

**Demand making on the ambiguous state in a state of ambiguity:**

**Egyptian feminist activism and human rights**

*Emma Sundkvist, Lund University*

This paper explores how Egyptian feminists and human rights activists pursue activism and resistance, trying to sustain a movement during circumstances like those currently in Egypt. I will focus on exploring questions like what is required in terms of strategies in a society where political conditions constantly changes and legal and state institutions are unreliable? Due to the social and political landscape of Egypt five years after the 25<sup>th</sup> January Revolution, any form of collective struggle or direct action comes with security threats and the risk of violating laws restraining the right to public assembly or events. However, the legal sphere is still somehow less restricted since legal reforms can be advocated through other methods than direct and public actions. Legal activism can thus still be pursued and gender and feminist issues in its broad terms can be explored, debated and advocated for. I will discuss what turning to law and advocating legal reforms means as a strategy sensitive to the context and a practice of feminist consciousness in an authoritarian regime that aims to control all forms of politics.

The aim of the paper is however two folded. Besides exploring the just mentioned issues, I will relate this to influential feminists critique of the role of law in feminist projects and the argument that feminists should shift focus from the identity project (Hekman, 2000; Lloyd, 2005; Zerilli, 2005) and legal activism (Brown, 1995; Brown & Halley, 2002; Butler, 2006; Halley, 2006) to other forms of activism outside of state institutions and the legal apparatus. The claim is that law is not a neutral instrument and legal activism is done at the cost of other projects for political change. Further, the law in itself is problematic since rights through law create static identity categories and legal subjects and legitimize state power in ways that foreclose the dynamism of political activism. These critical voices argue that the shift should be towards engagement in more collective and direct struggles and in projects that foster agonistic democratic debates.

I am aware of that some would argue that these ideas are relevant in the context of liberal democracies only, but would like to claim that theories of law, rights and legal activism is always applicable to the idea of human rights and human rights activism. Human rights, in turn, are urgently present issues in non-democratic societies where human rights abuses are common. How, then, does this critique of feminist legal activism play out in repressive states and less open societies where the public space is strictly regulated and controlled? Can the relationship between law and politics be asserted in the same way in all different societies or does legal and human rights activism have different outcomes depending on the political context? These questions are also explored by drawing from fieldwork and interviews with Egyptian feminist activists and their struggle for political and social change.

### *Laws role in feminist and human rights activism*

While there are other theorists criticizing the role of law in feminist activism, I will mainly develop my analytical understanding of feminist activism in relation to how Wendy Brown and Janet Halley have presented this critique.

Arguments for a feminist project that works outside of legal issues are based on critique of how law creates legal subjects with set contours for what it implies to be a certain identity category. Following a Foucauldian understanding of power as productive, the power of law is both disciplinary and produces its own subject. Wendy Brown begins problematizing identity politics and rights in 1995, when she outlines the circular logic of recognition and oppression. While different identity groups seek recognition on the basis of injury by the state, and mainly through law as rights, they inadvertently extend the state's disciplinary power. Given that these groups constantly need to re-mark their oppression in order to earn state recognition, the groups become dependent on their own suffering from that injury. In the hands of the state and legal machinery, the boundaries of that injury are codified and thus set the frames for what it means to belong to a certain identity group. Viewing identity as performative, she argues that as much as women's rights to abort unwanted pregnancies or litigate sexual harassment soften some of the effects of male dominance, using the law interpellates women as women when exercising these rights.

Brown's skepticism of law and rights as solely liberating also influences her stance on international human rights (Brown, 2004). Since rights are not simply rules and defenses against power, but can themselves be tactics and vehicles of governance and domination, human rights, she claims, do not necessarily decrease the overall power and reach of the state. Instead, in its promise to protect individuals against suffering, human rights produces a specific subject with certain needs of protection. This in itself is not necessarily an issue for Brown, as long as we continue to pose questions of what these political subjects are and what political possibilities that are created in the process of the reduction of suffering or protection. A recurrent concern is that rights and legal activism might render other political possibilities weaker and what the consequences of that will be for the "collective power of the citizenry to determine the contours and content of social, economic, and political justice" (Brown 2004: 459).

Brown and Halley (2002) develop their concern over what legalism and legal activism forecloses in terms of alternative political projects in search for justice. Politics through legalism, they argue, is unlikely to foster open-ended and polyvocal discussions on how we structure life in terms of what we value, what we should prohibit, and what is possible collectively. In turn, this preempts our explorations of the constitutive causes of oppression or injury and thereby sacrifices opportunities to "address at a more fundamental, or at least far-reaching, level various troubling conditions which appear to require redress" (Brown and Halley 2002: 20). What is presented as

the desirable alternative is collective actions on the ground through which feminists can engage as interlocutors and, regardless of their stance on different issues, create new alliances that nurtures intellectual explorations and political contestations. This reasoning follows Brown's (1996) earlier desired definition of "politics" as collective struggle over meaning based in agonistic democracy and conflict. This form of politics is "richer, more complicated, and also perhaps more fragile than that circumscribed by institutions, procedures, and political representation" (9) and legal activism is a retreat from these "fragile" forms of politics.

What seems to be the central desire for the authors is not the means in itself but what these means generates in terms of politics and what sort of politics that is shaped. If the outcome of activism is what matters the most, which seems to be the case for Brown, Haley and others, it is problematic to assert a stable relationship between law and politics throughout different contexts. If the desired outcome is an agonistic and conflict-driven democratic debate through polyvocal discussions, the questions should not be whether to engage with law, but how to engage in a manner that further feminist political aim (Karalekas, 2014).

Furthermore, the democratic debate that is imagined to be the result of collective struggle is preconditioned by political consciousness. This consciousness does not occur spontaneously or in a vacuum but come in various shapes and frames and is the effect of social and political intervention (McNay, 2010). Scholars of social movements have noted that oppositional consciousness and collective action depend on organizational resources and political opportunities for political mobilizations (McAdam, 1999; McAdam, Tarrow, & Tilly, 2001; Meyer, 2004). However, cultural aspects and actor's agency are also significant drivers behind action (El-Mahdi 2009) as well as the fact that political consciousness does not necessarily lead to collective struggles (Mansbridge 2001). There are different stages between an initial consciousness of injustice and the final decision to act against it, which does not develop automatically. Mansbridge (2001) clarifies that bare oppositional consciousness is far from enough to realize an actual move. Motivation for action depends on material, social and self-enhancing rewards of specific actions. The rewards should be relatively high and the costs relatively low. The smaller inner commitments there are, the more important are these external conditions. However, the inner commitments are also dependent on these external factors initially. Political consciousness and collective struggle is a complex, socially specific phenomenon that very much depends on the set of conditions in the specific context. For Egyptian feminists, their condition is a repressive regime and a strictly regulated public space. The consciousness about injustices is present, but in authoritarian regimes and undemocratic societies the stages towards actual resistance are interrupted by various local realities.

The state's various repressive tools strongly influence movement strategies and tactics (Boudreau, 2004) and, to ensure survival, activists often avoid direct action as well as antagonizing the authoritarian state (Spires, 2011). Johnston (2006) labels the periods of repression and state surveillance during which activists and social movements have to "get small"

in order to move under the radar of the security service as *resistant episodes*. When social control of public protest and political rights is employed, movements and activists can also turn to pragmatic resistance as strategic adaption, of which law and the use of law is one alternative (Chua, 2012). The human rights movement in Egypt has lost many of their activists, who are today detained and convicted, some of them to the death penalty. Resisting the repressive security regime and social control of protest and activity does not just cost time and money (Barkan, 2006; Earl, 2005) but also severe physical discomfort and even death among activists. In a shrinking public space where any form of critique against the regime can generate personal insecurity, feminists and women's rights advocates need to find ways in which women's rights can be discussed and maintained. I will now move on to explore how this is pursued.

### **Feminist activism in midst of social and political repression**

This paper is primarily based on interviews conducted in Cairo during two months of fieldwork in the spring of 2015. I did 12 interviews with activists from both NGO's and youth movements, attended a conference representatives of civil society and spent time with some of the activists in their own social environment together with friends and peers. The activists are to various extents engaged in gender-related questions through NGO's, loosely tied groups, and leftist youth movements. My interest in meeting with them was not only as representatives of these different collectives, but as individual activists struggling with the current situation in Egypt. Although some of the activists are not familiar with each other, the link between my informants is their feminist identity and their reciprocal support for mutual feminist causes. They are hence not tied together by a common ideology but by shared identity and concerns.

#### *Navigating the shrinking public space and protest laws*

When speaking with activists about the shrinking public space, activists perceive this denial of rights as the most urgent threat to their survival as a movement. The consequences of not being entitled to a public space are severe in terms of their possibilities to frame and pursue activities and articulate critique against the regime.

One of my informants who works with the gender program at a Cairene NGO describes the situation for me in terms of a return to office, self-reflective time and policy work.

It is almost impossible to have an activity in the street or anything like this so you have to go back to your policy level work which is very disappointing, and, [...] we have just been trying to reflect on our past and what we have done, what we have reached, and you know, what we did with the testimonies and the techniques we used and how we deal with the different institutions and you know our relation to the state and our relation to the

international institutions and so on and if the language we used effected. (Cairo, May 2015)

This statement gives a glance of the earlier period right after the uprising in 2011, when street protests, strikes and united demands were every day events in Egypt. Back then the organization at which this activist works collected testimonies from survivors of sexual violence and were active in the streets investigating the effects of harassments and violence. This work is not possible anymore since any activity in the street can be seen as a potential threat to the regime. Even if the large part of the NGO's contemporary work is to write reports and evaluations, the same activist explains that they still need to navigate the security threat in that process. The NGO is continuously careful in how they write and articulate the reports, and cautious of where they publish them so as to avoid unwanted security attention. This is confirmed by Mona from another Cairene NGO. She explains that NGOs today mainly work to defend their existence. Being too visible in the debates is to put yourself and your organizations at risk.

Hala, who is on the board of a NGO that is mainly a research center and has been spared security visits and investigation, explains how the repression of organizations paradoxically also can strengthen them.

I think this [shrinking public space] is an additional challenge and it gives more credibility to these organizations, there is a bright side to this, unless you are forced to close down, [...] the important thing is to not be intimidated and to move on. (Cairo, May 2015)

All forms of projects are evaluated beforehand in order to estimate the perils, especially the activities that can be viewed as a resistance against the regime. During the period of my fieldwork, many of the informants' peers and friends were imprisoned, prosecuted or even killed. The overall agreement is that they cannot afford to lose more people or martyrs; it is simply not worth it. Ahmed who is part of a youth leftist groups, conveys this:

Security is the major problem. If you will go and do a sacrifice, it has to be worth it. To do an activity it has to be worth it. To go to the streets without any backup, without any people, without supporting your demands its suicide. Do what is available. (Cairo, May 2015)

The controlled public space has not just repressive effects on activists' abilities to choose what projects to pursue. Many of my informants are also under constant threat of being arrested or denied travelling outside of Egypt. Several of the activists explain that they do not feel safe and are worried about their personal security. Another active member of Ahmed's youth leftist group explains how this security threat has played out for him. During the last two demonstrations that he attended in 2014, he was arrested and beaten inside police vans and his parental home in one of Egypt's larger cities has been visited by security personnel in their search for him. He is acutely aware that the security constantly has their eyes on him. At the time of writing, he is one

of many activists who have been arrested since January 2016, after the security machine made comprehensive raids of hundreds of apartments in the run-up to the 5<sup>th</sup> anniversary of the revolution. The charge against him is possession of seditious leaflets calling for demonstrations.

Obedying the repressive laws and social control is a strategy deployed by the majority of activists in this study. The small space that is left is utilized differently for various reasons and in diverse manners. Instead of broader mobilization, networking and demonstration, they turn their energy to building political awareness and consciousness inside their own groups. The youth leftist groups, focus on reading meetings, movie screenings and capacity building in order to be ready to use the next political moment.

#### *Using legal framework without mobilization*

The political climate described by the activists sets the contours of what they can and cannot do in terms of challenging the oppressive regime and patriarchal structures. For some of the activists, turning to law is an indispensable element of women's rights work regardless of repressive social control of the public space. For others, it becomes an active choice to work with the law once all other forms of contentious politics are impossible. However, what seems valid for all activists is that legal activism and the use of the legal framework in pursuing gender justice is given a new meaning in this particular repressive time. As the only space left, it is an active choice to remain vocal within it. For Salma who is a lawyer, advocating legal reforms is always a significant aspect of women's rights work. She explains:

This (policy level) is the remaining space of course, but generally speaking even if the space was as open as before during 2011 and forward I think we still need to engage with the legislative reform, you know, I think that [...] So I *yani* [like] I think, probably it is our prioritized agenda right now because we do not have room for mobilization as we used to have before but then again, even back then we were still engaging on the political agenda. (Cairo, May 2015)

Salma also values the fact that activists and organizations actually keep up the work and continue to struggle despite the difficult political climate. She emphasizes that using the mechanism you have at hand is significant for the struggle for women's rights.

Of course it's quite challenging to mobilize around any issue of gender equality because of the shrinking public space but the fact that there are still groups that are still interested enough to lobby for a better policy reform towards gender equality [...] like CEWLA (Center for Women's Legal Assistance) that are trying to push for legislation reforms this are steps ahead towards you know for improving the situation of women and contributing for gender equality.

For other activists, turning to law is an alternative to mobilization politics and other resistance practice under these specific circumstances. Ahmed again, views legal activism as the best thing to do in this moment that he calls “lower times”. He explains that whatever communist or anarchist dreams they have, they must stay within what is doable at the moment. “You have to play legal and illegal at the same time [...] in low times we can at least take a step forward to make it better than today”. Ahmed continues to explain that if the legal way fails because of the arbitrary rule of law, then turning to law becomes a strategy to show the shortcoming of the system and to foster another way of thinking. He continues:

People will know that this [legal] way is not available in this system, there must be another way, if you try everything inside the system and it’s not working, then you will start to think outside of the system. (Cairo, May 2015)

Another reflection on law as a tool is that the oppressive regime seemingly operates within a legal mandate. All the recent trials are done in accordance to the law. Hala, a professor of literature and a senior feminist and mentor of many of the younger activists, refers to the trials of Azza Suleiman, a prominent activist and lawyer, and the other prosecuted activists. She claims that they need to work with these laws that allow the state to initiate such cases. Suleiman and the other activists are charged for attending unlawful protests and disturbing the public order. Hala explains:

They [state] have been using the law against us, there was nothing illegal there, the government takes the steps and everything is legal. They are using the law against us. It is more difficult to fight because everything is legal. It’s legal. The execution yesterday they followed a legal process [...] the problem is to change the law. (Cairo, May 2015)

We can here see two separate problems with the law identified by the activists: the gender oppressive laws, such as the law regulating elections and the biased family law, and the laws restricting activists’ freedom to pursue their visions.

#### *What is the role of law towards change?*

The activists do not believe that law by itself can achieve any substantial change since the agent behind law is a repressive state, or a non-representative parliament and the actor executing law is a misogynic apparatus. But as we have understood from previous sections, under the current condition, broader awareness building and mobilization that could put pressure on this oppressive system is almost impossible. Without space with capacity to build feminist and gender justice consciousness from below, law becomes the urgent catalyst for making statements in society even though it is a short-time project. Mozn at Nazra for feminist studies explains:

It couldn't wait until people accept that sexual violence is not accepted or that women should run for the election, I know...but it couldn't only be a state thing, it cannot only be an order. It will not happen, it will not continue if it will only be an order. People have to think in two ways... but people need policy, people need stigmatization... and this is what law is, it's about stigmatization not going to jail. It's about saying: this is a crime because people have been dealing with it [sexual violence] as this is not a crime. (Cairo, May 2015)

Kamal confirms this by explaining that she perceives law as an effective tool for changing peoples' attitudes in Egypt. Following her own feminist trajectory, she has witnessed that when legal reforms are implemented and activated by people, the awareness about certain rights is increased among women. She takes child custody and divorce rights as examples:

I think that, in many cases what helped more was not the awareness than changing the laws. With custody, changing the laws definitely helped more than awareness about their [women's] right to their children. In many cases with *khula*<sup>1</sup> it was the changing the laws helping women more than having discussions with them about their rights with, *isma*<sup>2</sup>. [...]But what happens then is that you are spending generations of raising awareness and it doesn't happen. What happens... that's why I believe in legal changes.

Mozn and Hala locate law and legal reforms in the unique context of Egypt and refer to a time frame that indicates that societal changes are taking too long, longer than Egyptian women can afford. Mozn's reflection over the potential of law to stigmatize certain behaviors reveals her perception of laws' role in the Egyptian society and what it means to turn a perpetrator into a criminal. Her statement indicates that she puts great value in naming and shaming methods.

Salma is also of the opinion that laws have the potential to stigmatize certain behaviors. She welcomes a recent report published by the National Council of Women, that outlines the strategy of combating violence against women. She explains that if the state is not willing to improve the penal code and, for instance, criminalize domestic violence, it will not be stigmatized, certainly not as a crime, regardless of how much energy activists put in social mobilization around this cause. Therefore she believes the report is of significance.

Opinions on the extent to which legal reforms matter vary among the activists. However, there is agreement over the fact that the support from the broader collective of activists is important regardless of chosen strategy. A member of a leftist group and active in the doctor's union, known as the Egyptian doctor's syndicate, explains that their group does not prioritize legal reforms. "We are not against these strategies and we can help these strategies but we don't think this is the solution". When it comes to the women's rights groups and their demands, the leftist

---

<sup>1</sup> A woman's unstipulated right to initiate divorce.

<sup>2</sup> A woman's right to divorce through a stipulated condition in the marriage contract.

group is fully supportive of the women's rights cause. If women's right groups arrange a demonstration for legal reforms, or need any other form of backing, my informant explains that they are cooperating with women's rights groups in their demands and strategies. In the current context of political repression, different activist groups work with groups that share similar perspective on the situation, regardless of common ideology or attitudes towards laws and the justice system. It seems to be an outspoken strategy in itself to work across groups and networks in order to achieve a more substantial impact.

Those feminists who do believe legal reforms are important for their struggle view their previous work with implementing women's rights in the constitution as important for future amendments, especially in relation to gendered violence. The current constitution explicitly states that violence against women is a national concern and that the state is responsible for taking measures against it. Salma sees relatively great value in such formulations. "I think this means, or as soon as we have legislation in place or if legislations are based on such constitutional entitlements then there should be quite a big difference in terms of achieving gender equality."

### **Concluding remarks**

This presentation on feminist activists in Cairo delves into the processes of how feminist collectives and movements sustain themselves under an authoritarian regime, where the state uses legal restrictions to curtail political resistance among citizens. This chapter shifts the attention of feminism and activism away from the presumed static relationship between law, rights, activism and politics that may be valid in liberal democracies and towards questions of what legal activism actual implies in a society with restricted public space and limited political opportunity. In Egypt, engaging in law is done for many different reasons and doing so becomes at the same time a low-risk activity for activists. There is enough motivation for acting against the law through legal activism considering the material and social rewards and the relatively low costs in terms of security threats. Some of these rewards have been rather clear since the Egyptian regime reformed the penal code and criminalized sexual harassment as well as initiated a national strategy against violence against women – which feminist activists view as a result of their vocal feminist demands. Consequently, when all other channels for resisting or challenging the present situation is closed or highly restricted, legal activism gains a particular status among activists. Other contentious actions come at the moment with too much risk, something, which prevents the development of the stages from political consciousness to the actual move against injustices.

Further, in repressive states, the use of legal activism, debating and advocating legal reforms can in some ways have similar effects as direct action may have in other societies. This is illustrated through the activists' different stands on what law and legal activism actually can generate. For some, it is a continuing indispensable feature of feminism, and for others, it is a tool among many others in a comprehensive project of realizing gender equality and social justice. Legal activism can also be a way of realizing that the particular context of Egypt needs other paths to social

justice than law. Moreover, some attribute to law the symbolic value of stigmatizing and naming certain behaviors, rather than the juridical role of prosecuting and imprisoning individuals. All these different perspectives on law and law's role in Egyptian society generate internal and public debates that go beyond the codification of certain articles and defining identity categories. It poses larger questions of women's bodily integrity, the public-private division, and engages with religious discourses and different traditions of interpreting religious texts. The criminalization of sexual harassment has further been the catalyst of discussing the security apparatus in Egypt through more intense public interest in how the police force operates inside the police stations.

The different stances on law and its effects seem for all my informants to be valuable considering the outcomes despite the problematic situation. The turn to law is exceptional since everyone can debate a legal reform, present an alternative draft to a suggested law text or propose an additional article to an existing law, without risking prosecution or other measures taken from the state. For Egyptian feminists, it could be too costly to ignore these openings and the small improvements that legal activism actually may achieve.

## Bibliography

- Barkan, S. S. (2006). Criminal Prosecution and the Legal Control of Protest. *Mobilization*, 11(2), 181.
- Boudreau, V. (2004). *Resisting dictatorship : repression and protest in Southeast Asia*. Cambridge ; Cambridge University Press.
- Brown, W. (1995). *States of injury : power and freedom in late modernity*. Princeton, N.J.: Princeton University Press.
- (2004). 'The Most We Can Hope For. . .': Human Rights and the Politics of Fatalism. *The South Atlantic Quarterly*, (2), 451.
- Brown, W., & Halley, J. E. (2002). *Left legalism/left critique*. Durham: Duke University Press. Retrieved from <http://www.loc.gov/catdir/toc/fy035/2002006794.html>
- Butler, J. (2006). *Gender trouble : feminism and the subversion of identity*. New York ,: Routledge.
- Chua, L. J. (2012). Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore. *Law and Society Review*, 46, 713.
- Davenport, C. (2007). State Repression and Political Order. *Annual Review of Political Science*, 10, 1–23.
- Davenport, C., & Moore, W. H. (2012). The Arab Spring, Winter, and Back Again? (Re)Introducing the Dissent-Repression Nexus with a Twist. *International Interactions*, 38(5), 704–713.

- Earl, J. (2005). "You Can Beat the Rap, but You Can't Beat the Ride:" Bringing Arrests Back into Research on Repression. *Research in Social Movements, Conflicts & Change*, 26, 101–139.
- Halley, J. E. (2006). *Split decisions : how and why to take a break from feminism*. Princeton, N.J.: Princeton University Press. Retrieved from
- Hekman, S. (2000). Beyond identity. *Feminist Theory*, 1(3), 289.
- Johnston, H. (2006). "Let's Get Small": The Dynamics of (small) Contention in Repressive States. *Mobilization*, 11(2), 195.
- Kamal, H. (2015). Inserting women's rights in the Egyptian constitution: personal reflections. *Journal for Cultural Research*, 19(2), 150–161.
- Karalekas, N. (2014). Is Law Opposed to Politics for Feminists?: The Case of the Lusty Lady. *Feminist Formations*, 26(1), 27–48.
- Lloyd, M. (2005). *Beyond identity politics : feminism, power & politics*. London : SAGE, 2005.
- Mansbridge, J. J., & Morris, A. D. (2001). *Oppositional consciousness : the subjective roots of social protest*. Chicago, Ill. ; University of Chicago Press.
- McAdam, D. (1999). *Political process and the development of Black insurgency, 1930-1970*. Chicago, Ill. : University of Chicago Press ;
- McAdam, D., Tarrow, S. G., & Tilly, C. (2001). *Dynamics of contention*. Cambridge: Cambridge University Press.
- McNay, L. (2010). Feminism and Post-Identity Politics: The Problem of Agency. *Constellations: An International Journal of Critical and Democratic Theory*, 17(4), 512–525.
- Meyer, D. S. (2004). Protest and Political Opportunities. *Annual Review of Sociology*, 125.
- Skalli, L. H. (2014). Young women and social media against sexual harassment in North Africa. *Journal of North African Studies*, 19(2), 244–258.
- Spires, A. J. (2011). Contingent Symbiosis and Civil Society in an Authoritarian State: Understanding the Survival of China's Grassroots NGOs 1. *American Journal of Sociology*, (1), 1.
- Tadros, M. (2015). Contentious and Prefigurative Politics: Vigilante Groups' Struggle against Sexual Violence in Egypt (2011–2013). *Development and Change*, 46(6), 1345–1368.
- Zerilli, L. M. G. (2005). *Feminism and the abyss of freedom*. Chicago: University of Chicago Press.