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REVIEW ARTICLE

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REFLECTIONS ON THE LIMITS OF LAW

HUSSEIN AGRAMA, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012)

JUDITH BUTLER, *Parting Ways: Jewishness and the Critique of Zionism* (New York: Columbia University Press, 2012)

SAMERA ESMEIR, *Juridical Humanity: A Colonial History* (Stanford, Calif.: Stanford University Press, 2012)

To write a review essay about three books on what at first glance appear to be very divergent topics may seem like an impossible task. Samera Esmeir's book, *Juridical Humanity*, is an exploration of colonial law as it conscripted Egyptians into the grid of humanity; Judith Butler's *Parting Ways* is a critique of Zionism and state violence from a Jewish perspective; and Hussein Agrama's *Questioning Secularism* is about the paradoxical nature of secular power as manifest in modern Egypt. Despite this divergence, I found a rich thematic resonance between the three books that was unexpected and illuminating. All three books are deep meditations on the nature of law, its violent and performative character, even as they are also about a lot more. In what follows, I discuss the central themes of each book with a short rumination on their shared themes.

Butler's book is a sustained critique of political Zionism and Israel's settler-colonial project in Palestine. Offering a passionate rejoinder to those who claim Jewishness to be consubstantial with Zionism, Butler grounds her arguments in what she calls a Jewish tradition of critique and political resistance. She engages the work of Walter Benjamin, Hannah Arendt, Primo Levi, and Emmanuel Levinas, connecting them toward the end with the work of Edward Said and Mahmoud Darwish, two intellectual icons of Palestinian resistance.

Butler readily admits that Jewishness is not the only vantage point from which to lodge a legitimate critique of political Zionism. Indeed, there is a long secular tradition of opposing many of Israel's policies, aspects of which she herself rehearses in the book.[1] However, she insists on speaking from a *Jewish* perspective in part because it reflects her own formation and in part because she wants to develop a concept of Jewishness (note the emphasis on "Jewishness" not "Judaism") that is exilic and diasporic in nature rather than rooted in the identity of the nation-state. She writes:

> Jewishness can and must be understood as an anti-identitarian project insofar as we might even say that being a Jew implies taking up an ethical relation to the non-Jew, and this follows from

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the diasporic condition of Jewishness where living in a socially plural world under conditions of equality remains an ethical and political ideal. (p. 117)

Butler's concept of Jewishness is neither religious nor secular, in part because, she argues, the history of Judaism and Zionism makes such a distinction impossible (pp. 14–15). Instead, the term *Jewishness* for her holds together "a multiplicity of modes of identification without being able to reconcile them" (p. 14). Because Jewish ethics is exilic, it requires translation across cultural registers and boundaries. Translation, for Butler, is not a secular operation that transcends religion. Rather, in the process of translation the religious itself "is transmuted into something else," a transmutation that "bars a return to an original meaning, which means that the religious is strewn and scattered, signifying only in the context of a diasporic trajectory, postnational, and nonidentitarian—an affirmative purity" (p. 17). This exilic conception of Jewishness is surprisingly resonant with the experience of Palestinians exiled from their homeland and dispersed around the world, an experience movingly captured in the writings of Edward Said and the poetry of Mahmoud Darwish. In Chapter 8, Butler discusses their work as a way to think about Palestinian and Jewish political journeys in tandem, and how the diasporic condition has shaped these distinct and overlapping histories.

Butler practices a politics of location that abjures universalism, which, in her view, does not adequately account for one's historical formation. *Parting Ways* is a serious reckoning with the tradition one inherits, of which one is a part, from which one departs, in order to articulate a different relationship to it. This sense of locatedness may disturb some for its refusal to disavow difference but, in my view, it is a brave attempt to give an account of oneself while at the same time being accountable to the Other. The kind of Jewish subjectivity Butler articulates interrupts "the unitary character of the subject, its self-sameness and its univocity.. . . Something happens to the 'subject' that dislocates it from the center of the world; some demand from elsewhere lays claim to me, presses itself upon me, or even divides me from within, and only through this fissuring of who I am do I stand a chance of relating to another" (p. 6).

Separating Jewishness from the claims of the Israeli state makes it possible to imagine a politics of cohabitation and binationalism between Palestinians and Jews. Butler's affinity with Arendt is clear here both in the latter's position on Palestinian–Jewish coexistence and in her critique of state violence and its monopolization of the political. Arendt was concerned with the mass of stateless people, the refugees, created in the aftermath of World War I, a concern that extended later to the Palestinians who were also made stateless with the formation of the State of Israel. Butler reiterates Arendt's critique of the nation-state, its inherent propensity to violence and the erasure of heterogeneity in order to create a homogenous polity (p. 121). Israel's settler–colonial project takes this logic to another level, continuing to expel Palestinians in order to create a demographic advantage even as it declares the Jewish state to be a fait accompli. Butler's objection to the Jewish state is categorically normative: "No polity has the right to secure demographic advantage for any particular ethnic or religious group" (p. 201).

Butler's engagement with Walter Benjamin's thought in Chapters 3 and 4 expands her critique of state and legal violence, providing a different vantage point from which to consider a distinct course of resistance to unjust regimes. Butler builds upon Benjamin's critique of the notion of progressive history (as the "realization of an ideal over time") to

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question the Zionist claim that all Jews have the right to return to an imagined homeland at the cost of Palestinian sovereignty. What resources are available in the Jewish tradition to rethink this imperative? Butler provides a complex answer, drawing upon Benjamin's exposition of "divine violence" and Moses' command "Thou Shalt not Kill." Benjamin, explains Butler, rejects both "law-instating" and "law-preserving" violence: while the latter is the law of the police and courts through which a state maintains its power over the governed, the former is the foundational violence associated with the establishment of a polity and the making of law (p. 71). Through guilt and coercion, the subject comes to be bound to the law, incapable of imagining a world outside of this bondage. Benjamin posits divine violence as that which releases the subject from the oppressive force of state law. Divine violence, communicated in the commandment "Though Shalt Not Kill," is neither despotic, nor coercive, nor enforceable (p. 74); rather, it is an ethical demand that is lived in relationship to the Other, with the aim to preserve the history of the oppressed against oblivion. It releases "life secured through legal contract with the state." Butler writes, "This is divine violence that moves, like a storm, over humanity to obliterate all traces of guilt, a divine expiative force and thus not retribution" (p. 82).

Butler makes clear that Benjamin's divine violence is neither a call for the establishment of another kind of political state nor an anarchic invitation for the destruction of all legal regimes. Rather, divine violence is the "necessary limit of positive law" and its oppositional force is concurrent with positive law. The messianic in Benjamin, argues Butler, belongs precisely to this moment of divine violence whose temporality is a repudiation of the time of progressive history and the law. The genius of Butler's interpretation of Benjamin's essay lies precisely in harnessing its power to put forward not only a critique of Zionism but also an alternative vision of what it means to be Jewish, to resist the call to obedience to the state as the condition for Jewish identity.

While readers of this journal may be familiar with critiques of Zionism and Israel's violence against the Palestinians, *Parting Ways* reformulates what seem like familiar arguments in a philosophical register. Butler also reconceptualizes what it means to be a Jew politically and ethically in the present world, in the process inviting us to imagine politics outside the parameters of national identity, law, and the state. Written by one of the foremost American philosophers of our time, this book is a remarkable rumination on the relationship between ethics, politics, and tradition just as it is an unflinching critique of the Zionist project.

Arendt's and Benajmin's critique of law also informs Esmeir's *Juridical Humanity,* but she expands its insights to theorize the nature of colonial and positive law through a focus on Egypt. Esmeir contends that the institutionalization of positive law under colonial rule was the occasion for the emergence of the human and the inhuman as social and political categories, each bound together under the sign of juridical humanity. Through a meticulous reading of Egyptian and British colonial archives, Esmeir argues that modern law secured its authority by claiming to bring justice and equality to native subjects, freed from the tyranny of precolonial law construed as despotic, arbitrary, and punitive. Notably, Esmeir breaks from a longstanding tradition of scholarship that criticized the hypocrisy of colonial law for claiming to bring the values of freedom and equality to the Middle East as it simultaneously dehumanized the colonial subject, excluding him/her from its ambit. In contrast, Esmeir argues that colonial/positive law actually humanized the colonized by inscripting him/her into the matrix of law, in the

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process defining what it meant to be human, and by extension inhuman, subjecting the colonized to a new calculus of power and politics. She writes:

> Colonial Egypt saw the rise of positive law that itself engendered colonialism. This law assumed the authority to endow Egyptians with the status of the human. By inscribing the human in its legalities, the law necessitated its own existence and bonded the human to the modern state. The result was the making of juridical humanity—a technology of colonial rule, the juridical human had no place to flee. The threat of dehumanization came into being. (p. 285)

Because Esmeir is concerned with capturing the operational rationality of positive law and not simply colonial law, her focus, she claims, is on the "coloniality of law" (p. 22). Colonialism in Esmeir's book is posited not simply as a usurpation of native sovereignty but a legal regime that interrupted the flow of premodern time, forcibly eliminated other legal traditions, and established a normative distinction between the human and inhuman, in the process creating a new kind of political subject. Importantly, the agents of positive law were not only the colonialists but also the legion of Egyptian lawyers and professionals who sought to conscript Egypt into modernity (Chapter 1 is dedicated to the study of this professional class).

The epistemological break posited between positive law and precolonial law was not simply an ideological ruse; it helped normalize "humane violence" as necessary, just, and utilitarian. Colonial reforms aimed at transforming Egyptian behavior (whipping peasants, mistreating criminals, prisoners, and animals) did not so much ban violent practices as establish the crucial distinction between humane and inhumane forms of violence, the former defined as a necessary means to a just end and the latter as arbitrary and punitive. Colonial positive law produced and naturalized the subject of capitalism while destroying forms of economic and social relations that had characterized Egyptian life. Thus, even as the subjection of the Egyptian peasantry to the vagaries of the free market economy was celebrated as freedom to labor, corvee labor, while declared to be uncivilized, was reformed (never banned) to serve the logic of private capital. Because wage labor was deemed to belong to the naturalized domain of "private property," it was never subject to state or legal intervention as were other forms of labor.

The interesting point that Esmeir raises in chronicling this history is that colonial/positive law did not so much abolish precolonial violence as subject it to a new grid of intelligibility, one in which productive and instrumental pain came to be distinguished from the unproductive and capricious kind. As Esmeir writes, "Humanity is truly universalized when, in the colonies, pain is properly measured, administered, and instrumentalised. Only pain that serves an end is admitted. Useless, non-instrumental pain is rejected" (p. 142).

Esmeir shows that despite British attempts to construct an ideological opposition between the human and inhuman, the two came to be constitutively linked in positive law. Here Esmeir reverses the well-known Arendtian dictum that the loss of legal personhood in modern times meant the loss of one's humanity; those who could not claim a political-legal status (such as refugees) became pariahs, illegible in the roster of humanity. Esmeir contends that by presenting the loss of humanity as the loss of legal status, Arendt reinscribes the normative collapse that juridical humanity enacts between the human and inhuman. The challenge, she contends, is to step outside of

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this framework to apprehend different conceptions of the human that are part of our collective past and present.

Esmeir's book has important consequences for how we might think about the present. In her brief epilogue, she expands on her argument about the distinction positive law makes between the ideals it embodies and the reality of its practice: while the former are assumed to be sacrosanct, the latter is where the fault is supposed to lie if the ideals are not met. This distinction makes it possible to deflect the source of juridical violence onto somewhere else, leaving its normative presumptions intact, and, in turn, recommending judicious implementation of the law as the solution. The critique of juridical violence is therefore domesticated, leaving intact the presumptive power and truth of law. Esmeir captures this circularity succinctly:

> Perhaps what is troubling about juridical humanity is not so much the persistence of arbitrary violence but the fact that this persistence has already been targeted by the work of critique put forward by juridical humanity and its accompanying constitutive distinctions. This means that juridical humanity is both the subject of critique and the tool of critique. . . . [It is simultaneously] a relationship of bondage to the law and includes within it the critique of that bondage. This is perhaps what is most unsettling about the expansion of juridical humanity—that while it performs itself, it also produces its own critique. This is why modern law has become such a powerful technology of government and a tool of emancipatory struggles. (p. 289)

This is a sobering thought in the current context of post-Mubarak Egypt when the ideals that had inspired the January 2011 uprising have been squashed, overtaken by the military junta that makes a mockery of any aspiration to political and civil equality or economic justice. The phantom of law haunts the Egyptian political landscape, holding open the possibility that juridical humanity, if correctly restored, can right the wrongs, and end state violence. Esmeir's book teaches us to be skeptical of such presumptions and to confront the circularity of our political hopes and critiques.

Agrama's book *Questioning Secularism* is a salutory contribution to the growing body of literature on secularism. Inspired by the work of Talal Asad, a range of authors in the last decade have come to argue that, rather than the separation of religion and politics, secularism consists in their mutual imbrication. Secularism, this scholarship shows, requires the modern state's continuous regulation of religious life, a regulation that fundamentally transforms the normative and practical aspects of religion. While Agrama's book is heir to this scholarship, it also departs from it in important ways. Agrama focuses on the concept of secular power, which, he boldly asserts, should be analyzed less in terms of the regulatory norms it imposes than as an ongoing activity of questioning enshrined in the legal and political institutions of the state, constantly concerned with where and how to draw the boundary between religion and politics. Agrama argues that secularism is best understood "as a set of processes and structures of power wherein the *question* of where to draw the line between religion and politics acquires a *distinctive salience*," which in turn has consequences for "the definition and distribution of the fundamental rights and freedoms of citizens and subjects" (p. 27).

Two important consequences follow from secular power's propensity to subject all norms to question: one, it enables the state to extend its sovereign reach into domains of intimate life that are supposed to be protected from such interventions; and two, it introduces a fundamental instability and indeterminacy in the political life of modern

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societies. Agama's exploration of the legal concept of public order exemplifies these aspects of secular power. Public order, adopted into Egyptian law from the French legal tradition, allows the state to suspend its own laws (or international ones to which it is a signatory) to trump religious and civil freedoms, if the state deems them contrary to the social and moral values constitutive of national identity. Through a series of historical and contemporary examples, Agrama shows how the Egyptian state has consistently used public order reasoning to interfere in the private domain, reordering various aspects of religious and private life. Islamic concepts and practices central to these domains of life are transformed in the process, bearing little resemblance to what they were historically.

A key example Agrama discusses is the Islamic concept of *ḥisba*, which was used famously in the trial of Nasr Hamid Abu Zayd to declare him an apostate. In classical Islamic jurisprudence, *ḥisba* functioned as a technique of moral criticism and depended upon the practice of Islamic virtues that are no longer central to modern Egyptian life. Inserted into the civil law tradition, *ḥisba* becomes "a matter of public power and interest" and made consonant with the rationality of modern state rule (p. 65). This new interpretation of *ḥisba* makes religious belief a *public* concern and moral discipline a matter of *state* regulation. Rather than regard the deployment of *ḥisba* as an instrumental use of Islamic reasoning to corrupt the secular character of civil law, Agrama argues that it is secular power that has transformed *ḥisba*, rendering it as another tool of *raison d'etat*.

In addition to secularism as a state practice, *Questioning Secularism* explores secularity—the values, sensibilities, and affects that characterize a secular society. Agrama's key example in this regard is suspicion, an attitude historically associated with liberal legality, as the perpetually interrogative feature of law. While tracking its modern history, Agrama draws attention to his ethnographic encounter with suspicion in Egypt's personal status/family law courts despite their elaborate structure of privacy and implementation. Agrama is interested in how suspicion, as a feature of liberal legality, sows doubt in social relations and, ultimately, the effectiveness and trustworthiness of law itself. He calls this the "looping effect of suspicion" that "undermines trust in the courts and in the law, even while it further entrenches the law by spurring on ever more legislation" (p. 141). Increasingly, social relations are subject to legalization, a process that in turn seeds suspicion into those very relations, and casts doubt on the very instruments that are supposed to resolve social disputes.

Agrama's analysis of suspicion in Egyptian social–legal life is paradigmatic of his novel approach to secularism. For if secular power works, as Agrama argues, by unsettling the very categories and concepts on which it depends, subsuming the very grounds of its contestability, then suspicion is understandably its signal affect and mode of operation. It is at this point that one can identify a similarity between Agrama's and Esmeir's arguments. Just as for Emsier the power of law lies in domesticating the grounds of its critique, for Agrama secularism establishes its truth by rendering questionable its foundational concepts and norms. This, for Agrama, introduces a fundamental indeterminacy into the very structure of secularism—an indeterminacy that does not undermine secularism but consolidates it by extending the state's sovereign power of decision over social life (p. 105).

By way of conclusion, I want to briefly reflect on some of the themes that tie the three books together. Quite strikingly, all three authors regard law not as the arbiter of

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justice, freedom, and equality but as a form of bondage to statist power that prevents the actual pursuit of justice and freedom. For Butler law is that which binds the subject to the imperatives of the state through a matrix of guilt and accountability. For Esmeir, law colonizes the human imagination such that it becomes impossible to conceive of forms of humanity outside of its juridical ambit. For Agrama, law is a modality of secular power through which the state extends its reach into religious and social life, constantly blurs the line between religion and politics, and fosters religious–political conflict rather than mediate it.

Despite the pervasive character of legal and state power, all three authors suggest ways of acting ethically and politically outside this framework: Butler's invitation to forge a Jewishness, freed from its fealty to the Jewish state, in solidarity with the Palestinians, is an example. This ethics is neither religious nor secular; rather, it is rooted in an experience of exile and diaspora where living with the Other is an essential element of life, attuned to the mutual dependence this cohabitation requires. At a moment when the Palestinian struggle is increasingly reliant on international law to make its case, this is a radical proposition. Agrama's conceptualization of "asecularity" as a space that is indifferent to the religious–secular polarization is surprisingly resonant with Butler's vision of a Jewish ethics that is neither religious nor secular but is oriented to a different horizon of relationality and responsibility. Drawing upon Esmeir's trenchant discussion of different notions of the human eclipsed by the global ascendance of juridical humanity, I wonder what conceptions of the human underlie Butler's vision of diasporic ethics? Similarly, one might ask Agrama what conceptions of relationality and accountability inform spaces of "asecularity" that he tracks in his book?

All three authors share a foundational critique of the nation-state and its leeching out of political life and civil freedoms, which it claims to uphold. In this, Butler, Agrama, and Esmeir draw upon critical theory (Arendt, Benjamin, and Agamben), but all three also offer ways of thinking about politics outside of the clichéd truisms that have become a part of this corpus. In reading these authors, one gets a sense that they are painfully aware of the novelty and urgency of our current political situation, the sense that the political strategies on which we had classically depended are no longer useful, and that a new way of thinking about our present and past needs to be forged in order to reimagine the future. Whether it is the intransigent face of the Israeli occupation with its ever-growing arsenal of military might, the failure of the Egyptian uprising to foster any change, or the intractability of law to institute justice—all of these situations require that we step out of our relied-upon categories of thought to assess our current predicament and its historical roots in order to conceive a different horizon for political action. It is this sensibility that makes these books remarkable feats of intellectual and imaginative labor. They invite us to think outside of our inherited toolkit to diagnose the past and present differently.

NOTE

[1] As Butler puts it, "There are of course, many excellent arguments for opposing political Zionism, establishing a polity on grounds of equality for Palestinians and Jews on the land of historic Palestine, for opposing racist forms of citizenship within the borders of Israel, for stopping and reversing decades of land confiscation and colonial settlement by the Israeli state, supporting Palestinian self-determination, and opposing the brutal use of police and military force to maintain an illegal occupation." Butler, *Parting Ways*, 18.

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