declaring Haifa an occupied city and therefore “advocating its separation from the state.” Saeed is informed:²⁵

The Big Man has come to believe that the extravagance of your loyalty [to the state] is only a way of concealing your disloyalty.

The issue of the Jewish identity of the state is, in the end, one that extends beyond matters of legal definition; it affects every aspect of the individual’s life. The Palestinian who carries an Israeli ID card moves between carefully demarcated spaces: the inside of prison walls and gates and the outside, itself a larger prison:²⁶

I came, then, to see the jail’s iron gate as a door connecting the two yards of one prison. In the inner yard, I would wander awhile, then rest; in the outer yard I would also wander awhile, then go back to jail.

The Arabs’ condition in the state of Israel is not unlike that of “our great poet al-Mutanabbi in the gardens of Buwan in Persia: ‘In face, hand, and tongue a stranger.’”²⁷

Through Saeed’s misadventures, Habiby presents us with a series of events in which the defeated Palestinian becomes a cynical eyewitness who masters the art of dodging hardships solely through the strength of his sarcasm. Irony plays a crucial role in these events, conceived in a hotbed of conflicting laws and oppressive measures which restrict the freedoms of movement, thought, expression, and association, and stunt any form of ordered, settled life. Even Saeed is issued a compulsory stay order forbidding him from leaving Haifa, which he then displays on the wall of his vegetable stall. His popularity increases even more at this point:²⁸

a couple of days later the police returned and told me that the governor had been kind enough to revoke the order, and that our state was a truly democratic one. They then tore it off the wall and returned me to prison on the grounds that I had shown disrespect for official state papers.

The “Ill-Fated Saeed” also tells many stories involving Arabs who were stripped of their possessions. Thurayya, a Palestinian refugee from al-Wihdat refugee camp in Jordan, in one such sad tale, returns to her house now taken over by our cousins. Confused over the event, she reveals a secret place, where she had hid her wedding jewelry, to the “Custodian of Enemy Property” who simply “gave her a receipt for the gold [*dhahab*], took it himself, and left [*dhahab*].”²⁹ Saeed himself, the ingenious collaborator that he is, is subjected to an incident exemplary for the way it bares for all to see the victorious-defeated dynamic:³⁰

As I was moving my belongings to my new home, a car stopped nearby and evil itself emerged, produced pen and paper, and said, “We (he was in fact alone) are from the Custodian of Enemy Property.”

I produced from my hip pocket my membership card in the Union of Palestine Workers and exclaimed, “Oh, we’re on your side!”

“No, no,” he insisted, “I want proof that this property is yours, that you haven’t stolen it.”

I was at a loss as to what to do. As I slipped the card into my back pocket my trousers fell a little in the process. Since when, I wondered, did people have to carry with them proof that their furniture was not stolen? I hoisted my trousers, afraid I might have to prove ownership of them too.

Such is the case, even when the defeated is someone like Saeed who has had a long history in the service of the state.

Straining for Vision

I quoted earlier one of the basic definitions of the state, which, while very basic indeed, can still afford us with an insight into the socio-political nature of the state. The insight issues fundamentally from a Marxist worldview and understanding of human societies. This insight into the state as a tool for political hegemony in the hands of the ruling class can be useful at least in initiating debates over possibilities for improvement in any state formation, including that of Israel. But history has so far taught us that anti-Marxists know how to block the realization of Marxist visions. Those who hold a materialist view of history, therefore, can no longer afford to succumb to fatalist views or simply wallow in their past glories. They must, indeed as the Islamic edict would have it, “consider matters carefully and thereupon initiate the action trustingly” (*i’qilha wa tawakkal*). It is no longer tenable to follow historical delusions or to await the messiah or the mahdi. The awe-inspiring Creature from Outer Space condemns such attitudes and directs his rebuke at Saeed:³¹

I just wanted to say to you: this is the way you always are. When you can bear the misery of your reality no longer but will not pay the price necessary to change it, only then you come to me.

Let me return to the subject of our tale. Some crucial questions remain unanswered concerning security-related legal practices in Israel, and we may anticipate even graver developments in this regard. The matter by far exceeds blinkered

arguments over which codified laws or deviant practices inform the discriminatory measures that have become so part of the daily bread of Palestinian citizens of Israel, as individuals and as a group.

This excess in security-related practices escapes the rigid categories of law, making any examination of it, with the use of legal tools, a difficult task. This security excess that aims to regulate intimate spaces, such as the bedrooms of Palestinians, escapes the positivist worldview of the lawyer or the jurist who is able to analyze reality only based on the conceptually separate categories, such as citizen and subject, the law and its implementation.

Modern law separates the people of the world into citizens living in sovereign states and subjects living under occupation or in colonial states. State law grants rights to the former, and international humanitarian law offers protections to the latter. Saeed, a character not listed in the Population Registry, defies this distinction. He is neither a citizen nor a subject; he inhabits a zone of hybridity between/across both. He is not a citizen of the state; rather, he is its enemy. He is not living under occupation either, as this would suggest that Haifa is an occupied city. *The Pessoptimist* could then be read as a challenge to distinctions of legal theory, shedding light on zones that have yet to be adequately addressed by law.

In this zone of hybridity, security legalities, which first make their appearance as deviations from the law or as exceptions to it, gradually re-emerge as part of the general law governing the lives of Palestinians in Israel. They do not emerge under the guise of marginality, but as constitutive of the core of legal relations. Whereas the abstract divisions in modern law situate these security practices outside the

normative order of law governing citizens, Habiby's fictional-material depiction of the condition of Palestinians in Israel grounds the normative legal order in the general order of law. In a reverse move, *The Pessoptimist* gives birth to general legal relations from the womb of security legalities.

The statement quoted earlier about the Arab slipping out of his mother's womb without permission as being the first crime committed against the security of the state provides an example of how Habiby, the creative writer, articulated instinctively in literary language the central issue of security, the one behind all the discriminatory codes and practices. If Habiby were still with us, and was asked to write an epilogue to *The Pessoptimist*, he would probably want to refer to the reconfiguration of this security crime in the newly amended Nationality Law. He would want to describe restless Israeli legalities, which in the name of security, constantly move toward occupying more spaces to impose newly invented restrictions. The Nationality and Entry into Israel Law (Temporary Order) - 2003 prevents Palestinians from the West Bank and Gaza from uniting with their spouses, Israeli citizens living in Israel. This law prohibits Palestinians from the Occupied Territories from obtaining any residency or citizenship status in Israel by marriage to an Israeli citizen. The government has justified this law on the basis of security considerations, arguing that some Palestinians, who were united with their families in Israel, were involved in attacks against the state. In the name of security, spouses are torn apart and prevented from living together. If we accept that a condition of giving birth is being together, then many future Palestinian children have been denied permission to slip out of their mothers' wombs.

Those who wish may still repeat after the Big Man:³²

... our occupation has been the most compassionate known on earth ever since Paradise was liberated from its occupation by Adam and Eve.

The reality facing us, were we to look truth in the face and penetrate through all distracting appearance, is that matters have become ever so aggravated, and will continue to do so. As the Big Man explains to Saeed the Ill-Fated Pessoptimist:³³

You defeated the Mongols in the battle of Ain Jalut because they had come only to loot and leave; but we loot and stay, and it is you who will go.

End Notes

* Here and throughout his article, the author follows Emile Habiby's example, in his famous novel, *The Secret Life of Saeed The Pessoptimist*, by coining new terms out of two Arabic words in current usage. The practice in Arabic is commonly accepted and known to grammarians as the case of *naht* (carving), whereby the first syllable of the first word is joined to the last syllable of another word. For example, the two Arabic words *mutafa'il* and *mutasha'im* mean optimist and pessimist, respectively. When these two words are joined together, creating a third word via *naht*, then we have *al-Mutasha'im*, or the Pessoptimist in Habiby's title. Similarly, the term "Exception-Rule" in the title is a translation of *al-Sha'idha*, a term derived by *naht* from *al-shadhdha* (exception) and *al-Qa'ida* (rule). (Translator's Note – Ayman El-Desouky)

1 Emile Habiby, *The Secret Life of Saeed The Pessoptimist*, trans. Salma Khadra Jayyusi and Trevor LeGassick (London: Zed Books Ltd., 1985) at 90-91. All subsequent references are to this edition. A pre-eminent Palestinian author, Emile Habiby was born in Haifa in August 1921. He worked for the petroleum factories in Haifa for two years, while studying petrol engineering in a correspondence course with the University of London. From 1941-1943, he worked in the Arabic department of Palestinian Radio in Jerusalem. He was one of the founders of Usbat al-Taharur al-Watani (Coalition for National Liberation). In 1949, Habiby took part in founding the Israeli Communist Party and he remained one of its leaders until 1989, when

- he was forced to resign from all of his posts. Habiby served as a member of Knesset for 19 years, from 1952-1972. He resigned from his parliamentary post to pursue his literary work and to become the Editor-in-Chief of *Al-Ittihad*, the daily Communist Party newspaper. Habiby authored short stories and thousands of articles, and published six plays and novels, among them *The Pessoptimist* and *Ikhtiyya*. At the age of 75, on the eve of 1 May 1996, Habiby passed away in Nazareth.
- The Pessoptimist* is Emile Habiby's best known and most widely read novel. Similar to Voltaire's *Candide*, it tells the story of a Palestinian who finds himself, overnight, living in the state of Israel, which was established on the ruins of the Palestinian people. He tries with a mixture of pessimism and optimism to co-exist with an almost-impossible reality. He wants to be loyal to the new state, but his exaggerated loyalty constantly backfires, because state institutions cannot but see him as an enemy. The efforts of Saeed, the novel's protagonist, to co-exist with a harsh new reality result in a series of contradictions and ironic situations. The novel's depiction of Saeed's collaboration with the state is accompanied by an embarrassing and negative portrayal of Israel and its character-officials. Saeed's character and behaviour are practically, and ironically, the most effective written testimony challenging the foundations upon which Israel was established and the Israeli-Zionist propaganda.
- 2 Jaroslav Hasek, *The Good Soldier Svejk and His Fortunes in the World War*, trans. Josef Lada (London: Heinemann, 1973).
 - 3 Emile Habiby, *Ikhtiyya*, Kitab al-Karmel I, 1st ed. (Cyprus: Bisan Bars, 1985) (Arabic). *Ikhtiyya* is one of Habiby's novels. Its events are centered in Haifa. Through imagination and fantasy, beginning with a traffic jam in one of Haifa's streets, Habiby narrates the political reality of Israel since its establishment and the security-related practices against Arab citizens of the state. Habiby takes issue with some political groups, including Arab movements, and criticizes the Israeli administration. In this novel, Habiby clearly does not take interrogatory committees seriously and pokes fun at their procedures and the clumsiness of their members (at 33). He does not seem to believe in the different Israeli courts either, viewing them as mere servile arms of the security authorities, especially when it comes to security-sensitive cases (at 42-43).
 - 4 T. S. Eliot, "Burnt Norton" (1935), in *Four Quartets* (London: Faber and Faber, 1974) at 13.
 - 5 Maxim Gorky, *Mother*, trans. Margaret Wettlin (Dallas: Texas Bookman, 1987).
 - 6 Voltaire, *Candide or Optimism*, trans. John Butt (London: Penguin Books, 1947).
 - 7 Gabriel Garcia Marquez, *One Hundred Years of Solitude*, trans. Gregory Rambasa (New York: HarperPerennial, 1991).
 - 8 See John Lawton, ed., *The Time Machine, The Centennial Edition/H. G. Wells* (London: Everyman, 1995).
 - 9 Dante Aligheri, *The Divine Comedy*, trans. Dorothy L. Sayers and Barbara Reynolds (London: Penguin Books, 1962).
 - 10 Abu al'Ala' al-Ma'arri, *Risalat al-Ghufran*, ed. Bint al-Shati' (Cairo: dar al-ma'arif, 1975) (Arabic).
 - 11 The famous Irish writer, James Joyce, has appropriated the Christian concept of the Epiphany and developed it into a narrative principle. The experience of sudden inspiration should call to mind references to the muses of poetry (*shayatin al-shi'r*), which abound in the poetry of pre-Islamic Arabia. These muses, it is perhaps worth mentioning, were associated with *Wadi 'Abqar* (The Valley of 'Abqar), from which the term *'abqari* (genius) is derived.
 - 12 *Al-Mu'jam al-Falsafi al-Mukhtasar*, trans. Tawfiq Sallum (Moscow: Dar al-Taquddum, 1986) at 218.
 - 13 Edward Said, "Al-Dawr al-'Am li al-Kuttab al-Muthaqqafin," in 68 *Al-Karmel* 7 (Summer 2001) (Arabic). In the context of this article, the imperialism of virtue refers to the fact that some NGOs around the world receive funding, at least in part, from multi-national corporations and large foundations. Two researchers, quoted by Said, refer to these organizations as the "human virtue" foundations. The point is that through their financial aid, these foundations may limit the activities of the funded NGOs, thereby preventing deeper and more vital possibilities for change in the societies where these NGOs are active. We should add to this the fact that many of these NGOs, which are mushrooming all over, have begun to vie with political parties over certain spheres of action.
 - 14 *The Secret Life of Saeed The Pessoptimist* at 88.
 - 15 Id. at 45. The Absentees' Property Law - 1950 confers on the Custodian of Absentee Property full powers to seize lands and other properties owned by Arabs, even those who stayed in Israel after 1948. More devious ways were in time invented to seize more Arab lands. These procedures were eventually backed by precedent, in which the courts ruled in favor of the Custodian.

- 16 Statistics show that Arab citizens of Israel who are tried in the same courts and convicted of the same crimes are given much harsher sentences than Jewish citizens of the state. See Arye Rattner and Gideon Fishman, *Justice for All? Jews and Arabs in the Criminal Justice System* (Westport: Praeger, 1998). The courts, however, maintain that statistics do not constitute absolute proof; in practice, they claim that other factors play a role in sentencing. Religious, national or gender factors may thus not show in court records. See also Amnon Rubenstein, *Constitutional Law in the State of Israel*, 3rd edition (Jerusalem: Schocken, 1980) at 175-91 (Hebrew). Despite Rubenstein’s overall sympathetic stance when it comes to Israeli laws and the manner of their application, he still provides examples of laws that explicitly discriminate against Arabs. He also cites a series of instances of biased application of seemingly “neutral” laws, where the law itself does not discriminate on its face. One example is the practice of banning all citizens from certain areas, except for Jews who are allowed to pass uninhibited (at 185-186). Another example is the Law of Absentees’ Property - 1950.
- 17 *Ikhtiyaa* at 23.
- 18 For a detailed discussion of some of these laws and how they relate to the Jewish identity of the state, see David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder: Westview Press, 1990) at 89-113.
- 19 *The Secret Life of Saeed The Pessoptimist* at 122.
- 20 *Ikhtiyaa* at 21.
- 21 *Id.* at 56.
- 22 In recent years, an increasing number of strategic and academic studies have been published in Israel, which focus on the “demographic threat,” i.e., the population increase of the Arabs in Israel (excluding the Occupied Territories) so that they may become the majority in the coming decades. The authors of these studies view this “threat” as constituting a danger to the Jewish identity of the state. In 2002, the Minister of Labor and Social Affairs reconvened the state-funded Demography Council, after years of inactivity. The aim of the Council is to find solutions to this “demographic problem.” See also Rhoda Kanaaneh, *Birthing the Nation* (Berkeley: University of California Press, 2002), which analyzes the politics of reproduction and demography and how they affect Palestinians in Israel.
- 23 *The Secret Life of Saeed The Pessoptimist* at 97.
- 24 *Id.* at 121.
- 25 *Id.* at 122.
- 26 *Id.* at 134.
- 27 *Id.* at 76.
- 28 *Id.* at 135-6.
- 29 *Id.* at 95.
- 30 *Id.*
- 31 *Id.* at 159.
- 32 *Id.* at 124-5.
- 33 *Id.* at 126-7.

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