‘Modern’ Law and Its Subjects in 
Tawfiq al-Ḥakīm’s Diary of a Country Prosecutor (1937)

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Abstract
State law as the main transformative device to build a ‘modern’ Egypt has encountered tremendous resistance, yet legal scholars seem utterly uninterested in the matter while historians struggle to account for the reasons of the subjects’ resistance by using archival materials often produced by state officials themselves. In this article, I turn to literature to explore and interrogate literary representations of the rural subjects of ‘modern’ law, and their various forms of resistance to ‘modern’ law itself. In an effort to highlight the benefits of ‘turning to literature’ for legal scholars, I begin with one of the most acclaimed masterpieces and foundational works of the modern Egyptian literary canon: Tawfīq al-Ḥakīm’s Diary of a Country Prosecutor (1937). Listening to the awkward silences and garrulous voices of the Diary’s subjects opens a window onto the strained relations between ‘modern’ law and its subjects in which class, language, and centre/periphery dynamics all play a role. Considering what repertoire these subjects ‘spontaneously’ mobilise to challenge the ‘modern’ law further brings into view their alternative doxic understanding of law and justice.

Keywords: ‘Modern’ law, hegemonic legal modernity, everyday resistance, extra-judicial justice, vocal dissent, rural subjects, rural courtroom, Egypt, 20th-century fiction, Tawfīq al-Ḥakīm, Diary of a Country Prosecutor.

1. Introduction

Subjects of the law are rarely granted citizenship in the law’s own books: quite an egregious failure, considering how important subjects are for the actual operation of the governance system that ‘modern’ law intends to lay down. Subjects do largely populate the

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Imprisonment by force, Your Honour?
*iḥabs biz-zūr yā ḥadīt il-ṣādi?*
Tawfīq al-Ḥakīm, Diary, 1937

1 I mark the difference between the formal register of the narrator (and the courtroom personnel) and the colloquial register of the (rural) subjects through different romanisation styles. I romanise the formal register according to the formal rules of romanisation of Modern Standard Arabic, whereas I romanise the colloquial register according to an adapted version of BADAWI-HINDS 1986 (even if it adopts a Cairene pronunciation which is not the Delta”s). Colloquial register romanisations are preceded by an asterisk.
law’s disparate archives, but even there they are often silenced by the pen of the officials. Finding the voices (or the silences) of the subjects of the law thus becomes an arduous task facing anyone interested in the actual functioning of the law and its governance system.

When legal scholars working at other latitudes turned to literature, they found great abundance of remarkable insights into the working of the law that neither the law’s books nor its archives contained. James Boyd White’s *The Legal Imagination* (1973) has inspired a number of legal scholars in the North American context (and beyond) who soon ventured beyond matters of legal language into various directions eventually constituting a movement, the law & literature movement, which spread in law schools far and wide. The voices (and silences) of the subjects of the law were one of those rare treasures found in literature; one that still awaits to be unearthed—along with the rest of the tremendous potential that the law & literature approach yields—by scholars working on the Egyptian legal system. In front of these scholars lays a very promising field of inquiry, where fiction is characterised by an acute awareness of the writers’ own relation with reality in their works of ‘fiction’ (often against the réel of the officialdom).

Considering the modern Egyptian literary canon, there is a work that stands out as an obvious point of departure on this journey of law & literature: Tawfīq al-Ḥakīm’s *Diary of a Country Prosecutor* (1937). The *Diary* is an obvious point of departure not only because of its unparalleled contribution to the imaginary of law among Egyptians but also because its critique is steeped in the author’s own lived experience as a trainee public prosecutor in a remote village in the Nile Delta. In the *Diary*, the silences and voices of the subjects of the law are one of the areas which the author seems keenest on experimenting with. In doing so, Tawfīq al-Ḥakīm pays a lot of attention to the way in which he represents the subjects of the law and their voices and silences, and how they exist alongside—and often disastrously collide with—the voices of others, in particular court personnel and other law enforcement agents.

Aspects of the *Diary*’s polyphony have been studied by a literary scholar like Elliott COLLÀ, who in his seminal “Anxious Advocacy” considered matters of legal representation focussing on the public prosecutor (and the criminal defence solicitors).

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2 In her collection of essays, Samia MEHREZ considers a specific generation of writers (Naǧīb Mahfūẓ, Ṣun’ālīḥ Ibrāhīm, and Ǧamāl al-Ǧīṭānī), but situates them within a wider argument on literature and history in Egypt in the introduction to *Egyptian Writers between History and Fiction*, Cairo: AUC Press, 1994: 1-16. The Egyptian literary field of the second half of the 20th century is mapped and analysed through a Bourdieusian lens by Richard JACQUEMOND in *Entre scritti et écrivains: le champ littéraire dans l’Égypte contemporaine*, Paris: Actes Sud, 2003. Arguing in favour of duly appreciating the contribution of fiction, especially in West Asia and North Africa against reductionist tendencies of Neo-Orientalism, Stephan GUTH contends that “there can be more truth in fiction than in reports of facts or political-sociological studies,” in *Literary Visions of the Middle East*, Wiesbaden: Harrassowitz, 2019: 3.

3 The first reference title in English was *Maze of Justice*. The most recent edition of the standard English translation (by Abba EBAN) was re-titled *Diary of a Country Prosecutor* to align with the original title in Arabic. I use this translation when citing passages in English, but I often depart from it when I believe that it does not properly convey the meaning of the original text.

subjects of the law? Legal scholars in general, and legal historians in particular, can find a host of remarkable insights in Tawfīq al-Ḥakīm’s representations of the silences and voices of the subjects of the law. I propose to start with the obvious: their resistance to ‘modern’ law.

2. Diary of a Country Prosecutor (1937)

Tawfīq al-Ḥakīm’s Diary is a collection of twelve journal entries published fortnightly in the newly-established literary magazine al-Riwāya from February to August 1937. The Diary has become one of the classics of modern Egyptian literature, included in most anthologies—both in Arabic and in English. The work defies genre classification, and it deliberately straddles the factual/fictional line within the genre of autobiographical diaries. Autobiographical accounts, in their various forms of yawmiyyat (diary), muḏakkirāt (memoirs), or itirāfāt (confessions), were a popular genre in Egyptian literature before Tawfīq al-Ḥakīm, and the success of his Diary certainly contributed to the unceasing vitality of these accounts, especially among writers in the legal professions.

Reading the Diary as a detective story is a tempting yet reductive operation. There is no doubt that the Diary opens with a mystery, and the only ongoing plot line involves the investigations that the prosecutor carries out to try and solve that mystery. A reward of 5 EGP (the equivalent of five issues of the magazine, each selling at 1 EGP in 1937) for identifying the murderer was announced very late in the publication, with only two more journal entries to be released. The announcement prompted readers to communicate the murderer, together with clear but concise evidence, within a very narrow deadline of less than a fortnight. The plan was clearly not particularly well thought out, as the deadline had to be extended and, as a consequence, the publication of the eleventh journal entry delayed to the following issue. The Diary ended on its twelfth journal entry without a murderer.

5 The first edition of the collection was published by the Maṭbaʿat Laḏnat al-Taʾlīf wa-l-Taṛğama in late 1937, and the second edition appeared in late 1938 by the Maṭbaʿat Muṣṭafā al-Bābī al-Ḥalabī.
7 Elliott COLLÀ even goes as far as claiming that “most readers thought it was a detective novel” when it first appeared in 1937. The main piece of evidence to support the claim is the existence of a contest, which was clearly unplanned, as explained in the text. COLLÀ 2005: 417-418, and 433-436.
8 The most recent incarnation—which even explicitly mentions the Diary in the text—is the novel Bayt al-Qibṭiya by the judge and writer Ašraf al-ʿAšmāwī (Cairo: al-Dār al-Miṣriyya al-Lubnāniyya, 2019).
11 See al-Riwāya 1937.11 (1-Jul-1937): 663 (Fig. 1, next page). In the same issue, the previous announcement with the old deadline was repeated on page 703.
12 Published in al-Riwāya 1937.13 (1-Aug-1937).
In the following issue, the magazine announced on its front page that no one of the almost one thousand participants had guessed that the case would be closed without having identified the murderer, and thus no one earned the 5 EGP reward.\textsuperscript{13}

The Diary portrays the daily grind of a public prosecutor in all its routine and non-routine, senseless sequencing of activities and encounters. Tawfīq al-Ḥakīm makes use of the twelve entries to span the wide range of chores that a mid-career member of the parquet is assigned: from pre-trial investigations to representation in the courtroom, from attending post-mortem examinations to surprise inspections of the local prison, from running eyewitness identifications to checking the court’s inventory. The author also seizes the opportunity to present a variety of characters with whom the prosecutor engages: from judges to police

\textsuperscript{13} See \textit{al-Riwa’ya} 1937.14 (15-Aug-1937) (Fig. 2, page 61).
Fig. 2: *al-Riwaya* announcing after the last instalment of the Diary that no one won the competition on the solution of the murder mystery because the mystery remained unsolved – *al-Riwaya* 1937.14 (15-Aug-1937): frontpage.
officers, from local authorities to crime victims, from forensic doctors to court attendants. As such, the Diary functions as a counter-text to detective fiction, of which Tawfiq al-Hakim had declared to have been a consumer, and in which the centre of narration is the investigation. The Diary thus indirectly denounces the distortions of detective fiction, and intends to offer a “realistic representation,” a mimesis (tawīr al-wāqi’) of law enforcement.

Attesting to the Diary’s success is its uninterrupted publication in book format since 1937 (and its translation in various languages) and three main adaptations. Two right after 1967, when there was a certain taste for featuring the past to address the present. The first was a radiophonic adaptation as a drama serial directed by Ahmad ‘Abd al-Ḥamīd (1923-1998), himself a law school graduate, and aired by the Egyptian state radio (al-Idā’a al-Misriyya) in 1968. The second was a cinematic adaptation as a film directed by Tawfiq Ṣāliḥ (1926-2013), with Ahmad ‘Abd al-Ḥālim playing the prosecutor, and screened in 1969. The third adaptation appeared significantly later, in the 1980s, as a televised serial with Fathī Salāma (1985).

3. The Diary, ‘Modern’ Law, and its Subjects

By the time Tawfiq al-Ḥakīm’s Diary was written and serialised, a novel form of governance centred on law had developed in Egypt for over a century. Legal historians concur—albeit with various degrees of appreciation—on the considerable contribution of Muḥammad ‘Alī (r. 1805-1848) in setting the process in motion in the first half of the 19th century, and some demonstrated the fierce resistance that the project encountered since its very inception.


The cinematic adaptation is often cited as an example of the paradox of Egyptian Realism: turning to literary fiction for its réel. The film shows some peculiar features and departures, which will be signaled in the text if relevant for the argument. Script and dialogue were adapted by the director Tawfiq Ṣāliḥ and playwright Alfrīd Faraq (1929-2005). On the elements of the legal process that the cinematic adaptation rooted in Egyptian (legal) popular culture, see Gianluca Parolin, “Bunyat al-taḥqīq fi ‘Yawmiyyat nā’īb fl̲-l-ayālī bayn al-riwāya wa-l-film,” in: Salma Muharrak & Walid al-Hashāb (eds.), Al-Adab wa-l-sīnāmā fl̲ Misr: Al-Iqtiḥāb: Maḥ qaṭṭūt fl̲ tārīkh muṣṭarak, Cairo: Dār al-Marāyā, 2021: 78-90.

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Ignoring the resistance it faced at home, the ‘modern’ law at the heart of the new governance model was itself projected as a form of resistance against both the Ottoman and later the British colonial control in Egypt. Over a century later, however, Tawfīq al-Ḥakīm poignantly upends this fiction in the Diary by showing how widespread, stout, and vigorous the domestic resistance to the ‘modern’ law still was. To contrast the Cairo-centred hegemonic narrative of resistance to foreign intervention through ‘modern’ law, Tawfīq al-Ḥakīm chose rural Egypt to stage the domestic resistance to that ‘modern’ law, and the Diary problematises ‘modern’ law as a function of class and centre/periphery dynamics.

Since the second quarter of the 19th century, Muḥammad ʿAlī issued legislation in the form of qānūns regulating criminal law matters. As such, criminal law effectively became one of the first areas of the law that witnessed heavy interventions by the political authority, as Rudolph Peters has eminently demonstrated throughout his writings. In the one hundred years that followed, Egyptian criminal law evolved into one of the terminal nodes of an extremely sophisticated and complex legal system, yet Tawfīq al-Ḥakīm still portrays the struggle of the subjects of the Diary’s periphery to understand and consent to its operation, while the upper urban classes fail to appreciate the needs of these subjects or act upon them.

To depict the complex relation between the ‘modern’ law and its subjects, Tawfīq al-Ḥakīm not only relies on the subjects’ voices, but also on their silences, and silences are particularly prominent in the investigation on Qamar al-Dawla’s shooting at the centre of the most conspicuous plot line. As law enforcement agents in the Diary are well aware, collaboration from the public is crucial in any criminal investigation, and this is where strained relations with the subjects can come to the surface and eventually jeopardise the success of the investigation. The extent of the public’s collaboration and its dynamics thus transcend the case at hand to either illuminate or cast a shadow on the overall operation of the law. The cost of failure is high, as not delivering on this basic promise of establishing ‘law and order’ by securing apprehension and punishment of offenders is ultimately an indictment of the system as a whole. A close consideration of the silences—projected or otherwise—of the subjects in the Diary thus opens a window onto their attitudes towards the law when they are actively called upon to collaborate.

The subjects’ voices ring loud and clear in the courtroom, when their collaboration is not requested as their subjection to the law is revealed in all its monstrosity. Burlesque is the style of choice in the series of brief and humorous court cases where Tawfīq al-Ḥakīm sketches a portrait of the alienation of the subjects of ‘modern’ law and how they spontaneously respond to it, in a cogent critique that interrogates the functioning of ‘modern’ law well beyond the confines of the small village courtroom and its dependencies in which the action is set.

consequently harshly disciplined and punished (All the Pasha’s Men, Cambridge: CUP, 1997), but also how they made use of the opportunities offered by ‘modern’ law (In Quest of Justice, Oakland: University of California Press, 2018).


4. Class, Subjection, and Register in the Diary

The silences and voices of the subjects of ‘modern’ law are narrated by the unnamed protagonist, an urban member of the effendiyya class (the professional intelligentsia) who works as a prosecutor in an unnamed rural area in the Nile Delta. His narration oscillates between mockery of and compassion for the subjects, tilting towards the former more often than not. From the observations in the Diary, one could see the protagonist playing a wholly ambiguous role, representing “the ideals of Egyptian modernity and its flaws, the gap between the ‘enlightened’ theory of modern (European) law in colonial Egypt and the often irrational and unjust practice of that theory”. Beyond his more caustic or more sympathetic remarks in the Diary, however, the prosecutor is fully complicit with the system, toes the line, and does not resist even the practices that he ridicules as absurd. He is not alone in that, and all the other characters seem to be complicit, except the fellahin (peasants).

Class divisions run deep across the two sides of law enforcement in the Diary. The characters enforcing the law are all members of the professional intelligentsia, the effendiyya, while the subjects of the enforcement are all members of the peasantry, the fellahin. The wealthy ruling elite, the bashawiyya, is actually absent from the Diary. As if law were not an instrument to guarantee the privileges of the latter, but rather a matter for the effendiyya striving to modernise the fellahin.

Representations of class divisions in the Diary, including the urban/rural divide, speak to a new literary canon that mirrors historical aspirations of the effendiyya to “educate and improve the collective character of the Egyptians,” using narrative fiction as its most appropriate literary form. At the same time, the new narrative fiction captures the anxieties of the same effendiyya of being incapable of connecting with the reality of the collective. In describing the struggle of the narrating self, literary scholar Samah Selim characterises it as an alienated, frustrated subject:

The rural hinterlands in which he was born represent both the hereditary domains of his power and the borders of his own marginality. The fellahin—the people who inhabit these domains—are the source of his wealth and of his romantic identity. They are simultaneously the objects of his curiosity, pity, suspicion—the source of his malaise.

The prosecutor himself records his journal entries: a telling incarnation of ‘modern’ fiction in which a narrating self (al-ḏāt al-riwāʾiyya) emerges while engaging with the collective, its societal object (al-wāqiʿ).

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21 COLLA 2005: 419.
23 SELIM 2004: 15.
Arabic literary canon with its narrator as a “custodian and transmitter of an accumulated civilization or turath” to the new modes of the modern Egyptian narrative canon with its narrator as “rather an individual standing ‘outside’ the collectivity, observing it, describing it, narrating it, not as a communal historian but from a position that embodied a subjective but nonetheless authoritative and hegemonic point of view.”

It is the triumph of the effendiyya appropriating the narration, yet disguising itself as an objective, scientific observer.

The Diary strikes a remarkable parallel between law and literature in which the literary subject of the ‘modern’ canon is made to squarely overlap with the (rural) subject of the ‘modern’ law. In a way, the Diary seems to conform to most of the predicates of the new literary canon and the modern law. The narrator/prosecutor is a mittarbiš member of the effendiyya who loathes his exile in the countryside and deals sanctimoniously with all its fellahin inhabitants. His critical, self-aware, and reflexive voice may induce even the more attentive reader to lose sight of what the prosecutor actually does: he toes the line and blindly “enforces the law” (taṭbīq al-qānūn), which he rationalises as the essence of justice (al-ʿadl). The narrated subject/subject of the law is a disposable unit of a beastly mass often collectively described or even individually addressed as animals by the narrator and his fellow law-enforcement agents.

Yet, the Diary offers a much more complex narration that presents a multi-layered representation of law enforcement and its (rural) subjects. For a start, the Diary exposes the ambivalence of the prosecutor’s principled, piercing remarks by showing how quickly he bends those principles to avoid any possible adverse consequence. When the prosecutor informs the local official in charge, the maʿmūr, that he is going to personally inspect the prison instead of being content with seeing the prison records, the maʿmūr quickly transfers all those detained without a proper registration out of the prison proper and locks them in the fodder storage. Most likely, these were people detained so as to avoid them participating in the elections. The prosecutor sees the operation from the window and exclaims: “Come and look! What is this, the Bastille?” The head of the criminal section laments the degrade that politics brings and tries to calm him down, but the prosecutor quickly retorts: “Are you suggesting we leave in jail people who have committed no crime?” It only takes a vague mention of a possible transfer to Upper Egypt in retaliation for the prosecutor to back down, and conclude: “and that’s all there is to it” (*wis-salām).

Unlike earlier fiction (especially Muhammad Husayn Haykal’s Zaynab, 1913), the Diary’s (rural) subjects are given the possibility to use “their” colloquial language and style. They are given ‘their own’ voice. In the Diary, these subjects make full use of their voices to expose the shortcomings of the pompous yet incongruous language of law enforcement.

27 Even if advocating ‘realism,’ Muhammad Husayn Haykal’s Zaynab does not allow its subjects to use ‘their’ colloquial language and style. Zaynab and the Diary also belong to two different periods in Stephan Guth’s periodisation of the Egyptian novel; Zaynab (1913) belongs to the “Emotionalist period,” whereas the Diary (1937) belongs to the period of “later National Literature.” See Stephan GUTH, entry “Novel, Arabic”, in Encyclopaedia of Islam THREE, Leiden: Brill, 2014.
When a “rural prostitute” (mūmis rīfīyya) is charged with having stood at the entrance of her house, she puts her hand on her hip and shouts: “Well, Love, is it anathema to stand in front of one’s house?” (*huwa, yā rūhi, man waʿraf ʿuddām bāb baytuh kafār?). The judge quickly and formally rebuts: “You were standing there to seduce the public (iḍrāʾ li-l-ʿumrī).” The accused puns over ‘public’ in an exquisite combination of very colloquial, gendered expressions (like ʿiddilʿadī) and style. “Oh, dear, what a pity (*ḥasra wi-naddāma alēnā)! For the love of the beard of the judge, my eye never fell on Public, nor has this Public chap ever walked in front of my house (*ṣumrīnā mā wēʾīt ṣinnā ‘alā ʿumrī ʿummūr, wi-lā marr min ʿuddām manzīlnā ʿiddilʿadī ʿumhūr).’ The frustrated judge cuts her short by announcing his ‘usual’ fine: 20 piastres.28

This multiplicity of perspectives and voices, a Bakhtinian polyphony, runs throughout the Diary, but it is in the courtroom where it climaxes and where the (rural) subjects’ desire to engage in a dialogue is constantly frustrated by the authoritative discourse of law enforcement and its agents. The narrator/prosecutor is one of the voices that espouse authoritative discourse and reject a dialogical interaction with the other voices. For Tawfīq al-Ḥakīm, the courtroom is a place of impossible dialogue, where (rural) subjects are given a nominal voice destined to be overruled by the voice of the authority, yet he animates those margins of interaction with acts of ‘dialogical’ resistance.

The Diary makes a bizarre use of names and titles for its characters. Most of the ‘rural’ subjects of the modern law do not have names, just like the “rural prostitute”. And the “prostitute” herself stands out as a particularly identified character.29 Most of the subjects are treated as indeterminate disposable units in line with the desire of the ‘colonising’ state to “discipline, control, and increase”—as Timothy Mitchell says—the country’s resources, human or otherwise.30 But other characters on the other side of law enforcement do not have names either. The perpetrator, first of all; yet one could see in the nameless protagonist an incarnation of the “authoritative and hegemonic point of view” typical of the new literary canon. The judges, the maʿmūr, the ‘umdas are unnamed as well, though. The head of the criminal section is however constantly referred to with a name and a title: ‘Abd al-Maqṣūd ʿeffendī. As some have observed, there are however two instances of fictional names in the Diary that are particularly puzzling. The victim of the aggression that opens the Diary and whose investigation occupies, on and off, the prosecutor for the entirety of the twelve journal entries is named: Qamar al-Dawla ʿAlwān. His sister-in-law, who attracts the attention of all the characters in the Diary, is named: Rūm. The two characters are fellahin inhabitants of the rural world, yet the victim has a last name (ʿAlwān), a typical

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28 Public-seduction case (infractions), 12-Oct (al-Riwāya 1.2, 15-Feb-1937): 117. Probably the use of the word “prostitute” (mūmis) prompted later censors to have this case removed from later editions of the Diary. It is featured in both al-Riwāya and the the early editions. This “prostitute” was vividly described: “She had blackened her eyes with the point of a match and smeared her cheeks with the glaring crimson colour which can be seen painted on boxes of ‘Samsūn’ cigarettes. On her bare arm was tattooed the picture of a heart pierced by an arrow. She was wearing on her wrist several bracelets and armlets made of metal and coloured glass”.


feature of the (urban) effendiyya, and both first names (Qamar al-Dawla and Rīm) are considered very unlikely rural names. These latter considerations could be treated as a subtle pointer to the reader that these subjects of ‘modern’ law are by no means confined to the remote world of the rural imaginary.

5. Sites and Strategies of Subjects’ Resistance in the Diary

The 20th century opened with an unexpected confrontation between rural subjects and British colonial officers that sent shockwaves for decades to come, especially among the literati. The ‘Dinšawāy Incident’ of 1906 surprised urban Egyptians (and colonial forces) with a brave, sudden, spontaneous, and much unexpected outburst of resistance started in response to British officers hunting for sport pigeons owned and raised by villagers for their livelihood. If one were to follow the unfolding of the events, which eventually led to death sentences for four villagers (with nearly thirty other villagers being given lighter sentences), one could track a chain of acts of resistance against escalating abuses by the colonial forces. In aggravating the situation, the sentences were handed down in a summary trial with British and Egyptian judges, including two prominent intellectuals: Butrus Gālī, who chaired the panel as acting Minister of Justice, and Aḥmad Fāṭḥī Zaġlūl, one of the most influential scholars of ‘modern’ law of his time.

The Dinšawāy Incident came to represent a turning point in Egyptian politics; as a result of the poor handling of the incident, the loathed British ‘Consul-General’ Lord Cromer was forced to resign by a newly elected liberal government in London. These acts of resistance by fellahin against colonial forces (both British and local bashawiyya) which resulted in a harsh retaliation through law affected local perceptions of (rural) subjectivity. Kōnstantinos Kaváfēs (1863-1933) wrote a touching poem describing the sufferance of the mother of the youngest among the hanged villagers. In “27 Iounióu 1906, 2m.m.”, Kaváfēs emphatically repeats the reference to “the 17-year-old innocent boy” (to dekaeρhō atʰhō paidi) and his “martyr mother” (ē māna ē mártyssa), and calls those who brought him to the scaffold: “the Christians” (oi Christianoí). In the following decade, Maḥmūd Ṭāhir Ḥaqqī (1884-1964) set his novel ‘Aḏrāʾ Dīnsawāy (The Maiden of Dinšaway) in the remote Delta village of the incident and used the reactions to the incident as a plot device.

When Tawfīq al-Ḥakīm wrote the Diary, thirty years had passed since the incident, and the 1919 Revolution—in which the author participated—had happened. At first sight, there is nothing that connects the novel with Dinšawāy, yet it is nearly unconceivable that “a remote Delta village” could be a place of sheer passivity and normalisation. The state and its law enforcement agents, all belonging to the effendiyya, are complicit in what the prosecutor himself relentlessly marks as the nonsensical operation of the ‘modern’ law. The only character who shows some spark of conscience is the prosecutor’s young aide, but he is

31 Even this intertextual practice plays with the Diary’s factuality (Tawfīq al-Ḥakīm worked as a prosecutor in a small village in the Delta) and fictionality (the village in the Delta after the Dinšawāy incident is no longer just “any” rural area).
32 It could easily be one of the main voices of the author, who, as a young man, had no interest in the law
systematically schooled by the narrator who intends to tame the outbursts of his youth and train him into becoming a proper enforcer of the ‘modern’ law: insensitive, superficial, and unthinking.33

Unsurprisingly, the only resistance to ‘modern’ law comes from its (rural) subjects. It comes in two forms, unequally present in the Diary: extra-judicial justice and vocal dissent. Extra-judicial justice is a firm belief in the mind of the prosecutor, who is convinced that his good-faith attempts to bring justice to a case are intentionally frustrated by villagers who prefer to take justice into their own hands. This belief of his is often reiterated, yet always confined to the prosecutor’s mind. There is no direct evidence of it in the events of the Diary—a prophecy fulfilled by the prosecutor’s inability to move past it. Vocal dissent, on the contrary, is methodically recorded by the prosecutor, who observes it—often with an amused look.

The idea of looking at acts of everyday resistance of rural subjects came to the political scientist and anthropologist James Scott as a reaction to the proliferation of scholarship on “organised, large-scale, protest movements that appear, if only momentarily, to pose a threat to the state.”34 Scott believes that what this scholarship misses is that “most subordinate classes throughout most of history have rarely been afforded the luxury of open, organised, political activity”. Among the acts that he lists as “ordinary weapons of relatively powerless groups” are: foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, and sabotage. Scott identifies four features that these acts share: (1) they require little or no coordination or planning; (2) they make use of implicit understandings and informal networks; (3) they often represent a form of individual self-help; (4) they typically avoid any direct, symbolic confrontation with the authority.35 Admitting to the fact that these acts of everyday resistance ‘make no headlines’, Scott likens them to “millions of anthozoan polyps” that form barrier reefs. Even when the state shipwrecks on these barrier reefs, attention is directed towards the ship running aground on the reefs, and “not to the vast aggregation of petty acts that made it possible.”36 Scott further observes that this form of class conflict remarkably requires a largely ‘shared worldview,’ which is what I believe the Diary can help us gauge. In considering the repertoire on which the (rural) subjects of the ‘modern’ law draw in their acts of everyday resistance in the remote Delta village of the Diary, one can get a sense of what an acute mind of a cosmopolitan effendiyya like Tawfīq al-Ḥakīm perceived as important to represent about the fellahin barrier reefs of rural Egypt.

33 This aspect is even more emphatic in the cinematic adaptation (1969), including departures from the text. For instance, when the prosecutor objects to delaying the court session as suggested by the “quick” judge—the only instance in which the prosecutor objects to anything—the film shows the aide objecting, not the prosecutor himself. 16-Oct (al-Riɔ̄lɔ 1.6, 15-Apr-1937).
34 SCOTT 1985: xv.
36 Ibid.: xvii.
Scott’s conviction that the historical record and archive—"both resolutely centred on the state’s interests"—do not mention peasants except when their activities are menacing—seems to be confirmed by historians of modern Egypt. Nonetheless, legal historian Khaled Fahmy has eminently shown how court records and archives can reveal to an expert eye a wealth of information on everyday resistance of the subjects of ‘modern’ law in 19th century Egypt. Literature, like Tawfīq al-Hakīm’s Diary, can contribute to the understanding of forms of everyday resistance by casting light on the ‘shared worldview’ underpinning it that the author chooses to portray. Representations in literature become ever more valuable the more distant in time the events become.

5.1. The Subjects’ Silences, the Investigation, and Extra-Judicial Justice

In the literary imaginary confined to backward rural areas, extra-judicial justice is invariably condemned as justified by the sheer desire of taking justice into one’s own hands. As such, it is usually depicted as an aberration against which local heroes need to fight. If one were to take a closer look at fiction engaging with the issue of justice beyond matters of extra-judicial justice (ǧāʾīʾ/tār), one would discover that the process of judicial justice is perceived as so degraded that even in those fictional works it is incumbent upon (usually) the protagonists to carry out the investigation and collect the evidence on their own, stopping just short of ‘taking tār’.

To the overall perception of the functioning of law enforcement, one also needs to add considerations of class—an element that is very much present in Egyptian fiction (written, radiophonic, cinematic or televised). The necessity of extra-judicial justice thus becomes a function of the distrust of lower-class subjects in the upper-class run law enforcement and court machinery. A distrust that is often voiced in fiction.

The prosecutor of the Diary appears quite persuaded of the truth of his own statement about extra-judicial justice and does not even consider following that track, but he is forced to reconsider. When, in the middle of the night, the prosecutor receives a message informing him of the shooting of Qamar al-Dawla ‘Alwān, it takes him a minute to realise that he will be done in two hours at worst:

The assailant is unknown. The victim cannot speak and won’t confuse me with his chatter. I have no doubt what the witnesses will be like. There will be the ġafīr on duty who heard the shot, went off towards it, sluggish with fright—and naturally found nothing but a body prostrate on the ground. Then there will be the ‘umda who will swear by his wife’s honour that the criminal is not one of his villagers; and, finally, the members of the victim’s family, who will keep everything dark from me.

37 Scott himself carried out anthropological field work in Malaysia.
38 Starting from All the Pasha’s Men (1997), all the way to In Quest of Justice (2018).
and reserve the opportunities of vengeance for themselves (\textit{ṭumma ahl al-mağniyy \textit{‘alayh allāqīna sa-yaktumūna ‘annī kullu šay’ li-yaqṭarū li-anfusihim bi-aydīhim}).

The initial investigation confirms the prosecutor’s predictions inasmuch as he is blinded by his own self-confidence. He needs to be shaken out of his convictions by the village mystic, who tips him off to consider (the) women (around the victim). The prosecutor immediately turns to the ‘\textit{umdā}, who matter-of-factly ‘reminds’ him of the victim’s sister-in-law, Rīm. Rīm is summoned, yet no other relative is questioned, even after it turns out that her sister, the victim’s wife, did not die of natural causes.

The inability of the \textit{Diary}’s prosecutor to solve the mystery of Qamar al-Dawla’s shooting can be read as a representation of the inability of ‘modern’ law enforcement to engage with—let alone to compete against—extra-judicial justice. A chain of murders are unveiled and all remain unsolved throughout the \textit{Diary}. When Qamar al-Dawla is asked who shot him, with tremendous effort he utters his sister-in-law’s name: Rīm. The prosecutor is reluctant to consider it indicting, and does not act upon it. When Rīm disappears, he revisits Qamar al-Dawla’s response; a few minutes later he sees the disappeared Rīm in front of the hospital, but—one more—he takes no action. An anonymous letter tips him off that Qamar al-Dawla’s wife did not die of natural causes. This prompts him to order the exhumation and, after the forensic doctor confirms the allegations of the anonymous letter, he attempts to identify the sender. Even in this second case, the investigation does not include the wife’s relatives. The third unsolved murder is Rīm’s, whose body is found in the irrigation canal. The three murders are connected by family relations, possibly suggesting a chain of criminal events consistent with dynamics of extra-judicial justice, but they are not investigated as such. The \textit{Diary} closes with the closing of the official report on the first case because “the author [remains] unknown” (\textit{‘adam ma’rifat al-fā’il}).

5.2. The Subjects’ Voices, the Courtroom, and Vocal Dissent

The vocal dissent of the (rural) subjects of ‘modern’ law in the \textit{Diary} is not as opaque as their relationship to extra-judicial justice. To the contrary, it is quite vividly portrayed. The parodical elements of its staging have often clouded the appreciation of the oppositional nature of these acts of everyday resistance. In the \textit{Diary}, these acts are mostly confined to a series of vignettes, away from the more prominent plot line of the investigation on Qamar al-Dawla’s shooting. These vignettes are in double figures and occupy almost the entirety

40 11-Oct (\textit{al-Riwāya} 1.1, 1-Feb-1937).
41 17-Oct (\textit{al-Riwāya} 1.1, 1-May-1937).
of three journal entries (12-Oct, 14-Oct, and 16-Oct), i.e., a fourth of the Diary. They are all staged in the courtroom building, either in the courtroom proper (for trial hearings), or in the prosecutor’s office (for pre-trial hearings). All the actors involved are not given names (be they on one side of law enforcement—the judges, the prosecutor, and his aide—or on the other—the accused and the witnesses48). The only characters given names are the court personnel, from the usher to the court attendant.

In the Diary’s courtroom vignettes, Tawfiq al-Ḥakīm weaves in damming depictions of the courtroom travesty with vibrant manifestations of vocal dissent to it. The Diary’s (rural) subjects of ‘modern’ law constantly and relentlessly challenge the latter’s hegemonic aspirations. In doing so, they undermine the hegemonic project at its core—ensuring subjects’ voluntary compliance—and appeal to their fellows’ sensibilities. The accused in the vignette cases express their (spontaneous) counter-hegemonic convictions in verbal and non-verbal forms, all registered by the bystanders—as we know from the impression they make on the prosecutor who records them. Among the verbal forms, one can identify two modalities: one centred on style, the other centred on content. As usual, it is often the timing in which these everyday acts of resistance are mentioned that gives meaning to the target of the subjects’ opposition.

Spontaneous non-verbal behaviour marks the subjects’ desire to display their non-adherence to the hegemonic (legal) discourse. A combination of vocalics and kinesics are either described or cumulatively summarised by the prosecutor. In the dog-registration case, the accused, after having heard the charges, “coughed, shook his head and mumbled as though reciting a religious formula (fa-tanahā al-raḡul wa-hazz ra’sah wa-tamtam ka’annahu yastaṭfir wa-yastarqī)”.49 Considering all the court hearings on infractions of the day, the prosecutor notes in his journal: “Not a single one of the accused showed any sign of believing in the real iniquity of whatever he had done. It was merely that fines had fallen upon them from heaven, whence all disasters proceed; they had to be paid, for so the law required (Wa-lam ara wāḥid wa min al-muḥālif min badā ‘alayh annahu yu’min bi-baqāqat mà ’rtakab, innamā huwa šurru waqa’a ‘alayhim min al-samā’ kamā ṭaqa’ al-maṣā’īb, wa-itāwam wa’addūnahā. Li’anna l-qānnīn yaqūl: innahum yaqūl ‘alayhim an yu’addūhā).”50 Immediately afterwards, on the same day, the prosecutor notes that in the bitten-(off)-finger case, the accused could not comprehend the difference between misdemeanour and felony: “the woman showed no sign of understanding the distinction (fa-lam yabdu ḍalā l-mar’a annahā fāhima il-fāriq)”.51 The most articulate description of a reaction to the lack of understanding of legal subtleties comes in the opposition (mu’ārada) case, just after the judge called the appellant a stupid cow. The opposition is rejected

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48 In a few cases, names are actually given to the parties. In these few cases, however, the names sound largely contemptuous, like Sitt Abūhā (Lady of Her Father) and Sayyid Ḥurayš (Mister/Monsieur Little Melon; hirš are melons that never reach ripeness on the plant) in the case of the brawl between two families over a suitable means of transportation for the bride.


50 After the dog-registration case (infractions), 12-Oct (al-Riwyāta 1.2, 15-Feb-1937): 118.

because filed beyond the three-day deadline, and the appellant is thus taken back into custody: “as he goes, he looks left and right to the ones around him to see if he is the only one unable to comprehend (wa-ḥuwa yaṭaṯīt yammā ṣawā ḍ ṣawā ilā man ḥawālāyī ḍ y-yārā a-ḥuwa wahdahu llāḏī lam yafḥam)!

Just as portrayed in earlier modern Egyptian literature,52 garrulous peasants in the Diary challenge the hegemonic legal discourse with their verbal style. The judges and the prosecutor often rebuke them because of it and try to cut them short or silence them altogether. The effect is that the reader is often deprived of a credible explanation of what happened in the case. In the portable-gas-stove case, as the accused starts responding: “It is true that I found the stove in front of the shop, but I neither stole it nor plundered it (*lākin lā saraṭ wi-lā nahābta)...” the “scrupulous” judge cuts him short and calls in the witness. The judge was probably satisfied with the admission that the accused “found” (*la’ayt) the stove, and wanted to avoid the chatter signalled by the stylistic duplication of the negation in “but I neither stole it nor plundered it...” Later in the hearing during the testimony, the accused protests: “Where in the world does a thief steal a lit stove (*Fī d-dunyā ḥarāmī yisraṭ wāḥīr gāz bi-nāruḥ)?” The judge dismisses him with a hand gesture (fa-‘askatahu t-qāḍī bi-išāra min yādīh). The lawyer takes over defence, the prosecutor falls asleep, and the reader is left without any clue as to what happened, except that the reconstruction of facts in the Diary’s courtroom lacks credibility.54 The same happens in front of the “quick” judge in two cases. In the first, the domestic-violence case, the judge reacts to the style of the peasants’ answers, including another duplication of the negation. The judge wants single-word answers from both the accused husband and the wife. He first stops the accused husband: “No philosophy here (mamni‘ al-falsafa)!" And then abruptly stops the wife, who is answering his question “did he hit you (darabīk)?” with: “The point is, your honour, God bless you... (*āsl, yā sīdī l-kāḍī, rabīnā yḥallik...).” After an extorted single-word answer from the distressed wife, the judge decides to dismiss all remaining witnesses, and gives the floor to the accused husband for his final defence—which he does not listen to, and so the reader is kept in the dark. After sentencing the accused husband to a month with hard labour, the latter protests: “Your honour! I’ve still got witnesses! I neither hit nor struck her (*lā ḍaraḥt wi-lā baṭaḥt). It’s an injustice (*il-hukm zulm)! Listen, everybody, it’s unjust (*zulm, yā nās)! “Quiet (ihras)! Take him away, constable (iṣhabhu yā ʿaṣkarī)!”55 In the second, a case of sheep grazing on a neighbour’s plot, the accused responds to the charges: “The point of the story is, your honour (*āsl il-ḥikāya, yā saʿādt il-bēk)...” The judge plays on the word ḥikāya—which to him signals a long, peasant-style story to come—to cut him short: “We have no time to listen to stories (*Mā ʿandinās waʿt li-samā’ ḥikāyāli).” “Present. 50. Next!”56

52 Opposition (muʿārada) case (review), 16-Oct (al-Riwaḥa 1.6, 15-Apr-1937): 360.
56 Sheep-grazing case (infractions), 16-Oct (al-Riwaḥa 1.6, 15-Apr-1937): 358.
Tawfiq al-Hakim in the Diary constantly employs double negation to mark the garrulous style of the (rural) subjects. In the clothes-in-the-canal case, when the prosecutor challenges one in the group: “Do you think, my dear, that there is just chaos in the world (*Inta, yâ raqûl, fâkir id-dunyâ jawâlâ)\footnote{The word _husâma_ has a broad semantic scope, from government (in the broad sense of state administration or the narrow sense of the executive branch) all the way to the law enforcement (namely, the police).} Or law and order\footnote{The text puns with _‘urâvâ_ as meaning both naked and destitute.}? Or the ruler has asked me any questions till now! The man bursts out: “Haven’t we suffered enough from the government (*bâlî hiya l-hukûma lâ minhâ wi-lâ kifâya sârâhâ)\footnote{Clothes-in-the-canal case (pre-trial), 14-Oct (al-Riwaya 1.4, 15-Mar-1937): 231-232.}! It doesn’t clothe us and doesn’t leave us free to clothe ourselves (*lâ kasîntâ wi-lâ tarakînî nînsî).’ The prosecutor offers to let them free on bail (*bi-damân mâlî), but they clearly cannot afford to pay bail: “Bail (*mâlî)! Peasants are destitute,”\footnote{Opposition (mi’âradâ) case (review), 16-Oct (al-Riwaya 1.6, 15-Apr-1937): 360.} your honour (*il-fâllâhi ‘arâyâ yâ haḍrît in-nâyihi)!” The prosecutor dismisses the group in a demeaning way: “Oh, for heavens’ sake, I’ve got a headache and it’s a waste of time to argue with people like you (Tâjuddâlû min ḡayar mâtrûd. Dimâgî wa-ga’âna’î wa-l-munâqâsâ ma’a amjâlikum dayâ’ waqît)!”\footnote{Confiscated-wheat case (misdemeanours), 16-Oct (al-Riwaya 1.6, 15-Apr-1937): 359-360.} In the opposition (mu’âradâ) case in front of the “quick” judge, the accused uses the double negation to challenge on substantial grounds the procedural objection of the judge: “Imprisonment by force, your honour (*il-ḥabs biz-zûr yâ haḍrît il-‘âdî)\footnote{In the public-seduction case, there is a similar}! I’ve been wronged (*anâ mazlâm)! No judge has heard my case, no ruler has asked me any questions till now (*lâ ‘âdî simî kalâmi wi-lâ hâkim tâlab su’âlî li-hadd is-sâ’a).” Unsurprisingly, the judge’s response is: “Quiet (iḥras)!”

Some of the more penetrating spontaneous verbal manifestations of resistance challenge the content of the ‘modern’ law by drawing on the counter-hegemonic repertoire of the subjects. In the confiscated-wheat case, the accused is charged with theft for having eaten his wheat. He has already appealed to the judge to recognise that it was ‘his’ wheat (*il-‘amîn ‘amînî). Since the judge has nonetheless sentenced him to a month of imprisonment with hard labour, he appeals to bystanders: “A month! Oh Muslims! The wheat is my wheat. My planting…. My property…. (*Ṣahr! Yâ musîlimîn! Il-‘amîn ‘amînî! Zirâ’î…. Mâlî….”) The religious reference could be read as a generic “Oh people,” but also connected with the foundation of his counter-claim that there can be no theft on goods on which someone has a claim, what fiqh scholars call _ṣibhat mulk_. “As he went, he stared at those in the courtroom with goggling eyes as though he could not believe that he had heard the sentence aright (anna l-hukm allâḏî samî’a ḥaqiqî). Surely his ears must have deceived him and the spectators must have heard the truth (inna l-yaqîn ‘ind al-nâs al-ḥâdîrîn). For he had stolen no man’s wheat (*fa-huwa lam yasruq qamîb ahadî).” In the eyes of the prosecutor, the old man eventually puts his case in his Lord’s hands (wa-aslam al-ṣâryr amrah li-fâlluqî), and mutters, as he is taken away: “There is no power and no might, save in God (lâ ḥawla wa-lâ quwwa‘ illâ bi-l-lâh).”\footnote{In the public-seduction case, there is a similar}
spontaneous reference to the religious foundation of the counter-claim. Faced with the charges of having stood at the entrance of her house, the “rural prostitute” retorts: “Well, Love, is it anathema to stand in front of one’s house? (*huwwa, yā rūhi, man wāḍif ṭaddām bāb bētuh kafar?). Kafar is a religious term denoting an action with severe consequences in fiqh (a popular Egyptian proverb goes: “there is no sin worse than atheism.” *ma fiṣ ba’d il-kufr zanb) used to expose the inconsistency of the charge against her by contrast. 62 Similarly, in the dog-registration case, when the well-off farmer is about to state that according to ‘modern’ law dogs have acquired a standing (ḥayṭiyya), the prosecutor has the impression that the man is preventively asking for God’s forgiveness for what he is about to say (wa-tamtam ka’annahu yastağfir wa-yastarğī).63

Part of the counter-hegemonic repertoire has no religious colouring whatsoever. Clothes have been washed in the river since the beginning of times, how can ‘modern’ law criminalise it? In the clothes-washing case, the accused checkmates the judge with a simple question: “Where should I wash them (*Agsilhā fēn)?” if washing them in the canal is now prohibited. The judge turns the question to the prosecutor, who finally says it’s simply not his business. 64

Finally, some of the spontaneous reactions challenge the motives and the outcomes of ‘modern’ law by mocking the trial or pre-trial court decisions. In the clothes-in-the-canal case, a man at the end of the long line of men, women and children tied up in ropes being brought into custody after the prosecutor’s decision whispers: “They detain us because God has blessed us (lit: clothed us, *ṣiyhissinā li’innī rabbīnā kasānā). In the ear-of-maize case, the indigent, detained because he has stolen an ear of maize out of hunger and has no money to bail himself out, emphatically shows his joy. He kisses the front and back of his hand, glorifying God (fa-qabbal al-rağīl kaffahu wağhā wazazān ḥāmidan rabbah). Then turns to the prosecutor and his aide—who probably looked puzzled—and says: “So what? Detention is great (*wi-mā-luh il-habs ħilṣo! At least we are assured a bit of food (*nibī fīh ‘alā l-a’dall hu’ma madmūna). Good bye (*is-salāmu ‘alēkum)! 66

6. Conclusions

In one of his most acclaimed masterpieces and foundational works of the modern Egyptian literary canon, Tawfīq al-Ḥakām stages a poignant critique of ‘modern’ law, taking aim at the state’s claim over the monopoly of the production of law and its desire to regulate ever larger areas of human life. In theory, a degree of consent lies at the foundation of the governance system that has been promoted in Egypt since the early 19th century on the global model of a hegemonic legal modernity. Brute force is deemed undesirable, not

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because of an ethical commitment, but rather on sheer political calculations of system efficiency. Law is projected at the heart of the governance model precisely to produce that desired outcome: consent. Yet, what the Diary describes and the epigraph succinctly and eloquently captures—"Imprisonment by force, your honour (*il-ḥabs biz-zār yā ḥadīt il-ṭādī?)—is a denunciation of that very consent.

The public prosecutor, whose notes are the twelve journal entries constituting the Diary, is the main character who articulates a critique of hegemonic legal modernity in his own, 'rational,' effendiyya ways. His critique is confined to his journal entries, while he plays an active role in enforcing the system that he so vociferously criticises. In depicting the public prosecutor's alienation, caught between his scathing critique and his blind enforcement of what he critiques, Tawfiq al-Ḥakīm represents the wider crisis of the effendiyya in the Interwar period\(^67\) and at once distances himself from a role that in real life he first resented and later rejected. Tawfiq al-Ḥakīm never concealed his utter lack of interest in the typical effendiyya role that his father had sketched for him; he did go to law school, but it wasn't his doctoral studies in law that kept him busy in Paris, and when he eventually returned to Egypt his posting as a public prosecutor in a remote village in the Nile Delta was the final straw.

The reader needs to turn to the (rural) subjects of 'modern' law to find tangible acts of resistance, which can take the form of silent non-collaboration with the criminal investigation or of vocal opposition to court decisions. In his humorous vignettes, Tawfiq al-Ḥakīm stages the spontaneous dissent that the (rural) subjects of 'modern' law voice during trial or pre-trial hearings. Acts of everyday resistance that—in the eyes of the narrating voice—are not endowed with the sophistication of the fellahin. Just as the parody captures the readers' attention, the sheer volume and variety of cases decided in the Diary force readers to consider the extent of the dangers and failures of 'modern' law. Compiling and analysing the repertoire of the spontaneous responses that these court decisions elicit in the (rural) subjects of 'modern' law can in turn illuminate on their alternative, counter-hegemonic idea(s) of justice. Incidentally, this is another blind spot in conventional legal scholarship where a law & literature approach could offer some welcome succour.

When analysing the repertoire mobilised by the (rural) subjects of 'modern' law in Tawfiq al-Ḥakīm’s Diary, one can appreciate the contours of the doxa of the subjects’ pre-'modern', common-sense understanding of the law. The alignment of this doxa with the fiqh orthodoxy in a small Egyptian Delta village is worth exploring, along with the challenges to the state’s claim over the monopoly of the production of law, including the re-definition of crimes.\(^68\) The ‘modern’ law’s desire to regulate from the centre ever larger areas of human life without providing the means to comply with it finally crashes against the actual living conditions of the Diary’s rural periphery.


\(^68\) Considering classical fiqh theorists, Marion Katz interrogates how scholars—influenced by Sufi thought—progressively started to transfer principles of the sacred law into the “discretionary domain” of temporal power, even if treated as separate from sacred law. See Marion Katz, “Pragmatic Rule and Personal Sanctification in Islamic Legal Theory”, in Sarat (et al., eds.) 2007: 91-108.
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