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Constitution and its translation into English**

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CANDIDATO:

Barbara Quaranta

(matricola: 143320)

Coordinatore del Dottorato

Chiar.mo Prof. Fabio Ferrucci

Tutor

Chiar.mo Prof. Flavia Monceri

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Introduction: A translational approach to the transfer of political concepts

My research is aimed at evaluating whether, how and to what extent the concept of democracy acquires different meanings according to the cultural context in which it is used. Democracy nowadays is considered the only acceptable form of government and is also held to be a universal value that everyone should pursue in such a way that the concept cannot be questioned in any case. On the other hand, the concept's capability to include different lifestyles and demands coming from other cultures is still broadly debated. It is thus extremely difficult, if not impossible, to come to a shared definition of democracy, and, on the contrary, well-established definitions are being questioned and made more complex by highlighting some of their contradictory points. In the present work I will analyse the transfer of the concept of democracy in other cultural contexts using a translational approach¹ to find out how translation influences such relocation. In order to do so, I will examine the term democracy in the case of an English translation of the 2012 Egyptian Constitution.

In the first chapter, a brief overview of modern and contemporary Western political thought on democracy will provide a general description of the contexts in which nowadays discourses on democracy are shaped and take place. Such account will outline the stages of formation of 'mainstream democracy', analysing the key political thinkers who contributed to the development of the contemporary notion of western liberal democracy. I will then consider some internal streams of thought such as classical liberalism, communitarianism and multiculturalism, which initiated a gradual process of redefinition of the concept to make it more inclusive of differences. One aspect that led to a first questioning of the concept has been the ongoing migration flows to Europe and North America, which first raised the problem of establishing peaceful coexistence among communities extremely different from the national population. Such a renewed interest in this matter shows the need to

¹ The analysis of the meaning of democracy has already been carried out with a discourse analysis approach by Dunne, 2003; while Schaffer, 1998 has resorted to conceptual analysis. The translational approach I propose here appears to assume a different point of view in that it tries to uncover the political implications of translation that are not considered in other studies.

make the democratic model more capable of including an increasing number of minorities. In this sense, even though the value of democracy is perceived to be stable and universally recognised, it is extremely problematic to come to an acceptable and universal definition and, on the contrary, the meaning of democracy is widely debated in different contexts and at various levels, both in the west and in other cultural contexts. Such developments seem to suggest that translation of the concept into different languages might not be sufficient to guarantee that democracy is understood and accepted by other cultures keeping the same original meaning.

With such considerations in mind, in the second chapter, I will consider the paradigm of equivalence in translation to bring to light its illusory and constructed character. I will thus analyse the political implications of translation that will ultimately constitute the theoretical framework for a translational approach to the transfer of democracy into other cultural contexts. Despite the fact that the paradigm of equivalence is still extensively used to describe the translation process, scholars today tend to emphasise its illusory and constructed character. Such a questioning however does not entail claiming the impossibility or inexistence of translation, which on the contrary is increasingly necessary and ubiquitous. The aim for criticising the paradigm of equivalence is rather to make apparent the metaphorical and metonymic aspects of language, so that, when translating, in order to favour the reader's comprehension, the original is modified using such concepts that can only partly be considered 'similar', 'akin' or 'equivalent', and that for the rest also produce changes of meaning in the target culture. As a consequence, language also determines the metonymics of translation, being translation a communicative process that modifies the original meaning. Theoretical survey of such aspects will lead to conclude that the paradigm of equivalence should be considered a political instrument, since it contributes to make the meaning of words well established and certain instead of highlighting its unstable, illusory and constructed character not only at a terminological and register level, but also lexically, syntactically and textually. If we define politics as an activity aimed at establishing and maintaining an order to ensure peaceful coexistence within a social group based on certain well known and generally shared rules, translation acquires a political value, however for the most part unconsciously. This is because, by translating we make an attempt to transfer

content in such a way that does not question the dominant universe of meaning within a given culture. If translation did not endorse such a cultural adaptation, it would result in a major disruption of the order and of the shared rules and, at a language level, a text would be ultimately discarded as being deviant, difficult to understand or not relevant. The translational study of political terms seems to be an interesting method that could help establish whether some terms are in a more stable condition of equivalence compared to others and why such equivalence is more easily found in some fields and contexts rather than in others.

In the third chapter, I will analyse the question of transferring democracy into other cultural contexts by introducing the still open discussion on the necessity and possibility to go beyond a normative understanding of political theory. Normative liberal political theory is considered the main starting point to evaluate the quality of democracy in the whole world and, according to it, the stages of democratisation occurred in Western countries in the past should be used as preconditions for the establishment of democracy in cultures and countries where democracy is poor or does not exist yet. In this thinking, the degree and the quality of democratisation in such countries could be measured based on value standards developed in the so called 'advanced democracies'. I will introduce the theoretical questioning of 'mainstream democracy' presenting a variety of non-Western, post-colonial and Arab reinterpretations that aim at breaking the paradigm of normative liberal democracy. After such brief outline of the ongoing debate that aims at countering the traditional notion of liberal democracy, I will consider how the meaning of the concept of democracy, when transferred into other cultural contexts, is modified and reinterpreted based on the cultural, social and political situation locally. In order to do so, I will analyse the meaning of democracy in the 2012 Egyptian Constitution issued by the Freedom and Justice Party, in close connection with the Society of the Muslim Brothers. In this sense, democracy, that has recently been a matter of renewed interest in the international theoretical panorama, is redefined in terms of its meaning and outreach, also based on the cultural and political demands of the local governments. This process of redefinition is particularly interesting from a linguistic and translational point of view, since it seems to reproduce some of the effects of the

metonymics of translation and deals with the need to change the meaning of the translated words to adapt them to the target cultural context.

Finally, I will analyse the way in which the notion of democracy in the 2012 Egyptian Constitution gets retold and strengthened through its translation into English by Dr. Nivien Saleh, a German-Egyptian academic scholar of Global politics and management who works in the United States.

In order to perform text analysis, I will utilise the socio-narrative theory adapted by Mona Baker to analyse translations with a constructivist approach. In this sense, translation will not be intended as an operation of transferring meaning from the source to the target text, so that the original value is preserved. This is because, even though translators could deliberately aim at safeguarding authenticity and know, understand and speak the languages they work with, they would not be able to translate 'objectively'. Partial/personal translation is inevitable due to the impossibility to control a large number of variables that include, but are not limited to, cultural aspects related to the translator's training, their interests and opinions and, ultimately, their experiences in life. More generally, one should also take into account the interventions of the individuals who interact while writing, editing, translating, publishing, reading, interpreting and receiving the translated texts. In this dissertation I will claim that the transfer of meanings from one language into another (which is ultimately termed as 'translation') is always influenced by factors that inevitably cause a textual transformation in the first place. Secondly, since I will claim that any text can influence, modify and definitively intervene on its own production environment, I will also maintain that the translated text, together with its subsequent changes and modifications, will have an impact on its broader cultural context, also by affecting the behaviour of individuals and groups.

This implies that the very same way in which translation is conceived subsequently influences the broader cultural context. In this perspective, translation will be considered a communicative cultural process that, while introducing new elements into a different context, uses the transfer of meanings at the language level as a strategy to endorse the cultural adaptation of the original text. In this way, the translated texts will abide by the standards which are generally accepted in the receiving culture, thus influencing and being influenced by the local recurring

discourses and topics shared by the individuals and the communities who receive them. Despite this being the case for the whole target text, such process can be easily identified in the translation of certain terms that are deemed to be particularly relevant within the universe of shared meanings at a cultural level. Although such terms could be easily considered equivalent to their original meaning, they can also undergo, as well as cause, extensive changes, and one such term is precisely 'democracy'. While considering translation as a communicative process, which is subject to the interpretation of a number of individuals, I will also claim the absence of a neutral point of view and, consequently, the impossibility to produce a text which is actually equivalent to its original.

1.1 The meaning and definition of democracy

The modern notion of democracy will be presented here as a changing concept, being continually redefined and extended to large or small cultural contexts since its very origins. In this sense, democracy has served as a gathering point of different, sometimes diverging, values and interpretations of political and social justice in time and space². Democracy in its modern version has always been a contested concept³ which, even though, on the one hand, is defined according to times, places and local needs, it is also, on the other, considered a universal value⁴ that all people should bear in mind and struggle for. Such aspects have made it increasingly difficult to come to a shared definition and are still kindling the debate over what might be the most inclusive preconditions, as well as stages and actions that are necessary to establish and maintain democracy globally.

In an attempt to find its true and definitive origins, scholars refer back to Ancient Greek models of democratic governance and reinterpret them to find possible connections, best practices and viable solutions for modern democracy⁵. Apart from research into its etymological and historical origins in ancient times, democracy in its modern interpretations stands out to be a significant form of government in the seventeenth and eighteenth centuries. In those ages, contractualist theorists⁶ propose to pursue the principle of equality and the preservation of natural rights and Jean-Jack Rousseau's theorisation⁷ of the social contract, inspired by the Ancient Greek model, envisages democracy as a possible form of government.

2 For a general overview of the concept of democracy in Western political thought see Sartori, 1962, and 1987; Birch, 1993; Held, 2006; Dahl, Shapiro, Cheibub, 2006; MacPherson, 2011.

3 Sartori, 1962.

4 Sen, 1999.

5 See, for instance, Robinson, 2004; Hansen, 1991; Raaflaub, Ober, Wallace, 2007; Ober, Hedrick, 1996.

6 Hobbes, 1651/1929; Locke, 1690.

7 Rousseau, 1762/2010.

Such notions were questioned by the utilitarian⁸ understanding of liberty as the pursuit of the highest levels of individual happiness and the idea of democracy as a 'tyranny of the majority'⁹.

During the nineteenth century, political and economic liberal and utilitarian theories of *laissez-faire* were challenged both internally and externally by socialist theories¹⁰.

In the twentieth century, such social, political and economic theories competed against one another for their establishment in different parts of the world and shaped national political debates differently according to their local social and economic contexts and needs.

Throughout the second half of the twentieth century a new procedural concept of liberal democracy¹¹ took shape and established itself as the most influential form of government in different parts of the world. Despite its global dissemination and success, such procedural democracy has been constantly criticised by liberal¹², libertarian¹³, and communitarian¹⁴, as well as participatory deliberative¹⁵ and multicultural¹⁶ stances.

In the next paragraphs, such processes and developments will be described by analysing the formation of the notion of modern democracy in Western political thought. More specifically, in paragraph 1.2, the main features will be highlighted by introducing western political scholars who contributed to the establishment of the mainstream model of liberal democracy from Rousseau's definition to Huntington's 1991 study of the waves of democratisation. In paragraph 1.3, the consequences of a first questioning of liberal democracy and its consecutive readjustment to diversity and cultural demands will be analysed as a way to ensure inclusiveness and pluralism to newly established minorities.

⁸ Bentham, 1891; Mill, 1859/2001.

⁹ Tocqueville, 1835/2009.

¹⁰ Marx, 1887; Marx & Engels, 1888.

¹¹ Dahl, 1973, 1989, 2006a, 2006b; Rawls, 1958, 1971/1999; Habermas, 1994, 1996; Fukuyama, 1992.

¹² Schumpeter, 1943/1976; Hayek, 1982.

¹³ Rothbard, 1976/2006; 1998; Nozick, 1974; Dworkin, 1977.

¹⁴ MacIntyre, 1981; Walzer, 1983, Mouffe, 1993; Mouffe & Laclau, 1985; Bell, 2000; 2006; Bell, Brown, Jayasuriya & Jones, 1995; Bell & Jayasuriya, 1995.

¹⁵ Bohman & Rehg, 1997; Bohman, 1998; Gutmann & Thompson, 2002; 2004; Cohen, 2009; Fishkin, 1988; 2009; Dryzek, 2006; 2008.

¹⁶ Taylor, 1984; 1993; Kymlicka, 1995; Benhabib, 2004; Parekh, 2000.

1.2 The definition of democracy from Rousseau to Huntington

The modern notion of democracy is thought to be originated and inspired in the eighteenth century, by the American and French Revolutions, and as a consequence of the adoptions of the United States Constitution in 1787 and of the French Declaration of the Rights of Man and of the Citizen in 1789. Later in the nineteenth century, universal male suffrage is established in France as a consequence of the 1848 Revolution, which leads other European states to claim for democratic provisions and for the adoption of national constitutions.

The Genevan philosopher and writer Jean-Jacques Rousseau greatly influences the revolutionary movement in France with his treatise "Du contrat social ou Principes du droit politique", [Of The Social Contract, Or Principles of Political Right]¹⁷. In his work, he sets out to find the best way to constitute a legitimate political authority to counter the social problems of the time, which he views close to the ones of the state of nature. In his work, Rousseau defines the concept of the social contract as

a form of association that will bring the whole common force to bear on defending and protecting each associate's person and goods, doing this in such a way that each of them, while uniting himself with all, still obeys only himself and remains as free as before¹⁸.

Rousseau considers the social contract as the only way for individuals to have their interests mutually recognised and protected. The conditions of such contract, according to the philosopher, are such that «the slightest change would make them null and void»¹⁹ and even if they are not made openly explicit, «they are everywhere the same and everywhere tacitly accepted and recognised»²⁰. If such agreement was infringed, each individual would go back to the state of nature, thus regaining his rights and liberties. Rousseau views the social contract as a necessary «total alienation of each associate, together with all his rights, to the whole community» for the sake of survival.

¹⁷ Rousseau, 1762/2010.

¹⁸ Rousseau, 1762/2010:6.

¹⁹ Ibid.

²⁰ Ibid.

In his work, he defines the sovereign as the individual or group retaining the supreme power and goes on to describe the possible forms of government that the sovereign, as the holder of the supreme power, could decide to subscribe to:

(A) The sovereign may put the government in the hands of the whole people or of a majority of them, so that among the citizens the magistrates outnumber the merely private individuals. This form of government is called democracy. (B) Or the sovereign may restrict the government to a small number of citizens, so that the private citizens outnumber magistrates; and this is called aristocracy. (C) Or the sovereign may concentrate the whole government in the hands of a single magistrate from whom all the others—i.e. all the other governmental officials—hold their power. This third form is the most usual, and is called monarchy, or royal government.²¹

According to the philosopher, even if democracy is to be considered the best of the three possible forms of government, it is also the most difficult to achieve since «it's against the natural order for the many to govern and the few to be governed», and people could never continually dedicate themselves to public affairs. Moreover, the conditions for democracy to exist are extremely demanding, since they would require the existence of a small state where people could easily gather and be informed about public matters, «simplicity of moeurs, to prevent complexity and controversy in public affairs», «equality in rank and fortune», and «little or no luxury» because it corrupts individuals, given that the rich would have more wealth and the poor would desire to get it. Such corruption, according to Rousseau, is generated by the fact that the very same person who makes the laws, also executes them, and that the people concentrate on particular, private matters instead of focussing on general concerns. This deviation of democracy could only be avoided by the «vigilance and courage» of virtuous individuals, since «a people that would always govern well wouldn't need to be governed». Failure to guard and supervise would thus result in the democratic government being easily «subject to civil wars and internal agitations». In a real democracy, according to Rousseau, in agreement with the practice of the ancient Athenian democracy, the best method to select representatives is through «election by

²¹ Rousseau, 1762/2010:33.

lottery»²², given that all people are equally virtuous, and retain the same «talents as well as principles and fortunes»²³.

The principle of equality envisaged by Rousseau and the idea of a common good attainable by a social contract is countered in the same period by Jeremy Bentham. In his 'A Fragment on Government'²⁴, the British philosopher and jurist criticises Sir William Blackstone's 'Commentaries on the Laws of England' for failing to give a meaningful and precise account on the nature and justification of authority. According to Bentham, Blackstone fails to consider the real reason of the people in the state of nature for renouncing their power:

With respect to actions in general, there is no property in them that is calculated so readily to engage, and so firmly to fix the attention of an observer, as the tendency they may have to, or divergency (if one may so say) from, that which maybe styled the common end of all of them. The end I mean is Happiness: and this tendency in any act is what we style its utility: as this divergency is that to which we give the name of mischievousness.²⁵

What makes people all the same, in Bentham's opinion, is a common propensity to pursue happiness, so that when one acts in order to achieve his utility, he is considered a good man. On the contrary, when any action does not help, but rather eliminates the possibility to realize one's own happiness, it is judged to be a damaging enterprise and thus punishable by law.

With respect then to such actions in particular as are among the objects of the Law, to point out to a man the utility of them or the mischievousness, is the only way to make him see clearly that property of them which every man is in search of; the only way, in short, to give him satisfaction.²⁶

Following from such assumption, Bentham finds that it is through utility as a general and universal principle, «recognized by all men»²⁷, that it is possible to govern «such arrangement as shall be made of the several institutions or combinations of institutions»²⁸. According to the British philosopher, such arrangement based on

²² Rousseau, 1762/2010:34.

²³ Rousseau, 1762/2010:57.

²⁴ Bentham, 1891.

²⁵ Bentham, 1891:118.

²⁶ Ibid.

²⁷ Bentham, 1891:119.

²⁸ Ibid.

utility could «serve the jurisprudence of any one country, would serve with little variation for that of any other»²⁹.

Rousseau's likening of modern democracy to the Athenian model is criticised by the Swiss-French politician Benjamin Constant in 1819. In his speech 'De la liberté des Anciens comparée à celle des Modernes', [The Liberty of the Ancients Compared with that of the Moderns]³⁰, Constant argues that «since the liberty we need is different from that of the ancients, it needs to be organised differently from ancient liberty»³¹. More specifically, he claims that in ancient times, «the more time and energy a man dedicated to exercising his political rights, the freer he thought himself to be»³². On the contrary, liberty in the modern times is considered to be related to the time a man can dedicate to his private interests. Because of this difference, in the modern age, a representative system is constituted, so that men designate «a few individuals to do what»³³ they cannot or do not want to do themselves. However, such lack of interest of the modern man in public affairs, «absorbed in the enjoyment of our private independence and the pursuit of our particular interests»³⁴, could result in surrendering too easily our right to share in political power»³⁵, to the advantage of our representatives who «are so ready to spare us every sort of trouble except the trouble of obeying and paying»³⁶. On the contrary, when citizens take an active part in preserving their interests, their spirits are enlarged, their thoughts ennobled and they enjoy intellectual equality³⁷.

According to Constant, one should be able to combine the enjoyment of the two kinds of liberties, so that

the people who resort to the representative system so as to enjoy the liberty that suits them, should exercise an active and constant surveillance over their representatives, and reserve for

²⁹ Ibid.

³⁰ Constant, 1819/2010.

³¹ Constant, 1819/2010:12.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Constant, 1819/2010:12-13.

³⁶ Constant, 1819/2010:13.

³⁷ Ibid.

themselves the right—at times that aren't too far apart—to discard them if they betray their trust, and to revoke any powers they have abused³⁸.

In this sense, Constant suggests that the modern man should be wary of a legislator who «has simply brought peace to the people»³⁹, since his work is not complete «when the populace is satisfied»⁴⁰. Rather, institutions should also educate morally their citizens, and make sure they contribute to the government, «by respecting their individual rights, securing their independence, refraining from troubling their work»⁴¹.

In 1830s a different comparative attempt is undertaken by the French political thinker and historian Alexis de Tocqueville, who, in his work 'De la démocratie en Amérique', ['Democracy in America']⁴², examines the conditions of the establishment and flourishing of democracy in the United States. Tocqueville is particularly interested in finding out the causes for the United States' exceptional «equality of conditions»⁴³. At the same moment, while considering such conditions «having reached its extreme limits as in the United States»⁴⁴, he observes a different trend in Europe, which, although increasingly closer to the American democratic experience, has not reached the same results yet:

It seems to me beyond doubt that sooner or later, we will arrive, like the Americans, at a nearly complete equality of conditions. From that, I do not conclude that one day we are necessarily called to draw from such a social state the political consequences that the Americans have drawn from it. I am very far from believing that they have found the only form of government that democracy may take; but in the two countries the generating cause of laws and mores is the same; that is enough for us to have an immense interest in knowing what that generating cause has produced in each of them⁴⁵.

According to the historian, in France the revolution in terms of social change, only happened superficially, and was not extended to «the laws, ideas, habits and

³⁸ Constant, 1819/2010:12.

³⁹ Constant, 1819/2010:14.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Tocqueville, 1835/2009 and 1840/2009.

⁴³ Tocqueville, 1835/2009:80.

⁴⁴ Ibid.

⁴⁵ Tocqueville, 1835/2009:89.

mores»⁴⁶. Tocqueville thus aims at analysing the American democracy, the one that has «reached the most complete and most peaceful development»⁴⁷, so as to «find lessons there from which we would be able to profit»⁴⁸. More specifically, the French historian considers it necessary for modern leaders

to instruct democracy, to revive its beliefs if possible, to purify its mores, to regulate its movements, [...] knowledge of its true interests for its blind instincts; to adapt its government to times and places; to modify it according to circumstances and men⁴⁹.

Among the differences Tocqueville finds in America is the fact that equality is widespread in property, since inheritance law is such that it equally distributes land among all of a family's siblings. Equality is also found in education, so that «a great multitude of individuals [...] have about the same number of notions in matters of religion, history, the sciences, political economy, legislation, and government»⁵⁰. Such aspect, according to Tocqueville, not only contributes to weaken aristocracy, but also, and more importantly, results in political equality⁵¹. Such a «manly and legitimate passion for equality»⁵² also outdoes the relevance of liberty, which, according to Tocqueville, is «not the principal and constant object of their desire»⁵³, since «without equality nothing can satisfy them, and rather than lose it, they would agree to perish»⁵⁴.

Another relevant aspect in American democracy is that of the power of the majority, «based in part on the idea that there is more enlightenment and wisdom in many men combined than in one man alone»⁵⁵, and, on the other hand, depending on the «principle that the interests of the greatest number must be preferred to those of the few»⁵⁶. In this sense, accordance and sense of equality are so strong in America, that the members of the minority are forced «to abandon the very object of the struggle»⁵⁷.

⁴⁶ Tocqueville, 1835/2009:84.

⁴⁷ Tocqueville, 1835/2009:89.

⁴⁸ Ibid.

⁴⁹ Tocqueville, 1835/2009:83-84.

⁵⁰ Tocqueville, 1835/2009:119.

⁵¹ Ibid.

⁵² Tocqueville, 1835/2009:120.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Tocqueville, 1840/2009:404.

⁵⁶ Tocqueville, 1840/2009:405.

⁵⁷ Tocqueville, 1840/2009:406.

As a consequence to such «omnipotence of the majority»⁵⁸, decisions are rapidly applied and enforced, thus making the law and public administration unstable. Such a negative tendency of the majority stems from an intrinsic «mildness of government»⁵⁹ and is for Tocqueville a 'tyranny', against which American democracy has no protection.

The theme of the tyranny of the majority as a tendency of society to impinge on individual liberties is also examined by John Stuart Mill in his 1859 essay, 'On Liberty'⁶⁰, in which he aims at analysing the «nature and limits of the power which can be legitimately exercised by society over the individual»⁶¹. A student of Bentham's theory of utilitarianism, Mill believes that, in order to guarantee a «good condition of human affairs»⁶², «protection against political despotism»⁶³ and independence, it is necessary to determine the limits «to the legitimate interference of collective opinion»⁶⁴, since «all that makes existence valuable to any one, depends on the enforcement of restraints upon the actions of other people»⁶⁵. According to Mill, even if it is necessary to impose some rules of conduct to men,

no two ages, and scarcely any two countries, have decided it alike; and the decision of one age or country is a wonder to another. Yet the people of any given age and country no more suspect any difficulty in it, than if it were a subject on which mankind had always been agreed.⁶⁶

In this sense, Mill claims that rules and the limits that appeared to be «self-evident and self-justifying»⁶⁷ in a country at a given age, might not make sense in a different part of the world or at a different age; but rather such «universal illusion»⁶⁸ is the result of the influence of customs and traditions. As a consequence, everyone would be inclined to think that other people «should be required to act as he, and those with

⁵⁸ Tocqueville, 1840/2009:409.

⁵⁹ Tocqueville, 1840/2009:415.

⁶⁰ Mill, 1859/2001.

⁶¹ Mill, 1859/2001:6.

⁶² Mill, 1859/2001:9.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Mill, 1859/2001:10.

whom he sympathises, would like them to act»⁶⁹, without noticing that «his standard of judgment is his own liking»⁷⁰:

To an ordinary man, however, his own preference, thus supported, is not only a perfectly satisfactory reason, but the only one he generally has for any of his notions of morality, taste, or propriety, which are not expressly written in his religious creed; and his chief guide in the interpretation even of that⁷¹.

Such a self-centred attitude is considered inescapable by Mill, who observes that «the rules laid down for general observance»⁷² are actually based on the «likings and dislikings of society, or of some powerful portion of it»⁷³, thus actually enacting the 'tyranny of the majority':

They have occupied themselves rather in inquiring what things society ought to like or dislike, than in questioning whether its likings or dislikings should be a law to individuals. They preferred endeavouring to alter the feelings of mankind on the particular points on which they were themselves heretical, rather than make common cause in defence of freedom, with heretics generally⁷⁴.

In agreement with Bentham's assertions, Mill thus argues that utility is «the ultimate appeal on all ethical questions»⁷⁵ and as such, in its broadest and more inclusive sense, it justifies «the subjection of individual spontaneity to external control»⁷⁶. In this sense, the liberty of an individual could be infringed upon only in case his actions damage other individuals:

The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others⁷⁷.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Mill, 1859/2001:11.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Mill, 1859/2001:15.

⁷⁶ Ibid.

⁷⁷ Mill, 1859/2001:13.

Based on such principle, Mill more specifically describes the areas of human liberty that should be protected and that include the «domain of consciousness»⁷⁸, regarding the liberty «of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological»⁷⁹, as well as «the liberty of expressing and publishing opinions»⁸⁰. In addition to it, the principle also refers to «liberty of tastes and pursuits»⁸¹, so that an individual is considered free to choose his way of life without being hindered by society, so long as he does not act unwisely or incorrectly. Finally, the principle also includes protection of «freedom to unite, for any purpose not involving harm to others»⁸².

Mill's defence of individual liberties stems directly from his opinion on the value of the State depending on the conditions of the single individuals who live in it. In this sense, the small men, whose State «postpones the interests of their mental expansion and elevation to a little more of administrative skill»⁸³, are diminished so that they become «more docile instruments in its hands even for beneficial purposes»⁸⁴. However, such men are also incapable of accomplishing important objectives in life.

Bentham and Mill's utilitarian theory, together with Adam Smith's economic liberalism, contribute to further establishing political philosophical liberalism, that is initiated in the early modern age with contractualist theories, and that inspires the American and French Revolutions in the late eighteenth century. During the nineteenth century, such liberal theories disseminate democratic and constitutional ideals throughout Europe, and, at the economic level, come to support capitalist laissez-faire models of production. However, at the same time, the growing rates of poverty and unemployment in the industrialised cities lead to reconsider economic liberal theories in the light of social and state intervention in the economic system. In the second half of the nineteenth century, such socialist theories are criticised by the German philosophers Karl Marx and Friedrich Engels, who reinterpret socialism as an anti-capitalist social and economic system, namely communism, based on

⁷⁸ Mill, 1859/2001:16.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Mill, 1859/2001:17.

⁸² Ibid.

⁸³ Mill, 1859/2001:106.

⁸⁴ Ibid.

common ownership of the means of production and on the abolition of social classes. During the twentieth century, liberal capitalist theories, on the one hand, and socialist communist ones, on the other, have changing fortunes in different countries. In the Western world, liberalism has a considerable impact until the 1930s, when socialism advocates for state control over economy. In the Eastern part of the world, the constitution of the Soviet Union in the 1920s leads to the establishment of a large socialist and communist political system.

In the 1940s, the Austrian economist and political scientist Joseph Schumpeter analyses the Marxian social and economic theory and criticises the utilitarian notion of democracy supported by capitalist economics in his 1943 work 'Capitalism, Socialism and Democracy'⁸⁵. More specifically, he questions the existence of «a uniquely determined common good that all people could agree on or be made to agree on by the force of rational argument»⁸⁶. According to Schumpeter, different individuals and groups inevitably mean different things when they refer to the notion of the 'common good' and such difference could not possibly be «reconciled by rational argument because ultimate values—our conceptions of what life and what society should be—are beyond the range of mere logic».⁸⁷ The Austrian economist argues that such way of assuming the rationality and logic of democracy is rather a strategy to make certain national values universal, by extending the concept of democracy to other contexts:

Democracy, when motivated in this way, ceases to be a mere method that can be discussed rationally like a steam engine or a disinfectant. It actually becomes what from another standpoint I have held it incapable of becoming, viz., an ideal or rather a part of an ideal schema of things. The very word may become a flag, a symbol of all a man holds dear, of everything that he loves about his nation whether rationally contingent to it or not. [...] There is the fact that the forms and phrases of classical democracy are for many nations associated with events and developments in their history which are enthusiastically approved by large majorities⁸⁸.

⁸⁵ Schumpeter, 1943/1976.

⁸⁶ Schumpeter, 1943/1976:251.

⁸⁷ Ibid.

⁸⁸ Schumpeter, 1943/1976:266.

Not only is the assumption of the rationality of people not questioned at all, but fair competition through elections is conceived to be the only possible method for a democracy to flourish, thus restricting «the kind of competition for leadership which is to define democracy, to free competition for a free vote»⁸⁹:

We now take the view that the role of the people is to produce a government, or else an intermediate body which in turn will produce a national executive or government. And we define: the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote.⁹⁰

Schumpeter likens the political electoral competition to some unfair cases of economic competition and claims that the way democracy is thought of is «a completely unrealistic ideal»⁹¹. Since a perfect electoral system, which could completely and exactly reflect the decisions of the people, is impossible to attain, Schumpeter concludes that it is only possible to enact an impure democratic process, that, even if it takes account of the opinions of the majority, it is inattentive to any other minority claims:

Between this ideal case which does not exist and the cases in which all competition with the established leader is prevented by force, there is a continuous range of variation within which the democratic method of government shades off into the autocratic one by imperceptible steps⁹².

To this regard he also argues that «*no* society tolerates absolute freedom even of conscience and of speech, *no* society reduces that sphere to zero»⁹³, but rather such freedoms are accommodated to varying degrees. On this account, it is also possible to conclude that «the democratic method does not necessarily guarantee a greater amount of individual freedom than another political method would permit in similar circumstances»⁹⁴. Such reflections lead Schumpeter to assert the need to commit to a

⁸⁹ Schumpeter, 1943/1976:271.

⁹⁰ Schumpeter, 1943/1976:269.

⁹¹ Schumpeter, 1943/1976:271.

⁹² Ibid.

⁹³ Ibid. Italics in the original.

⁹⁴ Schumpeter, 1943/1976:271-272.

«strictly, relativist view»⁹⁵, according to which «there is no absolutely general case for or against the democratic method». He thus claims that

democracy thrives in social patterns that display certain characteristics and it might well be doubted whether there is any sense in asking how it would fare in others that lack those characteristics—or how the people in those other patterns would fare with it.⁹⁶

The German economist maintains that the democratic method could work satisfactorily only upon certain conditions, within the only possible context of «the great industrial nations of the modern type»⁹⁷. Such requirements, for Schumpeter, regard the high quality, knowledge and goodness of political representatives⁹⁸ and the range of political decisions to be taken, which should be based on the actual capacities of the people dealing with politics, and not surpass them⁹⁹. Another necessary condition in order for democracy to work adequately is also the presence of a «well-trained bureaucracy of good standing and tradition, endowed with a strong sense of duty and a no less strong esprit de corps, [...] strong enough to guide and, if need be, to instruct the politicians who head the ministries»¹⁰⁰. Finally, Schumpeter also advocates for «Democratic Self-control», so that «all the groups that count in a nation are willing to accept any legislative measure»¹⁰¹.

The German economist also claims that a successful democracy should be supported by the ethical consistency of «electorates and parliaments»¹⁰², that have to «be on an intellectual and moral level high enough to be proof against the offerings of the crook and the crank, or else men who are neither will be driven into the ways of both»¹⁰³. To counter deviating practice, however, there needs to be a «minimum of democratic self-control»¹⁰⁴ supported by «a national character and national habits of a certain

⁹⁵ Schumpeter, 1943/1976:290.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Schumpeter, 1943/1976:292.

¹⁰⁰ Schumpeter, 1943/1976:271.293.

¹⁰¹ Schumpeter, 1943/1976:295.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

type»¹⁰⁵, which in some place might not have the possibility to arise and «which the democratic method itself cannot be relied on to produce»¹⁰⁶.

With the end of World War II and the Allied victory in 1945, two general areas of economic and political influence gradually take shape, which respectively refer to the Soviet Union and the United States. While the Soviet Union exerts a centralised communist political and economic control over its satellite states in Central and Eastern Europe, the United States commit to extend liberal and democratic ideals to Western European states. At the same time, decolonisation of former colonies and occupied territories start with the gradual constitution of a variety of independent countries and, at stages, is countered by coloniser countries which try to retain their economic and political control over them. The economic and political opposition between the Eastern and Western blocs, known as the Cold War, shapes political thought throughout the second half of the twentieth century and, in spite of the openings to capitalist economy in the Eastern part of the world, such antagonism still continues to wield a considerable influence. Following and reflecting such opposition, during the 1950s and throughout the second half of the twentieth century, the debate over the concept of democracy unravels along different strands of thought, in order, on the one hand, to support and justify a general call for democratisation, and, on the other, to criticise and go beyond normative Western political thought. In the 1950s, a group of political theorists sets out to study the democratic theory in more detail, thus initiating a normative procedural strand of thought that tries to both establish and optimise the conditions upon which a successful democratic government can be constituted.

In his 1956 work entitled 'A Preface to Democratic Theory'¹⁰⁷, the American political scientist Robert Alan Dahl proposes the study of democracy as a way to both maximize a set of democratic goals and describe actually democratic countries, thus adopting both a normative and a descriptive method¹⁰⁸. Dahl criticises the modern «procedural rule for the perfect or ideal attainment of political equality and popular

¹⁰⁵ Ibid.

¹⁰⁶ Schumpeter, 1943/1976:295-296.

¹⁰⁷ Dahl, 2006a.

¹⁰⁸ Dahl, 2006a:63.

sovereignty»¹⁰⁹ which is «no more than an exercise in axiomatics»¹¹⁰ and defines the democratic theory as «concerned with processes by which ordinary citizens exert a relatively high degree of control over leaders»¹¹¹.

The American scholar then proposes to study «the necessary and sufficient conditions for maximizing democracy in the real world»¹¹² and he asserts that, in order to do so, one should consider the conditions in which political equality is increased, so that «the preference of each member of an organization is assigned equal value»¹¹³. Because constant inequalities between individuals could never be overcome, he acknowledges the impossibility for any country to actually become democratic¹¹⁴. However, he maintains that it is still possible to maximize the conditions of political equality. He thus claims that the closest possible expression of it is that particular situation in which the opinion of each individual has the same value as that of all others and identifies it in competitive elections¹¹⁵. Dahl then analyses the electoral procedures and systems and poses a number of conditions for political equality to be maximised¹¹⁶. However, since, according to Dahl, those ideal conditions could never be achieved in the real world, he introduces the notion of a 'polyarchal democracy', in which both democratic and undemocratic processes are present¹¹⁷. The American scholar thus defines 'polyarchy' as a political system in which the ideal conditions which he has previously formulated «exist to a relatively high degree»¹¹⁸. In this sense, «the theory of polyarchy, an inadequate, incomplete, primitive ordering of the common store of knowledge about democracy»¹¹⁹ could be considered a theory of an incomplete democracy, which in any case could contribute to the construction of «a satisfactory theory about political equality»¹²⁰.

¹⁰⁹ Dahl, 2006a:64.

¹¹⁰ Ibid.

¹¹¹ Dahl, 2006a:3.

¹¹² Dahl, 2006a:64.

¹¹³ Ibid.

¹¹⁴ Dahl, 2006a:66.

¹¹⁵ Dahl, 2006a:67.

¹¹⁶ Ibid. For a complete account of such conditions see Dahl, 2006a:67-71.

¹¹⁷ Dahl, 2006a:66.

¹¹⁸ Dahl, 2006a:84.

¹¹⁹ Ibid.

¹²⁰ Ibid.

In further years, Dahl goes on to define more specifically the idea of polyarchies as «relatively (but incompletely) democratized regimes, or, [...] regimes that have been substantially popularized and liberalized, that is, highly inclusive and extensively open to public contestation»¹²¹. He thus defines democratization «as consisting of several broad historical transformations»¹²² and sets out the stages a country has to undergo in order to become a polyarchy:

One is the transformation of hegemonies and competitive oligarchies into near-polyarchies. This was, in essence, the process at work in the Western world during the nineteenth century. A second is the transformation of near-polyarchies into full polyarchies. This was what occurred in Europe in the three decades or so that spanned the end of the last century and the First World War. A third is the further democratization of full polyarchies. This historical moment can perhaps be dated to the rapid development of the democratic welfare state after the onset of the Great Depression; interrupted by the Second World War, the process seems to have renewed itself in the late 1960s in the form of rapidly rising demands, notably among young people, for the democratization of a variety of social institutions¹²³.

According to this view, «hegemonic regimes and competitive oligarchies»¹²⁴ could become polyarchies, so that they increase «the opportunities for effective participation and contestation»¹²⁵. Furthermore, the history of democratisation of Western countries is considered to be a model suitable for all other countries in the world that have not democratised yet.

Even if that basic notion of polyarchy remains unchanged in Dahl's democratic theory, in later works he constantly redefines the conditions for a polyarchy to exist. In his 1989 work 'Democracy and its critics'¹²⁶, the American political scientist develops the concept of 'adequate and equal opportunity', which is the necessary condition of the citizens «for expressing their preferences as to the final outcome»¹²⁷ as well as «for placing questions on the agenda and for expressing reasons for endorsing one outcome rather than another»¹²⁸. According to him, «to deny any

¹²¹ Dahl, 1973:8.

¹²² Dahl, 1973:10.

¹²³ Dahl, 1973:10-11.

¹²⁴ Dahl, 1973:14.

¹²⁵ Ibid.

¹²⁶ Dahl, 1989.

¹²⁷ Dahl, 1989:109.

¹²⁸ Ibid.

citizen adequate opportunities for effective participation means that because their preferences are unknown or incorrectly perceived, they cannot be taken into account»¹²⁹. In this sense, preventing a citizen from enjoying equal opportunities would be discriminating and would make it impossible for a state to become a polyarchy. In his work Dahl poses seven sets of conditions¹³⁰ for polyarchies to exist which refer to historical, social, and economic aspects and which include a country's peaceful transition into an independent state; reduced intervention by military forces; economic and social development in order to increase literacy and education; reduced presence of political inequalities through making contestation accepted and political activists independent; the absence of foreign control¹³¹.

In his 2006 book 'On Political Equality'¹³², Dahl focuses on the concept of political equality assuming that «if we believe in democracy as a goal or ideal, then implicitly we must view political equality as a goal or ideal»¹³³. According to him, not only such assumptions appear «to be highly reasonable»¹³⁴, but they also set «feasible and realistic»¹³⁵ goals «within our human reach»¹³⁶, given the «historical advance of “democratic” systems and the expansion of citizenship to include more and more adults»¹³⁷.

In his work Dahl considers «the importance of some widespread—even universal—human drives»¹³⁸ to political equality and analyses also «some fundamental aspects of human beings and human societies that impose persistent barriers to political equality»¹³⁹. The American scholar envisages «an alternative and more hopeful future», in which there could be «a cultural shift that would lead to a substantial reduction in the political inequalities that now prevail among American citizens»¹⁴⁰.

Starting from the definition of 'intrinsic equality' as

¹²⁹ Ibid.

¹³⁰ Dahl, 1989:233.

¹³¹ Ibid.

¹³² Dahl, 2006b.

¹³³ Dahl, 2006b:2.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Dahl, 2006b:3.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

the moral judgment that all human beings are of equal intrinsic worth, that no person is intrinsically superior to another, and that the good or interests of each person must be given equal consideration¹⁴¹.

Dahl moves on to consider the political implications of such idea by restricting his «focus to the government of a state»¹⁴². He thus claims that

among adults no persons are so definitely better qualified than others to govern that they should be entrusted with complete and final authority over the government of the state¹⁴³.

Dahl advances that no person should be given complete and final authority because of the fact that they are better prepared to govern, but rather «free discussion and controversy are [...] essential to the pursuit of truth—or, if you prefer, to reasonably justifiable judgments»¹⁴⁴, because a government in which citizens do not control leaders would be worse than modern authoritarian regimes.

In his book Dahl claims that in order for modern states to be democratic, there needs to be a concept of ideal democracy, or democratic ideal objectives, that include a set of peculiar features. Firstly, all the members of an association should have the opportunity to give their opinions before policies are implemented¹⁴⁵. Secondly, when having to decide on policies, all the members should have the opportunity to participate in voting and all votes should be equally valued and counted¹⁴⁶. Third, all members should be given sufficient time and opportunity to get informed about possible alternative policies¹⁴⁷. In addition, the demos should be able to choose the topics of discussion in the agenda, and, more generally, to participate freely and be actually included in all the activities mentioned earlier¹⁴⁸. Finally, such previous political activities should be protected by the presence of fundamental rights¹⁴⁹.

Dahl, however, acknowledges that such ideal features of democracy are always countered by a variety of unjust occurrences in the real world:

¹⁴¹ Dahl, 2006b:4.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Dahl, 2006b:5.

¹⁴⁵ Dahl, 2006b:9.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Dahl, 2006b:10.

Always and everywhere, the goal of political equality among the citizens of a political unit faces formidable obstacles: the distribution of political resources, skills, and incentives; irreducible limits on time; the size of political systems; the prevalence of market economies; the existence of international systems that may be important but are not democratic; and the inevitability of severe crises¹⁵⁰.

For this reason, in order to ensure that democracies around the world could get as close as possible to the democratic ideal, the American political scientist proposes a set of procedures, which include the presence of «elected representatives», the arrangement of «free, fair, and frequent elections»; the possibility to express one's own opinions freely, the existence of «alternative sources of information», the possibility for people to associate autonomously, and the «inclusion of all members of the demos»¹⁵¹.

In the late 1950s, the American moral philosopher John Rawls criticises the utilitarian concept of justice and analyses practices and procedures of justice, proposing a different view of it and introducing his idea of 'justice as fairness'¹⁵². He defines it as

the mutual acceptance, from a general position, of the principles on which a practice is founded, and how this in turn requires the exclusion from consideration of claims violating the principles of justice¹⁵³.

In his early paper, Rawls asserts that such concept of justice could be generally accepted,

since in the life of every society there must be at least some relations in which the parties consider themselves to be circumstanced and related as the concept of justice as fairness requires¹⁵⁴.

According to Rawls, such notion of justice could be applicable to describe all societies, because the difference among them resides «not in having or in failing to have this notion but in the range of cases to which they apply it and in the emphasis

¹⁵⁰ Dahl, 2006b:77.

¹⁵¹ Dahl, 2006b:15.

¹⁵² Rawls, 1958.

¹⁵³ Rawls, 1958:193.

¹⁵⁴ Rawls, 1958:194.

which they give to it as compared with other moral concepts»¹⁵⁵. In this view, societies differ not for the fact that some of them do not have the idea of justice, but because they apply the principles in different ways and to diverse areas of interest.

In his later and highly influential 1971 work, 'A Theory of Justice'¹⁵⁶, Rawls proposes a more systematic theory of 'justice as fairness', reinterpreting the notion of social contract and trying to solve the conflicts between liberty and equality. The American philosopher sets out to solve the problem of distributive justice, that is the problem of distributing goods to society according to just criteria.

Revising the traditional theory of the social contract, he explains his concept of justice as fairness through a mental experiment, «a purely hypothetical situation characterized so as to lead to a certain conception of justice»¹⁵⁷, that he calls «original position of equality»¹⁵⁸ describing it as follows:

No one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like [...] the parties do not know their conceptions of the good or their special psychological propensities¹⁵⁹.

Rawls advances that in order to eliminate conflicts of interests in defining what should be considered just for a society, the principles of justice should be «chosen behind a veil of ignorance»¹⁶⁰. In this sense, such principles are established without knowing one's own social and economic conditions in order to obtain a fair agreement:

This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. [...] The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair¹⁶¹.

¹⁵⁵ Ibid.

¹⁵⁶ Rawls, 1971/1999.

¹⁵⁷ Rawls, 1971/1999:11.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

According to Rawls, even if «no society can [...] be a scheme of cooperation which men enter voluntarily in a literal sense»¹⁶², a society that is able to reach a consensus over the definition of justice as fairness could be very close to such an ideal situation, because «its members are autonomous and the obligations they recognize self-imposed»¹⁶³. In this sense, the parties involved in the agreement should be «rational and mutually disinterested»¹⁶⁴, so that while they know that they have some rational plan of life, they do not know the details of this plan»¹⁶⁵. They know, in fact,

that in general they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are. Guided by the theory of the good and the general facts of moral psychology, their deliberations are no longer guesswork. They can make a rational decision in the ordinary sense¹⁶⁶.

Rawls makes the case for «the assumption of mutually disinterested rationality»¹⁶⁷ claiming that when people are in the original position, they are not moved by affection or rancor»¹⁶⁸ nor are they «envious or vain»¹⁶⁹, but rather they try to «advance their system of ends as far as possible [...] by attempting to win for themselves the highest index of primary social goods»¹⁷⁰.

In order to be assumed to be rational, however, the parties necessarily have to be capable of referring to a common and publicly well-known sense of justice, so that they can respect the principles they chose and «insure the integrity of the agreement made in the original position»¹⁷¹.

After such initial setting, Rawls proceeds to introduce the two principles which, in his opinion, naturally stem from the condition of the original position

¹⁶² Rawls, 1971/1999:12.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Rawls, 1971/1999:124.

¹⁶⁶ Ibid.

¹⁶⁷ Rawls, 1971/1999:125.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, [...] are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society¹⁷².

While, according to the first principle of equality, everyone should receive the same fundamental rights and duties, the second principle of difference holds it that, «since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life»¹⁷³, social and economic inequalities should not impinge on the will of the disadvantaged to cooperate and actively participate in the society. In this sense, Rawls argues that it is thus possible

to say that one conception of justice is more reasonable than another, or justifiable with respect to it, if rational persons in the initial situation would choose its principles over those of the other for the role of justice¹⁷⁴.

The theory of justice as fairness for Rawls is thus one «of rational choice»¹⁷⁵, in which it is possible to define justice «only if we know the beliefs and interests of the parties, their relations with respect to one another, the alternatives between which they are to choose, the procedure whereby they make up their minds»¹⁷⁶.

According to Rawls, the best institutional arrangements to accommodate the two principles of equality and difference are the democratic ones¹⁷⁷, since,

assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society¹⁷⁸.

The democratic institution are then considered to better serve in reconciling the two aspects of equality and liberty. Further than that, the American philosopher holds that constitutional democracy is a suitable and «workable political conception»¹⁷⁹ that

¹⁷² Rawls, 1971/1999:13.

¹⁷³ Ibid.

¹⁷⁴ Rawls, 1971/1999:15-16.

¹⁷⁵ Rawls, 1971/1999:16.

¹⁷⁶ Ibid.

¹⁷⁷ Rawls, 1971/1999:65.

¹⁷⁸ Ibid.

¹⁷⁹ Rawls, 1971/1999:171.

provides for «a reasonable approximation to an extension of our considered judgments»¹⁸⁰.

Rawls also remarks the fact that the application of the two principles to institutional contexts is bound to produce indeterminate results¹⁸¹, since «it is not always clear which of several constitutions, or economic and social arrangements, would be chosen»¹⁸². However, even when this was the case, justice should be considered «likewise indeterminate»¹⁸³. Such indeterminacy should not be considered as a defect, but rather as some expectable result¹⁸⁴, so that «on many questions of social and economic policy we must fall back upon a notion of quasi-pure procedural justice»¹⁸⁵. In later works¹⁸⁶, Rawls responds to some of the criticisms that are moved to him for giving a metaphysically and philosophically-biased justification for his notion of justice as fairness. He thus reasserts the peculiar political characteristics of his concept, by claiming that the concept «tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime»¹⁸⁷. In this sense, Rawls claims that such concept should avoid to be embedded in any kind of religious and philosophical interpretation:

The idea is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines. [...] the public conception of justice is to be political, not metaphysical¹⁸⁸.

In a similar way, when responding to the German philosopher Jürgen Habermas who doubted on the possibility to come to an actually shared and neutral original position in Rawls's theory¹⁸⁹, his American counterpart claims that the theory of justice as fairness could «be formulated independently of any particular comprehensive doctrine, religious, philosophical, or moral»¹⁹⁰. In this sense, even if it could be considered to «be derived from, or supported by, or otherwise related to one or more

¹⁸⁰ Ibid.

¹⁸¹ Rawls, 1971/1999:175.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Rawls, 1971/1999:176.

¹⁸⁵ Rawls, 1971/1999:175.

¹⁸⁶ Rawls, 1985; 1995.

¹⁸⁷ Rawls, 1985:225.

¹⁸⁸ Rawls, 1985:223

¹⁸⁹ Habermas, 1995.

¹⁹⁰ Rawls, 1995:134.

comprehensive doctrines»¹⁹¹, it should not be viewed as depending upon, or as presupposing»¹⁹² any particular ideological or moral assumption.

Another proceduralist view of democracy is advanced by the German philosopher and sociologist Jürgen Habermas, who, in his article 'Three Normative Models of Democracy'¹⁹³, criticises both liberal and republican normative democratic theories and proposes a comprehensive redefinition of the concept in the light of both traditions. Habermas's objective is to «sketch a proceduralist view of democracy and deliberative politics»¹⁹⁴, namely 'discourse theory', that put together «pragmatic considerations, compromises, discourses of self-understanding and justice»¹⁹⁵, assuming that «reasonable or fair results are»¹⁹⁶ always achievable. The German philosopher aims at grounding the normative features of the theory, not on reason or ethical choices, but on «the very structure of communicative actions»¹⁹⁷. In this sense, he argues that, in discourse theory, the success of deliberative politics depends «not on a collectively acting citizenry but on the institutionalization of the corresponding procedures and conditions of communication»¹⁹⁸.

Through his discourse theory, Habermas aims at analysing «the *higher-level intersubjectivity* of communication processes»¹⁹⁹ in formal democratic institutions as well as in «informal networks of the public sphere»²⁰⁰, which have to be taken into account in the process of will and opinion-formation. Habermas explains that the process of opinion-formation always influences legislation by means of civil society:

Informal public opinion-formation generates “influence”; influence is transformed into “communicative power” through the channels of political elections; and communicative power is again transformed into “administrative power” through legislation. As in the liberal model, the boundaries between “state” and “society” are respected; but in this case, civil

¹⁹¹ Ibid.

¹⁹² Rawls, 1995:135.

¹⁹³ Habermas, 1994.

¹⁹⁴ Habermas, 1994:1.

¹⁹⁵ Habermas, 1994:6.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Habermas, 1994:7.

¹⁹⁹ Habermas, 1994:8. Italics and bold in the original.

²⁰⁰ Ibid.

society provides the social basis of autonomous public spheres that remain as distinct from the economic system as from the administration²⁰¹.

Habermas puts particular emphasis of the concept of solidarity, which, according to him, would prevail over the two other «mechanisms of social integration - money and administrative power». Solidarity thus could not only and «no longer be drawn solely from sources of communicative action», but should also be encouraged by «widely expanded and differentiated public spheres as well as through legally institutionalized procedures of democratic deliberation and decision-making». In this view, apart from fostering informal settings of opinion-formation, solidarity, more than money and administrative power, also plays a key role in the establishment of a wide variety of formal institutionalised deliberative arenas.

The establishment of democratic procedures through discourse theory can only be possible by means of «detection, identification, and interpretation of those problems that affect society as a whole» with the intervention of a «self-organizing legal community». Such subjectless and decentralized forms of communication can be thought of as means to «regulate the flow of deliberations in such a way that their fallible results enjoy the presumption of rationality»²⁰².

In his later book 'Between Facts and Norms'²⁰³, he describes such assumption of rationality as the ideal to initiate a «reconstructive sociology of democracy»²⁰⁴. According to Habermas, it is possible to «identify particles and fragments of an "existing reason" already incorporated in political practices, however distorted these maybe»²⁰⁵. In his approach, he gives relevance to «the rules of discourse and forms of argumentation»²⁰⁶ that make it possible to reach an understanding and the normative aspect of his theory originates from «the structure of linguistic communication and the communicative mode of sociation»²⁰⁷.

²⁰¹ Ibid.

²⁰² All citations Habermas, 1994:8.

²⁰³ Habermas, 1996.

²⁰⁴ Habermas, 1996:297.

²⁰⁵ Ibid.

²⁰⁶ Habermas, 1996:296-297.

²⁰⁷ Habermas, 1996:297.

Through language, understanding and society the normative aspect of democratic procedure can then be established «in a pragmatic shape»²⁰⁸ and «the realization of the system of rights is measured by the forms in which this content is institutionalized»²⁰⁹. Such a pragmatic system can be legitimated only by the presence of discursive opinion and will-formation procedures whose quality can function as an integrative social factor. However, in order for deliberative politics to reach good quality, according to Habermas, an «interplay between democratically institutionalized will-formation and informal opinion-formation»²¹⁰ is necessary, so that the one aspect complements the other.

Habermas defends a notion of discourse theory that does not require communication to occur only through formal procedural means, but he claims for the need to ensure the presence of informal communicative channels too. He believes that the interplay between the two areas of discursive communication has to be safeguarded and that it has to be «the power holder [that, BQ] must remain *neutral* with respect to competing and mutually incompatible conceptions of the good life»²¹¹. Because neutrality refers to «the *priority* of justice over the good», one has to correctly «distinguish *procedural* constraints on public discourses from a constraint or limitation on the *range of topics* open to public discourse»²¹². In this sense, both informal and formal opinion and will-formation activities «should be open to ethically relevant questions of the good life, of collective identity, and of need interpretation»²¹³.

The proceduralist strand of thought had a great impact and resonance on the study of democracy and on political disciplines throughout the second half of the twentieth century. Having yet undergone continuous revisions to make procedural definitions more inclusive, it still constitutes the mainstream political thought, so that in the 1990s liberal democracy is thought by the political scientist Yoshihiro Francis Fukuyama to be «the "end point of mankind's ideological evolution" and the "final form of human government," and as such it constitutes the "end of history"»²¹⁴.

²⁰⁸ Habermas, 1996:303.

²⁰⁹ Ibid.

²¹⁰ Habermas, 1996:308.

²¹¹ Habermas, 1996:309. Italics in the original.

²¹² Habermas, 1996:313. Italics in the original.

²¹³ Ibid.

²¹⁴ Fukuyama, 1992:xi.

Fukuyama argues that unlike the preceding forms of government that «were characterized by grave defects and irrationalities that led to their eventual collapse»²¹⁵, liberal democracy does not suffer «from such fundamental internal contradictions»²¹⁶. The social problems experienced by modern stable democracies in Europe and North America, according to Fukuyama, are not due to the contradictions of democracy as a form of government, but rather to the «incomplete implementation of the twin principles of liberty and equality»²¹⁷.

Although he recognises that Islam is «a systematic and coherent ideology, just like liberalism and communism»²¹⁸, Fukuyama asserts that it has no appeal outside its geographical area of influence, and that liberal democracy is «the only coherent political aspiration that spans different regions and cultures around the globe»²¹⁹.

Such thrust would result from the

development of human societies from simple tribal ones based on slavery and subsistence agriculture, through various theocracies, monarchies, and feudal aristocracies, up through modern liberal democracy and technologically driven capitalism²²⁰.

Having undergone technological and economic development, the world population becomes «more cosmopolitan and better educated»²²¹, and increased living standards make people «demand not simply more wealth but recognition of their status»²²².

In his work, Fukuyama aims at demonstrating the world's advancements toward democracy, and establishing which countries can be considered democratic and which are still to initiate the process of democratization. He thus proposes a formal definition of democracy:

In judging which countries are democratic, we will use a strictly formal definition of democracy. A country is democratic if it grants its people the right to choose their own

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Fukuyama, 1992:45.

²¹⁹ Fukuyama, 1992:xiii.

²²⁰ Fukuyama, 1992:xii.

²²¹ Fukuyama, 1992:xiii.

²²² Ibid.

government through periodic, secret-ballot, multi-party elections, on the basis of universal and equal adult suffrage²²³.

According to him, liberal democracy is to put an end to the ongoing dialogue on the best form of government:

If human societies over the centuries evolve toward or converge on a single form of socio-political organization like liberal democracy, if there do not appear to be viable alternatives to liberal democracy, and if people living in liberal democracies express no radical discontent with their lives, we can say that the dialogue has reached a final and definitive conclusion²²⁴.

In this view, cultural relativism, which «seemed plausible to our century because for the first time Europe found itself forced to confront non-European cultures in a serious way through the experience of colonialism and de-colonization»²²⁵, has no reason to exist anymore, nor should it keep «undermining democratic and tolerant values»²²⁶. Relativism, however, could be permanently put aside with the «continuing convergence in the types of institutions governing most advanced societies; and [...] the homogenization of mankind»²²⁷.

Just from a cultural relativist perspective, the procedural definition of democracy is also used by the American political scientist Samuel Phillips Huntington in his 1991 'The Third Wave: Democratization in the late Twentieth Century'²²⁸, to identify the occurrence of three different waves of democratisation in the modern world. Drawing on Dahl's definition of polyarchy as involving «the two dimensions - contestation and participation»²²⁹, Huntington defines a wave of democratisation as

a group of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period of time. A wave also usually involves liberalization or partial democratization in political systems that do not become fully democratic²³⁰.

²²³ Fukuyama, 1992:43.

²²⁴ Fukuyama, 1992:137.

²²⁵ Fukuyama, 1992:338.

²²⁶ Fukuyama, 1992:332.

²²⁷ Fukuyama, 1992:338.

²²⁸ Huntington, 1991.

²²⁹ Huntington, 1991:7.

²³⁰ Huntington, 1991:15.

Starting from such definition, Huntington sets out to examine a number of benchmarks to consider «what extent political systems are democratic, to compare systems, and to analyze whether systems are becoming more or less democratic»²³¹.

Huntington identifies three distinct waves of democratisation in the modern world²³²: the first one spans about a century and goes from 1828 to 1926. In such period, as a result of the French and American revolutions, there is a gradual constitution of national democratic institutions. The second short wave starts during the World War II from the Allies' occupation of some European and Asian countries, and goes from 1946 to 1962. The American scientist then identifies a third still ongoing wave of democratisation that starts with «the end of the Portuguese dictatorship in 1974»²³³, and that over the last fifteen years has led to widespread liberalisation of autocratic regimes in some countries, and to the replacement of authoritarian regimes with democratic ones «in approximately thirty countries in Europe, Asia, and Latin America»²³⁴.

After defining the three different waves, Huntington sets out to analyse the causes that during the 1960s and 1970s initiated such new and fast third democratisation process. First, he observes that, «in a world where democratic values were widely accepted»²³⁵, authoritarian regimes have increasing problems in trying to legitimate their governments. Secondly, during the 1960s there has been an exceptional global economic growth «which raised living standards, [and, BQ] increased education»²³⁶. Thirdly, Huntington sees in the Second Vatican Council a strong change «in the doctrine and activities of the Catholic Church»²³⁷ that, unlike its past attitude, can oppose authoritarianism and propose «social, economic and political reform»²³⁸. Furthermore, according to Huntington, the politics of external actors such as the European Community and the Soviet Union, starts to open up to political and economic liberal values²³⁹. Finally, the first new transitions to democracy since 1974

²³¹ Huntington, 1991:7.

²³² Huntington, 1991:15

²³³ Huntington, 1991:21.

²³⁴ Ibid.

²³⁵ Huntington, 1991:45.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

have produced «"snowballing" or demonstration effects»²⁴⁰, that, «enhanced by new means of international communication»²⁴¹, have stimulated political change in other countries.

From the analysis of such causes and comparison with the previous two waves, Huntington concludes that the third one is a more peaceful, «Catholic wave»²⁴² in which «compromise, elections and nonviolence [...] in varying degrees [...] characterized most of the transformations, replacements, and transplacements of that wave»²⁴³.

1.3 Liberal, communitarian and multicultural criticisms to 'mainstream democracy'

The normative political theory of liberal democracy described above comes to be considered mainstream democracy during the second half of the twentieth century. However, it is also criticised by a variety of scholars, who contribute to redefining it accordingly. Such criticisms could be grouped into different broad and interlacing strands of thought that refer to both internal liberal and libertarian thinkers, as well as external post-structuralist, multicultural and postcolonial standings.

Criticism came from the part of classical liberalism, from which Friedrich Hayek, in his three-volume work 'Law, Legislation and Liberty'²⁴⁴, criticises the popular contemporary notion of liberal democracy arguing that

we have [...] become so used to regard as democratic only the particular set of institutions which today prevails in all Western democracies, and in which a majority of a representative body lays down the law *and* directs government, that we regard this as the only possible form of democracy. As a consequence we do not care to dwell on the fact that this system not only has produced many results which nobody likes, even in those countries in which on the whole it has worked well, but also has proved unworkable in most countries where these democratic institutions were not restrained by strong traditions about the appropriate tasks of the representative assemblies. Because we rightly believe in the basic ideal of democracy we feel usually bound to defend the particular institutions which have long been accepted as its

²⁴⁰ Huntington, 1991:46.

²⁴¹ Ibid.

²⁴² Huntington, 1991:76.

²⁴³ Huntington, 1991:163.

²⁴⁴ Hayek, 1982.

embodiment, and hesitate to criticize them because this might weaken the respect for an ideal we wish to preserve²⁴⁵.

According to Hayek, the contemporary notion of democracy has become so well established as an ideal, more than a form of government, that it is impossible for people today to think without it. However, the economist and philosopher's objective is to show that «what in a society of free men can alone justify coercion is a predominant opinion on the principles which ought to govern and restrain individual conduct»²⁴⁶. However, in such a democracy as the one practiced today some problems are bound to arise.

The first sets of questions refer to what was previously called, 'the tyranny of the majority', or «the necessity of forming organized majorities for supporting a programme of particular actions in favour of special groups»²⁴⁷, that Hayek considers to have «introduced a new source of arbitrariness and partiality»²⁴⁸. Such paradoxical aspect of democracy results from «the possession of unlimited power»²⁴⁹ of the people, since «the majority of the representative assembly, in order to remain a majority, *must* do what it can to buy the support [...] by granting [...] special benefits»²⁵⁰. Such distortion, according to Hayek would produce «an unintended outcome [...] rather than a deliberate decision of the majority or anybody else»²⁵¹. An unrestricted democratic government would thus become «the playball of all the separate interests it has to satisfy to secure majority support»²⁵².

As a consequence of the tyranny of the majority, the unrestricted power of democratic representatives would inevitably lead to «legalized corruption»²⁵³, since politicians who want to maintain their positions, and to «buy majority support»²⁵⁴, are forced to dispense «gratuities at the expense of somebody else *who cannot be readily identified*»²⁵⁵. Moreover, when such forms of democracy are transferred to other

²⁴⁵ Hayek, 1982:1-2. Italics in the original.

²⁴⁶ Hayek, 1982:135.

²⁴⁷ Hayek, 1982:3.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid. Italics in the original.

²⁵¹ Hayek, 1982:4.

²⁵² Hayek, 1982:99.

²⁵³ Hayek, 1982:103.

²⁵⁴ Ibid.

²⁵⁵ Ibid. Italics in the original.

cultures where there exist traditions different from those where the concept was originated, they have not been successful²⁵⁶.

In the light of such drawbacks of modern democracy, Hayek defends classical liberalism and argues that

Under the influence of socialist agitation in the course of the last hundred years the very sense in which many of the key words describing political ideals are used has so changed meaning that one must today hesitate to use even words like 'liberty', 'justice', 'democracy' or 'law', because they no longer convey the meaning they once did²⁵⁷.

Hayek thus criticises the call for social justice that contribute to making liberal terms such as 'liberty' or 'democracy' blurred in such a way that they have lost their meaning²⁵⁸. With regard to democracy, such concept is not anymore intended as «a procedure of arriving at agreement on common action»²⁵⁹, but rather it prescribes «what the aim of those activities ought to be»²⁶⁰. In this sense, Hayek claims that democracy has «largely lost the capacity of serving as a protection against arbitrary power»²⁶¹, because it has been long used to describe «systems that lead to the creation of new privileges by coalitions or organized interests»²⁶², causing more and more people to turn against it²⁶³.

Hayek thus proposes to preserve the original ideal, by inventing a new name for it²⁶⁴, and use the word «demarchy to describe [...] [it, BQ] by a name that is not tainted by long abuse»²⁶⁵.

In the 1970s, the American political theorist Murray Rothbard examines classical liberalism and initiates a modern libertarian movement. In what is considered the modern libertarian manifesto, 'For a New Liberty'²⁶⁶, Rothbard presents modern libertarianism as a creed that «emerged from the “classical liberal” movements of the seventeenth and eighteenth centuries, [...] from the English

²⁵⁶ Ibid.

²⁵⁷ Hayek, 1982:136.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Hayek, 1982:137.

²⁶² Hayek, 1982:40.

²⁶³ Ibid.

²⁶⁴ Hayek, 1982:39.

²⁶⁵ Hayek, 1982:40.

²⁶⁶ Rothbard, 1973/2006.

Revolution of the seventeenth century»²⁶⁷. Moreover, he considers its initiator to be John Locke with his assertion of the «natural rights of each individual to his person and property»²⁶⁸. The founding principle of modern libertarianism is the 'nonaggression axiom': the fact that «no man or group of men may aggress against the person or property of anyone else»²⁶⁹. Rothbard conceives of aggression as «the initiation of the use or threat of physical violence against the person or property of anyone else»²⁷⁰. Consequently, he also states that the libertarian creed also defends free speech and all the other connected civil liberties:

The freedom to speak, publish, assemble, and to engage in such “victimless crimes” as pornography, sexual deviation, and prostitution (which the libertarian does not regard as “crimes” at all, since he defines a “crime” as violent invasion of someone else’s person or property). Furthermore, he regards conscription as slavery on a massive scale. And since war, especially modern war, entails the mass slaughter of civilians, the libertarian regards such conflicts as mass murder and therefore totally illegitimate²⁷¹.

In this sense, according to Rothbard, for the right to self-ownership, each individual is the owner of their body, and they are able to control it without any external or social intervention. In this thinking, «each individual must think, learn, value, and choose his or her ends and means in order to survive and flourish»²⁷².

Since the State had the power to «commit actions that almost everyone agrees would be immoral, illegal, and criminal if committed by any person or group in society»²⁷³, one of the libertarian tasks is to demystify and desanctify the State²⁷⁴ and

to demonstrate repeatedly and in depth that not only the emperor but even the “democratic” State has no clothes; that all governments subsist by exploitive rule over the public; and that such rule is the reverse of objective necessity²⁷⁵.

The State is thus considered as a tyrannical authority equal to a king or a dictator. Rothbard also advances the inexistence of society as such, but only «of interacting

²⁶⁷ Rothbard, 1973/2006:2.

²⁶⁸ Rothbard, 1973/2006:4.

²⁶⁹ Rothbard, 1973/2006:27.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Rothbard, 1973/2006:34.

²⁷³ Rothbard, 1973/2006:28.

²⁷⁴ Ibid.

²⁷⁵ Rothbard, 1973/2006:29-30.

individuals»²⁷⁶ controlled by «a group of oligarchs—in practice, government bureaucrats»²⁷⁷ who are capable of expropriating them of their property. As a consequence, from an economic point of view, Rothbard supports free exchange and laissez-faire capitalism.

The American theorist also claims that there is no historical evidence to justify the aggression of totalitarian states only for the fact that they are considered to be less democratic. In this sense, Rothbard argues against the assumption that «in any conflict, the State which is more democratic or allows more internal freedom is necessarily or even presumptively the victim of aggression by the more dictatorial or totalitarian State»²⁷⁸.

In his later work, 'The Ethics of Liberty'²⁷⁹, the American political theorist criticises the contemporary widespread assumption that political scientists «can avoid the necessity of moral judgments, and that he can help frame public policy without committing himself to any ethical position»²⁸⁰. Rothbard maintains that

the avoidance of explicit ethical judgments leads political scientists to one overriding implicit value judgment—that in favor of the political status quo as it happens to prevail in any given society. At the very least, his lack of a systematic political ethics precludes the political scientist from persuading anyone of the value of any change from the status quo²⁸¹.

In his view, not only such assumption of neutrality is bound to hide their support for the mainstream political order, given the fact that every individual has different and «personal scale of values»²⁸², but, further than that, such political scientists would prove to have a limited persuasive capacity.

Rothbard then makes it clear that the libertarians' fundamental value is that of liberty as «a moral principle, grounded in the nature of man»²⁸³, that is related to justice, and to «the abolition of aggressive violence in the affairs of men»²⁸⁴.

²⁷⁶ Rothbard, 1973/2006:41.

²⁷⁷ Ibid.

²⁷⁸ Rothbard, 1973/2006:363-364.

²⁷⁹ Rothbard, 1998.

²⁸⁰ Rothbard, 1998:25.

²⁸¹ Ibid.

²⁸² Rothbard, 1998:258.

²⁸³ Ibid.

²⁸⁴ Ibid.

Given the absolute priority and urge for libertarians to free people of all possible constrictions, Rothbard also advocates the immediate elimination of the State. The American theorist also explains that such undertaking should not be considered as «unrealistic or "Utopian", because--in contrast to such goals as the "elimination of poverty"- its achievement is entirely dependent on man's will»²⁸⁵.

In his 1974 work 'Anarchy, State, and Utopia'²⁸⁶, the libertarian political philosopher Robert Nozick also criticises mainstream liberal democracy, for its extensive allowance of State control. Nozick claims that such pervasive presence of the state in modern liberal democracies violates the «persons' rights not to be forced to do certain things, and is unjustified»²⁸⁷.

The philosopher therefore proposes the constitution of a 'minimal state' that allows for «the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on»²⁸⁸. In this way, not only the state could not possibly force «some citizens to aid others»²⁸⁹, but it would also be prevented from prohibiting certain kinds of «activities to people for their own good or protection»²⁹⁰, while ensuring that voluntary actions are always possible.

According to Nozick, Rothbard's anarchist position imagined as a state of nature, is actually untenable to attain, because «even though no one intended this or tried to bring it about»²⁹¹, the constitution of a minimal form of state would always appear «by a process which need not violate anyone's rights»²⁹².

Nozick thus aims to study such original state, «investigating its nature and defects»²⁹³ in order to decide «whether there should be a state rather than anarchy»²⁹⁴. In his view,

if one could show that the state would be superior even to this most favored situation of anarchy, the best that realistically can be hoped for, or would arise by a process involving no

²⁸⁵ Rothbard, 1998:259.

²⁸⁶ Nozick, 1974.

²⁸⁷ Nozick, 1974:ix.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Nozick, 1974:xi.

²⁹² Ibid.

²⁹³ Nozick, 1974:5.

²⁹⁴ Ibid.

morally impermissible steps, or would be an improvement if it arose, this would provide a rationale for the state's existence; it would justify the state²⁹⁵.

With this objective in mind, Nozick starts a «hypothetical account»²⁹⁶ on how a minimal state should be considered to be a democratic one «without any blatant violation of anyone's rights»²⁹⁷. More specifically such transformation of the state of nature would be made possible because of the fact that groups of individuals seeking for protection would necessarily and gradually constitute into associations. Such a bond between individuals would also create a moral constraint and would ultimately depend on the «fundamental mode of relationship among persons»²⁹⁸.

In the last part of his work, Nozick suggests that such a «morally favored state, the only morally legitimate state»²⁹⁹ is the best way to keep the utopian aspirations of free individuals safe from the limited state of nature, in that it treats them as

inviolable individuals, who may not be used in certain ways by others as means or tools or instruments or resources; it treats us as persons having individual rights with the dignity this constitutes. Treating us with respect by respecting our rights, it allows us, individually or with whom we choose, to choose our life and to realize our ends and our conception of ourselves, insofar as we can, aided by the voluntary cooperation of other individuals possessing the same dignity³⁰⁰.

During the 1970s, a critique of utilitarianism comes also from the American philosopher of law Ronald Dworkin, who, in his book "Taking Rights Seriously"³⁰¹ questions the popular positivist interpretation of rights. Dworkin asserts that «the idea of a right to liberty is a misconceived concept that does disservice to political thought»³⁰² because, on the one hand, it establishes a necessary conflict between liberty and other sets of rights, and, on the other, it simplifies and generalises the reason for protecting only certain liberties at the expense of others³⁰³. In this sense, the American philosopher believes that in a state governed according to liberal

²⁹⁵ Ibid.

²⁹⁶ Nozick, 1974:290.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Nozick, 1974:333.

³⁰⁰ Nozick, 1974:333-334.

³⁰¹ Dworkin, 1977.

³⁰² Dworkin, 1977:271.

³⁰³ Ibid.

egalitarian principles, the key issue is that of establishing «what inequalities in goods, opportunities and liberties are permitted in such a state and why»³⁰⁴. With the aim of contrasting the idea of universal rights, Dworkin thus introduces the need for a just society to «recognize a variety of individual rights, some grounded on very different sorts of moral considerations from others»³⁰⁵.

In his opinion, representative democracy and the majoritarian principle cannot take into proper account «the intensity, as distinct from the number, of particular preferences, and because techniques of political persuasion, backed by money, may corrupt the accuracy with which votes represent the genuine preferences of those who have voted»³⁰⁶. More specifically, Dworkin argues that in democratic systems it is impossible to understand whether votes and preferences in general are guided by personal or external factors. As a consequence, there would be no valid method to only consider the first set, thus ignoring external constraints. According to the philosopher, «personal and external preferences are sometimes so inextricably combined [...] that the discrimination is psychologically as well as institutionally impossible»³⁰⁷.

In order to overcome this impasse, Dworkin proposes an alternative anti-utilitarian general theory of rights, introducing the concept of «an individual political right»³⁰⁸, that aims at protecting «the fundamental right of citizens to equal concern and respect by prohibiting decisions that seem, antecedently, likely to have been reached by virtue of the external components of the preferences democracy reveals»³⁰⁹. The external components of preferences are to be referred to as «political or moral theories, which the political process cannot discriminate or eliminate»³¹⁰. In this sense, Dworkin suggests that, instead of presupposing that there is only «a single right answer to complex questions of law and political morality»³¹¹, one should think that «there is sometimes no single right answer, but only answers»³¹². In his opinion a

³⁰⁴ Dworkin, 1977:273.

³⁰⁵ Dworkin, 1977:272.

³⁰⁶ Dworkin, 1977:276.

³⁰⁷ Ibid.

³⁰⁸ Dworkin, 1977:277.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Dworkin, 1977:279.

³¹² Ibid.

«wiser and more realistic»³¹³ way to consider such controversial questions would be to assume that there is always «a set of answers and arguments that must be acknowledged to be, from any objective or neutral standpoint, equally good»³¹⁴.

In his later book 'Is Democracy Possible Here?'³¹⁵, Dworkin claims that the «majority rule is by no means always an appropriate decisionmaking procedure»³¹⁶ and that «the idea of equal political power is a myth»³¹⁷. However, he also argues that the principles of liberty and equality, that «almost all Americans—and almost all citizens of other nations with similar political cultures—can embrace»³¹⁸, could not be rejected «without abandoning ethical or religious commitments»³¹⁹. Since he deems it unrealistic to renounce such beliefs, he introduces the concept of dignity to describe the modern liberal understanding of justice. In this light, and considering it impossible to escape moral political positions, Dworkin finally suggests that

any adequate theory of human rights insists that a nation not injure anyone in the way its laws and traditions forbid it to injure its own citizens; that only a tolerant secular state respects the personal responsibility of its citizens for ethical value; that a legitimate state must aim at ex ante equality through a tax structure inspired by the old political ideal of a collective insurance pool; and that democracy requires a culture of political argument and respect, not just naked majority rule³²⁰.

The Scottish moral philosopher Alasdair MacIntyre, in his 1981 work 'After Virtue'³²¹, although being far from considering the relativity of moral political positions, comes to similar conclusions. He argues that in the modern world there is great confusion both in «the language of morality»³²² and in «the language of natural science»³²³, and that, as a consequence, people continue to use words as «simulacra of

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Dworkin, 2006.

³¹⁶ Dworkin, 2006:140.

³¹⁷ Dworkin, 2006:142.

³¹⁸ Dworkin, 2006:161.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ MacIntyre, 2007.

³²² Ibid.

³²³ MacIntyre, 2007:2.

morality»³²⁴, without actually managing to understand both moral theoretical and practical issues.

MacIntyre claims that moral statements of modern times have three peculiar features. The first is the «conceptual incommensurability of the rival arguments», since they stem from «rival premises», there is supposed to be «no rational way of weighing the claims of one as against another». According to the Scottish philosopher, «each premise employs some quite different normative or evaluative concept from the others, so that the claims made upon us are of quite different kinds»³²⁵. The second characteristic that MacIntyre identifies in modern moral arguments is the tendency to present them in an impersonal fashion, as if they presuppose «the existence of impersonal criteria - the existence, independently of the preferences or attitudes of speaker and hearer, of standards of justice or generosity or duty»³²⁶. Thirdly, such incommensurable premises of the rival arguments appear to «have a wide variety of historical origins»³²⁷.

Given such features typical of moral arguments in modern times, MacIntyre draws on the Aristotelian conception of justice to claim that whenever it is impossible to reach practical agreement on the notion of justice, it is also impossible to constitute an actually political community:

Agreement on what the relevant rules are to be is always a prerequisite for agreement upon the nature and content of a particular virtue. But this prior agreement in rules is [...] something which our individualist culture is unable to secure³²⁸.

Thus, even if modern society nowadays has a consistent number of rules to abide by, still «basic controversies cannot [...] be rationally resolved»³²⁹.

The American political philosopher Michael Walzer holds similar conceptions of justice in his 1983 book 'Spheres of Justice'³³⁰, where he analyses Marx's materialism and communism to devise a theory of distributive justice in which

³²⁴ Ibid.

³²⁵ All quotations MacIntyre, 2007:8.

³²⁶ MacIntyre, 2007:9.

³²⁷ MacIntyre, 2007:10.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Walzer, 1983.

individuals came «together to share, divide, and exchange»³³¹. In this sense, Walzer makes a connection between patterns of distribution and cultural differences. According to him,

different political arrangements enforce, and different ideologies justify, different distributions of membership, power, honor, ritual eminence, divine grace, kinship and love, knowledge, wealth, physical security, work and leisure, rewards and punishments, and a host of goods more narrowly and materially conceived - food, shelter, clothing, transportation, medical care, commodities of every sort, and all the odd things (paintings, rare books, postage stamps) that human being collect³³².

In his view, distributive systems always entail a series of interconnected distributive criteria, and the market is only one part of them. Distribution can thus be considered to follow different patterns according to different criteria, such as «desert, qualification, birth and blood, friendship, need, free exchange, political loyalty, democratic decision»³³³, that have always been «invoked by competing groups, confused with one another»³³⁴.

In this thinking, equality is not intended to be as «an identity of possessions»³³⁵, but rather as «a complex relation of persons, mediated by goods we make, share, and divide among ourselves»³³⁶, that the American philosopher terms 'equal complexity'. Equality thus comes to indicate «a diversity of distributive criteria that mirrors the diversity of social goods»³³⁷. Since, according to Walzer, «social goods have social meanings, [...] we find our way to distributive justice through an interpretation of those meanings»³³⁸, while looking for internal distributive principles. The activity of exchanging goods, for Walzer, has to take place within fixed distributive spheres that are not supposed to communicate or overlap. In this sense, «to convert one good into another, when there is no intrinsic connection between the two, is to invade the sphere where another company of men and women properly rules»³³⁹. As an example, «the

³³¹ Walzer, 1983:15.

³³² Ibid.

³³³ Walzer, 1983:16.

³³⁴ Ibid.

³³⁵ Walzer, 1983:24.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Walzer, 1983:25.

³³⁹ Ibid.

use of political power to gain access to other goods is a tyrannical use»³⁴⁰. Furthermore, in order for goods' exchanges to take place correctly, such activities could occur following the principles of free exchange, desert, and need.

According to Walzer, once the distributive spheres of justice have been properly defined and limited so that they are autonomous, in the political sphere, the only possible system would necessarily be democracy³⁴¹. In his view, democracy is «a way of allocating power and legitimating its use - or better, it is the political way of allocating power»³⁴². The only possible way for citizens to be allocated resources is by convincing politicians of the soundness of one's arguments. Thus the American philosopher asserts that

democracy puts a premium on speech, persuasion, rhetorical skill. Ideally, the citizen who makes the most persuasive argument - that is the argument that actually persuades the largest number of citizens - gets his way. But he can't use force, or pull rank, or distribute money; he must talk about the issues at hand. And all the other citizens must talk, too, or at least have a chance to talk³⁴³.

Walzer calls such struggle for competitive arguments «the rule of reasons»³⁴⁴, which requires that «all non-political goods have to be deposited outside: weapons and wallets, titles and degrees»³⁴⁵. In this sense, a democratic decision can only be reached by «the politically most skilful»³⁴⁶ citizens, leaving «democratic politics [...] a monopoly of politicians»³⁴⁷.

Since Walzer considers justice as «relative to social meanings»³⁴⁸, in line with MacIntyre's moral understanding of community, he views the existence of different communities as necessarily separated and enclosed into fences:

There are an infinite number of possible cultures, religions, political arrangements, geographical conditions, and so on. A given society is just if its substantive life is lived in a certain way - that is, in a way faithful to the shared understandings of the members. (When

³⁴⁰ Ibid.

³⁴¹ Walzer, 1983:202.

³⁴² Ibid.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Walzer, 1983:203.

³⁴⁷ Ibid.

³⁴⁸ Walzer, 1983:208.

people disagree about the meaning of social goods, when understandings are controversial, then justice requires that the society be faithful to the disagreements, providing institutional channels for their expression, adjudicative mechanisms, and alternative distributions.)³⁴⁹

Different cultures and communities have different meanings of justice exactly because «a community's culture is the story of its members [...] so as to make sense of all the different pieces of their social life»³⁵⁰. In this understanding only through the constitutions of boundaries it is possible to come to a shared definition of justice: «Good fences make just societies»³⁵¹. However, since «we never know exactly where to put the fences» for the fact that they continually change, the goods and social meanings that communities exchange are artefacts that have to be remade all the times³⁵². As a consequence to the occurrence of «shifts in social meaning [...] we have no choice but to live with the continual probes and incursions through which these shifts are worked out»³⁵³.

During the late 1990s and throughout the first decade of the twenty-first century, the normative theory of liberal democracy is rediscussed also by an internal liberal 'deliberative' group of thinkers. Drawing on Habermas's notion of deliberative and pragmatic politics, such liberal scholars try to improve and increase communication between political representatives and citizens, and to encourage actual deliberation and participation of citizens in making political decisions.

In 1997, the two American scholars James Bohman and William Rehg edit a first collection of essays on deliberative democracy³⁵⁴ and define it as «the idea that legitimate lawmaking issues from the public deliberation of citizens»³⁵⁵, in accordance with «ideals of rational legislation, participatory politics, and civic self-governance»³⁵⁶. Their original assumption is that «a democracy based on public deliberation presupposes that citizens or their representatives can take counsel together about what laws and policies they ought to pursue as a commonwealth»³⁵⁷.

³⁴⁹ Ibid.

³⁵⁰ Walzer, 10983:212.

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ Bohman & Rehg, 1997.

³⁵⁵ Bohman & Rehg, 1997:ix.

³⁵⁶ Ibid.

³⁵⁷ Bohman & Rehg, 1997:x.

Considered as such, deliberative democracy should not be considered as a mere «self-interested competition governed by bargaining and aggregative mechanisms»³⁵⁸, but rather as a way of coming «to affirm a common good in some sense»³⁵⁹, while safeguarding «a variety of individual interests»³⁶⁰.

In his 1998 survey of deliberative democracy³⁶¹, the philosopher James Bohman asserts that it could be an «appealing basis for genuine reform and innovation»³⁶² of the debate on democracy. He also states that the objective of deliberation is that of reaching consensus, intended as «the agreement of all those affected by a decision»³⁶³. He thus defines deliberative democracy as «a family of views according to which the public deliberation of free and equal citizens is the core of legitimate political decision making and self government»³⁶⁴. Deliberation in this sense is conceived as resting upon «the ideal of public reason»³⁶⁵, requiring that legitimate decision be viewed as acceptable by everyone through «free public reasoning»³⁶⁶ of equals.

The three aspects that were analysed by the deliberative strand of thought related basically to the study of the moral and epistemic justification of deliberative procedures; to the implementation of such deliberative procedures in already existing public political institutions; and the study of empirical problems as well as the comparison of potentially and different deliberative protocols³⁶⁷.

Political scholars Amy Gutmann and Dennis Thompson intervene against the «effort to keep democratic theory procedurally pure»³⁶⁸, and claim that «any adequate theory must include substantive as well as procedural principles»³⁶⁹. They thus propose a theory of deliberative democracy that offers such an approach that, apart from procedural norms, also includes «substantive principles (such as basic liberty

³⁵⁸ Bohman & Rehg, 1997:xiii.

³⁵⁹ Bohman & Rehg, 1997:x.

³⁶⁰ Ibid.

³⁶¹ Bohman, 1998.

³⁶² Bohman, 1998:423.

³⁶³ Bohman, 1998:400.

³⁶⁴ Bohman, 1998:401.

³⁶⁵ Ibid.

³⁶⁶ Bohman, 1998:402.

³⁶⁷ Bohman, 1998:401.

³⁶⁸ Gutmann & Thompson, 2002:153.

³⁶⁹ Ibid.

and fair opportunity) that extend fairness to persons (for the sake of reciprocity, mutual respect, or fairness itself)³⁷⁰.

In a later work³⁷¹, the two theorists also set out a series of moral political features that a deliberative democracy should have. First, since individuals should be considered and treated as independent and active subjects who participate in the governance of their community, «leaders should [...] give reasons for their decisions, and respond to the reasons that citizens give in return»³⁷². Second, such reasons should be «accessible to all the citizens to whom they are addressed»³⁷³ in the sense that they should be given publicly and clearly, so that everybody can «understand its essential content»³⁷⁴. Third, since decisions made in deliberative democracy should last for some time, the deliberation that precedes the poll should be carried out in a responsible way to positively influence the resolutions of the government. Fourth, deliberation should also be dynamic, in order to keep «open the possibility of a continuing dialogue»³⁷⁵, so that citizens' criticism could make it possible to do away with past decisions and advance other new proposals. As a consequence, dialogue would always follow «the principle of the economy of moral disagreement»³⁷⁶, according to which «citizens and their representatives should try to find justifications that minimize their differences with their opponents»³⁷⁷.

In a similar fashion, the American political philosopher Joshua Cohen supports a view of deliberative democracy «as a fundamental political ideal and not simply as a derivative ideal that can be explained in terms of the values of fairness or equality of respect»³⁷⁸. In order to do so, he thus proposes to formulate both «an ideal deliberative procedure and the requirements for institutionalizing such a procedure»³⁷⁹. Cohen asserts that, in order to be «democratically legitimate»³⁸⁰, an ideally deliberative procedure should ensure that outcomes «be the object of a free

³⁷⁰ Ibid.

³⁷¹ Gutmann & Thompson, 2004.

³⁷² Gutmann & Thompson, 2004:3.

³⁷³ Gutmann & Thompson, 2004:4.

³⁷⁴ Ibid.

³⁷⁵ Gutmann & Thompson, 2004:6.

³⁷⁶ Gutmann & Thompson, 2004:7.

³⁷⁷ Ibid.

³⁷⁸ Cohen, 2009:16.

³⁷⁹ Cohen, 2009:37.

³⁸⁰ Cohen, 2009:23.

and reasoned agreement among equals»³⁸¹. Starting from consideration of the formal requirements of deliberative democracy, Cohen identifies «three general aspects of deliberation»³⁸²: deciding on an agenda, proposing «alternative solutions to the problems on the agenda»³⁸³, «supporting those solutions with reasons»³⁸⁴, and finally, selecting one of the options.

First of all, Cohen argues that an ideal deliberation can be deemed free only if the participants abide by the rules and preconditions for deliberation and accept that, having contributed to the decision on a specific issue, they would coherently comply with such decisions³⁸⁵. Second, an ideal deliberation should be reasoned in the sense that participants should «state their reasons for advancing proposals, supporting them or criticizing them»³⁸⁶, so that they are aware that the very fact of giving reasons in an effective way «will settle the fate of their proposal»³⁸⁷. As a consequence, they should be aware of the fact that if they do not provide adequate reasons for their proposals, the latter may be rejected³⁸⁸. Third, an ideal deliberation presupposes that participants are equal not only because they have «equal standing at each stage of the deliberative process»³⁸⁹, but also because the unequal «existing distribution of power and resources does not shape their chances to contribute to deliberation, nor does that distribution play an authoritative role in their deliberation»³⁹⁰. Finally, an ideal deliberation should purposely aim at reaching «a rationally motivated consensus»³⁹¹.

The political scientist James Fishkin tries to apply the ideal of a rational deliberation to case studies and aims at devising practical deliberative tools to ensure a more inclusive deliberation. After introducing the concept of 'deliberative opinion poll'³⁹² in 1988, in his 2009 work, 'When the People Speak'³⁹³, he decides to carry out a series of deliberative projects in different countries such as the US, China, Britain,

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Cohen, 2009:23-24.

³⁸⁶ Cohen, 2009:24.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ Ibid.

³⁹² Fishkin, 1988.

³⁹³ Fishkin, 2009.

Denmark, Australia, Italy, Bulgaria, Northern Ireland, and in the European Union. In his work, Fishkin claims that, while some electoral strategies could be deemed legal from the perspective of traditional democracy, from the standpoint of deliberative politics, they could not be accepted:

They muffle or distort, providing a platform for special interests to *impersonate* the public will - to mobilize letter or phone calls, emails, text messages, or Internet tabulations of opinion that appear to be representative of the general public, but are really only from specific and well-organized interest groups. [...] Elites and interest groups attempt to mold public opinion by using focus-group-tested messages in order later to invoke those same opinions as a democratic mandate. From the standpoint of some democratic theories these practices are entirely appropriate.[...] But from the perspective outlined here - deliberative democracy- they detour democracy from the dull aspiration to realize political equality and deliberation³⁹⁴.

In order to counter such trends in politics, Fishkin carries out opinion poll projects aiming at including in deliberation «everyone under conditions where they are effectively motivated to really think about the issue»³⁹⁵. In this sense, the American scientist observes that since «respondents to polls do not like to admit that they “don’t know”»³⁹⁶, they will most of the times choose an option randomly «rather than respond that they have never thought about the issue»³⁹⁷.

Furthermore, even if many people already have their own opinions on a variety of matters, according to Fishkin, «some of them are very much “top of the head,” vague impressions of sound bites and headlines»³⁹⁸, that could be easily manipulated «by the persuasion industry»³⁹⁹. On the other hand, however, it would be impossible for democratic countries to inform transparently all its citizens because it would «take too many meetings»⁴⁰⁰.

Fishkin's solution is that of selecting a «random sample of a population»⁴⁰¹ to be «convened together for many hours of deliberation, both in small groups and plenary

³⁹⁴ Fishkin, 2009:1.

³⁹⁵ Ibid.

³⁹⁶ Fishkin, 2009:2.

³⁹⁷ Ibid.

³⁹⁸ Fishkin, 2009:2-3.

³⁹⁹ Fishkin, 2009:3.

⁴⁰⁰ Ibid.

⁴⁰¹ Fishkin, 2009:10.

sessions»⁴⁰². During these sessions, people in groups can ask questions «to competing candidates, experts, or policymakers in the plenaries»⁴⁰³. At the end of the process, they have to give their informed opinion on the matters.

According to Fishkin, such a method could be advantageous to deliberative democracy in different ways:

While ordinary citizens are subject to the incentives for rational ignorance, those chosen in the microcosm face an entirely different situation—once they are chosen. They are all part of a smaller group whose members do, individually, have influence. Each participant in what we call a Deliberative Poll has the influence of one person’s voice in a small group of fifteen or so [...]. Once selected, the corrosive calculations of rational ignorance no longer apply to members of the microcosm. Within the microcosm, democracy is reframed on a human scale where individual voices can seem important enough to effectively motivate individual effort⁴⁰⁴.

In this view, once the democratic stances are made relevant by giving more responsibility to individuals, they are more interested into political issues. As a consequence, not only do they try to get more informed, but, while participating in the process, they can also be less easily manipulated by the persuasion industry and feel much more empowered compared to traditional elections.

Another deliberative application has also recently developed in comparative studies of democratization, in order to include the principles of deliberation in the promotion of democracy in the world. The political scientist John Dryzek, who advocates the notions of 'transnational deliberative democracy'⁴⁰⁵ and 'deliberative capacity building'⁴⁰⁶ claims that «deliberation capacity can be distributed in variable ways in the deliberative systems of states and other polities»⁴⁰⁷. He has thus established a way for «evaluating the degree to which a polity’s deliberative system is authentic, inclusive, and consequential»⁴⁰⁸. Dryzek argues that most scholars of democratization evaluate the presence of democracy «in terms of electoral

⁴⁰² Ibid.

⁴⁰³ Ibid.

⁴⁰⁴ Fishkin, 2009:10-11.

⁴⁰⁵ Dryzek, 2006.

⁴⁰⁶ Dryzek, 2008.

⁴⁰⁷ Dryzek, 2008:2.

⁴⁰⁸ Ibid.

competition»⁴⁰⁹, in order to measure «the degree to which ostensibly democratic political systems fall short of liberal electoralist ideals»⁴¹⁰. In this sense, he claims that «democratic legitimacy resides in the right, ability, and opportunity of those subject to a collective decision to participate in deliberation about the content of that decision»⁴¹¹. Dryzek terms as 'deliberative' those communications that «can induce reflection about the preferences that individuals hold, are non-coercive, and able to relate the particular interests of individuals and groups to more universal principles»⁴¹². He then defines 'deliberative capacity' «as the extent to which a political system possesses structures to host deliberation that is authentic, inclusive, and consequential»⁴¹³, so that it stimulates discussions that are non-coercive, reciprocal and consensus-based.

The American scientist views deliberative capacity as «instrumental in democratic transition, and crucial to democratic consolidation and deepening»⁴¹⁴, because it may well serve in analysing not only «authoritarian regimes»⁴¹⁵, but also «new and old democratic states, and [...] governance that eludes states»⁴¹⁶. According to Dryzek, such method could prove to be very useful in the assessment of democratization in «legislatures, cabinets, corporatist councils [...] as well as government executives, and constitutional courts»⁴¹⁷. However, «citizens' juries, citizens' assemblies, deliberative polls, consensus conferences, and stakeholder dialogues can also contribute»⁴¹⁸. Moreover, even though he gives priority to «reasoned argument»⁴¹⁹ and excludes «some kinds of communication, such as lies, threats, and commands, [...] [as, BQ] intrinsically anti-deliberative»⁴²⁰, he also acknowledges the use of «a variety of forms of communication, such as rhetoric, testimony (the telling of stories), and humor»⁴²¹.

⁴⁰⁹ Dryzek, 2008:3.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² Dryzek, 2008:4.

⁴¹³ Ibid.

⁴¹⁴ Dryzek, 2008:17.

⁴¹⁵ Ibid.

⁴¹⁶ Ibid.

⁴¹⁷ Dryzek, 2008:5.

⁴¹⁸ Ibid.

⁴¹⁹ Dryzek, 2008:4.

⁴²⁰ Ibid.

⁴²¹ Ibid.

According to him, even though such different forms of communication do not occur as a reasoned argumentation, they «can be effective in inducing reflection»⁴²².

Deliberative democracy is criticised by the Belgian political theorist Chantal Mouffe, who, in her 1993 work 'The Return of the Political'⁴²³, questions «the conception of politics that informs a great deal of [Western, BQ] democratic thinking today»⁴²⁴ for not being capable of bringing back into the theory of liberal democracy and universal values, the «manifold ethnic, religious and nationalist conflicts that they thought belonged to a bygone age»⁴²⁵. According to Mouffe, the «rationalist, universalist and individualist»⁴²⁶ liberal thinking's «main shortcoming is that it cannot but remain blind to the specificity of the political in its dimension of conflict/decision, and that it cannot perceive the constitutive role of antagonism in social life»⁴²⁷. Instead of conceiving the political as «restricted to a certain type of institution, or [...] constituting a specific sphere»⁴²⁸, Mouffe considers it as an inherent dimension proper to «every human society and that determines our very ontological condition»⁴²⁹. In this sense, one should accept the fact that it is impossible «to create or maintain a pluralistic democratic order»⁴³⁰ without conflict and antagonism, and without acknowledging the fact that «the opponent should be considered not as an enemy to be destroyed, but as an adversary whose existence is legitimate and must be tolerated»⁴³¹. In her view, the danger of trying to establish «consensus and unanimity»⁴³² is that a «lack of democratic political struggles with which to identify»⁴³³ would inevitably produce alternative «forms of identification, of ethnic, nationalist or religious nature»⁴³⁴. As a consequence, «the opponent cannot be perceived as an adversary to contend with, but only as an enemy to be destroyed»⁴³⁵:

⁴²² Ibid.

⁴²³ Mouffe, 1993.

⁴²⁴ Mouffe, 1993:1.

⁴²⁵ Ibid.

⁴²⁶ Mouffe, 1993:2.

⁴²⁷ Ibid.

⁴²⁸ Mouffe, 1993:3.

⁴²⁹ Ibid.

⁴³⁰ Mouffe, 1993:4.

⁴³¹ Ibid.

⁴³² Mouffe, 1993:5.

⁴³³ Mouffe, 1993:6.

⁴³⁴ Ibid.

⁴³⁵ Ibid.

Democracy is in peril not only when there is insufficient consensus and allegiance to the values it embodies, but also when its agonistic dynamic is hindered by an apparent excess of consensus, which usually masks a disquieting apathy. It is also endangered by the growing marginalization of entire groups whose status as an 'underclass' practically puts them outside the political community.[...] A healthy democratic process calls for a vibrant clash of political positions and an open conflict of interests. If such is missing, it can too easily be replaced by a confrontation between non-negotiable moral values and essentialist identities⁴³⁶.

In Mouffe's opinion, the only possible way to restore a healthy kind of democracy would be by breaking «with rationalism, individualism and universalism»⁴³⁷, to make them «plural, discursively constructed and entangled with power relations»⁴³⁸. Only in such a way could it be possible to ensure a real 'pluralism of values'⁴³⁹, because conflict would not be considered as an obstacle to endless and full harmony, but rather an integral part to a partial and temporal agreement.

Stemming from such an understanding is also the belief that an individual could never possibly establish a fixed identity, because there would always be «a certain degree of openness and ambiguity in the way the different subject positions are articulated»⁴⁴⁰. In this sense, Mouffe also criticises «the abstract Enlightenment universalism of an undifferentiated human nature»⁴⁴¹, because it has become a hindrance, rather than a common good. Claiming the importance of «the expression of differences»⁴⁴², she thus argues that rights could not possibly be universalised. In order to reconcile the needs of different struggles who would «not spontaneously converge»⁴⁴³, such as antiracism or antisexism, only the establishment of «democratic equivalence»⁴⁴⁴, considered as new 'common sense' would happen to be actually effective.

Throughout the second half of the twentieth century and in the first decade of the twenty-first, criticisms to the political theory of liberal democracy contribute to the redefinition of its normative principles to make them more inclusive of diversity. Such redefinition entails not only a structural and procedural revision of the notion of

⁴³⁶ Ibid.

⁴³⁷ Mouffe, 1993:7.

⁴³⁸ Ibid.

⁴³⁹ Mouffe, 1993:8.

⁴⁴⁰ Mouffe, 1993:12.

⁴⁴¹ Mouffe, 1993:13.

⁴⁴² Ibid.

⁴⁴³ Mouffe, 1993:18.

⁴⁴⁴ Mouffe, 1993:19.

democracy, in order to ensure increased participation of citizens; but also a questioning of democracy in the light of the development and end of colonialism and the consecutive constitution of postcolonial independent national states. Such aspects have two main interrelated consequences: on the one hand, migration flows especially to (former) colonialist European and North American countries pose the problem of establishing peaceful coexistence among communities that are different from the national population by making the democratic model more inclusive. On the other hand, the normative liberal political theory, which is considered the main starting point to evaluate the quality of democracy in cultures and countries where democracy is poor or does not exist yet, starts to be questioned as an effective and objective political method by poststructuralist and postcolonial scholars.

The possibility to recognise and include diversity in Western democratic countries as a consequence of different migration flows has been analysed in a variety of multiculturalist political theories. The Canadian philosopher Charles Taylor, in his essay "The Politics of Recognition"⁴⁴⁵, focuses on the analysis of the need for recognition «on behalf of minority or “subaltern” groups, in some forms of feminism and in what is today called the politics of “multiculturalism”»⁴⁴⁶. He argues that such «politics of equal recognition»⁴⁴⁷ has been brought to attention by the establishment of democracy as the best form of government and in the modern time it entails «demands for the equal status of cultures and of genders»⁴⁴⁸. According to Taylor, the emphasis that the idea of democracy puts on equality and equal recognition has also originated the notion of authenticity, caused by «a displacement of the moral accent in this idea»⁴⁴⁹. Such displacement is related to the fact that «being in touch with our feelings»⁴⁵⁰ becomes of an «independent and crucial moral significance»⁴⁵¹. It comes to be something we have to attain if we are to be true and full human beings»⁴⁵². However, «before the late eighteenth century, no one thought that the differences

⁴⁴⁵ Taylor, 1994.

⁴⁴⁶ Taylor, 1994:25.

⁴⁴⁷ Taylor, 1993:27.

⁴⁴⁸ Ibid.

⁴⁴⁹ Taylor, 1993:28.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

⁴⁵² Ibid.

between human beings had this kind of moral significance»⁴⁵³. In this sense, differences between people are accepted and integrated in such a way that they are not noticed or perceived to be morally relevant:

In those earlier societies, what we would now call identity was largely fixed by one's social position. That is, the background that explained what people recognized as important to themselves was to a great extent determined by their place in society, and whatever roles or activities attached to this position⁴⁵⁴.

In such societies the fact that «people didn't speak of "identity" and "recognition"»⁴⁵⁵ does not mean that they «didn't have (what we call) identities, or because these didn't depend on recognition, but rather because these were then too unproblematic to be thematized as such»⁴⁵⁶.

Taylor claims that the emphasis given to equal recognition by democracy is not a positive attainment and would not help solve the problems of peaceful coexistence. Rather, the stress on identity makes such generalised and simplified ways of categorising people stronger and more visible, thus leading to the marginalisation of those individuals to whom such recognition is not granted:

Equal recognition is not just the appropriate mode for a healthy democratic society. Its refusal can inflict damage on those who are denied it, according to a widespread modern view, as I indicated at the outset. The projection of an inferior or demeaning image on another can actually distort and oppress, to the extent that the image is internalized⁴⁵⁷.

According to equal recognition policies, everyone should have «an identical basket of rights and immunities»⁴⁵⁸, so that difference is eliminated. However, Taylor also criticises the politics of difference, since even if it entails that «*everyone* should be recognized for his or her unique identity»⁴⁵⁹, they are supposed to have an identity that is «assimilated to a dominant or majority identity»⁴⁶⁰, thus ignoring or glossing over their very same distinctness. Taylor asserts that «underlying the demand is a

⁴⁵³ Taylor, 1993:30.

⁴⁵⁴ Taylor, 1993:31.

⁴⁵⁵ Taylor, 1993:35.

⁴⁵⁶ Ibid.

⁴⁵⁷ Taylor, 1993:36.

⁴⁵⁸ Taylor, 1993:38.

⁴⁵⁹ Ibid. Italics in the original.

⁴⁶⁰ Ibid.

principle of universal equality»⁴⁶¹. In this sense, the politics of difference demand that one acknowledges only what is «universally present—everyone has an identity—through recognizing what is peculiar to each. The universal demand powers an acknowledgment of specificity»⁴⁶² which reveals to be extremely difficult to be accounted for when integrated into differential politics. The presence of such a «*universal human potential*»⁴⁶³, was «a capacity that all humans share» and entails that everyone «deserves respect»⁴⁶⁴, even the people who, for different reasons, are «incapable of realizing their potential in the normal way»⁴⁶⁵.

Taylor observes that, even if they share the same objective of respect, the politics of equal recognition and that of difference are at odds with one another because while the first requires that «we treat people in a difference-blind fashion»⁴⁶⁶, the latter insists upon recognising and fostering particularity⁴⁶⁷. However, he goes on to assert that the politics of difference, considered as the possibility for different groups to enjoy their rights in a different way and to a different extent from the standard mainstream culture, is inadmissible⁴⁶⁸. Rather, advocates of an equal recognition strategy would claim for the neutrality of their approach, instead of noticing that «the politics of equal dignity is in fact a reflection of one hegemonic culture»⁴⁶⁹. To this extent, since the requirements for dignity are based on cultural standards, «only the minority or suppressed cultures» are being forced to take alien form»⁴⁷⁰, and «the supposedly fair and difference-blind society is not only inhuman (because suppressing identities) but also, in a subtle and unconscious way, itself highly discriminatory»⁴⁷¹.

Taylor thus suggests that in places where not all people are part of the favoured national mainstream group, when proposing to pursue the common good, society should be «also capable of respecting diversity, especially when dealing with those

⁴⁶¹ Taylor, 1993:39.

⁴⁶² Ibid.

⁴⁶³ Taylor, 1993:42. Italics in the original.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Taylor, 1993:43.

⁴⁶⁷ Ibid.

⁴⁶⁸ Taylor, 1993:52.

⁴⁶⁹ Taylor:1993:43.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

who do not share its common goals; and provided it can offer adequate safeguards for fundamental rights»⁴⁷². According to the Canadian philosopher, even if such an approach would inevitably generate

tensions and difficulties in pursuing these objectives together, but such a pursuit is not impossible, and the problems are not in principle greater than those encountered by any liberal society that has to combine, for example, liberty and equality, or prosperity and justice⁴⁷³.

In this sense, Taylor aims at doing away with the liberal politics of equal respect, that he considers «inhospitable to difference»⁴⁷⁴ for the fact of not being able to guarantee the survival of «the members of distinct societies»⁴⁷⁵. He also proposes «other models of liberal society» that advocate the defence only of some basic rights extended to everyone, but that «distinguish these fundamental rights from the broad range of immunities and presumptions of uniform treatment that have sprung up in modern cultures of judicial review»⁴⁷⁶. In this sense, such liberal theories should not focus on procedural democracy, but should rather be «grounded very much on judgments about what makes a good life—judgments in which the integrity of cultures has an important place»⁴⁷⁷. In this understanding, the liberal politics of equal recognition also aim at acknowledging equal worth to every individual⁴⁷⁸. However, Taylor argues that matter-of-fact study of the other carried out in comparison with familiar standards would not produce «real judgments of worth»⁴⁷⁹, because they «suppose a fused horizon of standards»⁴⁸⁰. In this sense, assuming that every culture has the same value would entail an ethnocentric analysis of the other for its being similar to one's own culture⁴⁸¹. The Canadian philosopher thus criticises the tendency of multicultural scholars for their «peremptory demand for favorable judgments of worth»⁴⁸² that is «paradoxically—perhaps one should say tragically—homogenizing»⁴⁸³. Such

⁴⁷² Taylor, 1993:60.

⁴⁷³ Taylor, 1993:59-60.

⁴⁷⁴ Taylor, 1993:60.

⁴⁷⁵ Ibid.

⁴⁷⁶ Taylor, 1993:61.

⁴⁷⁷ Ibid.

⁴⁷⁸ Taylor, 1993:64.

⁴⁷⁹ Taylor, 1993:70.

⁴⁸⁰ Ibid.

⁴⁸¹ Taylor, 1993:71.

⁴⁸² Ibid.

⁴⁸³ Ibid.

presuppositions entail the presence of certain standards to make judgements: «those of North Atlantic civilization»⁴⁸⁴, that are ethnocentric and do not actually result in any sort of redefinition of the standards.

The Canadian political philosopher, Will Kymlicka, also criticises the American colour-blind approach to the politics of recognition. In his 1995 book 'Multicultural Citizenship'⁴⁸⁵ Kymlicka argues against the Western philosophical creation of «an idealized model of the polis in which fellow citizens share a common descent language and culture»⁴⁸⁶. Because of such ideal illusory condition, he claims that, in order to achieve such homogenising objective, «governments throughout history have pursued a variety of policies regarding cultural minorities»⁴⁸⁷, such as expulsion or ethnic cleansing, genocide, coercive assimilation, as well as «physical segregation and economic discrimination, and denied political rights»⁴⁸⁸. Even if in the twentieth century minorities have been treated in a less violent way, through the stipulation of bilateral treaties that have «regulated the treatment of fellow nationals in other countries»⁴⁸⁹, such provisions are only limited to some aspects of life and are not sufficient to ensure that migrants live with dignity. With the conception of human rights «cultural minorities would be protected indirectly, by guaranteeing basic civil and political rights to all individuals regardless of group membership»⁴⁹⁰. According to Kymlicka, such policy tools have been devised as an extension «of the way religious minorities were protected»⁴⁹¹, so that both identity and religion could be practiced in private life⁴⁹². However, Kymlicka asserts that such an approach would hinder «any legal or governmental recognition of ethnic groups, or any use of ethnic criteria in the distribution of rights, resources, and duties»⁴⁹³. The Canadian philosopher thus claims that it would also be advisable to introduce, together with the protection of fundamental human rights, other side, group-specific rights in order to safeguard minorities:

⁴⁸⁴ Ibid.

⁴⁸⁵ Kymlicka, 1995.

⁴⁸⁶ Kymlicka, 1995:2.

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid.

⁴⁸⁹ Ibid.

⁴⁹⁰ Kymlicka, 1995:2-3.

⁴⁹¹ Kymlicka, 1995:3.

⁴⁹² Ibid.

⁴⁹³ Kymlicka, 1995:4.

legitimate, and indeed unavoidable, to supplement traditional human rights with minority rights. A comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership, and certain group-differentiated rights or 'special status' for minority cultures⁴⁹⁴.

He thus aims at explaining how such differentiated minority rights can be reconciled with democracy, liberty and social justice⁴⁹⁵. Kymlicka believes that a view of liberalism inspired by «commitment to freedom of choice and (one form of) personal autonomy»⁴⁹⁶ is not contrary to, but rather requires «a concern with cultural membership»⁴⁹⁷. This is because, in his opinion, «individual choice is dependent on the presence of a societal culture, defined by language and history»⁴⁹⁸, and some people are intimately bound to their own culturally-oriented lifestyles and traditions. He thus deems it necessary to defend a liberal theory of minority rights to protect through external interventions the interests of «ethnic groups and national minorities»⁴⁹⁹, without setting any kind of «internal restrictions»⁵⁰⁰.

The political theorist Seyla Benhabib attempts to reconcile the liberal democratic theory and the notion of cosmopolitanism with the question of pluralism and difference. In her 2004 work 'The Rights of The Others'⁵⁰¹, following the Kantian concept of cosmopolitan federalism, Benhabib focuses on the notion of political membership, that she intends as «the principles and practices for incorporating aliens and strangers, immigrants and newcomers, refugees and asylum seekers, into existing polities»⁵⁰². In this sense, she questions the concept of national membership and citizenship and claims that «a cosmopolitan theory of justice cannot be restricted to schemes of *just distribution* on a global scale, but must also incorporate a vision of *just membership*»⁵⁰³. In Benhabib's opinion a just membership requires, first of all, the recognition of «the moral claim of refugees and asylees to *first admittance*»⁵⁰⁴, so

⁴⁹⁴ Kymlicka, 1995:6.

⁴⁹⁵ Ibid.

⁴⁹⁶ Kymlicka, 1995:7.

⁴⁹⁷ Kymlicka, 1995:8.

⁴⁹⁸ Ibid.

⁴⁹⁹ Kymlicka, 1995:7.

⁵⁰⁰ Ibid.

⁵⁰¹ Benhabib, 2004.

⁵⁰² Benhabib, 2004:1.

⁵⁰³ Ibid. Italics in the original.

⁵⁰⁴ Ibid. Italics in the original.

as to grant them acceptance and assistance within the national borders. To this extent, Benhabib argues that

the right to political membership must be accommodated by practices that are non-discriminatory in scope, transparent in formulation and execution, and justiciable when violated by states and other state-like organs⁵⁰⁵.

At the same time, however, it would be necessary to have «a regime of *porous* borders for immigrants»⁵⁰⁶, so that the government could «regulate the transition from first admission to full membership»⁵⁰⁷. A third condition for the constitution of a just membership is related to the necessary maintenance of national borders, «an injunction against denationalization and the loss of citizenship rights»⁵⁰⁸. This is due to the fact that in order for a democratic government to be effective it has to be able to extend its provisions and control only to «the territory under its jurisdiction»⁵⁰⁹. Finally, every person should be entitled to «certain inalienable rights, regardless of the status of their political membership»⁵¹⁰. In this sense, everyone should be granted human fundamental rights even if they have not become full members yet.

The problem of a just membership, for Benhabib, is strongly connected to what she calls «the paradox of democratic legitimacy»⁵¹¹ for which the pursuit of the common good is limited by the inescapable preconditions of human rights:

The republican sovereign should undertake to bind its will by a series of precommitments to a set of formal and substantive norms, usually referred to as “human rights.” The rights and claims of others – be they “auxiliaries to the commonwealth,” as women, slaves, and propertyless males were considered to be, or be they subjugated peoples or foreigners – are then negotiated upon this terrain flanked by human rights on the one hand and sovereignty assertions on the other⁵¹².

Given such unavoidable paradox, Benhabib proposes to diminish its problematic import «through a renegotiation and reiteration of the dual commitments to human

⁵⁰⁵ Benhabib, 2004:4.

⁵⁰⁶ Benhabib, 2004:1. Italics in the original.

⁵⁰⁷ Benhabib, 2004:221.

⁵⁰⁸ Benhabib, 2004:3.

⁵⁰⁹ Benhabib, 2004:45.

⁵¹⁰ Benhabib, 2004:3.

⁵¹¹ Benhabib, 2004:47.

⁵¹² Ibid.

rights and sovereign selfdetermination»⁵¹³. Since, in her opinion, the illusions of democracy are related to the homogeneous nature of the individuals and to «territorial self-sufficiency»⁵¹⁴, she aims at challenging such illusions through the redefinition of national rights according to the needs of immigrants in order to «initiate self-reflexive transformations on the part of the polity involved»⁵¹⁵. To this extent, Benhabib supports the establishment of a «disaggregated citizenship» through which people could «develop and sustain multiple allegiances and networks across nation-state boundaries, in inter- as well as transnational contexts»⁵¹⁶. Her idea of cosmopolitanism is based on the existence of one polis «furthered by such multiple, overlapping allegiances which are sustained across communities of language, ethnicity, religion, and nationality»⁵¹⁷.

In this understanding, a just democratic rule should be carried out through continuous and active participation and «attachment to representative institutions, which exhibit accountability, transparency, and responsibility toward a given constituency that authorizes them in its own name»⁵¹⁸. Democracy can thus be defined as the people's «ongoing process of constitutional self-creation»⁵¹⁹, that makes «fluid and negotiable»⁵²⁰ the traditional fixed borders between exclusion and inclusion, «through processes of continuous and multiple democratic iterations»⁵²¹. The political theorist thus defines 'democratic iterations' as

the complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society. These can take place in the “strong” public bodies of legislatures, the judiciary, and the executive, as well as in the informal and “weak” publics of civil society associations and the media⁵²².

⁵¹³ Ibid.

⁵¹⁴ Benhabib, 2004:171.

⁵¹⁵ Ibid.

⁵¹⁶ Benhabib, 2004:174.

⁵¹⁷ Benhabib, 2004:174-175.

⁵¹⁸ Benhabib, 2004:175.

⁵¹⁹ Benhabib, 2004:177.

⁵²⁰ Ibid.

⁵²¹ Benhabib, 2004:178.

⁵²² Benhabib, 2004:179.

Through the concept of democratic iterations Benhabib introduces a communicative and deliberative interpretation of the democratic process, since she assumes that through discussion and argument it is possible to renegotiate and include marginal positions. The term 'iteration', borrowed by Derrida's philosophy of language with which he describes «the process of repeating a term or a concept»⁵²³, does not «simply produce a replica of the first original usage and its intended meaning: rather every repetition is a form of variation»⁵²⁴. In line with Derrida, Benhabib explains the process of iteration as one of interpretation, including a change of the meaning of some notions and the eventual demise of some others:

The iteration and interpretation of norms, and of every aspect of the universe of value, however, are never merely acts of repetition. Every act of iteration involves making sense of an authoritative original in a new and different context. The antecedent thereby is repositioned and resignified via subsequent usages and references. Meaning is enhanced and transformed; conversely, when the creative appropriation of that authoritative original ceases or stops making sense, then the original loses its authority upon us as well. Iteration is the reappropriation of the “origin”; it is at the same time its dissolution as the original and its preservation through its continuous deployment⁵²⁵.

In this sense, Benhabib intends democratic iterations as «linguistic, legal, cultural, and political repetitions-in-transformation»⁵²⁶ that do not only «change established understandings but also transform»⁵²⁷ what are perceived to be original meanings.

A different communicative approach to the solution of political problems in the light of cultural diversity is proposed by the political theorist Bhikhu Parekh, who, in his 2000 book 'Rethinking Multiculturalism'⁵²⁸, defines multiculturalism as «a perspective on human life»⁵²⁹ based on three main assumptions. The first one is the fact that individuals are inescapably influenced by their own cultures,

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ Benhabib, 2004:180.

⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ Parekh, 2000.

⁵²⁹ Parekh, 2000:336.

in the sense that they grow up and live within a culturally structured world, organize their lives and social relations in terms of its system of meaning and significance, and place considerable value on their cultural identity⁵³⁰.

Secondly, Parekh claims that, because «different cultures represent different systems of meaning and visions of the good life»⁵³¹, they are limited and could never account for all the «human capacities and emotions»⁵³², but could only grasp «a part of the totality of human existence»⁵³³. As a consequence, every culture «needs others to understand itself better, expand its intellectual and moral horizon, stretch its imagination and guard it against the obvious temptation to absolutize itself»⁵³⁴. In this understanding, experiencing difference would enrich and expand one's own understanding of themselves:

No culture is wholly worthless, that it deserves at least some respect because of what it means to its members and the creative energy it displays, that no culture is perfect and has a right to impose itself on others, and that cultures are generally best changed from within⁵³⁵.

Thirdly, all the cultures, though retaining a certain variable degree of coherence and identity, are also «internally plural and represent a continuing conversation between their different traditions and strands of thought»⁵³⁶.

In accordance with such presuppositions, Parekh suggests that «from a multicultural perspective, no political doctrine or ideology can represent the full truth of human life»⁵³⁷, since each of them represents a narrow and partial account of what should be considered as just and good. In this sense, he asserts that «since multicultural societies represent an interplay of different cultures, they cannot be theorized or managed from within any one of them»⁵³⁸.

According to Parekh, multicultural societies should accept «the reality and desirability of cultural diversity»⁵³⁹ and structure their «political life accordingly»⁵⁴⁰.

⁵³⁰ Ibid.

⁵³¹ Ibid.

⁵³² Ibid.

⁵³³ Ibid.

⁵³⁴ Parekh, 2000:336-337.

⁵³⁵ Parekh, 2000:337.

⁵³⁶ Ibid.

⁵³⁷ Parekh, 2000:338.

⁵³⁸ Parekh, 2000:339.

⁵³⁹ Parekh, 2000:340.

In order to allow for communication between different cultures the political theorist argues that such societies should not only be «dialogically constituted», but they should also make sure that such dialogue is continuous and effective to «stretch the boundaries of the prevailing forms of thought, and generate a body of collectively acceptable principles, institutions and policies»⁵⁴¹. In order to be effective such dialogue requires

certain institutional preconditions such as freedom of expression, agreed procedures and basic ethical norms, participatory public spaces, equal rights, a responsive and popularly accountable structure of authority, and empowerment of citizens⁵⁴².

Such preconditions also require that individuals retain a series of «essential political virtues»⁵⁴³, such as

mutual respect and concern, tolerance, self-restraint, willingness to enter into unfamiliar worlds of thought, love of diversity, a mind open to new ideas and a heart open to others needs, and the ability to persuade and live with unresolved differences⁵⁴⁴.

Through such process of negotiation and dialogue, a multicultural society could reach a stable and long-lasting «common sense of belonging among its citizens»⁵⁴⁵, that should not be based on cultural or ethnic differences, but «on a shared commitment to the political community»⁵⁴⁶.

The criticisms to the mainstream notion of liberal democracy described above have contributed to make the normative political theory of democracy more capable of including cultural minorities. This seems to suggest that nowadays diversity has been granted a more relevant role in political theory. However, since multiculturalism resorts to identity politics in order to give diversity its due significance, it could be concluded that its underlying epistemology still supports mainstream liberal democracy. For instance, according to Monceri, theories of multiculturalism end up

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² Ibid.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Parekh, 2000:341.

⁵⁴⁶ Ibid.

being «unable to radically think of diversity»⁵⁴⁷, because, in their understanding, «not all differences matter, but only the set of them that can be ‘categorized’ on the basis of selected affinities or similarities»⁵⁴⁸. This way of creating identities to include them in the political system would entail that those differences that are not statistically relevant or even recognised as such are automatically excluded. In this sense, such theories of multiculturalism do not question the basic assumptions of liberal democracy which is still considered the only possible model of good governance globally⁵⁴⁹.

In this sense, the assumptions underlying the modern mainstream notion of liberal democracy are considered to be transferable to poorly democratic local contexts because of a universal common political epistemology which all reasonable and decent individuals would recognise as valuable. According to such view, when transferring democracy into different cultural contexts it would still be conceivable to maintain an equivalence in its definition and meaning based on the fact that there is always the possibility to find common and shared understandings among human beings.

From a linguistics perspective, while such transfer of concepts entails the possibility to reach a common understanding between different languages, it also acts as if such correspondence of meaning could totally remove all obstacles posed by differences, thus ignoring the possibility that there might also be a lack of understanding in the translation process. In the next chapter, the notion of equivalence in meaning will be analysed from a translational point of view, by examining the most relevant stages of the debate on equivalence in the history of translation theory. After such brief outline, the recent developments in the politics of translation will be introduced to consider the political implications of the paradigm of equivalence in translation.

547 All quotations Monceri, 2012:217.

548 Monceri, 2012:216.

549 Monceri, 2008, 2012. For further criticisms to normative political theory and to mainstream liberal democracy see Chapter 3.

2 - Translation and politics: the paradigm of equivalence

2.1 The original and the translated text in the Western translation tradition

The problem of establishing the best kind of relationship between the original and the translated texts has always dominated the debate on the practice of translation since the first reflections on this topic in the Western translation tradition, starting from the classical Roman writings on translation in the first century b.C until today's discourses in translation studies. Such relationship has always been described as one of recreating a certain degree of sameness in the translated text, but it was only in the 1950s that the first systematic studies on translation aimed at acquiring a scientific and standardised way to consider translation, ultimately using the term 'equivalence' to describe the relationship between the original (termed as 'source text') and its translation (or 'target text').

In general, however, when examining translation theories from its origins until now, it can be concluded that the degree of autonomy of a translation from its original varies depending on the historical period and on the cultural and political context in which reflections on translation are formulated. Moreover, the debate on the best methods of translating shows that thoughts and theories of translation are closely interrelated in space and time, so that they are gradually adjusted to fit different contexts, disciplines and objectives and are also reinterpreted accordingly. Until the 1970s, theories of Western translation thought have also retained a certain degree of prescriptiveness and normativeness so that they mainly consist of instructions and suggestions on the best methods to translate and of strategies a translator should use in order to make a good translation¹.

Scholars of translation² describe the first stages of classical translation thought from the Roman period to the twentieth century as being characterised by the alternating recourse to two opposite kinds of strategies termed as literal, or word-for-

¹ This trend started to change in the 1970s, when Gideon Toury introduced descriptive translation studies; however, the prescriptive component in translation theories is still nowadays strong and today's call for an ethics of translation seems to stem from this very same approach to translation. See for instance Merrill, 2012; Van Wyke, 2012.

² Steiner, 1998; Baker, 1992; Munday, 2001; Venuti, 2004.

word, and free, loose, or sense-for-sense translation; that have also informed later debates on translation. Despite this could be easily accepted as a general description of the extremely long period of time we are considering, it also results to be an uncomplicated view of past translation traditions that does not consider the specific contexts in which they were conceived. What follows is a brief and not at all complete overview of the key authors who contributed to create a history of Western translation thought.

The origins of Western translation theories are traditionally dated back to the first century b.C.³, when the distinction between word-for-word and sense-for-sense strategies is thought to be originally posed by the Latin orator and philosopher Marcus Tullius Cicero in 46 b.C., in his 'De Optimo Genere Oratorum'⁴. In his work, Cicero advocates for a translation that should reproduce the sense of the original keeping the beauty of the target language without translating literally:

I have converted [...] not recasting them as a translator [interpres], but as an orator, keeping the same meanings but with their forms - their figures, so to speak - in words adapted to our idiom. I have not thought it necessary to pay out one word for another in this process, but have conserved the character and the force of the language. Nor have I thought it fitting to count them out to the reader, but to weigh them out⁵.

Cicero makes a distinction between interpreters, also known as grammarians, who were used to translate literally or word for word, and orators, whose approach focused on preserving the general sense of the original without sticking to the meaning of each single word. Such a method needs to be introduced in the wider context of that time, when, as a consequence of the Romans' conquests in Ancient Greece, the great influence exerted by the Greek culture on its Roman conquerors posed the problem of dealing with a large amount of writings in Greek⁶. Roman artists, poets, philosophers

³ In his 'An Account of Egypt', Herodotus (2006/2013) first mentioned the work of interpreters, when describing their community in Egypt at that time. He talked about the creation of a community of interpreters whose role was to ensure communication between Egypt and Greece, but he was not actually concerned with the way they translated or with their approach to translating, and did not mention the relations between the original and the target text.

⁴ Cicero, 1830.

⁵ Venuti, 2004. The following is the Latin original: «neck convert, us interpres, seed us Orator, sententious wisdom et arum formic, tam figures quam verbs ad nostrum consuetudinem aptis. In quibus non verbum pro verbo necesse habui reddere: sed genus omne verborum vimque servavi. Non enim me annumerare ea lectori putavi oportere, sed tanquam appendere», Cicero, 1830:449.

⁶ McElduff, 2013; Copeland, 1991.

and orators were at the same time attracted by and not feeling at the same level as Greek artists and authors. Such an ambivalent feeling was also reflected in the strategy they chose to translate Greek writings, since, by adjusting the original to the Latin tastes and traditions, they managed to appropriate Greek texts and make them Roman.

At that time, translation⁷ was used to study two different disciplines: not only Latin and Greek grammar, for language learning, but also rhetoric, for examining speech models and content both in science and literature⁸. Educated Romans were bilingual and studied both Latin and Greek; in this case, at a basic level of education, the approach to translation favoured a word-for-word strategy in order to show the different grammatical features and patterns of the two languages⁹. Apart from grammar, translation also served another discipline, rhetoric, the highest level of Roman education, which focused on speech models and strategies¹⁰. In this case, according to Cicero, the Greek classics have to be translated following the Latin tastes and traditions, by reinterpreting the original through making it easily understandable to the audience.

Cicero's writing on translation had an educational purpose and was directed to orators and scholars whose aim was to learn how to speak in public, with Cicero thus favouring this second approach to translation¹¹. His opinion is also part of a general public debate of his time, when his thought, also influenced by personal and professional happenings, is at rivalry with the Atticists' word-for-word translation strategies, and considers translation an elite activity to create a Roman identity and to show control over the Greek culture^{12,13}.

⁷ For further readings on Roman translation and its relevance for the creation of Western translation theories see Copeland, 1991; Lianeri & Zajko, 2008; McElduff & Sciarrino, 2011; and McElduff, 2013.

⁸ Copeland, 1991; McElduff, 2013.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid. By contextualising translation strategies in Roman traditions, McElduff's main objective, as well as Copeland's, is to complicate the history of Western translation thought, which is nowadays oversimplified and not sufficiently taken into account in translation studies.

¹³ Cicero's translation strategy in Rome was also supported by Horace in his 'Art of Poetry', where he advocated for a free translation that created new meanings and models in Latin, without exactly reproducing Greek poetry like a trustworthy interpreter or grammarian.

The Roman sense-for-sense strategy also affected patristic translation of sacred documents; however, while for Roman orators the translated texts acquired a high degree of autonomy from its Greek originals, in the Middle Ages, translation moved in the opposite direction, and focused on the importance of the original sacred texts. In fact, while a word-for-word strategy could have altered the original meaning and caused misunderstandings, a meaning-oriented approach would have conveyed the real sense of the texts. For instance, in his 'De optimo genere interpretandi'¹⁴, a letter to the ex-senator Pammachius, in 395 a.D., Saint Jerome defends his translation of a letter from Pope Epiphanius to John of Jerusalem, after being accused of having falsified the original. In his defence, Saint Jerome quotes the Gospels' different versions of the same events, and also ecclesiastical and Latin authors, among whom Cicero and Horace, while publicly claiming to favour a meaning-oriented strategy: «Indeed, I not only admit, but freely proclaim that in translation [*interpretatione*] from Greek - except in the case of Sacred Scripture, where the very order of the words is a mystery - I render not word for word, but sense for sense»¹⁵.

One can notice that while Saint Jerome advocates for a free translation of ecclesiastical and sacred documents, he makes an exception for the Bible, the Sacred Scripture, because in that case even the word order is held to be a mystery, and also possibly because modifying the meaning of such an important original text would lead to a charge of heresy¹⁶. In his defence, he also introduces criticisms to the existing biblical translations as part of his future plan to retranslate the Bible into Latin directly from Hebrew¹⁷. His translation, known as the Vulgate, later became the official Catholic version of the Bible and replaced the Old Latin one.

The choice of a sense-for-sense translation strategy to appropriate Greek culture and make it Roman had by then lost its original purpose, and the conflicting and ambivalent attitude towards Greek texts was substituted by a search for truth and fidelity inspired by God's nature¹⁸. Such «theory of conservation of textual meaning

¹⁴ Jerome, 395/2004.

¹⁵ Jerome, 395/2004:23.

¹⁶ Munday, 2001.

¹⁷ Jerome, 395/2004.

¹⁸ Copeland, 1991.

without the impediment of linguistic multiplicity»¹⁹ can also be noticed in Saint Augustine's 'De Doctrina Christiana', written between 395 and 426 a.D. with the aim to provide guidance and rules for the correct interpretation of the Scripture. In the second book, while telling about the legend of seventy Hellenistic Jews working in separate cells who produced the very same translation, Augustine argues that they

enjoyed so much of the presence and power of the Holy Spirit in their work of translation, that among that number of men there was but one voice [...], and yet nothing was found in the manuscript of any one of them that was not found in the same words and in the same order of words in all the rest²⁰.

The faithfulness Augustine talks about does not require precise adherence to the original text, but rather it entails the presence and inspiration of God to guide the translators when carrying out their task²¹, so that

even if anything is found in the original Hebrew in a different form from that in which these men have expressed it, I think we must give way to the dispensation of Providence which used these men to bring it about²².

The prominence of the sacred original texts was a common and indisputable feature of translation throughout the Middle Ages and literalism gradually started to gain ground as the accepted translation strategy for key philosophical and religious texts. During this period philosophy and theology were brought together in order to reconcile authoritative Latin classics with the sacred texts in an effort to find the unique truth. The use of literalism was a way for the Roman Catholic Church to keep its dominating religious position clear of a number of attacks and threats throughout the Middle Ages. During the High Middle Ages new religious orders proposed a return to a simpler and more modest monasticism and were alternatively accepted or persecuted for being heretical. In addition, at later stages, the Avignon Papacy and the Great Schism marked the rise of the state power with the consequent spread of national vernaculars in spite of Latin. A long and debated contention on the correct interpretation of the sacred scriptures and on the possibility to translate the Bible into

¹⁹ Copeland, 1991:51.

²⁰ Augustine, 428/2014:33.

²¹ Venuti, 2004.

²² Augustine, 428/2014:33.

vernacular languages started, leading to controversies over the fidelity, referred to the faithfulness to the words of the author²³, and the truth of translation, dealing with the content and the correct meaning of sacred texts²⁴.

In the thirteenth and fourteenth centuries, John Wycliffe and his rebellious religious movement, known as the Lollards, uses a meaning-oriented strategy for their unauthorised version of the Sacred Scripture into English vernacular. At that time, a sense-for-sense strategy was not considered acceptable by the Roman Catholic Church for translating the Bible and the other most important sacred documents. In the prologue of the Wycliffite Bible the purpose of the translator is:

with Goddis helpe, to make the sentence as trewe and open in English as it is in Latyn, either more trewe and more open than it is in Latyn; and I preie, for charité and for comoun profyt of Cristene soulis, that if ony wiys man fynde ony defaute of the truthe of translacioun, let him sette in the trewe sentence and opin of Holi Writ²⁵.

In the preceding passage, one can notice that the most important task of the translator is to find the true («trewe») translation, that should be 'open', and even clearer than its Latin original. The sense-for-sense translation strategy is then introduced as a way to achieve this purpose:

First it is to knowe that the best translating is out of Latyn into English to translate aftir the sentence and not oneli aftir the wordis, so that the sentence be as opin (either openere) in English as in Latyn and go not fer fro the lettre; and if the lettre mai not be suid in the translating, let the sentence evere be hool and open, for the wordis owen to serve to the entent and sentence and ellis the wordis ben superflu either false²⁶.

This religious and political power struggle ruled throughout the Middle Ages and culminated in the sixteenth century in the Protestant Reformation. While in the early decades of the sixteenth century the Church of England separated from the Roman Church under Henry VIII; John Calvin's ideas and Martin Luther's 'Ninety-five Theses' started to gain consensus in great part of Europe. Luther, who translated the New and Old Testament into East Middle German, respectively in 1522 and 1534, was criticised by the Roman Catholic Church for having falsified the original sacred

²³ Kelly, 1979.

²⁴ Ibid.

²⁵ Dean, 1996:274-278.

²⁶ Dean, 1996: 245-250.

texts. In his defence, the German monk wrote in 1530 his famous 'Sendbrief vom Dolmetschen' ['Open Letter on Translation']²⁷, where, following Saint Jerome's 'De optimo genere interpretandi', he rejects the word-for-word strategy and adopts a meaning-oriented one, to « convey the sense of the text—if the translation is to be clear and accurate»²⁸. In spite of Saint Jerome's open claim on the impossibility to translate the Bible using a sense-for-sense strategy, Luther equates his predecessor's condition with his own and states that: «The literal Latin is a great barrier to speaking proper German»²⁹. The German monk defends his choice asserting that, when translating, it is necessary to use a common language to favour understanding:

We must ask the mother in the home, the children on the street, the common person in the market about this³⁰. We must be guided by their tongue, the manner of their speech, and do our translating accordingly. Then they will understand it and recognize that we are speaking German to them³¹.

The struggle over the correct interpretation of classical philosophical and religious texts in the sixteenth-century France knew changing fortunes, with Francis I's early tolerance of the Huguenots, and his later support for the Roman Catholic Church and persecution of heretic scholars and writers. Among the French humanists who are persecuted and condemned at that time is the scholar and translator Etienne Dolet, who writes in 1540 'La maniere de bien traduire d'une langue en aultre' ['The Way of Translating well from a language into another']³², the first systematic work on the practice of translation in a European vernacular³³.

Inspired by Greek and Latin classical texts and authors, and also by the French political agenda that aimed at extending the use of the French vernacular of Paris to France as a whole³⁴, Dolet initially plans to write a treatise called 'l'Orateur Francoys' ['The French Orator']. He only actually manages to complete three of the nine chapters he intended to write and in the one about translation³⁵ he provides

²⁷ Luther, 1530/1909.

²⁸ Luther, 1530/1909:8.

²⁹ Ibid.

³⁰ 'This' here refers to 'how we are to speak German' in a preceding sentence.

³¹ Ibid.

³² Dolet, 1540/2006.

³³ Hermans, 2013.

³⁴ Ibid.

³⁵ Dolet, 1540/2006.

prescriptive norms on how to translate classical Greek and Latin texts into the French vernacular. While in general, at that time, translation was attached to an original-centred literal strategy, Dolet criticises such method and proposes the use of the sense-for-sense approach:

You should not enter into slavery to the point of rendering word for word. Whoever translates in this way does so because his mind is poor and deficient.[...] [A translator, BQ] will work with sentences and not care about the order of the words, and he will see to it that the author's intention is expressed while miraculously preserving the characteristics of both languages. [...] if you express the intention of the author you translate you will be above reproach, even if you distort the syntax. I shall not pass over in silence the folly of some translators who bow to servitude instead of acting freely. They are such fools that they try to render line by line, or verse by verse. When they make this mistake they often adulterate the meaning of the author they translate and convey neither the elegance nor the perfection of either language. You must guard against this vice with all your might, since all it demonstrates is the translator's ignorance.

In this passage, Dolet compares word-for-word translation to enslavement and folly and describes the translator who uses that approach as ignorant and poor in spirit. In his treatise, the humanist scholar also stresses the importance of other aspects in translation, such as the translator's deep understanding of the original, the complete knowledge and command of the languages he translates from and into; the avoidance of Latin and Greek words and calques when translating into vernacular; and the respect for oratory and rhetoric norms in the translator's rendering of classics³⁶.

Dolet's appeal to a meaning-oriented strategy and the norms he introduces in his work are part of a broader political agenda, in which French humanists transfer a «rhetorical ideal of translation»³⁷ into the French vernacular, in order to counter standard literal trends and strategies in translation and favour the creation of a national language³⁸. Translation in the sixteenth and seventeenth centuries was mostly dedicated to Greek and Latin literature, with humanistic ideals of classic authors such as Cicero and Horace informing the artists' sense-for-sense strategies. Such meaning-oriented approaches were reinterpreted in order to create free versions and

³⁶ Ibid.

³⁷ Hermans, 2013:1.

³⁸ Ibid.

adaptations of classical texts from antiquity and reinscribe them into different national narratives. Translators would freely admit modifying the originals to create new pieces of literature that could fit local customs and traditions, and the resulting translations were commonly known as 'les belles infideles', the French for 'the beautiful but unfaithful'.

This humanist translation tradition is held to be initiated by the French translator Nicolas Perrot D'Ablancourt³⁹ who, in his preface to Tacitus⁴⁰ explains that, whenever a word-for-word approach is impossible or infelicitous, he recurs to meaning-oriented strategies that comply with the French literary tastes and traditions of his times:

I have followed him [Tacitus, BQ] step by step, and rather as a slave than as a companion, although I might have allowed myself more freedom since I was not translating a passage, but a Book, every part of which must be linked together and fused in the same body [...] Hence one must take heed that an Author's grace not be lost through too much scrupulousness, and that the fear of being unfaithful to him in some one thing not result in infidelity to the whole [...]. This means, however, that the best translations seem to be the least unfaithful⁴¹.

In the paragraph above, D'Ablancourt identifies two types of faithfulness: one is directed to the words ('scrupulousness') and is related to literalist translation strategies; while the other has to do with the text's general message or the author's intention ('the whole').

In his preface to Lucian⁴², the French translator argues for a meaning-oriented strategy, even though he also recognises that such methods may not fall in the category of translation proper:

I do not always cleave to the words or thoughts of this Author; whilst keeping in sight his purpose, I fit things to our air and manner. Diverse times require not only different words, but different thoughts; and Ambassadors are accustomed to dress in the fashion of the country where they have been sent for fear of appearing ridiculous to those whom they

³⁹ Venuti, 2004.

⁴⁰ D'Ablancourt, 1640/2004.

⁴¹ D'Ablancourt, 1640/2004:32.

⁴² D'Ablancourt, 1654/2004.

endeavor to please. Nevertheless, this is not properly a Translation; but it rates more highly than a Translation; and the Ancients did not translate otherwise⁴³.

The French tradition of 'les belles infideles' also influenced the English poets of the seventeenth century, who criticised literal renderings of Greek and Latin verses into the English vernacular and advocated for a meaning-oriented translation strategy. However, while D'Ablancourt's reflections are guided by two recurring themes: first, unfaithfulness of language to guard faithfulness to the author's purpose and message, and second, a translation has to surpass its original and make it better; in the seventeenth century, English poets adopted a sense-for-sense approach to best recreate the spirit of the original⁴⁴. For instance, Abraham Cowley, in his preface to the 'Pindaric Odes'⁴⁵, attacks the word-for-word renderings of poetry, that sound «little better than prose to our ears⁴⁶», and identifies such literal trend in translation as the cause for all translations to be «so much inferior to their originals⁴⁷». Similarly to D'Ablancourt, Cowley has doubts on what translation actually is, and at times also calls it 'imitation'. He appeals for the use of «our wit or invention (not deserting still his subject)⁴⁸» and openly claims to have «taken, left out, and added, what I please; nor make it so much my aim to let the reader know precisely what he spoke, as what was his way and manner of speaking⁴⁹», but rather to experiment on how Pindaric Odes «will look in an English habit⁵⁰».

During the seventeenth-century, another English poet and translator, John Dryden, contributes to the debate over the best method to translate poetry and furthers Cowley's reflections on translation as an imitative activity. In his preface to Ovid's Epistles, Dryden introduces a categorisation of translation strategies into three types:

Metaphrase, or turning an Authour word by word, and Line by Line, from one Language into another. Thus, or near this manner, was Horace his Art of Poetry translated by Ben. Johnson. The second way is that of Paraphrase, or Translation with Latitude, where the Authour is kept in view by the Translator, so as never to be lost, but his words are not so strictly

⁴³ D'Ablancourt, 1654/2004:35-36.

⁴⁴ Amos, 1920.

⁴⁵ Cowley, 1640/1806.

⁴⁶ Cowley, 1640/1806:120.

⁴⁷ Ibid.

⁴⁸ Cowley, 1806:120. 'His' is referred to Pindar.

⁴⁹ Cowley, 1806:121. 'He' and 'his' are also referred to Pindar.

⁵⁰ Cowley, 1806:122.

follow'd as his sense, and that too is admitted to be amplyfied, but not alter'd. Such is Mr. Wallers Translation of Virgils Fourth Aeneid. The Third way is that of Imitation, where the Translator (if now he has not lost that Name) assumes the liberty not only to vary from the words and sence, but to forsake them both as he sees occasion: and taking only some general hints from the Original, to run division on the ground-work, as he pleases. Such is Mr. Cowleys practice in turning two Odes of Pindar, and one of Horace into English⁵¹.

Dryden criticises both metaphrase, dismissing it as a slavish copying of words, and imitation, given its lack of respect for the author's memory and reputation⁵². He then suggests that the best method to translate is paraphrase, considering it a middle way between metaphrase and imitation: «Imitation and verbal Version are, in my opinion, the two extremes, which ought to be avoided: and therefore when I have propos'd the mean betwixt them, it will be seen how far his Argument will reach⁵³». In his later dedication to Virgil's 'Aeneid'⁵⁴, the English translator also shifts towards a more literal rendering, and explains that he has

thought fit to steer betwixt the two extremes of paraphrase and literal translation; to keep as near my author as I could, without losing all his graces, the most eminent of which are in the beauty of his words; and those words, I must add, are always figurative. Such of these as would retain their elegance in our tongue, I have endeavor'd to graft on it; but most of them are of necessity to be lost, because they wall not shine in any way but their own⁵⁵.

Dryden's reason for prescribing a general middle way in translation is to safeguard the spirit of the author: «The sense of an Author, generally speaking, is to be Sacred and Inviolable⁵⁶», so that translators have to understand the language of the poet, and «his particular turn of Thoughts and of Expression, which are the Characters that distinguish, and as it were individuate him from all other Writers⁵⁷». Once translators have gained thorough understanding of the author's spirit, they have «to look into our selves, to conform our Genius to his, to give his thought either the same turn, if our tongue will bear it, or, if not, to vary but the dress, not to alter or destroy the

⁵¹ Dryden, 1680/1992.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Dryden, 1697/1909:64.

⁵⁵ Ibid.

⁵⁶ Dryden, 1680/1992.

⁵⁷ Ibid.

substance⁵⁸». Dryden's *via media* is a way of overcoming difficulties in literal translation, given the impossibility to translate word-for-word keeping the beauty of the text, so that «The like Care must be taken of the more outward Ornaments, the Words; when they appear (which is but seldom) literally graceful, it were an injury to the Author that they should be chang'd⁵⁹». Whenever literal translation is not possible, «There is [...] a Liberty to be allowed for the Expression; neither is it necessary that Words and Lines should be confin'd to the measure of their Original⁶⁰».

In the eighteenth century, the paraphrastic translation strategy is also encouraged by Alexander Fraser Tytler, who in 1797 writes his 'Essay on the principles of translation'⁶¹, the first English systematic treatise on translation. Following Dryden's distinction between the two extremes of literal and free translation, he advocates for a meaning-oriented strategy that enables the reader to perfectly understand and easily read the translated text:

As these two opinions form opposite extremes, it is not improbable that the point of perfection should be found between the two. I would therefore describe a good translation to be, *That, in which the merit of the original work is so completely transfused into another language, as to be as distinctly apprehended, and as strongly felt, by a native of the country to which that language belongs, as it is by those who speak the language of the original work*⁶².

Tytler also gives his three general rules of translation: the first and most important is «that the translation should give a complete transcript of the ideas of the original work⁶³», translators are not allowed to cut what they please or add their own opinions, but should only intervene with caution and take out accessory concepts, or supplement the text uniquely to strengthen the author's opinion⁶⁴. When an ambiguous meaning is to be rendered, the translator should not, in any case, keep such ambiguity in his translation, but rather interpret the text according to the author's

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Tytler, 1797.

⁶² Tytler, 1797:14. Italics in the original text.

⁶³ Tytler, 1797:15.

⁶⁴ Tytler, 1797.

spirit and beliefs and following the context of the obscure passage⁶⁵. The second rule is «that the style and manner of writing should be of the same character with that of the original⁶⁶». The style and register of the translated text should reflect the original ones:

If we are justly offended at hearing Virgil speak in the style of the Evening Post or the Daily Advertiser, what must we think of the translator who makes the solemn and sententious Tacitus express himself in the low cant of the streets, or in the dialect of the waiters of a tavern?⁶⁷

Tytler admits that it is more difficult to follow this second principle, since it entails a good command of both languages involved in translation. The third law is «that the translation should have all the ease of the original composition⁶⁸», and is considered by Tytler the most difficult to abide to, since «To one who walks in trammels, it is not easy to exhibit an air of grace and freedom⁶⁹». In order to follow the last rule, the English poet advises that a translator should «adopt the very soul of his author, which must speak through his own organs⁷⁰».

The importance of the spirit of the original text and the idea that translation would always entail losses to make up for in the eighteenth and nineteenth-century England continues to animate the debates over the status of the original and of the translated text⁷¹. The controversy between Francis Newman and Matthew Arnold over the translation of Homer best represents the intellectual climate of those times. Newman translates Homer's *Iliad*⁷² into English using archaic, old-ballads English to recreate the same emotions the *Iliad* would give to Greek readers of the ancient times, since «the substance of what he [Homer, BQ] tells is often of less importance to us than the manner in which he tells it; and it becomes a first-rate duty of a translator to adhere closely to his manner and habit of thought, as also to his moral sentiments⁷³».

⁶⁵ Tytler, 1797:39.

⁶⁶ Tytler, 1797:15.

⁶⁷ Tytler, 1797:124.

⁶⁸ Tytler, 1797:15.

⁶⁹ Tytler, 1797:200-201.

⁷⁰ Tytler, 1797:203.

⁷¹ Munday, 2001:28.

⁷² Newman, 1856.

⁷³ Newman, 1856:iii.

In particular, Newman chooses old-English-ballads language to translate Homer in order to be historically faithful to the original and because

the style of Homer himself is direct, popular, forcible, quaint, flowing, garrulous, abounding with formulas, redundant in particles and affirmatory interjections, as also in grammatical connectives of time, place, and argument. In all these respects it is similar to the old English ballad, and is in sharp contrast to the polished style of Pope, Sotheby, and Cowper, the best known English translators of Homer⁷⁴.

To express Homer's style and manner suitably, «we need a diction sufficiently antiquated to obtain pardon of the reader for its (the text's) frequent homeliness⁷⁵».

In 1861, the English poet and translator Matthew Arnold, in his lecture 'On Translating Homer'⁷⁶, openly criticises Newman's translation strategy for pretending to be faithful in that it tries «to retain every peculiarity of the original, so far as he is able, with the greater care the more foreign it may happen to be; so that it may never be forgotten that he is imitating, and imitating in a different material⁷⁷». According to Arnold a common translator could never really understand what Homer's works were and meant to Greek people of his time, since: «the Greeks are dead; the unlearned Englishman has not the data for judging; and no man can safely confide in his own single judgment of his own work⁷⁸». Only scholars and experts could tell what Homer's writings meant to them: «No one can tell him [the translator, BQ] how Homer affected the Greeks; but there are those who can tell him how Homer affects them. These are scholars; who possess, at the same time with knowledge of Greek, adequate poetical taste and feeling⁷⁹». With such elitist attitude towards translation, Arnold also states the indisputable superiority of the original that is part of the general thinking of that time and that is still nowadays highly considered: «No translation will seem to them of much worth compared with the original; but they alone can say whether the translation produces more or less the same effect upon them as the original. They are the only competent tribunal in the matter⁸⁰».

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Arnold, 1861.

⁷⁷ Newman, 1856:xvi.

⁷⁸ Arnold, 1861/2003:69.

⁷⁹ Ibid.

⁸⁰ Ibid.

Arnold's argument can be similarly found in the eighteenth and nineteenth-century German tradition, where the imitative and paraphrastic English and French translation methods are criticised for not really communicating the foreign text, but shaping it so as to make it belong to the receiving cultures. For instance, in 1766's 'Fragments'⁸¹, the writer, translator and philosopher Johann Gottfried Herder disapproves of the French translators «who are much too proud of their own taste⁸²» and

adapt all things to it, rather than try to adapt themselves to the taste of another time. Homer must enter France a captive and dress according to their fashion, so as not to offend their eyes. He has let them take his venerable beard and his old simple clothes away from him. He has to conform to French customs, and where his peasant coarseness still shows he is treated as a barbarian. But we poor Germans, who are still almost an audience without a fatherland, who are still without tyrants to dictate our taste, want to see him the way he is⁸³.

In a similar manner, in his preface to Aeschylus' 'Agamemnon'⁸⁴, published in 1816, Wilhelm Von Humboldt despises «the eclectic manner in which translators often choose arbitrarily among the hundreds of variants in manuscripts and critical emendations, trusting to a feeling which, of necessity, often leads them astray⁸⁵». His interest is to translate the original, while reconstituting «a document, if not in its true and original form, at least as close as possible to the earliest source accessible. It must therefore be the product of one mind, the result of historical precision and conscientiousness, of the whole treasure of scholarship that underscores it⁸⁶». Such interest of the German tradition in maintaining the true spirit of the author and of his works was supported by historical studies and withheld a nationalist claim to develop and improve the German language thanks to Latin and Greek classics, since «as understanding of language increases understanding of a nation widens⁸⁷».

The eighteenth-century German tradition, in general, and in particular, Humboldt's pioneering view on language inspired later linguistic studies on the connection

⁸¹ Herder, 1766/2003.

⁸² Herder, 1766/2003:74.

⁸³ Ibid.

⁸⁴ Humboldt, 1816/2003.

⁸⁵ Humboldt, 1816/2003:135.

⁸⁶ Ibid.

⁸⁷ Humboldt, 1816/2003:137-138.

between culture and language by Edward Sapir⁸⁸ and on the theory of linguistic relativity and Benjamin Lee Whorf⁸⁹, since they introduced the idea that different languages reflected the spirit of a different nation and that «no word in one language is completely equivalent to a word in another language [...] Each language expresses a concept in a slightly different manner, with such and such a denotation, and each language places it on a rung that is higher or lower on the ladder of feeling⁹⁰». Far from asserting the impossibility of translation, Humboldt holds that translation

is one of the most necessary tasks to be performed in a literature, partly because it introduces forms of art and human life that would otherwise have remained totally unknown to those who do not know a language, and above all because it increases the significance and the expressiveness of one's own language. For it is a marvelous feature of languages that they all first reach into the usual habits of life, after which they can be improved on *ad infinitum* into something nobler and more complex by the spirit of the nation that shapes them⁹¹.

In order to make the spirit of a language known and inspire another nation, Humboldt prescribes that the best translation strategy is «simple fidelity⁹²» and «love for the original⁹³», which would consequently lead to a translation that has a «certain colouring,[...] merely a touch of the foreign⁹⁴» that French and English paraphrastic and imitative strategies do not include. Fidelity of the translator starts to signal a turn to literalist strategies so that a foreign text, even when translated, resists the receiving culture's appropriation and, on the contrary, introduces new and unfamiliar terms and notions into it.

This attitude towards translation reflects the themes of the broader Romantic literary movement of that time and is encouraged by critics and translators, such as August Wilhelm Schlegel, who criticises the English and French free and imitative translation strategy⁹⁵ and defends «diligence and skill in translating⁹⁶» from the

⁸⁸ Sapir, 1921.

⁸⁹ Whorf, 1941.

⁹⁰ Humboldt, 1816/2003:136.

⁹¹ Humboldt, 1816/2003:137.

⁹² Humboldt, 1816/2003:138.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Schlegel, 1803a/2003.

⁹⁶ Schlegel, 1803b/2003:17.

charge of «mental sluggishness and servility⁹⁷». In accordance with Humboldt's view of language, Schlegel also examines the question of language innovation through translation⁹⁸, while supporting a literal translation strategy:

much has [...] initially been condemned as corrupting a language, which later entered into that very language and proved itself to be rather an ennobling factor. Proposals to introduce into a language an element that is not yet available in it, should therefore not be rejected without thorough consideration⁹⁹.

He suggests that if a translator did not want to incur «the justified reproach that you are not speaking a valid language that is recognized as such, but rather a jargon of your own invention¹⁰⁰», «the innovation proposed should not be allowed to contradict what is already firmly established¹⁰¹».

The foreignizing translation strategy is considered by Romantic literary critics and historians the best possible translation method and was also held to be the arrival point of the Western translation tradition. Johann Wolfgang von Goethe, in his 'West-Östlicher Diwan', ['West-Easterly Diwan']¹⁰² classifies translation into three historically-marked strategies based on the degree of preservation of foreign features in the translation. The first stage is that of Luther's Bible translation in plain prose, while the second, which he calls 'parodistic'¹⁰³, consists of a translation with the aim to appropriate the foreign text. Goethe claims that:

Because we cannot linger for very long in either a perfect or an imperfect state but must, after all, undergo one transformation after another, we experienced the third epoch of translation, which is the final and highest of the three. In such periods, the goal of the translation is to achieve perfect identity with the original, so that the one does not exist instead of the other but in the other's place¹⁰⁴.

The most systematic theorisation of this German nineteenth-century translation tradition is Friedrich Schleiermacher's lecture 'Über die verschiedenen

⁹⁷ Ibid.

⁹⁸ Schlegel, 1796/2003.

⁹⁹ Schlegel, 1796/2003:54-55.

¹⁰⁰ Schlegel, 1796/2003:54.

¹⁰¹ Ibid.

¹⁰² Goethe, 1819/2004.

¹⁰³ Goethe, 1819/2004:64.

¹⁰⁴ Goethe, 1819/2004:65.

Methoden des Übersetzens' ['On the different methods of translating']¹⁰⁵ at the Berlin Academy of Sciences in 1813. The German theologian and translator is the first to make a functionalist distinction between interpreters, who generally deal with business and commercial oral communication, and translators, who work on scientific and artistic texts¹⁰⁶. In his lecture, while considering the «translator proper» the one «who truly wishes to bring together [...] his writer and his reader»¹⁰⁷, Schleiermacher asserts that, when translating,

there are only two possibilities. Either the translator leaves the author in peace as much as possible and moves the reader toward him; or he leaves the reader in peace as much as possible and moves the writer toward him [...], and besides these two methods there can exist no third one that might serve some particular end¹⁰⁸.

Following his German contemporaries, Schleiermacher advances that a translator should choose the first strategy, since, apart from bilingual individuals, who would not need texts to be translated, but would rather read the originals, «all other people», when reading a foreign text «as fluently as they might read a foreign tongue, will yet retain a feeling of the foreign». This «sense of encountering the foreign» should be also recreated in the translated text, using a language «that not only departs from the quotidian but lets one perceive that it was not left to develop freely but rather was bent to a foreign likeness». Despite the German translator admits that such strategy may appear extremely humiliating to the skilled translator, he also claims that «achieving this with art and measure, with detriment neither to oneself nor to the language, is perhaps the greatest difficulty our translator must confront»¹⁰⁹.

Humboldt's study of languages and Schleiermacher's notion of understanding and translation influences later discourses on the concept of translatability and, in the early decades of the twentieth century, drives translators to experiment with foreignizing strategies to give new life to national cultural and literary movements¹¹⁰.

¹⁰⁵ Schleiermacher, 1813/2004.

¹⁰⁶ Ibid.

¹⁰⁷ All quotations Schleiermacher, 1813/2004:49.

¹⁰⁸ Ibid.

¹⁰⁹ All quotations Schleiermacher, 1813/2004:51. According to Schleiermacher, a reason for such difficulties might depend on the translator's degree of knowledge of historical contexts, as well as his level of education and perception of the receiving culture.

¹¹⁰ Venuti (2004).

Modernist ideas inform arts and literature and lead to a process of reinterpretation and rewriting of past models. During this period the degree of autonomy of the translated text from its original increases, with translations being considered the revitalization of the foreign text.

The first move in this direction is the assertion of the 'afterlife' of the translated text by the German philosopher and translator Walter Benjamin, in his 'Die Aufgabe des Übersetzers' ['The Task of the Translator: an introduction to the translation of Baudelaire's *Tableaux Parisiens*']¹¹¹, in 1923. In his preface, Benjamin assimilates the process of translation to that of cognition and argues that as when recognising images of reality, there can be no objectivity; when translating, there could be no identity to the original, but only a search for similarity in a process of transformation:

To grasp the genuine relationship between an original and a translation requires an investigation analogous to the argumentation by which a critique of cognition would have to prove the impossibility of an image theory. There it is a matter of showing that in cognition there could be no objectivity, not even a claim to it, if it dealt with images of reality; here it can be demonstrated that no translation would be possible if in its ultimate essence it strove for likeness to the original. For in its afterlife—which could not be called that if it were not a transformation and a renewal of something living—the original undergoes a change. Even words with fixed meaning can undergo a maturing process¹¹².

In order for the translator to reproduce in the translation an «echo of the original¹¹³», Benjamin agrees with his German predecessors with the use of literal translation strategies. While it would not be «the highest praise of a translation [...] to say that it reads as if it had originally been written in that language»; literalness would ensure that the translation «reflects the great longing for linguistic complementation». According to Benjamin,

the real translation is transparent; it does not cover the original, does not black its light, but allows the pure language, as though reinforced by its own medium to shine upon the original all the more fully. This may be achieved, above all, by a literal rendering of the syntax which proves words rather than sentences to be the primary element of the translator¹¹⁴.

¹¹¹ Benjamin, 1923/2004.

¹¹² Benjamin, 1923/2004:77.

¹¹³ Benjamin, 1923/2004:79.

¹¹⁴ All citations Benjamin, 1923/2004:81.

Benjamin asserts that literal translation should focus on words rather than on sentence structures and he also maintains that such strategy should create a 'pure language', that allows the language of the original to enter the receiving culture and change it, by conveying an «alien meaning»¹¹⁵. The task of the translator, for Benjamin, would ultimately be to «release in his own language that pure language which is under the spell of another, to liberate the language imprisoned in a work in his re-creation of that work. For the sake of pure language he [the translator, BQ] breaks through decayed barriers of his own language¹¹⁶». In this sense, pure language, through the use of literalisms, would make it possible for the translator to change and renew the language of the receiving culture.

Benjamin's view of translation also aims at surpassing the ceaseless dichotomy between freedom and fidelity, respectively reflecting meaning-oriented and literalist translation strategies. According to the German translator,

just as a tangent touches a circle lightly and at but one point, with this touch rather than with the point setting the law according to which it is to continue on its straight path to infinity, a translation touches the original lightly and only at the infinitely small point of the sense, thereupon pursuing its own course according to the laws of fidelity in the freedom of linguistic flux¹¹⁷.

In this view, freedom and fidelity are not incompatible, but, on the contrary, they can coexist, so that when they converge at the same point a translation is made possible. Such point of convergence signals the translatability of a text, because literalisms are able to convey the sense of the original in its afterlife¹¹⁸.

Benjamin's reflections on literal translation as a strategy to innovate cultures and languages has been inscribed in different early twentieth-century cultural and political agendas, such as it has been the case with German nationalism at the time of

¹¹⁵ Ibid.

¹¹⁶ Benjamin, 1923/2004:82.

¹¹⁷ Ibid.

¹¹⁸ In 1924, Ulrich von Willamowitz-Moellendorff, in 'Die Kunst des Übersetzens', ['The Art of Translation'], gave a similar interpretation of what was a translation, since he defined true translation as «metempsychosis», (Willamowitz-Moellendorff;1924/2003: 34). However, he invited philologists, the only ones who, in his view, could produce good translations to «spurn the letter and follow the spirit (Ibid.)». According to the German philologist, a good translator should «let the ancient poet speak to us clearly and in a manner as immediately intelligible as he did in his own time. He must be given words, he must speak through our mouth [...] This implies that the ancient poet, whose own lines lead an immortal life, must time and again cast his spirit on a new translator (Ibid.)».

the Napoleonic wars as a way to resist the French cultural domination¹¹⁹, or with Martin Buber and Franz Rosenzweig's version of the Hebrew Bible, with the aim of distinguishing the German Jewish culture from the Christian one, through archaisms and other stylistic techniques¹²⁰.

The use of an archaic style as a simile of the language of ancient foreign texts is also experimented by the expatriate American poet and critic Ezra Pound in translating from Italian into English Guido Cavalcanti's sonnets and ballads. In his 1929 essay, 'Guido's relations'¹²¹, Pound explains the reason for using a pre-Elizabethan English to translate Cavalcanti's thirteenth-century Italian:

There is no question of giving Guido in an English contemporary to himself, the ultimate Britons were at that date unbreeched, painted in woad, and grunting in an idiom far more difficult for us to master than the Langue d'Oc of the Plantagenets or the Lingua di Si¹²².

According to Pound, translating Cavalcanti's Italian into the corresponding English of the same age would do it wrong because, at that time, the English language was not as clear and explicit as the thirteenth-century Italian was. On the contrary, a «pre-Elizabethan English, or a period when the writers were still intent on clarity and explicitness¹²³» would help him to convey a similar «fervour»¹²⁴ that «simply does not occur in English poetry in those centuries¹²⁵». By doing this, Pound seeks to evoke more the impression he is given when reading the originals, than the real voice of the author, which, in any case, his readers would not be able to reconstruct:

By taking these Italian sonnets, which are not metrically the equivalent of the English sonnet, by sacrificing, or losing, or simply not feeling and understanding their cogency, their sobriety, and by seeking simply that far from quickly or so-easily-as-it-looks attainable thing, the perfect melody, careless of exactitude of idea, or careless as to which profound and fundamental idea you, at that moment, utter, perhaps in precise enough phrases, by cutting

¹¹⁹ Venuti, 2004:73.

¹²⁰ Ibid.

¹²¹ Pound, 1929/2004.

¹²² Pound, 1929/2004:92.

¹²³ Ibid.

¹²⁴ Pound, 1929/2004:93.

¹²⁵ Ibid.

away the apparently non-functioning phrases (whose appearance deceives) you find yourself in the English *seicento* song-books¹²⁶.

Aware, as he is, that his choice might lead to misrepresentations of the degree of antiquity to be conveyed, since «Guido's thirteenth-century language is to twentieth-century Italian sense much less archaic than any fourteenth-, fifteenth-, or early sixteenth-century English is for us»; Pound believes that the task of a translator is to suggest a possible interpretation of the original to the reader. The translator, through their «interpretative translation», «show where the treasure lies, he can guide the reader in choice of what tongue is to be studied, and he can very materially assist the hurried student who has a smattering of a language and the energy to read the original text alongside the metrical gloze», but he would always be «impotent to do all the work for the linguistically lazy reader»¹²⁷. Pound imagines his experimental translations to be read together with their originals, so that the reader could make up for himself the changes and his imagination and creativity could be stimulated by acknowledging the translator's choices and methods.

The 1920s literal stylistic experiments in translation, sometimes part of national and cultural political agendas, in the 1930s initiates more self-conscious reflections on the translatability of the foreign texts and on the ideological implications of translation. The Argentinean writer Jorge Luis Borges, in his 1935 essay 'The Translators of *The Thousand and One Nights*'¹²⁸, compares different literal versions of the renown 'Arabian Nights' and, by analysing terms, grammar and syntax, he demonstrates that different translations produce different interpretations of the original text¹²⁹. Such 'interpretative translations', as Pound would call them, shed light on the underlying ideological assumptions that influence translators, and that Borges finds extremely interesting and worth examining. Instead of considering infidelity a negative feature of translation, the Argentinean writer is mostly interested into studying the differences in «happy and creative infidelity, that must matter to us¹³⁰».

¹²⁶ Pound, 1929/2004: 90-91.

¹²⁷ All citations Pound, 1929/2004: 90-91

¹²⁸ Borges, 1935/2004.

¹²⁹ Ibid.

¹³⁰ Borges, 1935/2004:105.

At the end of the 1930s, translation starts to be considered more systematically and raises the interest of different scholars, writers and literary critics¹³¹. The philosopher José Ortega y Gasset, in his 'The Misery and Splendour of Translation'¹³², describes translation as «an apparatus, a technical device that brings us closer to the work without ever trying to repeat or replace it¹³³», it is «not the work, but a path toward the work¹³⁴». The Spanish philosopher calls for a new definition of translation as «a literary genre apart, different from the rest, with its own norms and own ends¹³⁵».

In his 1937 philosophical dialogue, Ortega y Gasset analyses the essence and the use of translation by initially stating the impossibility to translate at all, given the general utopian nature of man:

Isn't the act of translating necessarily a utopian task? The truth is, I've become more and more convinced that everything Man does is utopian. Although he is principally involved in trying to know, he never fully succeeds in knowing anything. When deciding what is fair, he inevitably falls into cunning. He thinks he loves and then discovers he only promised to. Don't misunderstand my words to be a satire on morals, as if I would criticize my colleagues because they don't do what they propose. My intention is, precisely, the opposite; rather than blame them for their failure, I would suggest that none of these things can be done, for they are impossible in their very essence, and they will always remain mere intention, vain aspiration, an invalid posture¹³⁶.

Ortega's argument goes on to claim that it is impossible to produce duplicates of the original texts and that, given the imperfect nature of man, it is only possible to have multiple translations of the same foreign text¹³⁷. Following Schleiermacher's defence of literalist foreignizing strategies, he also claims that «it is only when we force the reader from his linguistic habits and oblige him to move within those of the author that there is actually translation¹³⁸».

¹³¹ Venuti, 2004.

¹³² Ortega y Gasset, 1937/2000.

¹³³ Ortega y Gasset, 1937/2000:61.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ortega y Gasset, 1937/2000:49.

¹³⁷ Ibid.

¹³⁸ Ibid.

According to the philosopher, the most urgent enterprise for translators of his time is translation of the Greeks and Romans, that having «lost the character of models¹³⁹», could in any case contribute to the rebirth of the humanities. However, Greek and Latin should not be translated as models, but as exemplary errors,

because Man is a historical entity and like every historical reality—not definitively, but for the time being—he is an error. To acquire a historical consciousness of oneself and to learn to see oneself as an error are the same thing. And since—for the time being and relatively speaking—always being an error is the truth of Man, only a historical consciousness can place him into his truth and rescue him. But it is useless to hope that present Man by simply looking at himself will discover himself as an error. One can only educate his optics for human truth, for authentic humanism, by making him look closely and well at the error that others were and, especially, at the error that the best ones were¹⁴⁰.

In Ortega's view, ancient models could serve as an advising comparison in order for the modern man not to make the same errors of the past.

The interest in the translation of ancient philosophical classics, in the mid 1940s, brings the philosopher Martin Heidegger, in his essay 'The Anaximander Fragment'¹⁴¹, to analyse and compare different translations of a fragment attributed to the Greek pre-Socratic thinker Anaximander, «considered the oldest fragment of Western thinking¹⁴²». In his 1946 essay, Heidegger argues that previous translations of the fragment by renowned scholars are influenced by later Platonic and Aristotelian assumptions:

The unexpressed standard for considering and judging the early thinkers is the philosophy of Plato and Aristotle. These are taken as the Greek philosophers who set the standards both before and after themselves. Traversing Christian theology, this view becomes firmly entrenched as a universal conviction, one which to this day has not been shaken. In the meantime, even when philological and historical research treat philosophers before Plato and Aristotle in greater detail, Platonic and Aristotelian representations and concepts, in modern transformations, still guide the interpretation.[...] Simply ignoring these later notions will not

¹³⁹ Ortega y Gasset, 1937/2000:61.

¹⁴⁰ Ibid.

¹⁴¹ Heidegger, 1975.

¹⁴² Heidegger, 1975:13.

help in the course of translating from one language to another, if we do not first of all see how it stands with the matter to be translated.¹⁴³

Heidegger also claims that, before translating, one should be aware of his own incorrect beliefs and assumptions and abandon them: «in order to translate at all what comes to language in the fragment, we must, before we do any actual translating, consciously cast aside all inadequate presuppositions¹⁴⁴». However, a translator should also be able to build a significant dialogue with the original to understand what things are the same in his worldview:

Even to cast aside all presuppositions whenever we find them inadequate is insufficient so long as we fail to gain access to what comes to language in the fragment. Dialogue with early Greek thinking will be fruitful only when such listening occurs. It is proper to dialogue that its conversation speak of the same thing; indeed, that it speak out of participation in the Same¹⁴⁵.

The word 'Same' here is not to be intended as the identical, but as a condition of similarity that enables thoughtful dialogue between recent and past times: «Where we can speak of the Same in terms of things which are not identical, the fundamental condition of a thoughtful dialogue between recent and early times is automatically fulfilled¹⁴⁶». A thoughtful dialogue with the original, for Heidegger, would make it possible to translate it; but, since thinking entails «poetizing¹⁴⁷», that is a creative activity, «art [that, BQ] shapes its work within the realm of language¹⁴⁸», translation and the experience of language would also «retain the appearance of violence¹⁴⁹». Violence, according to Heidegger, would be inevitable in order to make the original speak for itself, and it is reflected through the use of literal translation strategies¹⁵⁰.

¹⁴³ Heidegger, 1975:14.

¹⁴⁴ Heidegger, 1975:22.

¹⁴⁵ Ibid.

¹⁴⁶ Heidegger, 1975:23.

¹⁴⁷ Heidegger, 1975: 19.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Heidegger, 1975:20.

2.2 The origin and development of the paradigm of equivalence in translation

Even though during the 1940s and 1950s debates over the best translation strategy and translatability continue especially in the field of literature¹⁵¹, with Borges and Heidegger's comparisons of different translations and Ortega y Gasset's reflections, translation starts to be considered a growing and progressively autonomous discipline or genre and is studied in a more historically-defined pattern.

With the gradual institutionalisation of translation, which starts following the structuralist linguistics studies in the early twentieth century, the discourses on the word-for-word, literal strategies versus the loose, free, meaning-oriented ones continues to inform later debates on translation.

However, even though it appears to be possible to group translation into only two opposing categories, closer observation of their uses in different historical periods has shown that one could recognise different foundational translation thoughts and beliefs, and consequently diverse strategic choices, falling within each of the two categories. In order to make these aspects more apparent, it seems useful to recall a number of elements that contributed to the varying nature of the notion of translation and translation strategies in the Western translation thought.

First of all, it is important to notice that, instead of being an independent activity, translation was ubiquitous and necessary in a number of disciplines that included not only, as one could easily imagine, grammar, philology, literature and literary critique, but also rhetoric, theology and philosophy.

Secondly, one could find it useful to consider the purposes of translation based on two elements that are strongly linked together: one being the purpose for the translation of a specific text, and the other the aim of the broader political agenda that in turns was served through translation. In fact, narrower textual objectives, such as faithfulness to the message, fidelity to the author and the reader's ease of understanding, were always closely connected with the broader political, cultural and religious agendas, such as the appropriation of a culture, the creation of nations or

¹⁵¹ Consider, for instance, Vladimir Nabokov's 1955 essay 'Problems of Translation: *Onegin* in English', in which the Russian writer criticized rhymed paraphrastic versions of Pushkin's poem 'Eugene Onegin' into English and advocated for literal and over-glossed translations of it.

peoples, the power struggle over the custody of religious truths, the defence of national languages and minority cultures, the renewal of national languages.

These first two aspects contributed to establish, in any historical periods, specific standards and common translation practices, according to which it was possible to determine what was translatable and what, on the contrary, was not allowed or worth to be translated. Moreover, only by abiding to such norms was it possible to produce what was perceived to be a 'good translation'.

Thirdly, in some contexts literal and meaning-oriented strategies were part of a power struggle between groups of conflicting interests, thus proving to be irreconcilable and opposed. However, it is also worth mentioning that, in other historical periods, far from being incompatible and exclusive, such strategies were used together in the very same translated text as mutually integrating methods.

Finally, depending on the historical periods, such strategies were variably applied at different linguistic levels, such as words, sentences, paragraphs, or full texts, and to different text types, such as commentaries, literary prose or poetry, sacred texts, etc.

The discourses on translation presented so far informed modern and contemporary theories and models and, specifically, the notion and the degree of autonomy of the translated texts from their originals, that have been rethought in the 1950s in order to fit the paradigm of equivalence in translation.

Such notion has always been disputed starting from its very early appearance at the end of the 1950s and seems to be part of the broader and interdisciplinary controversies of the twentieth century between linguistic universalist and relativist scholarly positions.

Throughout the first part of the twentieth century, debates on the best translation strategies dominated in disciplines such as philology, literature and literary critique, mostly propounding literalist or foreignizing methods. During this period, such debates also regarded the translatability of foreign literary texts and were broadly discussed in other disciplines such as philosophy, ethnography and anthropology. Such discussions also led to the establishment of linguistics as an independent 'science of language' in the 1920s, and to later applications of linguistic theories to the practice of translation in the 1950s. Linguistic studies on translation originated the paradigm of equivalence as a consistent and scientific formulation of the practice of

translation. Parallel to these developments, however, other linguistic, philosophical and anthropological reflections on translatability influenced the debate and at times contributed to question and redefine the paradigm of equivalence as a less stable concept since the early decades on the twentieth century.

Humboldt's nineteenth-century notion of different languages representing different nations inspires many scholars and is also interpreted in varying manners during the twentieth century. For instance, in the 1920s and 1930s, the American anthropologist and linguist Edward Sapir studies the connection between languages and cultures¹⁵² and the linguistic influences of some languages over others. In later years, Sapir's student Benjamin Lee Whorf formulates the principle of linguistic relativity¹⁵³, that claims that people's worldviews and ways of thinking are influenced by the language or languages they spoke.

Humboldt's idea is also restated in the 1916 'Course of General Linguistics'¹⁵⁴ by the linguist Ferdinand De Saussure: «the culture of a nation exerts an influence on its language, and the language, on the other hand, is largely responsible for the nation¹⁵⁵». In this work, compiled after Saussure's death from his lectures at the University of Geneva, a systematic theory of linguistic signs is developed that initiates a new «science of language¹⁵⁶»:

Language, unlike speaking, is something that we can study separately. Although dead languages are no longer spoken, we can easily assimilate their linguistic organisms. We can dispense with the other elements of speech; indeed, the science of language is possible only if the other elements are excluded¹⁵⁷.

Saussure hypothesizes that one could focus on language more scientifically by casting aside all contextual details and studying linguistic signs synchronically.

The Swiss linguist defines language, or 'langue', a «self-contained whole and a principle of classification¹⁵⁸», the orderly part of human speech, that he calls 'langage'. On the contrary, human speech is considered «many-sided and

¹⁵² Sapir, 1921.

¹⁵³ Whorf, 1941.

¹⁵⁴ Saussure, 1916.

¹⁵⁵ Saussure, 1916:20.

¹⁵⁶ Saussure, 1916:15.

¹⁵⁷ Ibid.

¹⁵⁸ Saussure, 1916:9.

heterogeneous¹⁵⁹», the «social product of the faculty of speech and a collection of necessary conventions that have been adopted by a social body to permit individuals to exercise that faculty¹⁶⁰». Apart from language, the human speech, for Saussure, is also made of linguistic utterances and «articulation of words¹⁶¹», the actual speaking, or 'parole', that is considered the individual and «executive side¹⁶²» of human speech. Following his first distinction between 'langue' and 'parole', Saussure goes on to define a linguistic unit or sign as a «double entity¹⁶³» formed by the association of two terms: «not a thing and a name, but a concept and a sound-image¹⁶⁴». The latter, according to Saussure, is not to be mistaken for the material sound, but is rather «a psychological imprint of the sound, the impression that it makes on our senses¹⁶⁵». He then proposes to «retain the word *sign* [*signe*] to designate the whole and to replace *concept* and *sound-image* respectively by *signified* [*signifié*] and *signifier* [*signifiant*]; the last two terms have the advantage of indicating the opposition that separates them from each other and from the whole of which they are part»¹⁶⁶.

Toward the end of the 1950s, a general growing interest for translation in the field of structural linguistics arises and Saussure's considerations on the 'science of language' are applied to translation by the Russian formalist linguist Roman Jakobson. In his 1959 seminal paper 'On Linguistic Aspects of Translation'¹⁶⁷, Jakobson examines the concept of meaning from a structuralist perspective, taking on Saussure's investigation on the 'double entity' of a linguistic sign.

«Against those who assign meaning (*signatum*) not to the sign, but to the thing itself¹⁶⁸», thus criticising approaches such as Sapir and Whorf's, the Russian linguist restates that

there is no *signatum* without *signum*. The meaning of the word "cheese" cannot be inferred from a nonlinguistic acquaintance with cheddar or with camembert without the assistance of the verbal code. An array of linguistic signs is needed to introduce an unfamiliar word¹⁶⁹.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Saussure, 1916:13.

¹⁶² Ibid.

¹⁶³ Saussure, 1916:65.

¹⁶⁴ Saussure, 1916:66.

¹⁶⁵ Ibid.

¹⁶⁶ Saussure, 1916:67. Italics in the original.

¹⁶⁷ Jakobson, 1959.

¹⁶⁸ Jakobson, 1959:138.

According to Jakobson, the meaning of a word cannot simply be guessed by experiencing the thing it refers to, but it has to be mediated by a verbal definition or clarification of it. Quoting Dewey's 1946 article on 'Peirce's Theory of Linguistic Signs, Thought, and Meaning'¹⁷⁰, Jakobson asserts that «for us, both as linguists and as ordinary word-users, the meaning of any linguistic sign is its translation into some further, alternative sign, especially a sign "in which it is more fully developed"».

In his essay, Jakobson also identifies three different ways of interpreting signs, corresponding to three types of translation which could be carried out into the same language, into another language or into another non-verbal systems of symbols: the first kind is «intralingual translation or *rewording*», that «is an interpretation of verbal signs by means of other signs of the same language». The second is «interlingual translation or *translation proper*», an «interpretation of verbal signs by means of some other language¹⁷¹». The third is «intersemiotic translation or *transmutation*», an «interpretation of verbal signs by means of signs of nonverbal sign systems»¹⁷².

In Jakobson's view, any language would be able to convey any possible meanings and messages embedded in it, because languages only differ in code-units, such as words or expressions¹⁷³, and differences arise «essentially in what they *must* convey and not in what they *may* convey¹⁷⁴».

In this sense, Jakobson agrees that when translating single code-units it is impossible to achieve complete equivalence, because both in intralingual and interlingual translation, «a word or an idiomatic phrase-word [...] may be fully interpreted only by means of an equivalent combination of code-units¹⁷⁵». In this sense, only messages could be adequately translated into other code-units or messages:

Most frequently [...] translation from one language into another substitutes messages in one language not for separate code-units but for entire messages in some other language. Such a

¹⁶⁹ Ibid. Italics in the original.

¹⁷⁰ Dewey, 1946.

¹⁷¹ All citations Dewey, 1946:91. Italics in the original.

¹⁷² All citations *ibid.* Italics in the original.

¹⁷³ Jakobson, 1959.

¹⁷⁴ Jakobson, 1959:141. Italics in the original.

¹⁷⁵ Jakobson, 1959:139.

translation is a reported speech; the translator recodes and transmits a message received from another source. Thus translation involves two equivalent messages in two different codes¹⁷⁶.

According to Jakobson, equivalence could only be reached between messages and not between languages and establishing equivalence of sense ('message') in the difference between two code-units is the task of linguists: «Equivalence in difference is the cardinal problem of language and the pivotal concern of linguistics», because «no linguistic specimen may be interpreted by the science of language without a translation of its signs into other signs of the same system or into signs of another system»¹⁷⁷.

Such assertions also implies that in order to translate, one should also be aware of the differences between languages:

Any comparison of two languages implies an examination of their mutual translatability; widespread practice of interlingual communication, particularly translating activities, must be kept under constant scrutiny by linguistic science¹⁷⁸.

Jakobson criticises Benjamin Lee Whorf for asserting his «dogma of untranslatability¹⁷⁹» and invites linguists to study the differences between languages so to establish their 'mutual translatability':

It is difficult to overestimate the urgent need for and the theoretical and practical significance of differential bilingual dictionaries with careful comparative definition of all the corresponding units in their intension and extension. Likewise differential bilingual grammars should define what unifies and what differentiates the two languages in their selection and delimitation of grammatical concepts.

In line with Jakobson's urge to compile bilingual dictionaries and comparative grammars, in 1958, the Canadian linguists Jean-Paul Vinay and Jean Darbelnet publish their 'Stylistique comparée du français et de l'anglais', ['Comparative Stylistics of French and English: A Methodology for Translation'¹⁸⁰], to provide translators working with English and French with different translational procedures. In their manual, they introduce two general methods of translation, namely «direct, or

¹⁷⁶ Ibid.

¹⁷⁷ All citations Jakobson, 1959:139.

¹⁷⁸ Jakobson, 1959:140.

¹⁷⁹ Ibid.

¹⁸⁰ Vinay and Darbelnet, 1958/2004.

literal translation», and «oblique translation», and present particular translation procedures for each general category. While the first kind of translation is «based on parallel categories, [...] or on parallel concepts», with occasional gaps or lacunae in the receiving language; the second kind is described as based on «structural or metalinguistic differences»¹⁸¹ in translation.

After classifying translation strategies into two different groups, Vinay and Darbelnet introduce a number of translational techniques, which refer to either direct or oblique translation: as for direct translation, in order «to overcome a lacuna», their model includes 'borrowing', through which «foreign terms may be used» and introduces in the receiving culture; 'calque', which is a special kind of borrowing, translated literally into the receiving culture¹⁸²; and 'literal translation', a word-for-word translation of the text to maintain close adherence to it¹⁸³. With regard to oblique translation strategies, the Canadian linguists include: 'transposition', which entails the substitution of a word class with another, keeping the meaning unaltered¹⁸⁴; 'modulation', which consists of modifying the form of the message, by changing its point of view¹⁸⁵; 'equivalence', that is used to render onomatopoeic or idiomatic expressions by changing style and content¹⁸⁶; 'adaptation', used in case a whole situation in the original does not exist in the receiving culture and has to be substituted with a more relevant one¹⁸⁷.

While Jakobson considers equivalence as the ultimate aim of a linguist and a key concept in the study of meaning, Vinay and Darbelnet's model considers equivalence as one of the strategies a translator could use to render idiomatic and onomatopoeic expressions and locates it as a special case of loose 'oblique' translation. In both cases, equivalence is held to be an achievable objective and starts to be studied in a more scientific and systematic manner.

During the same period, philosophical and literary critique reflections move in a different direction. The analytic philosopher, Willard Van Orman Quine, in his work

¹⁸¹ All citations Vinay and Darbelnet, 1958/2004:128.

¹⁸² All citations Vinay and Darbelnet, 1958/2004:129.

¹⁸³ Vinay and Darbelnet, 1958/2004:130.

¹⁸⁴ Vinay and Darbelnet, 1958/2004:132.

¹⁸⁵ Vinay and Darbelnet, 1958/2004:133.

¹⁸⁶ Vinay and Darbelnet, 1958/2004:134.

¹⁸⁷ Vinay and Darbelnet, 1958/2004:134-135.

'Word and Object'¹⁸⁸ asserts the principle of indeterminacy of translation. Quine derives his reflections from the very structure of language as a context-based code of communication and claims that, since it is impossible to gain certainty of the meaning of an object through external observation and experience, also translation of words is unpredictable and indeterminable. In one of his best known examples, Quine argues that

Manuals for translating one language into another can be set up in divergent ways, all compatible with the totality of speech dispositions, yet incompatible with one another. In countless places they will diverge in giving, as their respective translations of a sentence of the one language, sentences of the other language which stand to each other in no plausible sort of equivalence however loose¹⁸⁹.

Far from claiming the impossibility to translate at all, Quine rather proposes that, since one could never be sure about the meaning of a word that varies with context, translations should not be evaluated as being good or bad, and multiple translations of the same text should be equally considered possible. However, he also acknowledges that the discrepancy between different translations of the same text could proportionally decrease in case contextual details were present: «the firmer the direct links of a sentence with non-verbal stimulation, of course, the less drastically its translations can diverge from one another¹⁹⁰».

In order to explain his concept of 'indeterminacy of reference', Quine uses an example of what he calls 'radical translation', that is the «translation of the language of a hitherto untouched people¹⁹¹»: the Arunta native speaker, who, in the presence of a linguist, utter the word 'gagavai', while a rabbit is passing by. While the linguist could imagine that the word 'gagavai' means 'rabbit' in Arunta, still other translations could be possible and compatible with the same context, such as «Lo, a rabbit¹⁹²», 'food', 'a rabbit-part', 'a rabbit-stage¹⁹³', etc. Even if a linguist tried to circumscribe all the possible situations and thus exclude some hypotheses through observation, he would never be sure to recreate the same conditions, since he would translate «not by

¹⁸⁸ Quine, 1960.

¹⁸⁹ Quine, 1960:29.

¹⁹⁰ Ibid.

¹⁹¹ Quine, 1960:28.

¹⁹² Quine, 1960:29.

¹⁹³ Quine, 1960.

identity of stimulus meanings, but by significant approximation of stimulus meanings¹⁹⁴». Even if he wanted to test his conclusions by asking the native speakers, he could only do so after having mastered the language. However, his command of the language would circularly depend on hypotheses that were previously inferred by earlier observation¹⁹⁵.

Another philosophical stance is that of Hans-Georg Gadamer, who in his 'Wahrheit und Methode', ['Truth and Method']¹⁹⁶, first published in 1960, introduces his hermeneutic approach. The German philosopher draws from Heidegger's notion of 'hermeneutic circle' as the process of understanding stemming from a dialogue between text and context and also takes on Dilthey's idea of understanding as an interpretation based on personal experience and historical context. In his work, Gadamer criticises the use of the scientific method, usually employed in natural sciences, for evaluating human sciences and arts, claiming that

the human sciences are connected to modes of experience that lie outside science: with the experiences of philosophy, of art, and of history itself. These are all modes of experience in which a truth is communicated that cannot be verified by the methodological means proper to science¹⁹⁷.

Gadamer's objective is to «defend the experience of truth that comes to us through the work of art against the aesthetic theory that lets itself be restricted to a scientific conception of truth»¹⁹⁸. The work of art, according to Gadamer, should not be measured «by the yardstick of a progressive knowledge of regularity»¹⁹⁹ and «by the inductive procedure of the natural sciences»²⁰⁰, because such procedures do «not suffice to guarantee the truth»²⁰¹. The German philosopher claims that understanding always entails recourse to one's own prejudices that are inescapably part of each human being. However, even though this shows the limitations of the way one

¹⁹⁴ Quine, 1960:40.

¹⁹⁵ Quine, 1960.

¹⁹⁶ Gadamer, 2004.

¹⁹⁷ Gadamer, 2004:xxi.

¹⁹⁸ Ibid.

¹⁹⁹ Gadamer, 2004:4.

²⁰⁰ Ibid.

²⁰¹ Gadamer, 2004:484.

understands and gets to know anything, in Gadamer's opinion, it is still extremely important to question knowledge to become aware of such limits.

Thus there is undoubtedly no understanding that is free of all prejudices, however much the will of our knowledge must be directed toward escaping their thrall. [...] The fact that in such knowledge the knower's own being comes into play certainly shows the limits of method, but not of science. Rather, what the tool of method does not achieve must—and really can—be achieved by a discipline of questioning and inquiring, a discipline that guarantees truth²⁰².

In this sense, to understand a text one should not only rely on «simply filing things in pigeonholes» and use «a superior knowledge of the subject matter», but they should undergo a hermeneutical experience and genuinely encounter that which «asserts itself as truth». Such an encounter, however, should not be understood as «an achievement of empathy in which one divines the inner life of the speaker», but rather as a «determination by situation and context» that «pertains not to the speaker but to what is spoken»²⁰³.

Gadamer uses the concept of translation, «the transformation of something alien and dead into total contemporaneity and familiarity»²⁰⁴ to describe this process of understanding:

The translation process fundamentally contains the whole secret of how human beings come to an understanding of the world and communicate with each other. Translation is an indissoluble unity of implicit acts of anticipating, of grasping meaning as a whole beforehand, and explicitly laying down what was thus grasped in advance²⁰⁵.

Language is thus considered «the medium in which substantive understanding and agreement take place between two people»²⁰⁶ and the process of translation, broadly defined, is held to be extremely enlightening of any verbal process

the translator must translate the meaning to be understood into the context in which the other speaker lives. This does not, of course, mean that he is at liberty to falsify the meaning of what the other person says. Rather, the meaning must be preserved, but since it must be

²⁰² Ibid.

²⁰³ All citations Gadamer, 2004:483.

²⁰⁴ Gadamer, 2004:156.

²⁰⁵ Gadamer, 2004:552.

²⁰⁶ Gadamer, 2004:385.

understood within a new language world, it must establish its validity within it in a new way²⁰⁷.

In this sense, Gadamer views every translation as an interpretation, or «the culmination of the interpretation that the translator has made of the words given him»²⁰⁸, happening not «between the partners of the conversation, but between interpreters, who can really have an encounter in a common world of understanding»²⁰⁹.

As a consequence, translation, as any interpretation and act of understanding, is also the result of a 'fusion of different horizons' that includes not only the translator's present perspective, but also other historical horizons that are continually questioned when encountering the past²¹⁰. In the case of translation, such 'fusion of horizons' should not be considered a simple reproduction or a «re-awakening of the original process in the writer's mind»²¹¹, but rather a «re-creation of the text guided by the way the translator understands what it says»²¹².

In this sense, faithfulness would not guarantee the removal of «the fundamental gulf between the two languages»²¹³, since, as in conversations, «the distance between one's own opinion and its contrary is ultimately unbridgeable»²¹⁴ and, «however faithful we try to be, we have to make difficult decisions»²¹⁵ by favouring some aspects of the original to the detriment of others:

In our translation if we want to emphasize a feature of the original that is important to us, then we can do so only by playing down or entirely suppressing other features. But this is precisely the activity that we call interpretation. Translation, like all interpretation, is a highlighting. A translator must understand that highlighting is part of his task. Obviously he must not leave open whatever is not clear to him. He must show his colors²¹⁶.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Gadamer, 2004:305.

²¹¹ Gadamer, 2004:387.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Gadamer, 2004:388.

²¹⁵ Gadamer, 2004:387.

²¹⁶ Gadamer, 2004:387-388.

Such highlighting for Gadamer also entails making ambiguous passages «clearer and flatter than the original» and an act of renunciation by the translator, who, in order to be clear and open, would not be «able to express all the dimensions of his text» and would miss «some of the overtones that vibrate in the original».

For Gadamer, the translator is a special kind of interpreter who has to constantly face «an extreme case of hermeneutical difficulty—i.e., of alienness and its conquest», by seeking «the best solution» and reaching, as in usual conversations, a compromise «in the to and fro of dialogue, [...] in the to and fro of weighing and balancing possibilities»²¹⁷. Such interpretation, for Gadamer, could be called a 'hermeneutical conversation', in which the two interlocutors in translation, the original text and the translator, find a common language as the result of their 'fusion of horizons'.

The structures are clearly analogous. Reaching an understanding in conversation presupposes that both partners are ready for it and are trying to recognize the full value of what is alien and opposed to them. If this happens mutually, and each of the partners, while simultaneously holding on to his own arguments, weighs the counterarguments, it is finally possible to achieve—in an imperceptible but not arbitrary reciprocal translation of the other's position (we call this an exchange of views)—a common diction and a common dictum²¹⁸.

A common language for Gadamer can be obtained also in the case of written texts, because in his opinion «writing is the abstract ideality of language»²¹⁹ that should not be considered as «a repetition of something past but the sharing of a present meaning»²²⁰.

Gadamer's view of translation as interpretation is addressed at literary claims of untranslatability and has deeply influenced later translation scholars in the 1970s and 1980s, such as George Steiner and Antoine Berman.

However, during this period, diverse strains of thought in different disciplines concur in shaping the discourse on translation: on the one hand, the context-based nature of language, at times, supports the indeterminacy of translation and untranslatability, while, on the other hand, meaning is considered a common ground for different languages to communicate and equivalence as an attainable task for the

²¹⁷ All citations Gadamer, 2004:388.

²¹⁸ Ibid.

²¹⁹ Gadamer, 2004:394.

²²⁰ Ibid.

translator. In the aftermath of the 1950s discourses on translation try to reconcile both positions and, throughout the 1960s, such objective in the field of translation is pursued by privileging the scientific and institutionalising import of linguistics and subsuming the indeterminist elements mentioned before under systematic translation models. Such trend reflects the favourable reception of Noam Chomsky's generative linguistic theory that he first formulates in his 1957 seminal work 'Syntactic Structures'²²¹ and that leads linguistic indeterminism to be resolved in his dynamic context-based model. Chomsky's generative-transformational model is devised to analyse English and aims in the first place to prove the autonomy of grammar from meaning, since, according to him, it is possible to create grammatically correct sentences that have no meaning at all. The American linguist asserted that «the notion "grammatical" cannot be identified with "meaningful" or "significant" in any semantic sense²²²». He then gives the following example:

Sentences (1) and (2) are equally nonsensical, but any speaker of English will recognize that only the former is grammatical.

(1) Colorless green ideas sleep furiously.

(2) Furiously sleep ideas green colorless²²³.

Chomsky considers language in general and sentences in particular to be governed by different interconnected levels of rules: phrase-structure, transformational and morphophonemic. According to Chomsky, sentences can be broken down into smaller constituents and analysed according to phrase-structure rules. Moreover, sentences can also be analysed on the basis of the morphophonemic rules. Morphophonemic and phrase-sentence rules can be connected together by a mediating level of rules, called transformational:

We consequently view grammars as having a tripartite structure. A grammar has a sequence of rules from which phrase structure can be reconstructed and a sequence of morphophonemic rules that convert strings of morphemes into strings of phonemes.

²²¹ Chomsky, 1957/2002.

²²² Chomsky, 1957/2002:15.

²²³ Ibid.

Connecting these sequences, there is a sequence of transformational rules that carry strings with phrase structure into new strings to which the morphophonemic rules can apply²²⁴.

The transformational level of rules is the one «where the kernel sentences underlying a given sentence can be thought of, in a sense, as the 'elementary content elements' out of which this sentence is constructed»²²⁵. By reducing phrase-sentence structure to «a kernel of basic sentences (simple, declarative, active, with no complex verb or noun phrases), deriving all other sentences from these (more properly, from the strings that underlie them) by transformation²²⁶», the American linguist aims at simplifying «the description of English and gain new and important insight into its formal structure²²⁷».

Chomsky's generative-transformational model, together with Saussure's claim for a science of language, and Jakobson's linguistic insights on translation have greatly influenced later theorists of translation who aim at constituting a 'science of translation'. The first systematic work is Eugene Nida's 1964 'Toward a Science of Translating'²²⁸, where the American translator sets out to initiate the 'science of translating' by clearly stating his linguistic approach:

Is translating [...] an art or a science? [...] though no one will deny the artistic elements in good translating, linguists and philologists are becoming increasingly aware that the processes of translation are amenable to rigorous description. When we speak of "the science of translating", we are of course concerned with the descriptive aspect: for just as linguistics may be classified as a descriptive, so the transference of a message from one language to another is likewise a valid subject for scientific description. Those who have insisted that translation is an art, and nothing more, have often failed to probe beneath the surface of the obvious principles and procedures that govern its functioning. Similarly, those who have espoused an entirely opposite view have rarely studied translating enough to appreciate the artistic sensitivity which is an indispensable ingredient in any first-rate translation of a literary work.

Nida acknowledges the tradition of literary translation and recognises the artistic elements as important aspects of good translating; however, in accordance with the

²²⁴ Chomsky, 1957/2002:107.

²²⁵ Chomsky, 1957/2002:107-108.

²²⁶ Chomsky, 1957/2002:106-107.

²²⁷ Chomsky, 1957/2002:106.

²²⁸ Nida, 1964.

linguistic scholars who inspire him, he also sees the possibility of a scientific descriptive approach to translation²²⁹.

The American translator construes his theory of translation from his long experience as a Bible translator since the 1940s and uses his material on the Bible to give examples of translation. Influenced by theories of meaning in linguistics, semantics and anthropology, he acknowledges the work of Sapir and Whorf as a way to study language related to culture, and meanings as «they occur in all types of human behavior²³⁰». Moreover, Nida claims that it is a mistake to believe that «one could not understand a word apart from some nonlinguistic acquaintance with it; and that such an acquaintance [...] involved evidence from one or more sciences²³¹». In order to refute such belief, Nida cites Jakobson and asserts that for some words it is impossible to find a contextual referent, but one can still understand their meanings: «Of course such evidence is often quite impossible to adduce, as in the case of such words as *ambrosia*, *dragon*, *unicorn*, and *mermaid*, and in no instance is it necessary, for the meaning is of the symbol and not for the referent».

Nida acquires a «functional definition of meaning» that, apart from being regarded as a useful tool with which to analyse meaning, it also appears to him to suggest «the very process by which terms acquire meaning, namely through contextual conditioning» and is «a healthy antidote to traditional mentalism, for language as a mode of action is described as a system of symbols which signal behavior, and not merely as countersigns of or indices to thought»²³². He therefore acquires Leonard Bloomfield's definition of meaning:

In the study of meaning, attention has therefore shifted from concern with the referents to the distribution of the form within the total behavior, so that, as Bloomfield (1943, p.102) states, 'The features of situation and action which are common to all utterances of a speech form are the meaning of that speech form'²³³.

²²⁹ It seems noticeable to observe that, even if Toury's *Descriptive Translation Studies*, that also marked the birth of Translation Studies as an academic discipline, were only to be started in the 1970s, the call for a descriptive approach to translation as a way to institute a scientific discipline was previously made by Nida ten years before.

²³⁰ Nida, 1964:36.

²³¹ Ibid.

²³² All citations Nida, 1964:37. Italics in the original.

²³³ Ibid.

When defining translation, Nida claims the impossibility to judge what a good translation is, since it depends on different factors:

definitions or descriptions of translating are not served by deterministic rules; rather, they depend on probabilistic rules. One cannot, therefore, state that a particular translation is good or bad without taking into consideration a myriad of factors, which in turn must be weighted in a number of different ways, with appreciably different answers. Hence there will always be a variety of valid answers to the question. "Is this a good translation?"²³⁴

In his 1964 work, he also asserts that the task of the translator should always be to translate creating «an effective blend of "matter and manner", for these two aspects of any message are inseparably united²³⁵».

The two extremes of translation, for Nida, are represented by formal equivalence or correspondence, that is «basically source-oriented; [...] designed to reveal as much as possible of the form and content of the original message»²³⁶; and dynamic equivalence, that «may be described as one concerning which a bilingual and bicultural person can justifiably say [...], "the closest natural equivalent to the source-language message"»²³⁷. Despite Nida ideally backing a balance between form and content, it is also possible to notice a focus on equivalence of response rather than on equivalence of form, since he considers 'natural' a rendering that «must fit (1) the receptor language and culture as a whole; (2) the context of the particular message, and (3) the receptor-language audience²³⁸».

His later work, 'The Theory and Practice of Translation'²³⁹, shows a stronger propensity for dynamic equivalence, since Nida claims that, while in the past translators have focused on rendering the form of the text rather than its message,

the new focus [...] has shifted from the form of the message to the response of the receptor. Therefore, what one must determine is the response of the receptor to the translated message. This response must then be compared with the way in which the original receptors presumably reacted to the message when it was given in its original setting²⁴⁰.

²³⁴ Nida, 1964:164.

²³⁵ Ibid.

²³⁶ Nida, 1964:165.

²³⁷ Nida, 1964:166.

²³⁸ Nida, 1964:166-167.

²³⁹ Nida & Taber, 1969.

²⁴⁰ Nida & Taber, 1969:1.

According to Nida, this reader-oriented focus would make it possible to give a more systematic and scientific definition of translation that encompasses «reproducing in the receptor language the closest natural equivalent of the source-language message, first in terms of meaning and secondly in terms of style²⁴¹». However, it is important to notice that the concept of equivalence in Nida is a sort of identity, but rather a similarity of response, allowing for extensive modification of the form of a text:

The translator must strive for equivalence rather than identity. In a sense this is just another way of emphasizing the reproduction of the message rather than the conservation of the form of the utterance, but it reinforces the need for radical alteration of a phrase²⁴².

Even though he shows a certain degree of concern for founding his assumptions on 'probabilistic' rather than 'deterministic rules', and despite his idea of translation as a combination of formal and dynamic equivalence constituents depending on the peculiarities of the text and situations, Nida uses Chomsky's categorisation of language as a stable and unchanging subject matter²⁴³.

Toward the end of the 1950s, the British linguist Halliday, drawing from Firth's notion of language as a social and behavioural system, proposes a different descriptive way of analysing language and meaning, an alternative to Chomsky's generative-transformational grammar. In line with his master Firth, who rejected Saussure's distinction between 'langue' and 'parole' and the Chomskian notion of language as a static mental system, in one of his first papers 'Some aspects of systematic description and comparison in grammatical analysis'²⁴⁴, Halliday asserts that

there can be no universal formal-linguistic categories (there might theoretically be categories formally identified as common to all languages studied heretofore, but such identification is not yet a practical possibility), while non-formal-linguistic categories, if they are to figure in the description at all, must be implicitly regarded as universal²⁴⁵.

²⁴¹ Nida & Taber, 1969:12.

²⁴² Ibid.

²⁴³ A similar approach to the theory of translation in the same period was that of the French translation theorist George Mounin, 1963, who, in his 'Les problèmes théorique de la traduction' ['The theoretical problems of translation'], defended the existence of universal categories against relativity claims.

²⁴⁴ Halliday, 1957.

²⁴⁵ Halliday, 1957:21.

Clearly rejecting the utility of formal linguistic categorization, Halliday allows the existence of universal non-formal linguistic categories that serve for the purpose of language description. Moreover, in his 1961 paper 'Categories of the theory of grammar'²⁴⁶, the British-Australian linguist introduces four relevant categories for grammatical analysis, namely unit, structure, class and system, that could include all the possible sets of data to be analysed. In order to classify data he also introduces three different scales of abstraction: rank, or hierarchy; exponence, or taxonomy; and delicacy, or cline. Most relevant to the questioning of the concept of language as a stable entity appears to be the notion of delicacy, which Halliday also defines «a continuum carrying potentially infinite gradation»²⁴⁷ «a variable»²⁴⁸, «the scale of differentiation, or depth in detail»²⁴⁹ that serves to relate categories to each other and to contextual elements. Such variable seems to signal a probabilistic and indeterministic approach to grammatical categories:

the nature of language is **not** to operate with relations of “always this and never that”. Grammatical theory takes this into account by introducing a special scale, that of delicacy, to handle the improbability of certainty; this frees the rest of the theory from what would otherwise be the weakening effect of this feature of language²⁵⁰.

Far from using his classification in a definite manner, Halliday also highlights the potential connection of grammar, a closed system, to language, which, on the contrary, he considers an open network, by claiming that

It may well be that the nature of language is such that this “most delicate grammar” will evaporate in distinctions which are so slenderly statistical that the system has, in effect, been replaced by the open set²⁵¹.

An initial questioning of Nida's static linguistic theory of translation comes in the 1965 with Catford's application of Firth and Halliday's systemic-functional models of linguistics to translation in his work 'A linguistic Theory of Translation'²⁵². Although he considers translation as a branch of Comparative Linguistics and not,

²⁴⁶ Halliday, 1961.

²⁴⁷ Halliday, 1961:42.

²⁴⁸ Halliday, 1961:58.

²⁴⁹ Ibid. Bold in the original.

²⁵⁰ Halliday, 1961:49.

²⁵¹ Halliday, 1961:54.

²⁵² Catford, 1965.

like Nida, a distinct autonomous discipline, Catford continues to consider the paradigm of equivalence a key aspect of translation theory. He defines translation as «the replacement of textual material in one language (SL)²⁵³ by equivalent textual material in another language (TL)»²⁵⁴, with a textual translation equivalent being «any TL form (text or portion of text) which is observed to be the equivalent of a given SL form (text or portion of text)»²⁵⁵.

In order to define the concept of equivalence, the Scottish linguist and phonetician follows Nida's categorisation and makes a distinction between a textual equivalent, that is «any TL text or portion of text which is observed on a particular occasion [...] to be the equivalent of a given SL text or portion of text»²⁵⁶, and a formal correspondent, that is «any TL category (unit, class, structure, element of structure, etc.) which can be said to occupy, as nearly as possible, the 'same' place in the 'economy' of the TL as the given SL category occupies in the SL»²⁵⁷. However, differently from Nida, Catford considers equivalence as depending on contextual details and meaning as «a property of a language». As a consequence, «an SL text has an SL meaning, and a TL text has a TL meaning», and the meaning is defined as «the total network of relations entered into by any linguistic form—text, item-in-text, structure, element of structure, class, term in system—or whatever it may be».

In this sense, according to Catford, «the view that SL and TL texts 'have the same meaning' or that 'transference of meaning' occurs in translation is untenable»²⁵⁸, because, «since every language is formally *sui generis* and formal correspondence is, at best, a rough approximation», «the formal meanings of SL items and TL items can rarely be the same». In a similar way, since formal meanings are also related to the context, the «contextual meaning of an item», which is «the groupment of relevant situational features» that «varies from one language to another, [...] is rarely the same in any two languages»²⁵⁹.

²⁵³ The two acronyms SL and TL will be used from now on to indicate respectively the Source Language (SL) in which the original Source Text (ST) is written, and the Target Language (TL) which the Source Text (ST) is translated into.

²⁵⁴ Catford, 1965:20.

²⁵⁵ Catford, 1965:27.

²⁵⁶ Catford, 1965:27.

²⁵⁷ Ibid.

²⁵⁸ All citations Catford, 1965:35.

²⁵⁹ All citations Catford, 1965:36. Italics in the original.

Equivalence, as conceived by Catford, could not be described in terms of ST and TT or SL and TL items having «'the same meaning' in the linguistic sense», but as being «*interchangeable in a given situation*» through retaining «the greatest possible overlap of situational range»²⁶⁰. The establishment of a translation equivalence could thus be conceived in terms of probability, a «translation rule»²⁶¹, that is «an extrapolation of the probability values of textual translation equivalences»²⁶².

In this context, Catford introduces the concept of shifts in translation which he defines as «departures from formal correspondence in the process of going from the SL to the TL»²⁶³. Such shifts are, according to Catford, an inevitable occurrence of translation and also depend on the «'sameness' or otherwise of the cultures (in the widest and loosest sense) to which SL and TL belong»²⁶⁴. However, while «any speech-act takes place in a specific bio-socio-physical environment, at a specific time and place, between specific participants and so on»²⁶⁵, on the other hand,

the *text* which is (for the linguist) the central item in the speech-act is, or may be, relatable not only to features of this *immediate* situation, but also to features at greater and greater distances (so to speak) reaching out, ultimately, into the total cultural background of the situation. The 'situation', in other words, may be thought of as a series of concentric circles, or spheres, of relevance to the text²⁶⁶.

While he regards speech as immediately and closely related to the situation, Catford views a text as a particular speech-act that has broader scope and more extensive contextual referents.

The concepts of equivalence and situation, for Catford, are closely related to two other concepts, namely translatability and function, since «translation fails—or untranslatability occurs—when it is impossible to build functionally relevant features of the situation into the contextual meaning of the TL text»²⁶⁷. The question of translatability described by Catford seems to be «a cline rather than a clear-cut

²⁶⁰ All citations Catford, 1965:49.

²⁶¹ Catford, 1965:31.

²⁶² Ibid.

²⁶³ Catford, 1965:73.

²⁶⁴ Catford, 1965:52.

²⁶⁵ Ibid.

²⁶⁶ Ibid. Italics in the original.

²⁶⁷ Catford, 1965:93.

dichotomy»²⁶⁸ with texts and items being «more or less translatable rather than absolutely translatable or untranslatable»²⁶⁹. However, following Catford, translatability is, at least partly, dependable on the cultural and subjective opinion, given that «a decision, in any particular case, as to what is functionally relevant in this sense must in our present state of knowledge remain to some extent a matter of opinion»²⁷⁰.

The two main reasons for untranslatability to occur, according to Catford, are either linguistic, since the absence of «a TL equivalent is due entirely to differences between the source *language* and the target *language*»²⁷¹; or cultural, in which case «a situational feature, functionally relevant for the SL text, is completely *absent* from the culture of which the TL is a part»²⁷² and «is usually less 'absolute' than linguistic untranslatability»²⁷³.

After Catford's study on the shifts of translation, in the second part of the 1960s the notion of equivalence starts to be considered as a less stable concept and, even though it is still highly regarded throughout the 1970s and the 1980s²⁷⁴, it also comes to be gradually questioned.

For instance, the Czech literary theoretician Jiří Levý considers shifts as a necessary occurrence in translation and starts to analyse the existence of a number of different equivalent terms depending on the context and on the stylistic conventions. In his 1967 paper 'Translation as a decision process'²⁷⁵, he applies the game theory to the case of literary translation, starting from the impossibility to find perfectly equivalent terms in two different languages. For example, when trying to explain the notion of paradigm, as the finite group of terms which may all translate a particular term in the original, he argues that

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Catford, 1965:98. Italics in the original.

²⁷² Catford, 1965:99. Italics in the original.

²⁷³ Ibid.

²⁷⁴ Nida's scientific approach to translation has been particularly influential in Germany, especially in the works of Werner Koller, 1979, who expands Nida's equivalence to include five different types. In England Peter Newmark's, 1981; 1988, interpretation of Nida's categories has been extremely popular throughout the 1980s, with his description of communicative and semantic translation.

²⁷⁵ Levý, 1967/2000.

a paradigm is, of course, not a set of completely equivalent elements, but a set ordered according to different criteria (e.g., stylistic levels, connotative extensions of meaning, etc.); otherwise, no choice would be possible²⁷⁶.

In this case, shifts in translation are an integral part of the translational process and are considered to be the only way one could possibly carry out a translation.

According to Levý, the translation decisions progressively made by a translator are «not random but context-bound»²⁷⁷, since «every interpretation has the structure of problem solving»²⁷⁸. The translator would have to «choose from a class of possible meanings of the word or motif, from different conceptions of a character, of style, or of the author's philosophical views»²⁷⁹. However, his choice could be simplified if he was able to restrict his translational options through relying them to the context.

Levý's work on translation clearly exemplifies a gradual opening to the debate over the issue of equivalence by scholars of translation and of the related disciplines, such as literature, literary critique, linguistics and philosophy. In the following decades, equivalence comes to be more openly questioned and such debate also mark the institutionalisation of the discipline of Translation Studies in the 1970s. In the next paragraph, such questioning will be described as the result of a broad and interdisciplinary narrative that comes to gradually put aside the importance of equivalence by replacing it with other paradigms.

2.3 The questioning of the paradigm of equivalence

During the 1970s and throughout the 1980s and 1990s the paradigm of equivalence comes to be further discussed and questioned by different strands of thought. In the last decades of the twentieth century there is a spread of interest into the field of translation by scholars of different academic disciplines²⁸⁰. Influenced by

²⁷⁶ Levý, 1967/2000:150.

²⁷⁷ Levý, 1967/2000:149.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Translation's interdisciplinary and heterogeneous character was emphasised so that in the 1970s translation scholars started to feel the need of gaining disciplinary autonomy. In his seminal 1972 paper 'The name and nature of translation studies', generally considered as the founding statement of the discipline, James Holmes (1972/2004) proposed a classification of translation studies that included 'pure' theoretical and descriptive branches and applied analytical tools.

the developments in linguistics and related fields, translation scholars thus introduce functional and descriptive translation models. From a different perspective, literary translation studies following poststructuralist reflections, start to integrate philosophical hermeneutics tenets on the scientific nature of translation and discuss old and new theoretical issues such as fidelity, untranslatability and autonomy of the translated text. Moreover, the Hallidayan functional-systemic model is applied to machine and corpus-based translation, as well as to the study of translated texts in general through a variety of register and text analysis methodologies.

Nida's formal and dynamic equivalence and Catford's distinction between formal correspondence and textual equivalence prompt translation scholars to reinterpret these categories considering different aspects such as function, communication and systems. Although the concept of function is first introduced by Nida and Catford in the 1960s, the functional element in translation theory and practice growingly raises interest among scholars especially in Germany in the early 1970s and becomes a key aspect of translation during the 1980s and 1990s.

In 1971 the German linguist and translation scholar Katharina Reiss describes interlingual translation «as a bilingual mediated process of communication, which ordinarily aims at the production of a TL [target language] text that is functionally equivalent to an SL text [source language]»²⁸¹. Reiss also describes the three-stage process a translator should go through in order to establish the real functions of the original text. The first step a translator should take is the «establishment of the “text-type”»²⁸², by choosing among three that existed «in every speech community with a culture based on the written word» and «every author of a text ought to decide in principle on one of the three forms before beginning to formulate his text». The three text-types are informative, that aimed at communicating content; expressive, dealing with «artistically organised content» and operative, that have «a persuasive character»²⁸³. As for the second stage, the translator has to establish the text variety, related to «specifically structured sociocultural patterns of communication belonging to specific language communities»²⁸⁴. The third stage includes an analysis of the style

²⁸¹ Reiss, 1971/2004:168.

²⁸² Reiss, 1971/2004:171.

²⁸³ All citations Ibid.

²⁸⁴ Reiss, 1971/2004:173.

or «textual surface»²⁸⁵, that, according to Reiss is extremely important because the translator has to use «strategy and tactics [...] directed by type and variety»²⁸⁶ in order to reflect their functions.

Reiss also admits the existence of two general aims: one is for the translator to keep the same function of the source text, the other is to change the original function. In the first case she asserts that, according to the text types established

if the SL text is written to convey contents, these contents should also be conveyed in the TL text. Mode of translating: *translation according to the sense and meaning* in order to maintain the invariability of the content. [...]

If the SL text is written in order to convey artistic contents, then the contents in the TL should be conveyed in an analogously artistic organization. The translator identifies with the artistic and creative intention of the SL author in order to maintain the artistic quality of the text.[...]

If the SL text is written to convey persuasively structured contents in order to trigger off impulses of behavior, then the contents conveyed in the TL must be capable of triggering off analogous impulses of behavior in the TL reader²⁸⁷.

In the second case, «if the aims pursued in the translation are different from those of the original»²⁸⁸, the translation will reflect such differences, since «there is now no attempt any more to strive for a functional equivalence between the SL and the TL text, but for adequacy of the TL reverbalization in accordance with the “foreign function”. It follows that, besides a text typology relevant to translating, a translation typology should be worked out»²⁸⁹.

Reiss's functional theory was developed during the 1970s and 1980s in collaboration with Hans Vermeer²⁹⁰, taking up Holz-Mänttari's theory of translational action. In her 1984 'Translatorisches Handeln: Theorie und Methode'²⁹¹, ['Translational Action: Theory and Method'], Holz-Mänttari views translation as a

²⁸⁵ Reiss, 1971/2004:174.

²⁸⁶ Ibid.

²⁸⁷ Reiss, 1971/2004:175-176. Italics in the original.

²⁸⁸ Reiss, 1971/2004:169.

²⁸⁹ Ibid.

²⁹⁰ Reiss & Vermeer, 1984.

²⁹¹ Holz-Mänttari, 1984.

particular communicative action, a 'translational action'²⁹², that is part of a broader theory of communication. The distinctive feature of translation is its focus on the source text with the aim to transmit its message. She thus analyses the role of the different professionals involved in translation, such as the initiator, the commissioner, the author, the translator, the readers and receivers; and examines their diverse purposes in the communicative act of translating.

Drawing on Reiss's functional theory and on Holz-Mänttari's theory of translational action, Vermeer formulates his Skopos theory, that considers translation as an action with its own objective:

the word *skopos*, [...], is a technical term for the aim or purpose of a translation [...]. Further, an action leads to a result, a new situation or event, and possibly to a "new" object. Translational action leads to a "target text" (not necessarily a verbal one); translation leads to a *translatum* (i.e. the resulting translated text), as a particular variety of target text²⁹³.

According to Vermeer, the concept of *skopos*, instead of that of equivalence, could best describe the relationship between the source text that «is oriented towards, and is in any case bound to, the source culture»; and the target text, that «is oriented towards the target culture, and [...] ultimately defines its adequacy». In this sense, he argues that «source and target texts may diverge from each other quite considerably», not only in terms of rendering, but also based on their different purposes.

In an attempt to thoroughly describe the process of translation as a market-oriented activity and to establish fixed protocols for a professional translator, Vermeer asserts that «the aim of any translational action, and the mode in which it is to be realized, are negotiated with the client who commissions the action»²⁹⁴. From this also follows that the translator is an expert «responsible for the performance of the commissioned task»²⁹⁵ and «his voice must therefore be respected»²⁹⁶, for he is to decide the role of the source text in his translation. Vermeer's focus on the translator's choices aims at increasing «the accountability of the translator, in that his translation must function in

²⁹² Ibid.

²⁹³ Vermeer, 1989:227.

²⁹⁴ All citations Vermeer, 1989:229.

²⁹⁵ Vermeer, 1989:228.

²⁹⁶ Ibid.

such a way that the given goal is attained»²⁹⁷, with the ultimate objective of founding his theory on the «ethos of the translator»²⁹⁸.

With his Skopos theory, Vermeer seeks to come to an end with the still ongoing debate between literal versus free translation and aims at making more explicit the consequences of pursuing fidelity or equivalence between source and target:

“Fidelity” to the source text (whatever the interpretation or definition of fidelity) is one possible and legitimate skopos or commission. Formulated in this way, neither skopos nor commission are new concepts as such—both simply make explicit something which has always existed. Yet they do specify something that has hitherto either been implicitly put into practice more unconsciously than consciously, or else been neglected or even rejected altogether: that is, the fact that one translates according to a particular purpose, which implies translating in a certain manner, without giving way freely to every impulse; the fact that there must always be a clearly defined goal. The two concepts also serve to relativize a viewpoint that has often been seen as the only valid one: that a source text should be translated “as literally as possible”²⁹⁹.

In the same way, Vermeer also views the strategy of adapting the source text to the target culture and expectations only as another possibility of translating and not a fixed prescriptive method, since «the theory equally well accommodates the opposite type of translation»³⁰⁰. Speaking against the claim that translation has in itself no purpose, Vermeer replaces the notion of equivalence with the one of *skopos* and claims that a translator should always be aware of the purpose of his translation in order to translate well. In this sense, equivalence starts to lose its momentum and comes to be viewed as a particular strategy of translation among many other methods: «Everything between these two extremes [literal versus free translation, BQ] is likewise possible, including hybrid cases»³⁰¹.

In the 1990s, the functional translation approach is taken up by Christiane Nord who, in her manual 'Text Analysis in Translation'³⁰², applies Reiss and Vermeer's functional model to text analysis. With the aim of providing a guide for translation teaching, Nord proposes a functional analytical model that considers translation as

²⁹⁷ Vermeer, 1989:237.

²⁹⁸ Ibid.

²⁹⁹ Vermeer, 1989:236.

³⁰⁰ Vermeer, 1989:237.

³⁰¹ Ibid.

³⁰² Nord, 1991.

intercultural communication. Given its functional nature, Nord's model especially focuses on the roles of what she calls the 'initiator' of the translation and the translator, «since they are the most important factors in the production of a translation»³⁰³.

The German translation scholar argues that the translation is usually started by an initiator because he wants or needs it for a specific purpose. In this case, «it is this purpose that determines the requirements to be met by the translation»³⁰⁴. Nord criticises «equivalence-based translation theory» that considers the rendering of a source-text as being influenced only by «its effect on the ST recipient, or the function assigned to it by the author». Rather, she takes on Vermeer's Skopos theory to assert that the function of a text is «determined by the initiator's needs»³⁰⁵ and also by the translator's decision on the possibility to produce a TT that meets the conditions posed by the initiator. Nord claims that

the function of the target text is not arrived at automatically from an analysis of the source text, but is pragmatically defined by the purpose of the intercultural communication³⁰⁶.

The German translator also gives importance to the specific cultural features related to the function of source and target texts:

Being culture-bound linguistic signs, both the source text and the target text are determined by the communicative situation in which they serve to convey a message³⁰⁷.

More importantly, for Nord, since especially in written translation the ST and TT functions could diverge, the translator who «wants to find out whether the text is suitable for the new situation in the target culture, [...] has to take into consideration the factors and constituents of the original situation»³⁰⁸. However, apart from focusing on the original text, she also stresses the fact that since the function of a text «is determined by the situation in which the text serves as an instrument of

³⁰³ Nord, 1991:4.

³⁰⁴ Nord, 1991:8.

³⁰⁵ All citations Nord, 1991:9.

³⁰⁶ Ibid.

³⁰⁷ Nord, 1991:7.

³⁰⁸ Ibid.

communication [...], the translating instructions should contain as much information as possible about the situational factors of the TT reception»³⁰⁹.

In turns, the translator should be viewed as «a very special kind of recipient»³¹⁰ with «perfect command of both the source and the target culture (including language)»³¹¹ and with the ability «to simulate a communicative situation that is determined not by his own but by somebody else's needs and purposes»³¹².

With the aim of choosing the best textual translation strategy, Nord proposes a first classification of texts based on the initiator's purpose into two macro-categories or types of translation, that also recall the usual distinction between word-for-word, or literal, and sense-for-sense, or free translation strategies. In her view, the purpose of a target text could basically be that of documenting «a source culture communication between the author and the ST recipient»³¹³, in which case a 'documentary translation' type would include culture-specific terms and literal translation strategies. Alternatively, a target text could serve «as an independent message transmitting instrument in a new communicative action in the target culture»³¹⁴, in which case free translation strategies would not make the target-text recipient aware of reading a translated source text originally functioning in a different cultural context, with possibly different purposes.

By focusing their investigations on the function of the translated texts, functional translation scholars contribute to relativising the concept of equivalence and to making it more dependent on the particular translational context. Another input in this sense, coming from a different field of research, is George Steiner's philosophical interpretation of translation as a 'hermeneutic motion'. In his 1975 influential book 'After Babel: Aspects of language and translation'³¹⁵, Steiner takes on Gadamer's critique of equating human sciences to the natural ones and using the scientific method to analyse them. He then claims that «the theory of translation in

³⁰⁹ Ibid.

³¹⁰ Nord, 1991:10.

³¹¹ Nord, 1991:11.

³¹² Ibid.

³¹³ Nord, 1991:72.

³¹⁴ Nord, 1991:73.

³¹⁵ Steiner, 1972/1998.

not [...] an applied linguistics»³¹⁶, but rather «a new field in the theory and practice of literature»³¹⁷. In this sense, Steiner sets out to «show that the study of language is not now a science» and that «very likely, it never will be a science». He then criticises generative linguistic models in general and Chomsky's universal linguistic theory in particular, arguing that it is impossible to speak of a 'theory of translation', «in any rigorous sense of the term»³¹⁸, because

we have no working model of the fundamental neurochemistry and historical aetiology of human speech. We have no anthropological evidence as to the causes or chronology of its thousandfold diversification. Our models of the learning process and of memory are ingenious but also of the most preliminary, conjectural kind. We know next to nothing of the organization and storage of different languages when they coexist in the same mind³¹⁹.

More specifically, Steiner questions the universalist approach to linguistics posing two arguments. First, the American philosopher claims that language should be considered only one possible idiolectic means of communication, that «is in perpetual change», «the most salient model of Heraclitean flux» that «alters at every moment in perceived time»³²⁰. Considered through his perspective, then, the «universalist argument [...] of ever-deepening formalization and abstraction» is destined to «be contingent or subverted by anomalies», so that «instead of being rigorous and exhaustive, the description of 'universal linguistic traits' has often proved to be no more than an open-ended catalogue»³²¹. In this sense, the scientific universalist approach to language, according to Steiner, would «fail to account for the nature and possibility of relations between languages as they actually exist and differ»³²².

Secondly, the universalist predisposition to abstraction and generalisation of linguistic transformational generative models masks the forcing of «all languages into the mould of English»³²³. Since most of the research and observation on languages are carried out in English and based on English grammar and syntax, Steiner

³¹⁶ Steiner, 1972/1998:xxx1.

³¹⁷ Ibid.

³¹⁸ All citations Steiner, 1972/1998:309.

³¹⁹ Ibid.

³²⁰ All citations Steiner, 1975/1998:18.

³²¹ All citations Steiner, 1975/1998:99.

³²² Steiner, 1975/1998:113.

³²³ Steiner, 1975/1998:112.

considers such inclination as «a profound bias towards 'monolingualism'»³²⁴. This «sophistication of actual techniques»³²⁵, according to the philosopher, make «the whole approach [...] at once 'rudimentary' and *a prioristic*»³²⁶.

Such an approach leads universalist linguists to formulate a scientific theory of translation that, in Steiner's opinion, is not be able to successfully describe what actually happens in translation. This is due to the fact that, even if «there are instances of arrested or sharply diminished mobility: certain sacred or magical tongues can be preserved in a condition of artificial stasis»³²⁷, «ordinary language is, literally at every moment, subject to mutation»³²⁸. Rather, a 'theory of translation' devised as a non-formalised and flexible «historical-psychological model»³²⁹ allows the philosopher to expand the notion of translation. Instead of defining it in terms of the transfer of meaning from one natural language into another, Steiner outlines translation in a different, more comprehensive way, arguing that

'Translation', properly understood, is a special case of the arc of communication which every successful speech-act closes within a given language. On the inter-lingual level, translation will pose concentrated, visibly intractable problems; but these same problems abound, at a more covert or conventionally neglected level, intra-lingually³³⁰.

In this sense, translation should be considered as an act of communication that takes place both in written and oral texts, so that «when we read or hear any language-statement from the past, be it Leviticus or last year's best-seller, we translate»³³¹. Any human being should thus be considered a translator, who renders any piece of communication into their own biased and incomplete words:

When an individual speaks, he is effecting a partial description of the world. Communication depends on a more or less complete, more or less conscious translation of this partiality, on a matching, more or less perfunctory, with other 'partialities'. A 'complete translation', i.e. a definitive insight into and generalization of the way in which any human being relates word to object would require a complete access to him on the part of his interlocutor. The latter

³²⁴ Steiner, 1975/1998:245.

³²⁵ Ibid.

³²⁶ Ibid. Italics in the original.

³²⁷ Steiner, 1975/1998:19.

³²⁸ Ibid.

³²⁹ Steiner, 1975/1998:49.

³³⁰ Ibid.

³³¹ Steiner, 1975/1998:28-29.

would have to experience a 'total mental change'. This is both logically and substantively a meaningless notion. It could never be shown to have taken place³³².

According to Steiner, total and complete understanding of any piece of communication is then impossible to attain and one would be wrong to pretend or to even think it achievable. Such an assumption also entails a deep questioning of the concept of equivalence and shifts attention to the act of interpretation. Instead of concluding the impossibility of translation, Steiner views translation as «a manifold act of interpretation»³³³, «where our sensibility appropriates its [BQ 'the text's'] object while, in this appropriation, guarding, quickening that object's life» in a process «of 'original repetition'». Steiner equates interpretation to a musical realization, «a new *poiesis*», that «differs from all other performances of the same composition» and «is at the same time reproductive and innovatory»³³⁴. In order to interpret and appropriate a text, one always uses «a complex aggregate of knowledge, familiarity, and re-creative intuition», that, in any case, would never guard individuals against «characteristic penumbras and margins of failure», or 'intractable' elements that, due to time or space barriers, «will elude complete comprehension or revival». This results in the «received message» being «thinned and distorted»³³⁵.

Thus, even if the appropriation of a text could always be achievable, it would also be «nearly impossible to paraphrase or systematize»³³⁶ it, so that, according to Steiner, only an 'inexact'³³⁷ theory of translation, «part deductive, part intuitive»³³⁸ could be devised, dependant both on historical and psychological factors. The American philosopher also terms his model as «an 'understanding of understanding'»³³⁹ or «a hermeneutic motion»³⁴⁰, that is «the act of elicitation and appropriative transfer of meaning»³⁴¹. Such act, according to Steiner is «a fourfold *hermeneia*, Aristotle's term for discourse which signifies because it interprets» that is «conceptually and

³³² Steiner, 1975/1998:309.

³³³ Steiner, 1975/1998:18.

³³⁴ All citations Steiner, 1975/1998:27.

³³⁵ All citations Steiner, 1975/1998:29

³³⁶ Steiner, 1975/1998:26.

³³⁷ Steiner, 1975/1998:436.

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Steiner, 1975/1998:312.

³⁴¹ Ibid.

practically inherent in even the rudiments of translation». The four stages of the hermeneutic motion are those of trust (*élancement*), penetration, embodiment, and restitution, and could make it possible to «overcome the sterile triadic model» of literalism, paraphrase and free imitation that have «dominated the history and theory of the subject», without retaining any «precision or philosophic basis»³⁴².

The first stage of hermeneutic motion is that of an «initiative trust, an investment of belief [...] in the meaningfulness» by the translator, who assumes that «the transfer will not be void». Steiner also calls such trust an «operative convention» based on «phenomenological assumptions about the coherence of the world, about the presence of meaning in very different, perhaps formally antithetical semantic systems, about the validity of analogy and parallel»³⁴³. After trust, the second stage is that of aggression, an «incursive and extractive move»³⁴⁴ by the translator who, in order to understand, recognise and interpret, has to assault the text. The third movement is that of comprehension «not only cognitively but by encirclement and ingestion»³⁴⁵. The translator incorporates and assimilates the text by placing it in a new and different context through «a complete domestication, an at-homeness at the core»³⁴⁶. Such placing also entails running the «risk of being transformed»³⁴⁷, so that, while adapting the text to a different culture, the translator «may be mastered and made lame»³⁴⁸ by what he has imported. In order to complete the hermeneutic motion, otherwise left with a loss in the third movement, the fourth stage of reciprocity allows the translator to balance the process through enhancement:

The enactment of reciprocity in order to restore balance is the crux of the *métier* and morals of translation. But it is very difficult to put abstractly. The appropriative “rapture” of the translator—the word has in it, of course, the root and meaning of violent transport—leaves the original with a dialectically enigmatic residue. Unquestionably there is a dimension of loss, of breakage—hence, as we have seen, the fear of translation, the taboos on revelatory

³⁴² All citations Steiner, 1975/1998:319.

³⁴³ All citations Steiner, 1975/1998:312.

³⁴⁴ Steiner, 1975/1998:313.

³⁴⁵ Steiner, 1975/1998:314.

³⁴⁶ Ibid.

³⁴⁷ Steiner, 1975/1998:315.

³⁴⁸ Ibid.

export which hedge sacred texts, ritual nominations, and formulas in many cultures. But the residue is also, and decisively, positive. The work translated is enhanced³⁴⁹.

Steiner's description of translation as an act of interpretation strongly relates on his notion of language influenced by subtle interlingual as well as intralingual differentiations due to «social status, ideology, profession, age, and sex»³⁵⁰ and ultimately connects to «the deeper-lying enigma of human individuality, of the bio-genetic or bio-social evidence that no two human beings are totally identical»³⁵¹. Language is then considered as the result of the fusion of «idiolects into the partial consensus of shared speech-forms»³⁵² of a community immersed in the same culture. As a consequence, translation is regarded as a special case of a broader transformative and communicative action that contributes to establish a shared consensus in the community through recourse to a variety of linguistic tools:

There is between 'translation proper' and 'transmutation' a vast terrain of 'partial transformation'. The verbal signs in the original message or statement are modified by one of a multitude of means or by a combination of means. These include paraphrase, graphic illustration, pastiche, imitation, thematic variation, parody, citation in a supporting or undermining context, false attribution (accidental or deliberate), plagiarism, collage, and many others. This zone of partial transformation, of derivation, of alternate restatement determines much of our sensibility and literacy. It is, quite simply, the matrix of culture³⁵³.

The partial transformation implicit in translation, in Steiner's broadened definition of it, contributes at all times to determine a shared consensus, that is culture, through 'original repetition', and when such consensus is not reached, «when antithetical meanings are forced upon the same word [...] , language loses credibility». Such occurrence is exemplified by Steiner in the language of ideology, that, according to him, is broadly marked by the use of «polysemy, the capacity of the same word to mean different things», and that makes it possible to alter «the conceptual reach and valuation of a word [...] by political decree». According to Steiner, «competing

³⁴⁹ Steiner, 1975/1998:316.

³⁵⁰ Steiner, 1975/1998:32.

³⁵¹ Steiner, 1975/1998:49.

³⁵² Ibid.

³⁵³ Steiner, 1975/1998:437.

ideologies rarely create new terminologies»³⁵⁴, but rather they struggle to change the meaning of mainstream terms in their favour:

In the idiom of fascism and communism, 'peace', 'freedom', 'progress', 'popular will' are as prominent as in the language of representative democracy. But they have their fiercely disparate meanings. The words of the adversary are appropriated and hurled against him. Translation in the ordinary sense becomes impossible³⁵⁵.

In this sense, equivalence starts to be considered as a negotiation of meaning between competing ideologies or power groups, thus becoming a variable model, increasingly dependent on social and cultural factors.

While being gradually introduced in the discourses on language and translation, and similarly to what happened with the appearance of functional translation theories, the cultural and social elements determine a shift of attention from equivalence, that is not anymore considered as an absolute scientific principle, to the receptor of the translated text. An input in this sense, within the newly founded academic discipline of Translation studies is Itamar Even-Zohar's Polysystem Theory³⁵⁶, that takes on the ideas of the 1920s Russian Formalists and analyses the cultural implications in the field of literature. According to Even-Zohar, literature should be considered a polysystem, defined as a heterogeneous aggregate of different systems, interacting, changing and competing one against another for the establishment of a literary canon.

Translated literature is then considered one of the systems that contribute to the development and transformation of the literary polysystem. More than that, «it participates actively in shaping the center of the polysystem» and, according to Even-Zohar, it should be conceived «not only as an integral system within any literary polysystem, but as a most active system within it». The degree of importance and influence of translated literature within such polysystem depends on the social, cultural, literary and historical elements, and also helps determine the translation strategy within given frameworks. Even though «one would be tempted to deduce from the peripheral position of translated literature in the study of literature that it

³⁵⁴ All citations Steiner, 1975/1998:35.

³⁵⁵ Ibid.

³⁵⁶ Even-Zohar, 1978/2004.

also permanently occupies a peripheral position in the literary polysystem, [...] this is by no means the case», since in fact, depending on a number of contextual factors, «translated literature» may become «central or peripheral, and [...] this position» could be «connected with innovatory (“primary”) or conservatory (“secondary”) repertoires»³⁵⁷. In this view, not only translation strategy plays an important role, but also the way in which originals are chosen in order to be translated:

My argument is that translated works do correlate in at least two ways: (a) in the way their source texts are selected by the target literature, the principles of selection never being uncorrelatable with the home co-systems of the target literature (to put it in the most cautious way); and (b) in the way they adopt specific norms, behaviors, and policies—in short, in their use of the literary repertoire—which results from their relations with the other home co-systems. These are not confined to the linguistic level only, but are manifest on any selection level as well. Thus, translated literature may possess a repertoire of its own³⁵⁸.

In Even-Zohar's view, translated literature may retain either a central or a peripheral position in a given literary polysystem. In the first case, translation «is likely to become one of the means of elaborating the new repertoire»³⁵⁹ and it would also be «an integral part of innovatory forces»³⁶⁰ that introduce new models and ideas into the receiving culture:

Through the foreign works, features (both principles and elements) are introduced into the home literature which did not exist there before. These include possibly not only new models of reality to replace the old and established ones that are no longer effective, but a whole range of other features as well, such as a new (poetic) language, or compositional patterns and techniques. It is clear that the very principles of selecting the works to be translated are determined by the situation governing the (home) polysystem: the texts are chosen according to their compatibility with the new approaches and the supposedly innovatory role they may assume within the target literature³⁶¹.

Translated literature can assume a central position in three cases: in the presence of a young non-crystallized literary polysystem «in the process of being established»³⁶²; or

³⁵⁷ All citations Even-Zohar, 1978/2004:200.

³⁵⁸ Even-Zohar, 1978/2004:199-200.

³⁵⁹ Even-Zohar, 1978/2004:200.

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² Ibid.

in the case of a peripheral and/or weak section of literature; or in times of crisis «or literary vacuums»³⁶³.

In case a given translated literature retained a peripheral position, it would refer to 'secondary models' and it would be «modelled according to norms already conventionally established by an already dominant type in the target literature». Instead of being a means through which «new ideas, items, characteristics can be introduced into a literature», translation would then become «a major factor of conservatism» and would contribute «to preserve traditional taste».

Even-Zohar's distinction between central and peripheral position is not absolute in the sense that it should always be «wholly one or the other», since he views translation as a stratified system. In this sense, «while one section of translated literature may assume a central position, another may remain quite peripheral», and, in general, «when there is intense interference, it is the portion of translated literature deriving from a major source literature which is likely to assume a central position»³⁶⁴. Even-Zohar criticised the tenets of a «static and ahistorical conception of translation» that would fail to adequately respond to the needs of translation theory and to flexibly analyse and show the change literary polysystems are exposed to due to translated literature. The concepts of adequacy and equivalence are thus made dependent on the contextual situation and, more specifically, on the way translation is perceived within a given culture. For example, when translated literature holds a central position, «the translator's main concern [...] is not just to look for ready-made models in his home repertoire into which the source texts would be transferable. Instead, he is prepared in such cases to violate the home conventions». In this case, foreignizing strategies would make the translation more adequate and faithful to the original, while, from the reader's perspective, such violation of conventional translational norms might make the text «too foreign and revolutionary»³⁶⁵. In this case,

³⁶³ Even-Zohar, 1978/2004:201.

³⁶⁴ All citations Even-Zohar, 1978/2004:202

³⁶⁵ All citations Even-Zohar, 1978/2004:203.

if the new trend is defeated in the literary struggle, the translation made according to its conceptions and tastes will never really gain ground. But if the new trend is victorious, the repertoire (code) of translated literature may be enriched and become more flexible³⁶⁶.

On the contrary, if translational norms were such as not to allow for innovation, «items lacking in a target literature may remain untransferable»³⁶⁷, thus resulting in the absence of a given translated literature section coming from a relatively new and too different culture. In any case, when translational norms come to gradually open up to innovation, the notion of adequacy and equivalence increasingly acquire a similar meaning in different cultures, so that they «may overlap to a relatively high degree»³⁶⁸.

Even-Zohar's reflections on literary polysystems contribute to making translational working concepts subject to cultural and social aspects so that even the definition of what translation and translated works are should not «be answered *a priori* in terms of an a-historical out-of-context idealized state; [BQ, but] it must be determined on the grounds of the operations governing the poly system»³⁶⁹. Thus translation can «no longer [BQ, be] a phenomenon whose nature and borders are given once and for all»³⁷⁰, but it should be considered as «an activity dependent on the relations within a certain cultural system»³⁷¹.

Even-Zohar's culturally-bound discourse on translation is taken on and furthered in the 1980s by his student Gideon Toury, who regards translation «as having cultural significance», such that «“translatorship” amounts first and foremost to being able to *play a social role*, i.e., to fulfil a function allotted by a community». In order to be a translator, one should thus acquire «a set of norms for determining the suitability of that kind of behaviour, and for manoeuvring between all the factors» that determine the cultural context in which one operates. Toury describes such factors as «socio-cultural constraints» running «along a scale anchored between two extremes: general, relatively absolute rules, on the one hand and pure idiosyncrasies on the other. Between these two poles lies a vast middle-ground occupied by inter subjective

³⁶⁶ Ibid

³⁶⁷ Ibid.

³⁶⁸ Even-Zohar, 1978/2004:203-204.

³⁶⁹ Even-Zohar, 1978/2004:204.

³⁷⁰ Ibid.

³⁷¹ Ibid.

factors commonly designated *norms*»³⁷². Norms are considered «the key concept and focal point in any attempt to account for the social relevance of activities» and also «the main factors ensuring the establishment and retention of social order» in social institutions in general, including cultures. The existence of such norms, however, do not entail absolute conformity to a coded conduct, since «behaviour which does not conform to prevailing norms is always possible too. [...] At the same time, there would normally be a price to pay for opting for any deviant kind of behaviour».

Toury also notes that, since «there is no necessary identity between the norms themselves and any formulation of them in language», the very same awareness of the existence of norms through verbal formulations would also «imply other interests, particularly a desire to *control* behaviour i.e., to dictate norms rather than merely account for them»³⁷³.

Given the dependence of norms on the cultural context where they are created, it is also important to note that, according to Toury, norms abide by a hierarchy, «some are stronger, and hence more rule-like, others are weaker, and hence almost idiosyncratic»³⁷⁴, forming a graded continuum that is also closely related to context. Thus, while some norms may lose importance and decline, others may «become more and more normative, and [...] can gain so much validity that, for all practical purposes, they become as binding as rules»³⁷⁵. In this sense, rules at any time could undergo «shifts of validity and force [BQ, that] often have to do with changes of *status* within a society»³⁷⁶. Even if such shifts determine the «socio-cultural specificity of norms and their basic instability»³⁷⁷, Toury holds that «one can [...] distinguish regularity of behaviour in recurrent situations of the same type». This is due to the fact that such regularities in translation behaviour can be actually noticed by «the persons-in-the-culture [BQ, who] can often tell when a translator has failed to adhere to sanctioned practices».

The unstable validity of translational norms can also be correlated first of all to the fact that, since it is an «activity which inevitably involves at least two languages and

³⁷² All citations Toury, 1980/2004:205. Italics in the original.

³⁷³ All citations Toury, 1980/2004:207. Italics in the original.

³⁷⁴ Toury, 1980/2004:206.

³⁷⁵ Ibid.

³⁷⁶ Ibid.

³⁷⁷ Toury, 1980/2004:211.

two cultural traditions, i.e., at least two sets of norm-systems on each level», the two texts would be «always different and therefore often incompatible»³⁷⁸, were it not for translational norms. The compatibility allowed for by translational norms, according to Toury, is a sort of 'sameness'³⁷⁹ viewed more as «a mere coincidence—or else the result of continuous contacts between subsystems within a culture, or between entire cultural systems»; than a stable universal possibility. More than that, identity, rather than being considered as an authentic occurrence, is seen as a superficial «manifestation of interference» of a culture upon another. Such sameness or identity in translation is, according to Toury, always conceived in the form of equivalence. The translation scholar wishes to retain equivalence as a descriptive paradigm of translation, but he also seeks to change it «from an ahistorical, largely prescriptive concept to a historical one». In this sense, instead of defining equivalence as «a single relationship, denoting a recurring type of invariant», Toury describes it as «any relation which is found to have characterized translation under a specified set of circumstances»³⁸⁰, thus making it a «functional-relational postulate [...] [BQ, that] has been realized—whether in one translated text, in the work of a single translator or “school” of translators, in a given historical period»³⁸¹. In his approach, **«it is norms that determine the (type and extent of) equivalence manifested by actual translations»**³⁸² and not vice versa.

Toury also introduces a classification of translational norms, based on different analytical levels. The first kind is the 'initial norm', the main choice of a translator to favour either the source of the target text:

a translator may subject him-/herself either to the original text, with the norms it has realized, or to the norms active in the target culture, or, in that section of it which would host the end product. If the first stance is adopted, the translation will tend to subscribe to the norms of the source text, and through them also to the norms of the source language and culture. [...]. If, on the other hand, the second stance is adopted, norms systems of the target culture are

³⁷⁸ Ibid.

³⁷⁹ All citations Toury, 1980/2004:207.

³⁸⁰ All citations Toury, 1980/2004:211.

³⁸¹ Toury, 1980/2004:210-211.

³⁸² Toury, 1980/2004:210. Bold in the original.

triggered and set into motion. Shifts from the source text would be an almost inevitable price³⁸³.

In Toury's opinion, it is impossible to have an absolute subscription to either the source or the target text, but, in fact, a translation always entails both occurrences in the same text, at different levels, so that,

whereas adherence to source norms determines a translation's adequacy as compared to the source text, subscription to norms originating in the target culture determines its acceptability³⁸⁴.

In this sense, any translational strategy would always be a sort of an «ad hoc combination of, or compromise between the two extremes»³⁸⁵.

Apart from a general initial norm, translation entails the use of other types of norms, that reflect the various stages and levels of translation. Toury distinguishes such norms into two categories, preliminary and operational. While the first group of norms regards «the existence and actual nature of a definite translation policy»³⁸⁶; operational norms account for the translator's decisions made while translating and results in «the modes of distributing linguistic material in it [BQ, the text]—as well as the textual make up and verbal formulation as such»³⁸⁷. Toury also introduces another group of norms, which are textual-linguistic ones, and that regulate «the selection of material to formulate the target text in, or replace the original textual and linguistic material with»³⁸⁸.

All such translational norms however, according to Toury, should not be conceived as fixed, mutually incompatible rules, because «complying with social pressures to constantly adjust one's behaviour to norms that keep changing is of course far from simple, and most people [...] do so only up to a point»³⁸⁹. It is therefore possible to find all the types of norms used in translation together, so that «the ones that dominate the centre of the system, and hence direct translational behaviour of the so-

³⁸³ Toury, 1980/2004:208.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ Toury, 1980/2004:209.

³⁸⁷ Ibid.

³⁸⁸ Toury, 1980/2004:210.

³⁸⁹ Toury, 1980/2004:212.

called *mainstream*»³⁹⁰ are present «alongside the remnants of *previous* sets of norms and the rudiments of *new* ones, hovering in the periphery»³⁹¹.

During the 1980s and 1990s, driven by Halliday's systemic-functional linguistic model, some translation scholars propose new analytical methods of texts in translation, in an attempt to connect text analysis to the social and cultural differences involved in translation, while trying to retain the paradigm of equivalence.

In 1977, Juliane House introduces a register analysis tool for the assessment of translation quality that she later revises in her 1997 work: 'Translation Quality Assessment: A Model Revisited'³⁹². In her fully rewritten study, House considers the paradigm of equivalence from a functionalist perspective and introduces a comparative model to analyse the source and the target texts together on lexical, syntactic and textual levels. More precisely she sets out to implement a register analysis by means of the Hallidayan categories of field, tenor and mode³⁹³. At the basis of her analysis lays the distinction between two types of translation: overt and covert; that are to be considered as «endpoints along a continuum, such that unclear cases will in practice arise». According to House, in overt translation «the translator is explicitly a mediator», since «the resultant text is clearly her work». In this case, «the translator has the least leeway to alter the fabric and content of the text, but has a clearly recognisable role and function for the reader»³⁹⁴. House calls the equivalence occurring in overt translation as a second-level one, because «the translated text must have a different reception from that which obtains for the original, source-culture readership». In this sense, the target-culture readers acquire the text as if they have received the source-text function:

³⁹⁰ Ibid. Italics in the original.

³⁹¹ Ibid. Italics in the original.

³⁹² House, 1997.

³⁹³ Halliday introduces the three categories as «the relevant features of a situation in which language has some place» and described them as «the *field* of social process, the *tenor* of social relationships and the *mode* of discourse itself: that is, (1) what is going on, (ii) who are involved, and (iii) what part the text is playing – whether written or spoken, in what rhetorical mode and so on». Halliday, 2002:201. Bold italics in the original.

³⁹⁴ All citations House, 1997:163.

The translation lets them eavesdrop, so to speak, and invites them to perceive the text, as though they were direct addressees enabling them to appreciate the original's function, albeit at a distance³⁹⁵.

In the case of covert translation, on the contrary,

it is the task of the translator to be invisible, but at the same time to transmute the original such that the function it has in its original situational and cultural environment is re-created in the target linguaculture³⁹⁶.

In this sense, the translator is allowed to change the text substantively, also by filtering culturally-specific features coming from the source culture that do not exist in the target one.

The questioning of the paradigm of equivalence by the functional and descriptive theories of translation, Steiner's hermeneutic motion, and linguistic tools for register analysis could be considered as one of the results of the growing relevance of and interest into the socio-cultural aspects of language, both in the theory and practice of translation. Starting from the 1960s and 1970s, the rise of new theoretical paradigms and academic disciplines, such as the poststructuralist philosophical thought, cultural and postcolonial studies gradually leads to the study of difference in translation and brings to the introduction of new interdisciplinary models that have difference as their core matter of observation and research. In this sense, the cultural elements also entail a deep reflection on power relations as well as political and ideological claims through translation. In the next paragraph, the cultural and political elements in translation studies and in some related disciplines will be analysed in order to describe the theoretical framework of this work. Translation will be defined as a metonymical communicative process that entails constant changes of meaning, and the concept of equivalence as an unstable space of negotiation and, ultimately, as a political instrument. In this sense, a translational approach to study the concept of democracy will be introduced as an effective tool to analyse the case study.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

2.4 Cultural and political aspects in translation

In the previous paragraph, a brief history of Western translation thought up to the last decades of the twentieth century has been given, trying to emphasise the relatedness between the degree of autonomy of a translation from its original and the cultural and political context in which reflections on translation are formulated. Secondly, the history of the paradigm of equivalence in translation has been outlined in order to show how the notion of equivalence is only one possible relationship between the original and its translation that has come to be broadly used in Western translation tradition since the 1950s. Such paradigm is strongly connected to structuralist linguistic theories of that time, and is prominent not only in academic disciplines dealing with language, such as linguistics and literature, but has also been conducive to the establishment of Translation studies as an autonomous academic discipline in the 1970s. The notion of equivalence still nowadays exerts a considerable influence on the way the activity of translation is conceived of in Western thought, even though it is growingly being redefined based on its cultural and political relatedness.

In this paragraph, the theoretical framework of this work will be introduced to provide a rationale for the translational study of political concepts in general and of democracy in particular and to allow for the analysis of the meaning of democracy in different cultural contexts.

Later developments in the newly founded academic discipline of Translation studies will be considered with a broad interdisciplinary scope in order to introduce the cultural and political implications of translation. More specifically, the political aspects of translation will be introduced through the description of its general tendency to convey meaning by supporting mainstream discourses in the receiving cultural context, thus safeguarding the continuity of the existing order, instead of highlighting discontinuous and marginalised discourses³⁹⁷. When translating, we make an attempt to transfer content in such a way that does not question the dominant universe of meaning within a given culture. If translation did not endorse such a

³⁹⁷ Ibid.

cultural adaptation, it would result in a major disruption of the order and of the shared rules and, at a language level, a text would be ultimately discarded for being deviant, difficult to understand or not relevant. The paradigm of equivalence in translation could thus be considered a political instrument, since it generally contributes to making the meaning of words well established and certain instead of highlighting its unstable, illusory and constructed character. Consequently, equivalence will be defined as a space of cultural interpretation and political negotiation dependent on the relations of the individuals and groups involved in the translational process to accommodate a suitable combination of foreignness and normativity in the receiving cultural context.

As the paradigm of equivalence in translation comes to be gradually put aside by register analysis, descriptive and functionalist approaches in the recently founded Translation studies and by Steiner's hermeneutic motion in literature and literary criticism, new theoretical paradigms questioning the structuralist perspectives in other disciplines, such as philosophy, sociology, anthropology, psychology and history influence later research developments in translation. More specifically, the questioning of the paradigm of equivalence in translation is strongly connected to the gradual shift of attention from universalist and structuralist approaches to the study of cultural difference in such disciplines as philosophy, anthropology, literature and literary criticism. Language starts to be considered as an unstable and changing open system and translation as an act of interpretation rather than a transparent transfer of meanings dealing with the creation of equivalent texts. Even though capable of accommodating new and foreign expressions, language is thought to be generally conducive to the establishment and preservation of a political order. This is because, by favouring the use of almost unvaried and consistent lexis and grammar, linguistic conventions generally prove to be supportive of common well known and shared rules, thus fostering peaceful coexistence within social groups.

The French philosopher Michel Foucault introduces such reflections on language and order in his 1966 "Les Mots et les choses: Une archéologie des sciences humaines", ["The Order of Things: an archaeology of the human sciences"]³⁹⁸, where he asserts the existence of an order, a historically determined way to classify things

³⁹⁸ Foucault, 1971/1994.

based on what is perceived to be the same or the other. According to Foucault, «there is no similitude and no distinction, even for the wholly untrained perception, that is not the result of a precise operation and of the application of a preliminary criterion». In this sense, the French philosopher claims that to create even «the simplest form of order», there has to be an episteme, «a 'system of elements'» that defines the parameters of resemblance and difference and «the threshold above which there is a difference and below which there is a similitude». Order is intended as the «inner law» of things, «the hidden network that determines the way they confront one another»³⁹⁹ and language is held to play a key role in the establishment of such order since. Thus, according to Foucault,

there is nothing more tentative, nothing more empirical (superficially, at least) than the process of establishing an order among things; nothing that demands a sharper eye or a surer, better articulated language⁴⁰⁰.

In this sense, the existence of an epistemologically-consistent language is considered a key factor for the creation of any kind of order, in such a way that, since the establishment of an order is in itself viewed as an indefinite, inexact and undefined process, it requires, in order to be successful, the use of as stable and fixed rules as those of language.

In his work, Foucault compares «the theories of language, of the natural order and of wealth and value»⁴⁰¹ to show that their common underlying episteme is strongly connected to the historical period they belong to. By comparing such aspects in different ages of Western thought, the French philosopher demonstrates the existence of common concurrent discontinuities in the three disciplines to signal the synchronous change of their common underlying episteme. He thus defines the episteme as a historical a priori, that should be considered

what, in a given period, delimits in the totality of experience a field of knowledge, defines the mode of being of the objects that appear in that field, provides man's everyday perception

³⁹⁹ All citations Foucault, 1971/1994:xx

⁴⁰⁰ Foucault, 1971/1994:xix.

⁴⁰¹ Foucault, 1971/1994:xxxiii.

with theoretical powers, and defines the conditions in which he can sustain a discourse about things that is recognized to be true⁴⁰².

In particular, with regard to language, Foucault claims that the way in which it is conceived in the modern age differs extensively from how it was viewed in the Western classical thought since

from the nineteenth century, language began to fold in upon itself, to acquire its own particular density, to deploy a history, an objectivity, and laws of its own. It became one object of knowledge among others, on the same level as living beings, wealth and value, and the history of events and men.⁴⁰³

In this sense, the knowledge of language in the modern age is thought to be attainable by simply applying «the methods of understanding in general to a particular domain of objectivity»⁴⁰⁴. According to Foucault, language has started to be treated and studied as a scientific phenomenon with its own well-determined and predictable rules and, as such, it has undergone extensive reduction and abstraction.

As a consequence to the objectification of language, the French philosopher recognises a series of peculiar tendencies in the modern age which contributes to compensate for such diminution:

The critical elevation of language, which was a compensation for its subsidence within the object, implied that it had been brought nearer both to an act of knowing, pure of all words, and to the unconscious element in our discourse⁴⁰⁵.

On the one hand, since language is «a necessary medium for any scientific knowledge that wishes to be expressed in discourse»⁴⁰⁶, it cannot reflect a particular science, but it has to be neutralized and polished⁴⁰⁷, to be made more scientific and transparent, so that

⁴⁰² Foucault, 1971/1994: 158.

⁴⁰³ Foucault, 1971/1994:296.

⁴⁰⁴ Ibid.

⁴⁰⁵ Foucault, 1971/1994:299.

⁴⁰⁶ Foucault, 1971/1994:296.

⁴⁰⁷ Ibid.

stripped of all its singularity, purified of all its accidents and alien elements - as though they did not belong to its essence - it [language, BQ] could become the exact reflection, the perfect double, the unmisted mirror of a non-verbal knowledge.⁴⁰⁸

Consequently, during the nineteenth century, attempts are made to protect pure thought «from the singularities of a constituted language» that could obscure it, so that it comes to be analysed and coded through universal logic and symbols without having to turn to «grammars, vocabularies, synthetic forms, and words».

On the other hand, Foucault also notices that, since language has «become a dense and consistent historical reality», its study acquires great relevance to the extent that it makes it possible to discover «the unspoken habits of thought, of what lies hidden in a people's mind». In this sense, «the truth of discourse is caught in the trap of philology», because in order to grasp a people's thoughts, it is necessary to separate them from «opinions, philosophies, and perhaps even from sciences» and study «the words that made them possible»⁴⁰⁹. Philology thus becomes «the modern form of criticism», since it makes it possible to analyse «the depths of discourse», in order to «destroy syntax, to shatter tyrannical modes of speech, to turn words around in order to perceive all that is being said through them and despite them»⁴¹⁰. In this view, even though «men believe that their speech is their servant», they do not realise that they express their thoughts using the «grammatical arrangements of a language», that constitute «the a priori of what can be expressed in it», thus «submitting themselves to its [language, BQ] demands»⁴¹¹.

Another important consequence of what Foucault calls the «demotion of language to the mere status of an object»⁴¹² is the emergence of literature in the nineteenth century as an isolated particular language, «an independent form, difficult of access, folded back upon the enigma of its own origin and existing wholly in reference to the pure act of writing»⁴¹³. According to the French philosopher, literature should be considered as

⁴⁰⁸ Ibid.

⁴⁰⁹ Foucault, 1971/1994:297.

⁴¹⁰ Foucault, 1971/1994:298.

⁴¹¹ Foucault, 1971/1994:297.

⁴¹² Foucault, 1971/1994:296.

⁴¹³ Foucault, 1971/1994:300.

the contestation of philology (of which it is nevertheless the twin figure): it leads language back from grammar to the naked power of speech, and there it encounters the untamed, imperious being of words⁴¹⁴.

While language is highly simplified and generalised through grammatical arrangements, thanks to literature, such reduction is made up for by expressing the power of words and the directness of speech that is lost with grammar and philology. According to Foucault, the ultimate consequence of the "demotion of language" is its dispersion «in a multiplicity of modes of being»⁴¹⁵, since

for philologists, words are like so many objects formed and deposited by history; for those who wish to achieve a formalization, language must strip itself of its concrete content and leave nothing visible but those forms of discourse that are universally valid; if one's intent is to interpret, then words become a text to be broken down, so as to allow that [sic, BQ] other meaning hidden in them to emerge and become clearly visible; lastly, language may sometimes arise for its own sake in an act of writing that designates nothing other than itself⁴¹⁶.

For the French philosopher, such dispersion of language into a number of different disciplines occurs throughout the nineteenth century and starts to be countered by Nietzsche's enterprise «to connect the philosophical task with a radical reflection upon language», so that it is univocally analysed in the field of thought. In order to master the fragmentation of language, there appears in the modern age a number of themes such as the «universal formalization of all discourse», the «integral exegesis of the world», or the «general theory of signs»⁴¹⁷. Such themes also encompass in the modern age the possibility of

a transformation without residuum, of a total reabsorption of all forms of discourse into a single word, of all books into a single page, of the whole world into one book⁴¹⁸.

The modern episteme, which views man as an empirical object of knowledge, according to Foucault, «was formed towards the end of the eighteenth century and

⁴¹⁴ Ibid.

⁴¹⁵ Foucault, 1971/1994:304.

⁴¹⁶ Ibid.

⁴¹⁷ All citations Foucault, 1971/1994:305

⁴¹⁸ Ibid.

still serves as the positive ground of our knowledge»⁴¹⁹. Such episteme is related not only to «the shift of language towards objectivity, and with its reappearance in multiple form»⁴²⁰ but also to «the disappearance of Discourse and its featureless reign»⁴²¹. According to the philosopher, the question of language, posited «in literature as well as in formal reflection»⁴²² rather than in philosophy in order to create a general theory of signs and the unity of language, also causes discourse to be eclipsed. The study of language as an objective and univocal reality would thus hide the existence of discourse and make less noticeable the way in which it is produced and deployed.

In his 1970 inaugural lecture at the College de France, 'L'Ordre du Discours', ['The Order of Discourse']⁴²³, Foucault sets out to analyse the production of discourse that he views as «the power which is to be seized»⁴²⁴, «not simply that which translates struggles or systems of domination»⁴²⁵, but «the thing for which and by which there is struggle». In this sense, discourse should not be considered a «transparent or neutral element», but on the contrary as «one of the places where sexuality and politics exercise in a privileged way some of their most formidable powers»⁴²⁶. The French philosopher recognises the existence of different kinds of procedures that ensure the control of discourse:

In every society the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality⁴²⁷.

Along with a number of procedures of exclusion and marginalisation, such as that of prohibition⁴²⁸, as well as the distinctions between reason and madness and between true and false, in his inaugural lecture Foucault also observes recourse to other groups

⁴¹⁹ Foucault, 1971/1994:385.

⁴²⁰ Foucault, 1971/1994:385-386.

⁴²¹ Foucault, 1971/1994:386.

⁴²² Ibid.

⁴²³ Foucault, 1970.

⁴²⁴ Foucault, 1970, 53.

⁴²⁵ Foucault, 1970, 52-53.

⁴²⁶ All citations Foucault, 1970, 52.

⁴²⁷ Ibid.

⁴²⁸ «we do not have the right to say everything, [...] we cannot speak of just anything in any circumstances whatever, and [...] not everyone has the right to speak of anything whatever». Ibid.

of procedures that he calls 'principles of rarefaction' or classification. One such group is that of internal procedures, through which «discourses themselves exercise their own control»⁴²⁹ on events and chance. Among the internal procedures of rarefaction, Foucault identifies that of commentary, which constitute a society's

major narratives, which are recounted, repeated and varied; formulae, texts and ritualised sets of discourses which are recited in well-defined circumstances; things said once and preserved because it is suspected that behind them there is a secret or a treasure⁴³⁰.

While some discourses «vanish as soon as they have been pronounced», others «give rise to a certain number of new speech-acts which take them up, transform them or speak of them». In this sense, the procedure of commentary appears to include translation as an integral part of the production of discourse, since it is impossible to make a distinction between «the category of fundamental or creative discourses», namely the original texts, and «the mass of discourses which repeat, gloss, and comment»; rather «plenty of major texts become blurred and disappear, and sometimes commentaries move into the primary position»⁴³¹. More specifically, according to Foucault,

the same literary work can give rise simultaneously to very distinct types of discourse: the 'Odyssey' as a primary text is repeated, in the same period, in the translation by Berard, and in the endless 'explications de texte', and in Joyce's 'Ulysses'⁴³².

In such an understanding, translation should not be considered as a secondary text and, as such, a less relevant one, but rather one should comprise the possibility for a translated text to become a major source of reference and discourse:

In what is broadly called commentary, the hierarchy between primary and secondary text plays two roles which are in solidarity with each other. On the one hand it allows the (endless) construction of new discourses: the dominance of the primary text, its permanence, its status as a discourse which can always be re-actualised, the multiple or hidden meaning with which is credited, the essential reticence and richness which is attributed to it, all this is

⁴²⁹ Foucault, 1970:56.

⁴³⁰ Ibid.

⁴³¹ All citations Foucault, 1970, 57

⁴³² Ibid.

an open possibility of speaking. But on the other hand the commentary's only role, whatever the techniques used, is to say at last what was silently articulated 'beyond', in the text⁴³³.

Commentary, and thus translation, is viewed by Foucault as a way to complete the primary source, by adding to the original text and saying something different which is not in it. Such a way of producing discourse generates a paradox in that «the commentary must say for the first time what had, nonetheless, already been said, and must tirelessly repeat what had, however, never been said»⁴³⁴.

Foucault claims that in our society, there exists, «a profound logophobia», «a sort of mute terror against these events, against this mass of things said», that are considered to be «violent, discontinuous, pugnacious, disorderly as well, and perilous». However, the fear for this «great incessant and disordered buzzing of discourse» should be faced and analysed by making «three decisions which our thinking today tends to resist»⁴³⁵:

We must call into question our will to truth, restore to discourse its character as an event, and finally throw off the sovereignty of the signifier⁴³⁶.

To cope with such fears, Foucault calls for the questioning of one's own truths and beliefs, by situating them in their own limited context and by doing away with their formal supremacy. In order to do so, the French philosopher identifies a number of principles to be kept in mind while trying to reset one's way of thinking in discourse. He firstly recognises a principle of reversal:

Where tradition sees the source of discourses, the principle of their swarming abundance and of their continuity, in those figures which seem to play a positive role, e.g., those of the author, the discipline, the will to truth, we must rather recognise the negative action of a cutting-up and a rarefaction of discourse.

In this sense, features, personalities and representations traditionally held to positively impact society should rather also be considered in their reducing and limiting role. Secondly, discourses should be thought of as «discontinuous practices, which cross each other, are sometimes juxtaposed with one another, but can just as well exclude

⁴³³ Foucault, 1970:57-58.

⁴³⁴ Foucault, 1970:58.

⁴³⁵ All citations Foucault, 1970:66.

⁴³⁶ Ibid.

or be unaware of each other», rather than processes that hide «a great unsaid or a great unthought which runs throughout the world».

Third, any kind of discourse should not be based on «pre-existing significations» that have to be explained, since «the world is not the accomplice of our knowledge», but rather discourse should be considered as «a violence which we do to things, or in any case as a practice which we impose on them».

The fourth principle, according to Foucault, is that of exteriority, which regards the analysis of discourse considering «its external conditions of possibility», and «what gives rise to the aleatory series of these events, and fixes its limits», rather than trying to analyse «its interior, hidden nucleus, towards the heart of a thought or a signification supposed to be manifested in it»⁴³⁷.

In Foucauldian terms, translation could be considered political in the sense that it is an act of commentary or interpretation that modifies the original text in order to adapt it to the production of discourse in the receiving cultural context. In such an understanding, in that they foster the establishment and maintenance of a political order, translation and the notion of equivalence in translation contribute to the illusory construction of discourses, also being influenced by local cultural contexts and ultimately by the individuals involved in the process.

The existence of discourse as a source of power to be seized and its dependence on its constructed character through procedures of rarefaction and classification play a key role in the field of literary theory and criticism of that time. The political role of commentary as a principle of rarefaction of discourse is analysed by the Palestinian literary theorist Edward Said in order to develop the notion of Orientalism. In his 1978 'Orientalism'⁴³⁸, Said demonstrates the existence of a mode of discourse, «a way of coming to terms with the Orient that is based on the Orient's special place in European Western experience»⁴³⁹. More specifically, Orientalism could be viewed as a «style of thought based upon an ontological and epistemological distinction made between "the Orient" and (most of the time) "the Occident"»⁴⁴⁰. In this sense, the Orient is not only considered geographically close to Europe, but it is also

⁴³⁷ Foucault, 1970:67.

⁴³⁸ Said, 2003.

⁴³⁹ Said, 2003:2.

⁴⁴⁰ Said, 2003:3.

the place of Europe's greatest and richest and oldest colonies, the source of its civilizations and languages, its cultural contestant, and one of its deepest and most recurring images of the Other. In addition, the Orient has helped to define Europe (or the West) as its contrasting image, idea, personality, experience⁴⁴¹.

According to Said, the discourse of Orientalism is supported by a large number of «institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracies and colonial styles»⁴⁴². Such discourse is created and reproduced by «a very large mass of writers, among whom are poets, novelists, philosophers, political theorists, economists, and imperial administrators»⁴⁴³, who take the orientalist perspective

as the starting point for elaborate theories, epics, novels, social descriptions, and political accounts concerning the Orient, its people, customs, "mind," destiny, and so on.⁴⁴⁴

On a more general basis, in his 1983 essay "Traveling Theory"⁴⁴⁵, Said observes and analyses the process of transferring ideas and theories from one culture to another. According to the Palestinian theorist, «like people and school of criticism, ideas and theories travel - from person to person, from situation to situation, from one period to another»⁴⁴⁶. Said asserts the positive aspects of such «circulation of ideas»⁴⁴⁷ for the nourishment of cultural and intellectual life «whether it takes the form of acknowledged or unconscious influence, creative borrowing, or wholesale appropriation»⁴⁴⁸. He however claims that an analysis of the movements and transfers of theories and ideas would be useful when trying to establish

whether by virtue of having moved from one place and time to another an idea or a theory gains or loses in strength, and whether a theory in one historical period and national culture becomes altogether different for another period or situation⁴⁴⁹.

According to Said «such movement into a new environment is never unimpeded», but rather it complicates the transfer and circulation of theories, because it implies

⁴⁴¹ Said, 2003:2-3.

⁴⁴² Said, 2003:3.

⁴⁴³ Ibid.

⁴⁴⁴ Said, 2003:3-4.

⁴⁴⁵ Said, 1983.

⁴⁴⁶ Said, 1983:226.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

recourse to «processes of representation and institutionalization different from those at the point of origin». However, Said identifies a number of recurring stages «common to the way any theory or idea travels» that can be used for the purpose of analysing such processes.

At the beginning of the process, «there is a point of origin, or what seems like one», a situation in which the theory is formulated or the idea is introduced into the discourse. Secondly, «as the idea moves from an earlier point to another time and place», it has to travel and cross the distance by undergoing «the pressure of various contexts where it will come into a new prominence». In the third phase, «the transplanted theory or idea» has to come to terms with a set of conditions of acceptance or resistance. Even though such conditions do not guarantee its total and definitive acceptance, they make it possible to introduce or tolerate the idea into a new cultural context, «however alien it might appear to be». During the last stage, «the now full (or partly) accommodated (or incorporated) idea» or theory is changed and translated to a certain degree, since it has been used in a different context and it has acquired «its new position in a new time and place»⁴⁵⁰.

Even if one might think that Said's notion of Traveling theory carries with it a sort of negative implication in that the original theories and ideas, once transferred into other cultural contexts, change their innovative thrust and modify their significance, the Palestinian theorist claims that

the exercise involved in figuring out where the theory went and how in getting there its fiery core was reignited is invigorating - and is also another voyage, one that is central to intellectual life in the late twentieth century⁴⁵¹.

Said's Traveling theory contributes to expand the notion of translation that instead of being considered as the transformation of an original text from a given source language into another target language, gradually starts to envisage the participation of other key factors, such as the individuals and groups that intervene in the translation of foreign concepts into other transnational communities; not only the translators, but also the readers' communities in the receiving culture.

⁴⁵⁰ All citations Said, 1983:227.

⁴⁵¹ Said, 2001:452.

The cultural and political implications in the production of discourse observed with Foucault and Said are also studied from a different perspective by the anthropologist Talal Asad who, in his essay 'The Concept of Cultural Translation in British Social Anthropology'⁴⁵², considers the «translation of cultures» as an enterprise that «increasingly since the 1950s has become an almost banal description of the distinctive task of social anthropology»⁴⁵³. Asad considers the institutionalised practice of cultural translation among anthropologists that study other cultures claiming that it does not involve only «what individual Western anthropologists say in their ethnographies»⁴⁵⁴, but also «what their countries (and perhaps they themselves) do in their relations with the third world»⁴⁵⁵. In this sense, anthropologists who translate a culture into their ethnographies, not only have to face linguistic problems in texts, but they also have to take into account «the social conditions they work in both in the field and in their own society»⁴⁵⁶.

According to Asad, it is dangerous to assume that translating deals simply with substituting words of a foreign text with words carrying equivalent meaning into another language, so that the translation conveys the "real meaning" of the original. Doing so would presuppose an ideal utopian condition of equality between the languages and the cultures involved in the process:

Because the languages of third world societies [...] are seen as weaker in relation to Western languages (and today especially to English), they are more likely to submit to forcible transformation in the translation process than the other way around. The reason for this is, first, that in their political-economic relations with third world countries, Western nations have the greater ability to manipulate the latter. And, second, Western languages produce and deploy desired knowledge more readily than third world languages do.⁴⁵⁷

The inequality of the relationship between First and Third-World countries, according to Asad, imbues translation with a process of interpreting implicit features of the foreign ethnocentrically:

⁴⁵² Asad, 1986.

⁴⁵³ Asad, 1986:171.

⁴⁵⁴ Asad, 1986:179.

⁴⁵⁵ Ibid.

⁴⁵⁶ Asad, 1986:180.

⁴⁵⁷ Asad, 1986:190.

This inequality in the power of languages, together with the fact that the anthropologist typically writes about an illiterate (or at any rate not an English-speaking) population for a largely academic, English-speaking audience, encourages a tendency [...] to read the implicit in alien cultures.⁴⁵⁸

Asad argues that there is a tendency of capitalist societies «to push the meanings of various third world societies in a single direction»⁴⁵⁹. Even if they are willing «to read about another mode of life»⁴⁶⁰, such first-world societies also seek «to manipulate the text it reads according to established rules»⁴⁶¹. This is because,

the process of cultural translation is inevitably enmeshed in conditions of power - professional, national, international. And among these conditions is the authority of ethnographers (a) to present the coherence of culturally distinctive discourses as the integration of self-contained social systems, and (b) to uncover the implicit meanings of subordinated cultural discourses.⁴⁶²

Asad focuses on the case of the translation of «scientific texts as well as social science, history, philosophy, and literature»⁴⁶³ from European languages into Arabic throughout the nineteenth century. Such phenomenon, according to him, has transformed the Arabic language so that it has become much more similar than ever to the European ones⁴⁶⁴.

In order to avoid such distortions a good translator should not view «unusual difficulty in conveying the sense of an alien discourse»⁴⁶⁵ as a problem proper to the receiving culture and language, but they should rather «test the tolerance of her own language for assuming unaccustomed forms»⁴⁶⁶. In this sense, according to Asad, in order to counter «asymmetrical tendencies and pressures in the languages of dominated and dominant societies»⁴⁶⁷, anthropologists should not assume that

⁴⁵⁸ Asad, 1986:194.

⁴⁵⁹ Asad, 1986:197.

⁴⁶⁰ Asad, 1986:193.

⁴⁶¹ Ibid.

⁴⁶² Asad, 1986:198.

⁴⁶³ Asad, 1986:190.

⁴⁶⁴ Ibid.

⁴⁶⁵ Asad, 1986:190.

⁴⁶⁶ Ibid.

⁴⁶⁷ Asad, 1986:199.

translation requires the adjustment of "foreign" discourses to their new site. In my view, they should retain what may be a discomfiting - even scandalous - presence within the receiving language⁴⁶⁸.

According to Asad, the only way to avoid reproducing cultural and power asymmetries while translating is by introducing in the receiving culture annoying and disturbing foreign elements.

The cultural and political asymmetries in language are also evidenced by other intellectuals more specifically dealing with translation. The translator and philosopher Antoine Berman, in his 1985 essay 'La Traduction comme épreuve de l'étranger', ['Translation and the Trials of the Foreign']⁴⁶⁹, in line with Schleiermacher's notion of 'a feeling of the foreign'⁴⁷⁰, asserts that translated texts should always bring inside foreign elements that make their origin and otherness visible. He also claims that when considering the history of translated literature, translation has always been an enterprise that negated, instead of asserting, the foreign nature of an original text,

as if translation, far from being the trials of the Foreign, were rather its negation, its acclimation, its "naturalization." As if its most individual essence were radically repressed⁴⁷¹.

He thus asserts the need to reflect «on the properly *ethical* aim of the translating act (receiving the Foreign as Foreign)»⁴⁷² and to analyse translated texts in order to show

how (and why) this aim has, from time immemorial (although not always), been skewed, perverted and assimilated to something other than itself, such as the play of hypertextual transformations⁴⁷³.

Such manipulation would produce «ethnocentric, annexationist translations and hypertextual translations (pastiche, imitation, adaptation, free rewriting)»⁴⁷⁴ as a result of «the internalized expression of a two-millennium-old tradition, as well as the

⁴⁶⁸ Ibid.

⁴⁶⁹ Berman, 1985/2000.

⁴⁷⁰ See Chapter One, p. 21.

⁴⁷¹ Berman, 1985/2000: 277.

⁴⁷² Ibid. Italics in the original.

⁴⁷³ Berman, 1985/2000:277-278.

⁴⁷⁴ Berman, 1985/2000:278.

ethnocentric structure of every culture, every language»⁴⁷⁵. According to Berman, however, only some cultures make use of translation:

Only languages that are “cultivated” translate, but they are also the ones that put up the strongest resistance to the ruckus of translation. They censor.⁴⁷⁶

The French translator catches sight of the fact that only some refined and advanced cultures avail themselves of translation into their languages in order to master the difference of the original text by censoring it.

Following the romantic authors he has studied, Berman supports a literalist translation strategy, thus setting it as a translational standard, and proposes a practical model to analyse and assess the degree of manipulation of the original text when it is translated:

I propose to examine briefly the system of textual deformation that operates in every translation and prevents it from being a “trial of the foreign.” I shall call this examination the *analytic of translation*. Analytic in two senses of the term: a detailed analysis of the deforming system, and therefore an analysis in the Cartesian sense, but also in the psychoanalytic sense, insofar as the system is largely unconscious, present as a series of tendencies or *forces* that cause translation to deviate from its essential aim. The analytic of translation is consequently designed to discover these forces and to show where in the text they are practiced⁴⁷⁷.

According to Berman, the textual deformation of an original happens to be mostly unconscious, since the translator is inescapably subject to a set of inclinations which make him stray. Such forces, however, cannot be noticed and countered by the translator alone, because they «form part of the translator’s being, determining the desire to translate»⁴⁷⁸. According to Berman, the only way the translator can do away with his unconscious thrust to manipulation is by willing to have his works analysed:

The translator’s practice must submit to analysis if the unconscious is to be neutralized. It is by yielding to the “controls” (in the psychoanalytic sense) that

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ Berman, 1985/2000:278. Italics in the original.

⁴⁷⁸ Ibid.

translators can hope to free themselves from the system of deformation that burdens their practice⁴⁷⁹.

Berman devises an analytical tool to detect some deforming tendencies, claiming that even though some «may appear relevant only to French “classicizing” translation»⁴⁸⁰, they could be useful to analyse «all translating, at least in the western tradition [...] although certain tendencies may be more accentuated in one linguistic-cultural space than in others»⁴⁸¹.

During the 1990s prior and contemporary poststructuralist and postcolonial reflections on the asymmetries of languages and on the cultural and political implications of translation are integrated in the study of different fields of translation, among whom literary translation plays the most relevant role. In the introduction to the seminal volume 'Translation, History and Culture'⁴⁸², the editors Susan Bassnett and André Lefevere, in line with Mary Snell-Hornby⁴⁸³, propose what they term the 'cultural turn in translation studies', as a call for abandoning scientific convictions about translation, in favour of a more culturally-oriented approach. In her article 'Linguistic Transcoding or Cultural Transfer? A Critique of Translation Theory in Germany'⁴⁸⁴, Snell-Hornby recognises and states the decline of the «rigorously linguistic conception of translation as mere substitution or transcoding»⁴⁸⁵. She then introduces the illusory nature of equivalence in translation⁴⁸⁶ as a result of the German functionalist translation theories in the 1970s and 1980s. The translation scholar also advocates the use of a culturally-oriented approach to bridge the gap between isolated translation traditions, such as linguistics and literature-based ones, across different countries.

⁴⁷⁹ Ibid.

⁴⁸⁰ Berman, 1985/2000:280.

⁴⁸¹ Ibid. Berman identified twelve kinds of manipulation of the original: rationalization, clarification, expansion, ennoblement and popularization, qualitative impoverishment, quantitative impoverishment, the destruction of rhythms, the destruction of underlying networks of signification, the destruction of linguistic patternings, the destruction of vernacular networks or their exoticization, the destruction of expressions and idioms, the effacement of the superimposition of languages. For a detailed description of Berman's analytical tool see Berman, 1985/2000.

⁴⁸² Bassnett and Lefevere, 1990.

⁴⁸³ Snell-Hornby, 1990.

⁴⁸⁴ Ibid.

⁴⁸⁵ Snell-Hornby, 1990:85.

⁴⁸⁶ Snell-Hornby, 1990:80.

Translation starts to be considered as an interdiscipline, and cultural and postcolonial scholars engage in critical studies of translated texts as a way of reproducing imperialistic discourse. Some scholars take on the theme of linguistic and cultural differences to propose resistant translation strategies.

In her 1992 book 'Siting Translation: history, post-structuralism, and the colonial context'⁴⁸⁷, Tejaswini Niranjana inscribes translation in the colonial discourse, that she defines as

the body of knowledge, modes of representation, strategies of power, law, discipline, and so on, that are employed in the construction and domination of "colonial subjects".⁴⁸⁸

Niranjana argues that, since translation contributes to «creating coherent and transparent texts and subjects», it also makes the colonized cultures «seem static and unchanging rather than historically constructed». In this sense translation of «philosophy, historiography, education, missionary writings, travel writing» fosters the renewal and perpetuation of the colonial domination⁴⁸⁹.

According to Niranjana, the postcolonial translator should be aware of such asymmetries and of the attempts to support essentialist anti-colonial narratives, «to deconstruct them, to show their complicity with the master-narrative of imperialism»⁴⁹⁰. More specifically, instead of trying to oppose the «hegemonic representation of the non-Western world»⁴⁹¹ by recourse to nativist or essentialist instances of the colonies, postcolonials should propose «a richer complexity, a complication of our notions of the "self"»⁴⁹². In this sense, translation should be considered as an opposing practice of resistance and «transformed into a disruptive, disseminating ['force', BQ]», by introducing difference and heterogeneity «against myths of purity»⁴⁹³.

In a different postcolonial perspective, Homi Bhabha, instead of focusing on the translation of cultures in Asad's sense, proposes a notion of cultural translation as

⁴⁸⁷ Niranjana, 1992.

⁴⁸⁸ Niranjana, 1992:7.

⁴⁸⁹ All citations Niranjana, 1992:3

⁴⁹⁰ Niranjana, 1992:167.

⁴⁹¹ Niranjana, 1992:186.

⁴⁹² Ibid.

⁴⁹³ Ibid.

a hybrid process of survival, the return of the original into «reinscription and redescription; an iteration that is not belated, but ironic and insurgent»⁴⁹⁴.

According to the Indian scholar, difference is normally made visible in literature through content instead of form, thus reproducing an alienated representation and causing a loss of signification:

Too often it is the slippage of signification that is celebrated in the articulation of difference, at the expense of this disturbing process of overpowering of content by the signifier. The erasure of content in the invisible but insistent structure of linguistic difference does not lead us to some general, formal acknowledgement of the function of the sign. The ill-fitting robe of language alienates content in the sense that it deprives it of an immediate access to a stable or holistic reference 'outside' itself. [...] Content becomes the alienating *mise-en-scène* that reveals the signifying structure of linguistic difference.⁴⁹⁵

In this sense, in translation, «the 'given' content becomes alien and estranged» and the language of translation is continually challenged «by its double, the untranslatable - alien and foreign».

Taking into account the literature of migrant writers, Bhabha asserts that «the migrant's survival depends [...] on discovering 'how newness enters the world'»⁴⁹⁶, by connecting the personal experience of migration to instances of literary writing, while «making the linkages through the unstable elements of literature and life - the dangerous tryst with the 'untranslatable' - rather than arriving at ready-made names»⁴⁹⁷.

Bhabha likens his idea of cultural translation to Benjamin's notion of the 'foreignness of languages' which sees translation as the representation and performance of cultural difference⁴⁹⁸. In such staging of cultural difference, which is cultural translation, «the content or subject matter is made disjunct, overwhelmed and alienated by the form of signification»⁴⁹⁹. In this sense, language is considered a means of introducing the foreign aspect as an «'unstable element of linkage', the indeterminate temporality of

⁴⁹⁴ Bhabha, 1994/2007:324.

⁴⁹⁵ Bhabha, 1994/2007:235

⁴⁹⁶ All citations Bhabha, 1994/2007:235

⁴⁹⁷ Bhabha, 1994/2007: 324-325.

⁴⁹⁸ Bhabha, 1994/2007:325.

⁴⁹⁹ Ibid.

the in-between»⁵⁰⁰. In cultural translation the meaning of the original words is destroyed in its original referential structure and renegotiated in a new perspective, in which «the purpose is, as Rudolf Pannwitz says, not 'to turn Hindi, Greek, English into German [but] instead to turn German into Hindi, Greek, English'»⁵⁰¹.

Rather than considering the narrow definition of translation as the substitution of words from one language into another, Bhabha views translation as «the performative nature of cultural communication»⁵⁰², thus at all times revealing «the different times and spaces between cultural authority and its performative practices»⁵⁰³, that make meaning move from one culture into another. Thanks to cultural translation, it is then possible to desacralise «the transparent assumptions of cultural supremacy»⁵⁰⁴, while demanding «a contextual specificity, a historical differentiation within minority positions»⁵⁰⁵.

Bhabha's notion of cultural translation considers not only the transfer of meaning from a text into another, but also the role of the writing subject as a living translational experience of cultural in-betweenness. In this sense, translation is increasingly viewed as an act of communication, rather than a transfer of meaning and content.

Cultural difference and asymmetries in translation are also studied by the Indian postcolonial philosopher and literary theorist, Gayatri Chakravorty Spivak, who, in her essay "The Politics of Translation"⁵⁰⁶, claims that the politics of translation is the result of considering language as a way to construct meaning and to «allow us to make sense of things, of ourselves»⁵⁰⁷. According to the Indian scholar, outside of language, beside it and around it, «random contingency»⁵⁰⁸ cannot be totally and adequately controlled. However, in the "uncanny" experience of translation that

⁵⁰⁰ Bhabha, 1994/2007:326.

⁵⁰¹ Ibid.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Bhabha, 1994/2007:327.

⁵⁰⁵ Ibid.

⁵⁰⁶ Spivak, 1992.

⁵⁰⁷ Spivak, 1992:369.

⁵⁰⁸ Ibid.

contains «alterity in an unknown language spoken in a different cultural milieu»⁵⁰⁹ it is possible to get the illusion of control.

According to Spivak, the uncanny aspect of translation, that hides and controls cultural difference, lies in the unbridgeable gap between logic and rhetoric:

Logic allows us to jump from word to word by means of clearly indicated connections. Rhetoric must work in the silence between and around words in order to see what works and how much. The jagged relationship between rhetoric and logic, condition and effect of knowing, is a relationship by which a world is made for the agent, so that the agent can act in an ethical way, a political way, a day-to-day way; so that the agent can be alive, in a human way, in the world. Unless one can at least construct a model of this for the other language, there is no real translation⁵¹⁰.

Translation is thus viewed as the successful construction of a coherent model that is capable to inscribe the relationship between the logical and the rhetoric aspects of a culture. However, according to Spivak, «without a sense of the rhetoricity of language»⁵¹¹, it would be impossible to translate correctly, and rather «a species of neo-colonialist construction of the non-western scene is afoot»⁵¹². In order to be successful,

the translator from a Third World language ['into English', BQ] should be sufficiently in touch with what is going on in literary production in that language to be capable of distinguishing between good and bad writing [...], resistant and conformist writing⁵¹³.

According to Spivak, the good translator should, first of all, know the literary environment in which the foreign language text has been conceived and written. Only by doing so, can they be able to realise «that what seems resistant in the space of English may be reactionary in the space of the original language»⁵¹⁴. The Indian philosopher claims that, since the notions of good and bad translation depend on the local cultural context, in order to counter racist assumptions such as the belief that «all Third World women's writing is good»⁵¹⁵, the translator should retain «a tough

⁵⁰⁹ Spivak, 1992:370-371.

⁵¹⁰ Spivak, 1992:371.

⁵¹¹ Ibid.

⁵¹² Ibid.

⁵¹³ Spivak, 1992:376.

⁵¹⁴ Ibid.

⁵¹⁵ Spivak, 1992:377.

sense of the specific terrain of the original»⁵¹⁶. In the same way «democracy changes into the law of force in the case of translation from the Third World»⁵¹⁷. If translators worked without mastering the language and thinking that they can simply transfer content, they would be «betraying the text and showing rather dubious politics». In order to avoid such oversimplification of the task of translating, a specific «preparation for the intimacy of cultural translation» is necessary that, instead of encompassing only the «learned tradition of language acquisition for academic work», entails direct and personal experience of foreign languages and contexts. According to Spivak, before talking or making claims on other cultures or individuals, a translator should try to live the same foreign experiences to avoid «to bludgeon someone else by insisting on your [the translator's, BQ] version of solidarity»⁵¹⁸.

In her later essay, "Translation as Culture"⁵¹⁹, she furthers such considerations by criticising the concept of translation as resistance arguing that, even if translation is considered in the narrow sense an act of reparation⁵²⁰, one should never try «to repay what cannot be repaid, and should not be thought of as repayable»⁵²¹. According to Spivak, the tendency of postcolonial translators to force foreignness into translation, in order to make up for lost meaning is not enough, or should never be thought of as the only way to balance power asymmetries:

This founding task of translation does not disappear by fetishizing the native language. Sometimes I read and hear that the subaltern can speak in their native languages. I wish I could be as self-assured as the intellectual, literary critic and historian, who assert this in English. No speech is speech if it is not heard. It is this act of hearing-to-respond that may be called the imperative to translate⁵²².

While the first direct response of postcolonial scholars to colonial discourse has been that of resisting and countering power through foreignizing strategies, Spivak contributes to highlight the complex aspects of the question by asserting that the

⁵¹⁶ Ibid.

⁵¹⁷ Spivak, 1992:378.

⁵¹⁸ All citations Spivak, 1992:379.

⁵¹⁹ Spivak, 2007.

⁵²⁰ Spivak, 2007:265.

⁵²¹ Spivak, 2007:266.

⁵²² Ibid.

answer to colonialism cannot resolve itself in the obsessive search for what is native and original. Doing so would only reproduce neo-colonial instances in that only through translation into the colonial language can the postcolonial subaltern make himself understood and be ultimately taken into consideration:

We often mistake this for helping people in trouble, or pressing people to pass good laws, even to insist on behalf of the other that the law be implemented. But the founding translation between people is a listening with care and patience, in the normality of the other, enough to notice that the other has already silently made that effort. This reveals the irreducible importance of idiom, which a standard language, however native, cannot annul.⁵²³

Spivak thus defends the importance of the use of standardized languages to empower subaltern speakers, to resist «the necessary impossibility of translation»⁵²⁴, so that «subalternity may painstakingly translate itself into a hegemony that can make use of and exceed all the succour and resistance that we can organize from above»⁵²⁵.

From a different perspective, the American translation theorist Lawrence Venuti considers the asymmetries of language and power in the case of translating foreign texts into English. Venuti criticises the scientific tendency of linguistics-oriented approaches in assuming that «language is defined as a set of systematic rules autonomous from cultural and social variation»⁵²⁶, thus considering translation as a series of operational norms independent of «the cultural and social formations in which they are executed»⁵²⁷. According to the American scholar, such tendency to «purify translation practices and situations of their social and historical variables»⁵²⁸ is a way to normalize difference and make the foreign aspects similar to the domestic ones:

Translating can never simply be communication between equals because it is fundamentally ethnocentric. [...] The very function of translating is assimilation, the inscription of a foreign text with domestic intelligibilities and interests.⁵²⁹

⁵²³ Spivak, 2007:274.

⁵²⁴ Spivak, 2007:275.

⁵²⁵ Ibid.

⁵²⁶ Venuti, 1998: 25.

⁵²⁷ Ibid.

⁵²⁸ Ibid.

⁵²⁹ Venuti, 1998:11.

In this sense, translation is thought to unavoidably inscribe foreign texts into different linguistic and cultural values in order to ensure understanding. Venuti also observes that such domesticating strategies in translation into English usually adopts a fluent strategy to reproduce the illusory effect of transparency and faithfulness. However, he claims that «what it makes seem faithful, is in fact the translator's interpretation of the foreign text, the signified he has demarcated in the translation in accordance with target-language cultural values»⁵³⁰.

Venuti notices that «this process of inscription operates at every stage in the production, circulation, and reception of the translation» and that it starts with the very choice of translating a specific foreign text instead of another because it «answers to particular domestic interests». Apart from the translation strategies that are chosen to render the foreign text, reception is always «further complicated by the diverse forms in which the translation is published, reviewed, read, and taught»⁵³¹.

Such complex processes of cultural representation are considered to play a key role in the construction of cultural identities, because

foreign literatures tend to be dehistoricized by the selection of texts for translation, removed from the foreign literary traditions where they draw their significance. And foreign texts are often rewritten to conform to styles and themes that *currently* prevail in domestic literatures.⁵³²

Such processes, according to Venuti, contribute to the establishment of cultural stereotypes by attaching «esteem or stigma to specific ethnic, racial, and national groupings»⁵³³ also influencing intercultural relations in «reinforcing alliances, antagonism, and hegemonies between nations»⁵³⁴. Furthermore, Venuti sees institutions to take a stronger part in the definition of cultural identity, given the fact that they tend to support the construction of an 'ethics of sameness' rather than one of difference «to ensure the continued and unruffled reproduction of the institution»⁵³⁵.

Furthermore, he considers translation as a violent practice in that it forces the foreign text into another cultural context with different «values, beliefs and representations

⁵³⁰ Venuti, 2010:72.

⁵³¹ All citations Venuti, 1998: 67.

⁵³² Ibid.

⁵³³ Ibid.

⁵³⁴ Venuti, 1998:68.

⁵³⁵ Venuti, 1998:82.

that pre-exist it in the target language, always configured in hierarchies of dominance and marginality». In this sense, translation makes «a cultural other as the same, the recognizable, even the familiar», by inscribing it in «its canons and taboos, its codes and ideologies», thus risking to contribute to «an imperialist appropriation of foreign cultures for domestic agendas, cultural, economic, political».

According to Venuti, translation could be termed as a 'cultural political practice', in that, through such processes, it supports «the maintenance or revision of dominant conceptual paradigms, research methodologies, and clinical practices in target-language disciplines and professions»⁵³⁶.

In postcolonial countries such peculiar features of translation are even more decisive in that, in such contexts, translation is «a cultural practice that is deeply implicated in the relations of domination and dependence, equally capable of maintaining or disrupting them»⁵³⁷. Even though a subordinate position might be considered as passive and weak, according to Venuti, colonial and postcolonial contexts retain a certain degree of contingency that makes it more difficult to predict and control the effects and functions of translated texts⁵³⁸. In such cases, the translator is especially responsible for «reconstructing the hierarchy of domestic values that inform the translation and its likely reception»⁵³⁹, so as to comply with «the linguistic and cultural differences that comprise the local scene»⁵⁴⁰.

Taking on Schleiermacher and Berman's foreignizing strategies, and in line with major postcolonial translators, Venuti advocates for an ethical choice of countering domesticating translations by introducing discomforting, 'demystifying' and disturbing foreign elements into English translations. Even if the American scholar views it as impossible for translation to «get rid itself of its fundamental domestication, its basic task of rewriting the foreign text in domestic cultural terms»⁵⁴¹, such ethnocentric aspects of translation can be used «to decenter the domestic terms»⁵⁴², also «introducing variations that alienate the domestic, reveal the

⁵³⁶ All citations Venuti, 2010:68.

⁵³⁷ Venuti, 1998:158.

⁵³⁸ Venuti, 1998:189.

⁵³⁹ Ibid.

⁵⁴⁰ Ibid.

⁵⁴¹ Venuti, 1998:182.

⁵⁴² Ibid.

translation to be in fact a translation, distinct from the text it replaces»⁵⁴³. According to him, a foreignizing strategy would make the foreignness of the text visible and would allow to introduce elements of difference into the ethnocentric Anglo-American world:

I want to suggest that in so far as foreignizing translation seeks to restrain the ethnocentric violence of translation, it is highly desirable today, a strategic intervention in the current state of world affairs, pitched against the hegemonic English-language nations and the unequal cultural exchanges in which they engage their global others⁵⁴⁴.

In this sense, the values in the receiving culture can be «disarranged to set going processes of defamiliarization, canon reformation, ideological critique, and institutional change»⁵⁴⁵. According to Venuti, however, one should not seek to enact «an indiscriminate valorization of every foreign culture or a metaphysical concept of foreignness as an essential value»⁵⁴⁶, but rather to use such method strategically and only in the contexts in which it serves to interfere with domesticating translations, with the ultimate objective of resisting «ethnocentrism and racism, cultural narcissism and imperialism, in the interest of democratic geopolitical relations»⁵⁴⁷.

Far from running himself into an ethnocentric narrative, Venuti also acknowledges that his purpose for using a foreignizing strategy to counter the Anglo-American domesticating tendency is «not to do away with cultural political agendas»⁵⁴⁸, since his «advocacy is itself an agenda»⁵⁴⁹. Moreover, in the case of translating foreign texts into English, a foreignizing strategy would contribute to a change in the way translations are produced and read because, in making the translator more visible, it holds him more responsible and accountable for his work⁵⁵⁰.

In his 2000 essay "Translation, Community, Utopia"⁵⁵¹, Venuti analyses the dynamics and the relations between the translator's strategy and choices and the communities of readers he refers to. According to the American scholar,

⁵⁴³ Venuti, 1998:67.

⁵⁴⁴ Venuti, 2010:69.

⁵⁴⁵ Venuti, 2000/2004:483.

⁵⁴⁶ Venuti, 2010: 78.

⁵⁴⁷ Ibid.

⁵⁴⁸ Venuti, 2010:74.

⁵⁴⁹ Ibid.

⁵⁵⁰ Venuti, 2010:75.

⁵⁵¹ Venuti, 2000/2004.

when choosing to translate a text and while selecting the best translation strategy for it, a translator that is motivated by this ethical politics of difference seeks to build a community with foreign cultures, to share an understanding with and of them and to collaborate on projects founded on that understanding, going so far as to allow it to revise and develop domestic values and institutions⁵⁵².

In this sense, translators choose to translate a text when they are attracted by the foreign text because they feel that it could positively affect the values and institution of the receiving culture:

The very impulse to seek a community abroad suggests that the translator wishes to extend or complete a particular domestic situation, to compensate for a defect in the translating language and literature, in the translating culture⁵⁵³.

Rather symmetrically, in choosing to translate a particular text the translator has in mind a potential indefinite community of readers in the receiving culture which he aims to affect through his translation. In order to successfully influence such ideal community, the translator needs to reach a group of «domestic cultural constituencies among which the translation will circulate»⁵⁵⁴. As Venuti puts it:

To engage these constituencies, however, the translator involves the foreign text in an asymmetrical act of communication, weighted ideologically towards the translating culture. Translating is always ideological because it releases a domestic remainder, an inscription of values, beliefs, and representations linked to historical moments and social positions in the receiving culture⁵⁵⁵.

In this sense, translation could be considered as an ideological interpretive form of communication that aims to influence domestic local communities and groups of interest. Considered as such, «a translation provides an ideological resolution for the linguistic and cultural differences of the foreign text»⁵⁵⁶.

Further than that, Venuti also asserts that, since «it is unlikely that a foreign text in translation will be intelligible or interesting (or both simultaneously) to every

⁵⁵² Venuti, 2000/2004:483.

⁵⁵³ Ibid.

⁵⁵⁴ Venuti, 2000/2004:498.

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid.

readership»⁵⁵⁷, the influence exerted by the translation could never reach the totality of constituencies, thus causing some of them to be excluded and giving way to the constitution of a hierarchical structure within such groups of interest. Given the inescapable reproduction of such hierarchy in the case of a translation whose manifest aim is «the utopian dream of a common understanding between foreign and domestic cultures»⁵⁵⁸, even when it refers to apparently non-political texts, such as to the literary ones, one should be wary enough to search for its less universalistic «technical or pragmatic purposes»⁵⁵⁹.

During the 1980s and throughout the 1990s, rather than accounting for the transfer of meaning and content of a text from one national language into another, translation has been growingly considered a political and cultural process of communication, that involves different contexts, communities and, ultimately, individuals. As a consequence, equivalence in translation has been gradually viewed as an illusory undertaking, whose misleading transparency, perfection and attainability mask linguistic and cultural asymmetries. Rather than being a stable, scientific and reliable paradigm, as well as the ultimate task of translators, equivalence could be considered a political space of negotiation in which viable linguistic solutions are continually worked out to introduce acceptable amounts of newness and foreignness into a well-established cultural and political order.

Considered as such, translation is a way of reproducing discourse not just at a textual level, but also in the transfer of ideas and theories into other cultural contexts by means of textual reproduction, interpretation and commentary⁵⁶⁰. In this sense, the analysis of the meaning of a concept through one of its many actualisations into a series of texts appears to acquire significance in that it would contribute to mapping its changes and transformations when introduced into a foreign cultural context⁵⁶¹. More specifically, when a theory or a concept are reproduced through translation, it seems relevant to consider to what extent, in trying to convey the illusion of

⁵⁵⁷ Venuti, 2000/2004:499.

⁵⁵⁸ Venuti, 2000/2004:500.

⁵⁵⁹ Ibid.

⁵⁶⁰ For further readings on the politics of translation see Alvarez & Vidal, 1996; Venuti, 1992, 1995, 1998, 2009, 2010; Baker, 2004, 2006, 2009, 2010, 2013; Lianeri, 2002, Tymoczko & Gentzler, 2002, Tymoczko, 2010; Cronin, 2003, 2006; Gentzler, 2008; Sakai, 2009; Hermans, 2014.

⁵⁶¹ Polezzi, 2012.

equivalence between the source and the receiving notion of it, there is a political attempt to introduce foreignness into the receiving cultural context.

Such an analysis would prove to be extremely relevant when it aims at examining the way in which political concepts are introduced into other cultural contexts, because it is through those very notions that the order of discourse could be more easily maintained and extended to other political settings. In such an understanding, one should not wonder whether concepts such as 'freedom', 'human rights', 'justice', or 'democracy' mean the same in different cultural contexts, given the fact that, considering the recent developments in translation theory, such terms could not possibly mean the same. Rather, one should look for the reason why is there so strong an attempt to make such concepts mean the same. In other words, it seems relevant to consider and question the purpose for creating an illusory correspondence of meaning that puts such terms into as equivalent a relationship as possible.

Democracy nowadays is an extremely positive and undisputed concept in the international geopolitical arena, so that it has become impossible to question its beneficial effects at every level, time and place. For this reason, to put it in Foucauldian terms, it seems particularly interesting to examine such common 'will to truth' and consider, alongside its positive effects, its limiting and constraining role when translated into other cultures.

It is also important to remark that such search for equivalence in political concepts should not be simplistically interpreted as a mere globalising and westernising neocolonialist strategy, but as a more complex inscription into local political enterprises that, in introducing concepts, contribute to the adjustment of the foreign to a specific context, in order to support local political demands. As a consequence, such process of redefinition should be considered as a two-way strategy that, in the long term, is likely to propose a more inclusive and descriptive meaning of the very same political concepts.

In the next chapter, a brief and not at all comprehensive account of the most recent theoretical discourses on democracy in non-Western and post-colonial settings will be given, in order to provide for an idea of the local environment in which 'mainstream democracy' has been questioned and discussed at the international academic level. During the last decades of the twentieth century and at the beginning of the twenty-

first, liberal democracy has started to be questioned by postcolonial⁵⁶² strands of thought that aim at building a non-Western democratic epistemology. After such presentation, a brief history of the Arab and ultimately Egyptian interpretation of the concept of democracy will be outlined by considering some Middle-Eastern and more specifically Arab scholars and intellectuals. This will allow to connect the case study under consideration to the current international debate over the postcolonial non-Western definition of democracy.

⁵⁶² Kaviraj, 2005; Sheth & Nandy, 1996; Kothari, 2005; Chatterjee, 2004; 2011; Quijano, 2000; Mignolo, 2000; Santos, 2012; 2014; Santos & Avritzer, 2007.

3 - Translating democracy

3.1 Non-Western and post-colonial criticisms to 'democracy'

During the last decade of the twentieth century and at the beginning of the twenty-first, multicultural theories have contributed to redefine the notion of democracy as a pluralist and inclusive form of government to make it more open to cultural diversity¹. Multicultural perspectives have also been included in the debate over deliberative democracy, which has made cultural diversity one of the variables to shape individuals' identities. As already stated in the first chapter², however, multicultural perspectives have not been able, so far, to do away with the basic assumptions of the mainstream normative liberal democracy.

Apart from such understanding of democracy, a different branch of criticisms has originated from a diverse epistemological approach that rejects the input of identity politics and calls for an epistemological redefinition of the democratic standards. With this regard, democracy has been rediscussed from a different stance, which criticises the process of democratisation for trying to establish the universal conditions under which it would be possible to democratise certain countries. The Western normative political theory of liberal democracy, that has set the required standards and conditions for the development of democracy in cultures and countries where democracy is poor or nonexistent, has thus started to be challenged by some scholars who study the effects of democratisation in different parts of the world.

In the 1995 book 'Towards Illiberal Democracy in Pacific Asia'³, the authors Bell, Brown, Jayasuriya and Jones observe that democracy activists have great obstacles and difficulties when trying to export liberal democracy in non-Western countries. In an introductory chapter⁴, Bell and Jayasuriya claim that while liberal democracy is almost completely accepted as the best form of government in Western countries, it is wrongly assumed also to be meeting «the deeper aspirations of the rest

¹ For an insight into multiculturalism in the Arab countries see Corrao & Maffettone, 2014.

² See Chapter 1, page 77.

³ Bell, Brown, Jayasuriya, & Jones, 1995a.

⁴ Bell & Jayasuriya, 1995.

of the world, [...] regardless of local needs, habits, and traditions»⁵. However, they argue that since such model of liberal democracy is culturally-oriented, it could not be immediately compatible with the demands of different cultural contexts:

A liberal democratic political system, informed and justified by the ideals of equality and freedom as well as by a recognition and accommodation of 'the fact of pluralism', is a culturally distinct, historically contingent artifact, not readily transferable to East and Southeast Asian societies with different traditions, needs, and conceptions of human flourishing⁶.

As a consequence, they claim that it is necessary to envision the possibility that, while transferring democracy into other cultures, «'Western' political practices such as competitive elections may be adopted selectively, without the whole gamut of liberal democratic practices and institutions, and if adopted, may be put to use for a unique set of illiberal purposes»⁷. They thus introduce the concept of 'illiberal democracy', as a reinterpretation of the Western conception of democracy that features «the dominant and intrusive role of the state in most aspects of social and economic life and the concomitant absence of a free public space»⁸.

In this sense, instead of foreseeing an increased Western-style democratisation in Pacific Asia, they envision the possibility of a return to abrupt methods of social control that does not encompass the protection of individual rights. In the concluding chapter⁹, the four authors identify three main characteristics of such illiberal democracy. First, they observe the presence of «a non-neutral understanding of the state»¹⁰, according to which governments are entitled to «intervene in most if not all aspects of social life» to pursue the official common good. Second, law is conceived as an apolitical set of rules that serve to manage the country «as a corporate enterprise»¹¹ to meet predetermined goals. Finally, the «public space and civil

⁵ Bell & Jayasuriya, 1995:1.

⁶ Ibid.

⁷ Bell & Jayasuriya, 1995:9.

⁸ Bell & Jayasuriya, 1995:16.

⁹ Bell, Brown, Jayasuriya, & Jones, 1995b.

¹⁰ Bell, Brown, Jayasuriya, & Jones, 1995b:163.

¹¹ Ibid.

society»¹² are as well managed and controlled by government and are not autonomous critical spaces for free association.

During the first decade of the twentieth century, Daniel Bell further develops his argument on Asian diversity. In his 2000 book, 'East Meets West'¹³, Bell argues that «not all human rights values and practices typically endorsed by Western countries are automatically accepted elsewhere»¹⁴. However, the American sociologist also criticises the rejection of such Western values purported for the promotion of 'Asian values', «a term devised by several Asian officials and their supporters for the purpose of challenging Western-style civil and political freedoms»¹⁵. In this view, Western liberal democracy and human rights are held to be incompatible with the typically Asian values of «family and social harmony»¹⁶. To counter such view, Bell observes that such «debate on Asian values also prompted critical intellectuals in the region to reflect and debate over how they can locate themselves in a debate on human rights and democracy»¹⁷. Such intellectuals have not participated in the claims of political representatives in favour of the 'Asian values', but they have reinterpreted liberal democratic values in the light of contemporary Asian traditions and practices to explore «areas of commonality and difference with the West»¹⁸. According to Bell, such interpretations could be useful in trying to «get beyond the rhetoric that has dogged the Asian values debate»¹⁹, not much to make democracy acceptable for other cultures, but rather «to identify relatively persuasive East Asian criticisms of traditional Western approaches to human rights and democracy»²⁰:

The ultimate aim is to argue for the need to take into account the meanings and priorities East Asians typically attach to a set of political standards that have been largely shaped by the Western experience²¹.

¹² Ibid.

¹³ Bell, 2000.

¹⁴ Bell, 2000:3.

¹⁵ Bell, 2000:7.

¹⁶ Ibid.

¹⁷ Bell, 2000:8.

¹⁸ Ibid.

¹⁹ Bell, 2000:9.

²⁰ Ibid.

²¹ Ibid.

Far from seeking to reject the use of democratic values in the name of culturally-oriented readings of Asian countries, he also asserts that overestimating «the social and political importance of traditional cultural values in contemporary societies»²² would also be counterproductive. Thus he argues:

If the aim is to bridge the gap between political philosophy and political reality, it is important to distinguish between traditional values that are still relevant today and others that have been relegated to the dustbin of history²³.

While trying to do so, one should also keep in mind the complexity of the matter: given the fact that «modern East Asian societies are characterized by different mixtures of Confucian, Buddhist, Western, and other values, and that Asian societies may not all share the same set of pressing social needs and political concerns»²⁴, it would be advisable to consider the actual relevance of the specific traditions and to carefully set and describe the context under examination.

In his more recent work 'Beyond Liberal Democracy'²⁵, Bell aims at showing that the most relevant liberal contemporary political concepts of human rights, democracy, and capitalism, while being transferred to East Asian societies, has been considerably modified and has «not been shaped by liberalism to nearly the same extent»²⁶ as Western democracies have. After analysing the reception of such concepts in East Asian countries, Bell concludes that, in his view, there are «morally legitimate alternatives to Western-style liberal democracy in the East Asian region»²⁷, and that such options might prove to be significant also for Western countries, which could learn new ways of addressing typically Western democratic issues:

What is right for East Asians does not simply involve implementing Western-style political practices when the opportunity presents itself; it involves drawing upon East Asian political realities and cultural traditions that are defensible to contemporary East Asians. They may also be defensible to contemporary Western-style liberal democrats, in which case they may

²² Ibid.

²³ Bell, 2000:10.

²⁴ Ibid.

²⁵ Bell, 2006.

²⁶ Bell, 2006:9.

²⁷ Bell, 2006:8.

be worth learning from. But there may also be areas of conflict, in which case the Western-style liberal democrat should tolerate, if not respect, areas of justifiable difference²⁸.

Whenever deviations from the normative political Western standard arise, according to Bell, such departures should be considered as remarkable and meaningful phenomena that, even if not deemed to be acceptable by Western eyes, should be tolerated as such, instead of being controlled.

The Indian economist and philosopher Amartya Sen contributes to redefine the concept of democracy from a different perspective. In his 2009 book 'The Idea of Justice'²⁹, Sen reinterprets the Rawlsian notion of 'justice as fairness' from a social choice³⁰ perspective. In his work, the Indian philosopher criticises the «dichotomy between those who want to 'impose' democracy on countries in the non-Western world (in these countries' 'own interest', of course) and those who are opposed to such 'imposition' (because of the respect for the countries' 'own ways')»³¹. He claimed that both conflicting views revolved around the much too predetermined assumption that «democracy belongs exclusively to the West, taking it to be a quintessentially 'Western' idea which has originated and flourished only in the West»³². According to him, failing to recognise the basic democratic principles of people's participation and public reasoning in other cultures, apart from the eighteenth-century European and American democratic experiences, would be very limiting:

Indeed, in understanding the roots of democracy in the world, we have to take an interest in the history of people's participation and public reasoning in different parts of the world. We have to look beyond thinking of democracy only in terms of European and American evolution. We would fail to understand the pervasive demands for participatory living, [...] if we take democracy to be a kind of a specialized cultural product of the West³³.

In this sense, even if «the institutional structure of the contemporary practice of democracy is largely the product of European and American experience over the last

²⁸ Ibid.

²⁹ Sen, 2009.

³⁰ See Arrow, 1963.

³¹ Sen, 2009:322.

³² Ibid.

³³ Ibid.

few centuries»³⁴, the assumption that Europe and America are the only regions in which democratic practices are admitted is the result of «a wrong and superficial diagnosis»³⁵. Such bias, according to Sen, originates from three sets of causes: first, it appears extremely difficult to him to «define civilizations not in terms of the exact history of ideas and actions»³⁶ but based on large and aggregated geographical areas thus producing imprecise and facile generalisations. Secondly, «the early Greek experience of balloting»³⁷ has influenced «many Asian regions [that, BQ] used balloting in the centuries that followed»³⁸:

Some of the cities in Asia – in Iran, Bactria and India – incorporated elements of democracy in municipal governance in the centuries following the flowering of Athenian democracy³⁹.

Moreover, Sen claims that even if elections are present also in non-Western societies, what makes the existence of democracy apparent in such places is the widespread recourse to public reasoning:

Open deliberation also flourished in several other ancient civilizations, sometimes spectacularly so; for example, some of the earliest open general meetings aimed specifically at settling disputes between different points of view, on social and religious matters, took place in India in the so-called Buddhist ‘councils’, where adherents of different points of view got together to argue out their differences, beginning in the sixth century bc⁴⁰.

According to Sen, the method of assessing democracy only as an institutional system does not do justice even when examining the case of the Middle East, that in today's understanding of democracy has often been depicted as «hostile to democracy»⁴¹:

If we look instead for public reasoning and tolerance of different points of view, in line with the broader understanding of democracy that I have been discussing, then the Middle East does have quite a distinguished past. We must not confuse the narrow history of Islamic militancy with the capacious history of the Muslim people and the tradition of political governance by Muslim rulers. [...] In Muslim kingdoms centred around Cairo, Baghdad and

³⁴ Sen, 2009:322-323.

³⁵ Sen, 2009:328.

³⁶ Sen, 2009:329.

³⁷ Sen, 2009:330.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Sen, 2009:331.

⁴¹ Sen, 2009:334.

Istanbul, or in Iran, India or for that matter Spain, there were many champions of public discussion⁴².

In such an understanding of democracy, Sen interprets the contemporary problems in the Middle East, not due to its inevitable culturally-bound aversion to democracy, but as a result of an identity politics that has been adopted in response to «its own imperial past and the subjugation that followed from the dominance of an imperial West – a dominance that still has many remaining influences»⁴³.

Sen thus views democratic politics as the best method to discuss «non-sectarian affiliations and their rival claims over religious divisions»⁴⁴, since it allows for «recognition of the multiple identities of each person, of which the religious identity is only one»⁴⁵, along with other individual features such as linguistic, literary, professional, regional as well as «many other bases of categorization»⁴⁶. In this sense, Sen's inclusive definition of democracy entails a continuous revision of past ideals to adjust them to contemporary needs and perceptions:

The significance of history in this respect lies rather in the more general understanding that established traditions continue to exert some influence on people's ideas, that they can inspire or deter, and they have to be taken into account whether we are moved by them, or wish to resist and transcend them, or (as the Indian poet Rabindranath Tagore discussed with compelling clarity) want to examine and scrutinize what we should take from the past and what we must reject, in the light of our contemporary concerns and priorities⁴⁷.

Such process of redefinition is also considered a search for universal significations in the global history through local and individual understandings across times and places. In his 1999 paper 'Democracy as a Universal Value'⁴⁸, Sen argues that in the twentieth century there has been a major development of democracy that shall lead to «its acceptance as a universal value»⁴⁹. The Indian philosopher identifies three main reasons for such an occurrence: the first is the fact that «political and social

⁴² Ibid.

⁴³ Sen, 2009:334-335.

⁴⁴ Sen, 2009:353.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Sen, 2009:332.

⁴⁸ Sen, 1999.

⁴⁹ Sen, 1999:5.

participation has intrinsic value for human life and well-being»⁵⁰. Second, democracy is held to be a key factor «in enhancing the hearing that people get in expressing and supporting their claims to political attention»⁵¹. Third, democratic politics is considered to be capable of giving «citizens an opportunity to learn from one another»⁵² in the construction and definition of shared values.

The normative political theory of liberal democracy has also been questioned by the postcolonial South Asian Subaltern Studies Collective in the 1980s, as well as by the Latin American Subaltern Group and later by the 'modernity /coloniality/decoloniality' Project in the 1990s. Such postcolonial strands of thought have been inspired by the Gramscian conception of the 'subaltern', which describes the condition of any person considered inferior due to any kind of diversity, based on race, gender, religion, poverty, and the like. Such subaltern groups reject the possibility for non-Western countries to develop the necessary sets of preconditions for democracy in the same way as they have appeared in Western countries.

The Indian scholar Sudipta Kaviraj, in his paper 'An Outline of a Revisionist Theory of Modernity'⁵³, argues against the assumption that a specific set of preconditions for the rise of democracy «that are known to have existed at the time of the rise of European democracy»⁵⁴, would serve as standard «*pre-conditions* for all other subsequent cases»⁵⁵. According to Kaviraj, such method cannot explain «the sheer existence of Indian democracy»⁵⁶, since the rise of democracy in India has followed a different path.

Drawing on a revisionist historical theory of modernity, the Indian scholar claims that, even in modern Europe, the conditions for the rise of democracy have not developed in the same way, but have followed peculiarly different paths in diverse countries:

Although the impulses towards a capitalist economy, urbanisation, and political democracy are all general tendencies in the history of modern Europe, there are different configurations

⁵⁰ Sen, 1999:10.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Kaviraj, 2005.

⁵⁴ Kaviraj, 2005:512.

⁵⁵ Ibid. Italics in the original.

⁵⁶ Ibid.

of their complex figuration, and even differential trajectories within the history of European modernity.[...] Paths of German, Italian and Russian modernity, taken in this wider and more complex sense, diverged significantly from the earlier English and French trajectories, and led to an immense historical conflict in Europe about which of these could establish itself as dominant and “universal”, until this contest was decided by the violence of the second world war⁵⁷.

As a consequence, Kaviraj argues that modernity should not be considered and used «as a general, ubiquitous condition that has an emergently homogeneous character everywhere», but rather it should be explained as «a historically contingent combination of its constituent elements which tend to produce different histories of the modern»⁵⁸. Thanks to such understanding of modernity, Kaviraj also explains the rise of democracy in India and its specific features quite differently. While in India the procedural notion of democracy has been widely respected and firmly established, it has not however produced complete elimination of traditional and peculiar ways of considering and treating authority:

Politicians might ascend to positions of power by punctiliously/unimpeachably electoral procedures, but those in their field of power might extend to them forms of reverence drawn from a traditional, princely repertoire; and they might draw upon these older repertoires themselves⁵⁹.

According to Kaviraj, dismissing such practices as illegal and clientelistic deviations would not constructively explain their widespread acceptance:

This is not just a mistake of treating one kind of authority with the deference suited to another; actually, this is the characteristic historical process of the previous practice existing within the newer one as “memory”, and substantially altering its operation⁶⁰.

In this sense, the Indian scholar describes such complex situation as a condition of hybridity in which «the older and newer practices might tend in the same direction, and become miscible»⁶¹, or, «in other cases, they might be more oppositional or

⁵⁷ Kaviraj, 2005:507-508.

⁵⁸ Kaviraj, 2005:514.

⁵⁹ Kaviraj, 2005:518.

⁶⁰ Kaviraj, 2005:518-519.

⁶¹ Kaviraj, 2005:519.

contradictory»⁶². Kaviraj also describes the production of hybrid responses to the establishment of democracy in India with the concept of translation. He points out that, as in literary translation what is produced as the end effect is generally acknowledged to be more a fusion of meanings, rather than a simply one-way writing of the meanings of a text into an entirely different passive language»⁶³; in a similar way «the social effectiveness of the prior practices are never entirely neutralised by the reception of newways of doing things»⁶⁴.

In their introduction to the book 'The Multiverse of Democracy'⁶⁵, the two Indian scholars Sheth and Nandy disapprove the tendency to view third world societies «at the receiving end of the global system»⁶⁶ without even considering the option of de-linking or opting out»⁶⁷, so that «the best they can do is to 'adapt' to the system»⁶⁸. In their view, third world societies,

for different reasons - colonization, Westernization and modernization- have not been able to develop political institutions of democracy on the basis of their own political-cultural traditions. They are now pushed to choose - lock, stock and barrel- forms of democracy evolved elsewhere, and to make as clean a break as possible with their own pasts. In the process, they connect their present with the political vision of a future which is the present of the Western societies, which in turn seem to have lost a sense of the future⁶⁹.

However, the use of a liberal democratic procedure in India, according to them, has produced a big linguistic, economic and cultural gap between metropolitan areas and rural regions, so that, while the educated and powerful elite participate in the centralised government, the deprived working classes are marginalised and excluded from the democratic discourse⁷⁰. Such divide, in India, has caused a decreased trust in political institutions and conflicts between a great multitude of minority groups which have arisen against the national hegemonic Hindutva movement and have struggled to

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Sheth & Nandy, 1996.

⁶⁶ Sheth & Nandy, 1996:9

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Sheth & Nandy, 1996:10.

⁷⁰ Sheth & Nandy, 1996:24.

be politically recognised⁷¹. Sheth and Nandy thus argue that, in order to mitigate such conflicts, the concept of democracy should be expanded to include the instances of the great number of marginalised minority groups⁷².

In his 2005 'Rethinking Democracy'⁷³, the Indian political theorist, Rajni Kothari, interprets such social conflicts of identity in India as a way to redefine the concept of liberal democracy. He thus claims that not only the local flourishing of new political groups outside traditional political parties, but also the constitution of other social volunteer and cultural movements has to be considered a development of participatory democracy:

Implicit in these new movements is a conception of politics and the public arena that [...] is multidimensional. These struggles are no longer limited to economic or even political demands, but seek to cover ecological and cultural issues as well. They include a sustained attack on sources of internal decay and degeneration⁷⁴.

Kothari links such struggle against decay to Gandhi's struggle for independence in the name of 'Swaraj', or self-rule, and he interprets such new claims to be addressed both to international external and domestic internal homogenising forces:

A distinctive conception of democracy will have to encompass the many facets and diversities of a complex social reality, without falling prey to the homogenising and oppressive thrust of the modern state, economy and technology⁷⁵.

The influence of such and other official and unofficial movements and groups in India has also been examined by the Indian scholar Partha Chatterjee, who, in his 2004 book 'The Politics of the Governed'⁷⁶, observes that democracy, rather than being the «government of, by and for the people»⁷⁷, is a government carried out by the claims of interest groups, and as such, it could be termed 'the politics of the governed'⁷⁸. According to Chatterjee, such governmental shift is caused by a widespread conflicted aspect of modern democracy throughout the world, and refers

⁷¹ Ibid.

⁷² Ibid.

⁷³ Kothari, 2005.

⁷⁴ Kothari, 2005:123.

⁷⁵ Ibid.

⁷⁶ Chatterjee, 2004.

⁷⁷ Chatterjee, 2004:4.

⁷⁸ Ibid.

to «the opposition between the universal ideal of civic nationalism, [...], and the particular demands of cultural identity»⁷⁹. The protection of minority rights thus entails «the differential treatment of particular groups on grounds of vulnerability or backwardness or historical injustice, or indeed for numerous other reasons»⁸⁰. During the 1980s, in India, such politics of recognition has forced governments «to deliver certain benefits even to people who are not proper members of civil society or of the republican body of true citizens»⁸¹. This aspect, however, has prompted the constitution of groups of interest demanding for benefits based on specific group exception politics.

Chatterjee considers such process as a «widening of the arena of political mobilization, prompted by electoral considerations and often only for electoral ends, from formally organized structures such as political parties»⁸². In this sense, political claims of recognition are transferred to other non-political groups, such as «religious assemblies or cultural festivals, or more curiously, even associations of cinema fans»⁸³. As a consequence, one could witness «much discomfort and apprehension»⁸⁴ in progressive elite circles that share an ideal understanding of democracy as freedom and equality. Such circles complain about the fact that «politics has been taken over by mobs and criminals»⁸⁵ and abandon their «mission of the modernizing state to change a backward society»⁸⁶. On the other hand, however, because of the «compulsions of parliamentary democracy»⁸⁷,

what we see is the importation of the disorderly, corrupt, and irrational practices of unreformed popular culture into the very hallways and chambers of civic life, all because of the calculations of electoral expediency⁸⁸.

Chatterjee views such «set of paralegal arrangements»⁸⁹ as a governing strategy, since they make it possible to grant «civic services and welfare benefits to population

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Chatterjee, 2004:47.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Chatterjee, 2004:48.

⁸⁸ Chatterjee, 2004:47-48.

groups whose very habitation or livelihood lies on the other side of legality»⁹⁰. Such politically-oriented groups include «refugees, landless people, day laborers, homestead, below the poverty line»⁹¹, which create communities, capable of producing «a new, even if somewhat hesitant, rhetoric of political claims»⁹².

In his more recent book 'Lineages of Political Society'⁹³, Chatterjee identifies in such rhetoric one of the most significant and common characteristic of «survival strategies adopted in the last few decades by thousands of marginal groups»⁹⁴. In this view, «the imaginative power of a traditional structure of community»⁹⁵ has successfully been integrated in «the modern emancipatory rhetoric of autonomy and equal rights»⁹⁶. Such growing relevance of the claims in the name of «autonomy and representation»⁹⁷ is commonly exploited also by «other groups of population in other Asian, African and South American countries»⁹⁸ and, according to the Indian scholar, makes such peculiar politics compatible with «a desire for democratization»⁹⁹.

By the end of the 1980s and at the beginning of the 1990s, similar reflections have been started within a group of Latin American scholars, also known as the Latin American Subaltern Group, and later grouped in the Modernity/Coloniality/Decoloniality Project. Inspired by the South Asian Subaltern Collective and by postcolonial scholars such as Edward Said, Gayatri Spivak, and Homi Bhabha, the Latin American scholars aim at questioning the Eurocentered notions of modernity and rationality and to create a different epistemological basis for decolonisation.

The Peruvian sociologist Anibal Quijano introduces the concept of 'coloniality of power'¹⁰⁰ to describe the specific model of power based on «the social classification of the world's population around the idea of race»¹⁰¹. Such a «mental

⁸⁹ Chatterjee, 2004:56.

⁹⁰ Ibid.

⁹¹ Chatterjee, 2004:59.

⁹² Chatterjee, 2004:60.

⁹³ Chatterjee, 2011.

⁹⁴ Chatterjee, 2011:206.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Quijano, 2000 and 2007.

¹⁰¹ Quijano, 2000:533.

construction»¹⁰² is the key aspect of the colonial domination and proves «to be more durable and stable than the colonialism in whose matrix it was established»¹⁰³. The racial classification as «a way of granting legitimacy to the relations of domination imposed by the conquest»¹⁰⁴ is closely interrelated with and also reinforced by «the division of labor»¹⁰⁵.

Another feature of the coloniality of power, contested by Quijano, is its indissoluble link with modernity and rationality:

The Eurocentric pretension to be the exclusive producer and protagonist of modernity—because of which all modernization of non-European populations, is, therefore, a Europeanization—is an ethnocentric pretension and, in the long run, provincial. However, if it is accepted that the concept of modernity refers solely to rationality, science, technology, and so on, the question that we would be posing to historical experience would not be different than the one proposed by European ethnocentrism¹⁰⁶.

In his view, one would have to demonstrate not only that modernity is exclusively a European product, but that such period also features irrational and non-scientific aspects and factors.

The colonial, modern, capitalist model also controls a Eurocentered supportive mode of production of knowledge: «a perspective of knowledge»¹⁰⁷ that «was made globally hegemonic, traveling the same course as the dominion of the European bourgeois class»¹⁰⁸. In this view, Eurocentered knowledge does not include «all of the knowledge of history of all of Europe or Western Europe in particular»¹⁰⁹, nor does it «refer to all the modes of knowledge of all Europeans and all epochs»¹¹⁰, but it rather favours only some specific notions of knowledge that have later colonised the rest of the world.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Quijano, 2000:534.

¹⁰⁵ Quijano, 2000:536.

¹⁰⁶ Quijano, 2000:544.

¹⁰⁷ Quijano, 2000:549.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

In Quijano's view, the Eurocentered coloniality of power also hinders the rise of democratic governance in Latin America, which is strongly connected to the creation of the nation-state:

A modern nation-state involves the modern institutions of citizenship and political democracy, but only in the way in which citizenship can function as legal, civil, and political equality for socially unequal people. [...] This is the specific manner of homogenizing people in the modern nation-state¹¹¹.

According to the Peruvian sociologist, in modern Europe «a considerable process of democratization of society was the basic condition for the nationalization»¹¹², that has been established without difficulty thanks to the presence of a homogeneous white race. In North America democracy has been successfully instituted, since the «conflict between whites and nonwhites was not [...] sufficiently powerful to impede the relative, although real and important, democratization of the control of the means of production and of the state»¹¹³. Quite differently, in Argentina, instead of a democratic governance, an oligarchic state has been created due to «the extreme concentration of land possession, particularly in lands taken from indigenous peoples»¹¹⁴ that have made it impossible to establish «any type of democratic social relations among the whites themselves»¹¹⁵. According to Quijano, in other Latin American countries the homogenisation of national societies has been obtained not through the establishment of «social and political relations, but by the exclusion of a significant part of the population, one that since the sixteenth century had been racially classified and marginalized from citizenship and democracy»¹¹⁶. In such conditions, in Latin America the rise of nation-states and democracy has been generally hindered and has followed an uncertain path. Quijano claims that even at present times the process of democratisation in Latin America follows colonial patterns, so that for democratisation to take place, it would be necessary to decolonise

¹¹¹ Quijano, 2000:557.

¹¹² Quijano, 2000:560.

¹¹³ Quijano, 2000:561.

¹¹⁴ Quijano, 2000:562.

¹¹⁵ Ibid.

¹¹⁶ Quijano, 2000:564.

«social, political, and cultural relations that maintain and reproduce racial social classification [...] against American Indians, blacks, and mestizos»¹¹⁷.

Drawing on Quijano's reflections on the coloniality of power, in his 2000 work 'Local Histories/Global Designs'¹¹⁸, the Argentine semiotician Walter Mignolo asserts that, by controlling the modes of production of knowledge, European modern colonial powers have managed to marginalise and eliminate other forms of knowledge created by subaltern communities:

Colonial modernities [...] a period expanding from the late fifteenth century to the current stage of globalization, has built a frame and a conception of knowledge based on the distinction between epistemology and hermeneutics and, by so doing, has subalternized other kinds of knowledge¹¹⁹.

In his work, Mignolo attempts to demonstrate that such Eurocentric tendencies are being transformed by alternative modes of knowledge, «by looking at the emergence of new loci of enunciation»¹²⁰. Mignolo describes as 'border gnosis' the places of subaltern reasons that tries to restore «the force and creativity of knowledges subalternized during a long process of colonization»¹²¹.

In the Introduction to 'Globalization and the Decolonial Option', Mignolo states that «de-colonial options»¹²², after clearly establishing the imperial stance of «abstract universals»¹²³, should open up

as de-linking and negativity from the perspective of the spaces that have been silenced, repressed, demonized, devaluated by the triumphant chant of self-promoting modern epistemology, politics and economy and its internal dissensions (honest liberals, theologians of liberation, post-moderns and post-structuralists, Marxists of different brands)¹²⁴.

The basic assumptions for a de-colonial project thus include the fact that «'history' is not only linear, and that [...] there are several histories, all simultaneous histories, inter-connected by imperial and colonial powers, by imperial and colonial

¹¹⁷ Quijano, 2000:568.

¹¹⁸ Mignolo, 2000.

¹¹⁹ Mignolo, 2000:13.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Mignolo, 2010:1.

¹²³ Ibid.

¹²⁴ Mignolo, 2010:2.

differences»¹²⁵. In this respect, Mignolo also argues for assuming a different point of view,

a different type of thinking [...], a non-linear and chronological (but spatial) epistemological break; it requires border epistemology (e.g. epistemic disobedience), a non-capitalist political economy, and a pluri-national (that is non-mono-national) concept of the state¹²⁶.

Mignolo considers democracy, and especially market democracy, to be an integral part of the colonial discourse together with «Christianization, civilization, progress, development»¹²⁷. Such «rhetoric of modernity»¹²⁸ is exerted «through the imposition of ‘salvation’»¹²⁹, progress, technology, and democracy, but, particularly for Latin American peoples, it goes «hand in hand with the logic and practice of oppression, racial discrimination, political concentration of power in the hand of a Creole/Mestizo/an elite»¹³⁰.

In other places and with different populations, however, such imposition can be disguised as humanitarian aids and support for peace-keeping, as in the case of Iraq:

First you destroy a country, then you provide help and promote reconstruction, third you promote freedom and democracy, and four you crash Islamic thinkers who would like to reconstruct Iraq and write the constitution on the basis of *sharia* and the Q’uran and not on the bases of the democracy and the Bible¹³¹.

By promoting the rhetoric of freedom and democracy as universal values, all other options for government are discarded for being contrary to such essential human prerogatives. Liberal democracy and modernisation are thus passed off as the best mix to solve the problems of all countries, irrespective of people's willingness to recognise their positive import:

Under the spell of neo-liberalism and the magic of the media promoting it, modernity and modernization, together with democracy, are being sold as a package trip to the promised

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Mignolo, 2007:463.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Mignolo, 2007:495.

¹³¹ Mignolo, 2007:496.

land of happiness [...] Yet, when people do not buy the package willingly or have other ideas of how economy and society should be organized, they become subject to all kinds of direct and indirect violence¹³².

In order to counter such impositions and violence, Mignolo advocates for a «decolonization of knowledge»¹³³. Such epistemological shift would require, on the one hand, to uncover «the geo-political location of theology, secular philosophy and scientific reason»¹³⁴, and, on the other, to stage and deploy «the modes and principles of knowledge that have been denied»¹³⁵.

From this perspective, justice and democracy do not have to be necessarily rejected on the whole for being colonial devices, but they could be redefined according to a different epistemology that has been silenced for a long time:

The need for political and epistemic delinking here comes to the fore, as well as decolonializing and de-colonial knowledges, necessary steps for imagining and building democratic, just, and non-imperial/colonial societies.¹³⁶

In a similar way, the Portuguese sociologist Boaventura de Sousa Santos also argues that the Eurocentric Western epistemology should not be completely dismissed, but rather rediscussed and used in a counter-hegemonic way. Santos thus proposes the construction of what he calls an 'epistemology of the South'¹³⁷, which he defines as

the retrieval of new processes of production and valorisation of valid knowledges, whether scientific or nonscientific, and of new relations among different types of knowledge on the basis of the practices of the classes and social groups that have suffered, in a systematic way, the oppression and discrimination caused by capitalism and colonialism¹³⁸.

Since the «understanding of the world is much broader than the Western understanding of the world»¹³⁹, and given the fact that he considers diversity in the world to be indeterminate and indeterminable, the Portuguese sociologist views the

¹³² Mignolo, 2007:450.

¹³³ Mignolo, 2007:463.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Mignolo, 2009:2.

¹³⁷ Santos, 2014 and 2012.

¹³⁸ Santos, 2012:51.

¹³⁹ Ibid.

global South not just as a «geographical concept»¹⁴⁰. Rather it also encompasses other kinds of diversities, apart from race, thus placing emphasis on «the human suffering caused by capitalism and colonialism at the global level»¹⁴¹. Considered as such, the definition of the global South also includes

the global North, in the form of excluded, silenced and marginalised populations, such as undocumented immigrants, the unemployed, ethnic or religious minorities, and victims of sexism, homophobia and racism¹⁴².

With regard to the method to be used to construct such new epistemology of the global South, he observes that one should be wary of using critical theory as it is, since it has lost its capacity to create and oppose traditional theory using counter-hegemonic lexis. In his view, Western critical theory normally uses adjectives to qualify «the proper nouns of conventional theories»¹⁴³:

If conventional theory speaks of development, critical theory refers to alternative, democratic or sustainable development; if conventional theory speaks of democracy, critical theory propounds radical, participative or deliberative democracy; the same is true of cosmopolitanism, which is then qualified as subaltern, of opposition or insurgent, or rooted; the same regarding human rights, which turn out to be radical, collective, intercultural¹⁴⁴.

Critical theory is thus allowed to «engage in debate but not to discuss the terms of the debate»¹⁴⁵, because the traditional terms continue to «establish the intellectual and political horizon»¹⁴⁶, by deciding «not only what is sayable, credible, legitimate or realistic, but also, by implication, what is unsayable, incredible or unrealistic»¹⁴⁷. However, since such traditional concepts are not «the unalienable property of conventional or liberal thinking»¹⁴⁸, what counter-hegemonic movements should be able to do, to effectively force non-Eurocentered meanings into hegemonic concepts and tool, is exactly to develop an awareness of how to use them without making them

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Santos, 2012:47.

¹⁴⁴ Ibid.

¹⁴⁵ Santos, 2012:48.

¹⁴⁶ Santos, 2012:47.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

sound too different, unacceptable, thus resulting in meaningless or marginal outcomes.

Santos then proposes a four-step process for the construction of a new epistemology of the South: first, he argues for a 'sociology of absences', intended as «research that aims to show that what does not exist is actually actively produced as non-existent»¹⁴⁹. In this sense, there are supposed to be no impossible objects, but only non-authoritative, non-visible, «non-intelligible or discardable»¹⁵⁰ ones. Secondly, the Portuguese sociologist envisages a 'sociology of emergences', that consists of a substitution of the emptiness of non-existent objects, by «a future of plural and concrete possibilities, utopian and realist at one time»¹⁵¹, that can be retrieved «in many different cultural and philosophical traditions»¹⁵². The third necessary step for the construction of a new epistemology of the South is 'the ecology of knowledges', founded on the idea that there is no absolute knowledge nor ignorance, but just relative ones, so that «every kind of ignorance ignores a certain kind of knowledge and every kind of knowledge triumphs over a particular kind of ignorance»¹⁵³. The final stage for the construction of a new epistemology is that of 'intercultural translation', «a procedure that allows for mutual intelligibility among the experiences of the world, both available and possible»¹⁵⁴. According to Santos, translation is an effective practice to treat experiences and cultures of the world as being at the same time totalities and parts, «realities that do not exhaust themselves in those totalities or parts»¹⁵⁵. The Portuguese sociologist identifies in translation two different directions:

First, a deconstructive challenge which consists in identifying the Eurocentric remains inherited from colonialism and present in the most diverse sectors of collective life, from education to politics, from law to culture. Second, a reconstructive challenge which consists in revitalising the historical and cultural possibility of [...] legacy, interrupted by colonialism and neo-colonialism¹⁵⁶.

¹⁴⁹ Santos, 2012:52.

¹⁵⁰ Ibid.

¹⁵¹ Santos, 2012:54.

¹⁵² Ibid.

¹⁵³ Santos, 2012:57.

¹⁵⁴ Santos, 2012:58.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

The work of translation, according to Santos should be initially prompted by the understanding that there are certain degrees of sameness between different cultures. He terms such attitude as ‘diatopical hermeneutics’ and defines it as an activity of «interpreting two or more cultures, aiming to identify isomorphic concerns among them and the different answers they provide»¹⁵⁷:

Diatopical hermeneutics stems from the idea that all cultures are incomplete and may, therefore, be enriched by engaging in dialogue with or confronting other cultures.[...] The idea and feeling of want and incompleteness create motivation for the work of translation which, in order to bear fruit, must be the crossing of converging motivations with origin in different cultures¹⁵⁸.

In the Introduction to the book 'Democratizing Democratization: Beyond the Liberal Democratic Canon'¹⁵⁹, Santos proposes to redefine the concept of democracy in the light of the results of an international project, named 'Reinventing Social Emancipation'¹⁶⁰. In such project, experimental practices have been implemented transnationally in a variety of fields, such as participatory democracy, alternative production systems, multiculturalism, justice and citizenship; biodiversity, intellectual property rights and new labor internationalism. More specifically, participatory democratic experiments have been carried out in a number of different countries of the global South, with the aim of expanding the traditional definition of liberal democracy.

Based on the outcomes of such experiments, the sociologist proposes a number of theses to question «the hegemonic canon of liberal democracy»¹⁶¹, by «giving credibility to counter-hegemonic democratic concepts and practices»¹⁶². First of all, Santos and Avritzer assert that «the struggle for democracy is today above all a struggle for the democratization of democracy»¹⁶³, in the sense that, since unequal power relations are impossible to be overcome, except for illusorily and conventionally constructed public spaces; democracy will always be an unattainable

¹⁵⁷ Santos, 2012:59.

¹⁵⁸ Santos, 2012:60.

¹⁵⁹ Santos, 2007.

¹⁶⁰ For further information on the project, visit: <http://www.ces.uc.pt/emancipa/en/>.

¹⁶¹ Santos & Avritzer, 2007:ixii.

¹⁶² Ibid.

¹⁶³ Ibid.

objective. Secondly, the «peaceful or conflictive coexistence in a given social field of different models and practices of democracy»¹⁶⁴ must be safeguarded and their capacity to provide alternative and enriching models should be protected from ethnocentric claims. Third, the traditional representative democracy should be generally considered as a «low intensity democracy»¹⁶⁵, thus favouring narrow and «top-down relations between the state and the citizens»¹⁶⁶. As a consequence, in accordance with the fourth thesis, in order to widen and democratise the concept of democracy, it is necessary to develop «new complementarities between participatory democracy and representative democracy»¹⁶⁷. The fifth thesis envisages the strengthening of counter-hegemonic democratic processes as a result of increased «articulations between the local and the global»¹⁶⁸, including communication and exchange between local practices and movements and national and transnational institutions. Finally, the concept of 'democratizing democracy' requires a «constant democratic vigilance» to avoid «perversion and co-optation»¹⁶⁹ at any time.

The redefinition of the concept of liberal democracy in the twentieth century from the side of the Latin American decolonial school merges with the demands for an increased inclusion by the procedural deliberative political thought. With this regard, it is possible to identify some general trends in the contemporary notion of democracy, which could be considered to include both the influential model of deliberative and participatory democracy and the remarks of postcolonial critics.

First of all, democracy is increasingly envisaged as an unattainable ideal of equality, which still everyone should struggle for. In this understanding, all the observations coming from different strands of thought examined so far tend to recognise or theorise the need for equality, or at least, the necessity of diminishing what are perceived to be inequalities.

Second, it appears to be indisputable that democracy as an unreachable end could be better approached to by fostering the communicative skills and the shared background

¹⁶⁴ Santos & Avritzer, 2007:ixiii.

¹⁶⁵ Santos & Avritzer, 2007:ixv.

¹⁶⁶ Ibid.

¹⁶⁷ Santos & Avritzer, 2007:ixvi.

¹⁶⁸ Santos & Avritzer, 2007:ixviii.

¹⁶⁹ Santos & Avritzer, 2007:ixix.

knowledge of communities in order to establish as clearly and as predictably as possible what their common good should be.

Lastly, to some differing extents, the various schools of thought presuppose that only by increasing communication and knowledge among the individuals in the communities is it possible to reach a shared understanding on what the common good should be. In such a general communicative approach to democracy, translation, intended as an intercultural process of communication carrying with it political consequences, is growingly becoming a key factor for the establishment of shared and meaningful cross-cultural political concepts.

In the next paragraph, such general and provisional conclusions will be compared to the way in which the concept of democracy has been conceived in the modern Arab political thought. By means of the following synthetic account, the analysis of the case study, namely the translation of the 2012 Egyptian Constitution into English, will be inscribed not only in the broader transnational political discourses presented before, but in the more recent international political debate over democracy in the Arab world and ultimately in Egypt.

3.2 Democracy in the Arab World

The modern notion of democracy is conventionally thought to have appeared in the Arab world in the first decades of the nineteenth century, inspired by the ideals of the French Revolution. However, far from being uniquely the result of European historical events, its development in the Arab world also depends on previous notions of ancient Greek democracy, and is as well strongly connected to the cultural, political and economic situation of the broader Ottoman Empire.

In this large region, prompted by a long economic and political crisis, during the second half of the eighteenth century, a period of military, cultural and economic change started. The relations with French institutions began around the 1720s with the aim of transferring military and naval innovations to the Ottoman army. However, at the beginning of the nineteenth century, with the steady growth of such contacts and the dismissal of the old Ottoman military system in 1826, a period of reforms called 'tanzimat' started.

Such cultural and economic exchanges were part of the political and strategic plans related, on the one hand, to the ongoing struggle between France and Great Britain to gain control over the Mediterranean, and, on the other, to the Ottoman need to seek alliance with European countries to secure control over the empire from both internal and European external pressures. In Egypt, after Napoleon Bonaparte's French invasion in 1798 and the British intervention to restore the Ottoman rule with the establishment of Khedive Muhammad 'Alī in 1805, such changes had been hastened by a relatively autonomous and stable government.

During Muhammad 'Alī's rule, a modernization process in the military, economic, agricultural and cultural fields took place in line with the principles of the French Revolution and following the technical advancements of the Industrial Revolution. These innovations also initiated a period of cultural renaissance throughout the Arab world, called 'Al-Nahḍah', that started around the 1850s and lasted until the first decades of the twentieth century. 'Al-Nahḍah' prompted the innovation of literary canons, the spread of the printing press, the renovation of educational methods, and the renewal of Islamic political thought. In this period of reforms, there was a continuous cultural and military exchange between France and Egypt, with the Egyptian military being trained on European technological innovations.

In his 'تخليص الإبريز في تلخيص باريز' ['The Extraction of Gold, or an Overview of Paris']¹⁷⁰, the Egyptian imam and translator Rifa'a Rafi' Al-Tahtawi gives an account of his travel to Paris to guide a student mission. During his stay in Paris he learns French and starts to translate into Arabic a variety of French writings. In his work, Al-Tahtawi comments on the principles and values of the 1814 French Constitution, asserting its «great power in establishing justice, in helping the wronged and satisfying the poor»¹⁷¹. He thus analyses each article trying to explain the consequences as civilizing forces, while encouraging «everyone to learn, so that all may be promoted to a higher position»¹⁷²; or, for example, granting religious freedom, which has made it possible for the French population to increase and to progress «with the many foreigners who migrated to it»¹⁷³. Another important

¹⁷⁰ Al-Tahtawi, 1834.

¹⁷¹ Al-Tahtawi, 1834:32/398.

¹⁷² Ibid.

¹⁷³ Al-Tahtawi, 1834:33/398.

advancement is considered to stem from free speech and press, so that anyone could express his opinion and «say whatever occurs to him if it does not harm others»¹⁷⁴. The social utility of free speech and press is also referred to fostering justice in the community, so that

if a man does an outstanding deed, whether good or bad, it is reported in the paper, and made known to all people, high and low. Thus the doer of good deeds is encouraged and the doer of evil ones restrained¹⁷⁵.

With the aim of reconciling the principles of equality and freedom of the French revolution with the values of Islam, the Egyptian scholar initiates a process of comparison of French concepts into Arabic terms:

What they hold dear and call liberty is what we call equity and justice, for to rule according to liberty means to establish equality through judgments and laws, so that the ruler cannot wrong anybody, the law being the reference and the guide¹⁷⁶.

In this sense, the principle of freedom seems to be a result of the acknowledgment of equality and justice, as only in being aware of the rules, explicitated by the Constitution, could one be free. However, far from believing in justice as a universal common good, Al-Tahtawi asserts that justice and rules change according to the context:

In general, if justice exists in any country it must be considered as relative and not absolute, for absolute justice as well as perfect faith, complete purity, and similar things do not exist anywhere, nowadays¹⁷⁷.

In his later work, 'المُرْشِدُ الْأَمِينُ لِلْبَنَاتِ وَالْبَنِينَ', ['The Honest Guide for boys and girls']¹⁷⁸, the Egyptian translator asserts that «those who perform their duties and receive their proper due from others, and persevere in so doing, are characterized by justice»¹⁷⁹. In his view, however, justice should not be intended in the way philosophers do, but

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Al-Tahtawi, 1834:32/398.

¹⁷⁸ Al-Tahtawi, 1875.

¹⁷⁹ Al-Tahtawi, 1875:39.

rather in a more comprehensive manner, that includes natural and civil laws, but is not limited to them:

Some philosophers perceived [justice] as the virtue of all virtues and the basis for human society, modernization, and civilization. [...] The noble *hadith*, the saying of [the Prophet], may peace and prayer be upon him, [states]: "None of you is a believer until you love for your brother what you love for yourself." This is the highest level of justice, and it is consistent with the wisdom of the philosophers and the laws of the Messengers prior to Islam. It is supported by *shari'a* and nature, although the support of natural laws should not be taken into consideration unless it is stipulated by the Legislator¹⁸⁰.

In this sense, while the laws of the *sharī'ah* are already set and given as the basic justice, the natural laws should be issued by the Legislator in order to be accepted and applied. According to Al-Tahtawi, «the laws delivered by the prophets are the essence of true civilization to be considered and adopted»¹⁸¹, and the basic regulations of *fiqh* are completely compatible with natural laws of civilised countries. The basic difference is that, while in Islam love for the country is one of the elements of faith, since Islam is the homeland for every Muslim, for European nations patriotism is the highest good:

Similar to the science we call the fundamentals of *fiqh*, they have the science of 'natural rights' or 'natural law' - rational regulations, stipulating good and bad, upon which they base their civil laws. What we call the branches of *fiqh*, they call civil rights or laws. What we call justice and benevolence, they call freedom and equality. The love of religion and the desire to protect it, whose adherence distinguishes the people of Islam from other nations in power and defense, they call love of country. But for us, the people of Islam, love of country is but one of the branches of faith, and the protection of religion is the core of all pillars. Every Islamic kingdom is a homeland for all those in it who belong to Islam. It combines religion and patriotism. [...] In the homeland all humankind is equal¹⁸².

Al-Tahtawi intends freedom as the «license for permissible action without an impermissible obstacle or a prohibited objection»¹⁸³, so that «people may do as they please with themselves, their time, and their work [...] restrained only by the limits

¹⁸⁰ Ibid.

¹⁸¹ Al-Tahtawi, 1875:35.

¹⁸² Al-Tahtawi, 1875:35-36.

¹⁸³ Al-Tahtawi, 1875:37.

prescribed by law or politics»¹⁸⁴. However, he asserts that people could be free only when they abide by the law as «members of the community»¹⁸⁵, since only by doing so they could participate in governmental decisions «as organs relate to the body»¹⁸⁶, and feel free in belonging. In this sense, people who cannot «tell their kings what they saw as inconsistent, [...], or give their views on issues»¹⁸⁷ feel «like foreigners in government affairs»¹⁸⁸.

In the same way, equality is defined as «a natural human quality, which makes each one equal in civil rights to another»¹⁸⁹. Since people are the same, they should all have the same «civil and public freedoms»¹⁹⁰ and «no one is preferred over others in terms of survival»¹⁹¹. However, Al-Tahtawi acknowledges also the illusory character of such equality, as «Divine providence has already privileged some over others». Equality is thus perceived to be related to accountability, in the sense that «equality in rights is associated with equality in obligations», so that people can rely on each other: «Equality means trusting all the people of the kingdom, without distinction, to perform their obligations toward each other»¹⁹². In Al-Tahtawi's understanding, such obligations are those of both natural laws and, ultimately, of *sharī'ah* :

In any case, the legal and political obligations around which the world revolves are based upon rational and sound principles devoid of inhibitions and doubts, because *shari'a* and politics are based on a wisdom that we can perceive, through worship, a wisdom that is known to God the Sustainer, most exalted and glorified. We cannot depend on what the mind likes or detests, unless *shari'a* law has stipulated its rightness or distastefulness¹⁹³.

In the same period, the prominent scholar and politician Khayr Al-Din Al-Tunisi, in his 'أقوم المسالك في معرفة أحوال الممالك', ['The Surest Path to Knowledge regarding

¹⁸⁴ Ibid.

¹⁸⁵ Al-Tahtawi, 1875:34.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Al-Tahtawi, 1875:39.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

the Conditions of Countries']¹⁹⁴, gathers «all possible information about European inventions related to economic and administrative policies»¹⁹⁵. According to him, the economic and political innovations of other countries shall prove to be useful for the Islamic *umma*:

If we consider the competition of nations in the field of civilization and the keen rivalry of ever the greatest among them to achieve what is most beneficial and helpful, it becomes clear that we can properly distinguish what is most suitable for us only by having knowledge of those outside our own group, and especially of those who surround us and live close to us¹⁹⁶.

The Tunisian politician argues that, in order for the Islamic *umma* to flourish again, it is possible to «choose what is suitable to our own circumstance which at the same time supports and is in accordance with our *shari'*»¹⁹⁷. In this understanding he criticises those Muslims who think that «all behavior and organizations of non-Muslims must be renounced»¹⁹⁸, claiming that «there is no reason to reject or ignore something which is correct and demonstrable simply because it comes from others»¹⁹⁹. He sets out to prompt the development of the Islamic *umma* «expanding the scope of the sciences and knowledge, smoothing the paths to wealth in agriculture and commerce, promoting all the industries, and eliminating the causes of idleness»²⁰⁰. Al-Din thus asserts that, in order to initiate such development «the basic requirement is good government»²⁰¹ that in the European countries has created safe and favourable conditions for the growth of employment and skilled labour:

As for political imperfections, the kingdom's need for others stands as an obstacle to its independence and a weakener of its vigor, especially when linked to the need for military necessities [...] There is no reason for all this except European technical progress resulting from *tanzimat* based on justice and liberty. [...] These [European, BQ] institutions are based on two pillars - justice and liberty- both of which are the sources in our own Holy Law. It is

¹⁹⁴ Al-Din, 1967.

¹⁹⁵ Al-Din, 1867:41/398.

¹⁹⁶ Al-Din, 1867:40.

¹⁹⁷ Al-Din, 1867:41.

¹⁹⁸ Al-Din, 1867:42.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

well known that these two are the prerequisites for strength and soundness in all kingdoms²⁰².

Al-Din argues that, in order to avoid oppression and have justice, the authority of the rulers must be limited. The unrestricted rule of kings may bring both European and Islamic countries to lose their independence. However, while Christianity which is «built on retirement from the world and ascetism»²⁰³, is not prepared to counter such process, in Islamic countries, *sharī'ah* laws can be applied, «both to religious and secular matters»²⁰⁴. Moreover, *sharī'ah* laws include the duty of *shūrā*, the principle of consultation, which even the Prophet Muhammad was obliged to follow. According to Al-Din,

without this type of resistance to authority, kingship would not be proper for mankind, because some form of restraint is essential for the maintenance of the human species, but if people exercising this restraint were left to do as they please and rule as they see fit, the fruits to be expected from this need to have a restrainer would not appear to the *umma*, and the original state of neglect would remain unheeded. It is essential that the restrainer should in turn have a restrainer to provide a check²⁰⁵.

In order to maintain such resistance to authority, the European countries have constituted councils and free press, while for Islamic countries such restricting role should be played by the '*ulamā*' and by the notables of the *umma*. Such institutions both in European and in the Islamic *umma* have the same objective: «to demand an accounting from the state in order that its conduct may be upright, even if the roads to this end may differ»²⁰⁶.

In order to safeguard this process, also the presence of guidelines in the form of laws should be ensured, so that a wise king, supported by a council, could apply them in a human and reasonable way:

²⁰² Al-Din, 1967:43/398.

²⁰³ Al-Din, 1967:44/398.

²⁰⁴ Ibid.

²⁰⁵ Al-Din, 1867:45/398.

²⁰⁶ Ibid.

Kingdoms administered without regular and well-observed laws under the supervision of those qualified to loosen and bind will be limited in their best and their worst to the person of the king. The extent of success will depend on his ability and probity²⁰⁷.

Without such conditions in place, according to Al-Din, the government would rest only on the king's integrity, and could turn into tyranny in case the ruler is corrupted. Thus justice appears to stem from a good compromise between the liberties of the rulers, the counsellors and the ruled.

Liberty is considered the «basis for the great development of knowledge and civilization in European kingdoms» in two different senses: 'personal liberty' ensures that the individual has «complete freedom of action over one's self and property, and the protection of one's person, honor, and wealth», so that everyone is equal before the law and «no individuals need fear encroachment upon their person nor any of their other rights». The second liberty is political and demands that people «participate in the politics of the kingdom and [...] discuss the best course of action»²⁰⁸.

However, to avoid confusion and «divergence of views», «the people[...] elect from among those possessing knowledge and virtue a group called by the Europeans the Chamber of General Deputies»²⁰⁹. Al-Din identifies in the '*ulamā*' and notables of Islam a similar group, however he observes that, in Islamic *umma*, such group is not elected, because in *sharī'ah* avoiding the evil is a responsibility that can be assigned only to some members:

The avoidance of the reprehensible in our *shari'* is in the category of those responsibilities which can be delegated. If some members of the community assume the responsibility, then the obligation is removed from the rest of the community. When such a group is so designated, this responsibility becomes a strictly prescribed obligation upon them²¹⁰.

To repay the country and the ruler for such granting of liberty, the ruled has the duty to work «to bring about its possible consequences and benefits»²¹¹. In such view, development and knowledge stem from the very fact of giving liberties to the

²⁰⁷ Al-Din, 1867:46/398.

²⁰⁸ All citations Al-Din, 1867:48/398.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Al-Din, 1867:49/398.

individuals who concern «themselves with the various branches of knowledge and all kinds of industries [...]: agriculture, commerce, physical work, and intellectual activity»²¹².

After a period of enthusiastic calls for modernization, in the 1870s the attitude toward foreign powers gradually starts to change. In an attempt to reunite the Ottoman Empire in line with European modernization, in 1876 the Young Ottomans elite issues a Constitution and elects the first Chamber of Deputies. Such political reforms are countered not only by mainly Muslim religious and conservative groups, but also by the European countries which do not deem the empire ready to support those radical transformations. In Egypt, after Muhammad 'Alī's rule, a large amount of debts with European banks causes national financial institutions to be controlled by British and French representatives. During the 1870s and 1880s Egyptians show strong signs of discontent that in 1879 brings to a military mutiny and revolt led by Colonel Ahmad 'Urabi. Such revolt ends with the French and British occupation of Egypt in 1882, and the establishment of the British protectorate in the country. The occupation of Egypt together with the French invasion of Tunis in 1881 ensues a heated debate throughout the Ottoman Empire over which aspects of modernization should be accepted, and which are rather unacceptable.

Among the modernist thinkers, the Islamic scholar Jamal al-Din al-Afghani plays a key role in defending the possibility to reconcile Islam and science. In a lecture given at Sorbonne University in 1883, the philosopher Ernest Renan argues that Islam is in its essence contrary to science, and that, because of their barbarian nature, Arab people are unable to think philosophically. In his response to the philosopher²¹³, Al-Afghani claims that, even if at the time of speaking Islam is responsible for holding Muslims from advancing in sciences, it has to be recognised that «no nation at its origin is capable of letting itself be guided by pure reason»²¹⁴, and that, since it is not able to detach itself from its fears, it could not «be led either by force or persuasion to practice the actions that would perhaps be the most profitable for it, or to avoid what is harmful»²¹⁵.

²¹² Ibid.

²¹³ Al-Afghani, 1883.

²¹⁴ Al-Afghani, 1883:107/398.

²¹⁵ Ibid.

According to the Afghan scholar, even if it is impossible to deny the backwardness of Islam and Muslim society, it is in any case «by this religious education, whether it be Muslim, Christian, or pagan, that all nations have emerged from barbarism and marched toward a more advanced civilization»²¹⁶. Moreover, even if that is the case at the time of writing, it should not be concluded that Islam and Muslim people could never change their attitude toward science. In fact, he argues, Islam is not the first religion to try to hinder philosophical and scientific advancements, since «a similar attempt [...] was made by the Christian religion, and the venerated leaders of the Catholic church have not yet disarmed»²¹⁷.

Furthermore, Al-Afghani justifies the opinions of Muslim people for holding on to religious beliefs:

I know all the difficulties that the Muslims will have to surmount to achieve the same degree of civilization, access to the truth with the help of philosophic and scientific methods being forbidden to them. A true believer must, in fact, turn from the path of studies that have for their object scientific truth, studies on which all truth must depend, according to an opinion accepted at least by some in Europe. [...] Convinced, besides, that his religion contains in itself all morality and all sciences, he attaches himself resolutely to it and makes no effort to go beyond.²¹⁸

Al-Afghani also asserts that even if the Arabs were barbarian and irrational in their conquering other countries during the seventh century, they have however marked their «passage in the world, not only by fire and blood, but by brilliant and fruitful achievements that prove its [Arab race's, BQ] taste for science, for all the sciences, including philosophy»²¹⁹. In this sense, it should be recognised that it has been through Arabic translation that Greek philosophy has been disseminated throughout Europe:

The Arabs, ignorant and barbaric as they were in origin, took up what had been abandoned by the civilized nations, rekindled the extinguished sciences, developed them and gave them a brilliance they had never had.²²⁰

²¹⁶ Al-Afghani, 1883:108/398.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

Inspired by the thought of his master Al-Afghani, the Egyptian Islamic scholar Muhammad 'Abduh asserts the need for legal reforms in order to modernise Egypt. In his 1881 work 'اختلاف القوانين باختلاف احوال الامم', ['Laws Should Change in Accordance with the Conditions of Nations']²²¹, 'Abduh calls for a renovation and simplification of the Egyptian rules, claiming that «the time has come for our government to turn its consideration to the laws of our courts, to make them appropriate for present conditions, choosing laws that are not difficult to understand»²²². More specifically, the Egyptian scholar argues that since «laws vary in accordance with nations' varying levels of knowledge, or the lack thereof»²²³, it is not possible «to apply the law of one group of people to another group who differ from and surpass the first in level of understanding»²²⁴. Such law would prove to be unacceptable for the latter group because it would not reflect its way of thinking, its understanding, traditions and customs. Failure to legislate according to the nature and the level of knowledge of a nation would thus inevitably lead to abuse the laws, misinterpret them and, ultimately, not abide by them, because of ignorance on «what these laws were intended to accomplish, what motivated them, and what made them necessary»²²⁵. On the contrary, people would follow the rules if they originated from their actual needs and values, so that such factors would serve as the real legislator:

Scholars and political leaders of both ancient and modern times have long recognized that legislators and institutors of laws must always take into account customs and traditional habits in order to establish laws in a just and beneficial manner. Indeed, the conditions of nations are themselves the true legislator, the wise, regulating guide. The governing power is actually dependent on the capacities of its subjects; the former does not take a single step unless induced to do so by the latter²²⁶.

In his view, thus, natural rules and regulations come to reflect the capacity that members of a nation acquire during their life, «including their familiar practices and the customs on which they have been raised»²²⁷.

²²¹ 'Abduh, 1881.

²²² 'Abduh, 1881:52/398.

²²³ 'Abduh, 1881:51/398.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ 'Abduh, 1881:53/398.

²²⁷ 'Abduh, 1881:54/398.

In another later work, 'رسالة التوحيد', ['The Theology of Unity']²²⁸, 'Abduh aims at demonstrating that reason plays a key role in understanding *sharī'ah* and Islam. In order to revive the traditional decaying religious customs and prompt modernization, the Egyptian scholar holds that before Islam, «every people custodians of religion [...] had [...] little recourse to rational judgement in their custody of belief»²²⁹ and hardly ever applied scientific reasoning to their religious beliefs. As a result, there is «an almost total contrast between the intellectual cut and thrust of science and the forms of religious persuasion and assurance of heart»²³⁰, so that religion is considered as an enemy to reason. However, he argues that, with the advent of Islam and the Qur'ān, all that is allowed, required or forbidden by God has been explained with reasons and argument, thus appealing to the rational and intelligent mind of the believers. In this sense, «for the first time in a revealed Scripture, reason finds its brotherly place»²³¹, because

saving those who give place to neither reason nor faith, all Muslims are of one mind in the conviction that there are many things in religion which can only be believed by the way of reason [...], all Muslims are of one mind that though there may be in religion that which transcends the understanding, there is nothing which reason finds impossible²³².

'Abduh also claims that even if at present times there is «a complete intellectual confusion, [...] fostered by the general educational poverty»²³³, that leads men to assert false obscurantist beliefs; in the past Islam and philosophy were compatible and Muslim philosophers had

full liberty of action to enjoy and give rein to their intellectual interests, the pursuit of crafts and the strengthening of the social order through the disclosure of the secrets hidden in the universe - all in accordance with the divine mandate for such exploration by thought and mind²³⁴.

²²⁸ 'Abduh, 1897.

²²⁹ 'Abduh, 1897:54/398.

²³⁰ Ibid.

²³¹ 'Abduh, 1897:55/398.

²³² Ibid.

²³³ 'Abduh, 1897:58/398.

²³⁴ Ibid.

In this view, Islam should be considered as a religion «built squarely on reason, while divine revelation is its surest pillar»²³⁵, and any other irrational claims should be viewed «as contentious and inspired by Satan or political passions»²³⁶.

During the early twentieth century, the general condition of distrust of foreign powers gradually increases, so that nationalist groups seek independence both in Egypt and in the Ottoman Empire. In 1908, the Young Turk Revolution aims at restoring the previously abolished 1876 Constitution, establishing a constitutional monarchy; while, in 1922, the War of Independence brings to the settlement of the Republic of Turkey. In Egypt, after World War I, such wariness in foreign powers is channelled into a revolution led by Sa'ad Zaghloul, the leader of the newly established nationalist liberal 'Wafd Party', that after the abolishment of the British protectorate in 1922, issues an Egyptian Constitution in 1923. Thanks to such Constitution, Egypt's form of government becomes a parliamentary constitutional monarchy and the Wafd Party manages to be in power until the 1950s.

During this time, the debate over modernization continues to kindle modern political thought and mainly regards the extent to which such transformations could rightfully change the Arab world. On the one hand, Islam is considered a backward religion that hinders renovation and should thus be abandoned; while, on the other, modernization is held to be, to varying degrees, compatible with Islam, and even to be impossible without its basic principles. As an example, in 1902-1903 there is a heated debate over the need for secularisation, that takes place between the Syrian Christian scholar Farah Antun, who argues for secularisation, and Muhammad 'Abduh, who instead defends the basic principles of Islam.

In later years, 'Abduh's disciple and Antun's country fellow Muhammad Rashid Rida develops on the ideas of modernization, criticizing the sterile *taqlid*, or imitation of the regulations provided by the traditional religious texts. On the other hand, however, he is also suspicious of indiscriminate emulation of European fashions and political thought that have lead to secularism and subordination of Islam to modernization. In his 1932 speech 'التجديد والتجديد والمجددون', ['Renewal, Renewing, and

²³⁵ 'Abduh, 1897:59/398.

²³⁶ Ibid.

Renewers']²³⁷, he disapproves of the chaotic political and cultural situation created by modernization and the consequent loss of values, pure language and religious traditions that is taking place due to Westernization:

All of our historical origins, the true religion, our blossoming civilization, and great empire, we have worn out and depreciated, even abandoned and forgotten. In our attempts to acquire the novel and borrow the modern we have only clung to the fringes and have never been able to reproduce it fully. What we have of the old and the modern is a shell of imitation, like the shell of an almond or a walnut that lies under the outer wooden layer; it is useless in itself and cannot preserve the core²³⁸.

According to Rida, modernization has come to a point in which renewal is not anymore a fruitful compromise between past traditions and innovations, but rather a mere reproduction of meaningless Western customs. In order to counter this process of devaluation, Rida proposes a new concept of renewal:

Renewing is a law of social association; renewal is part of nature and habit. It is counterweighted by the preservation of the old. Each has its place. There is no contradiction or opposition between them, provided that each is put in its place with no neglect and excess²³⁹.

Even though people «at all times need both the old and the new»²⁴⁰, and beneficial consequences or damage could stem from either of the two, it would be childish to completely abandon the old in favour of the new. In this sense, only rational and independent people choose not to abandon the old «in accordance with the rule of logic»²⁴¹, unless such innovation were useful «either in itself or for something outside it, such as the economy, appropriateness, patriotism, and nationalism»²⁴².

Rida also criticises the attitude of false renewers who contempt Islam so much that they urge Muslim people «to abandon our religion and our entire *shari'a*», arguing that, since they accept that *sharī'ah* is abandoned in some penal or financial cases, Muslims «must abandon all the rest of God's regulations regarding personal status code, inheritance, marriage, and divorce. There is no difference [...] between the two

²³⁷ Rida, 1932.

²³⁸ Rida, 1932:78/398.

²³⁹ Rida, 1932:81/398.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

types of regulations»²⁴³. While strongly rejecting such possibility, Rida argues for «the return to the simplicity and guidance of religion as it was in the beginning; to reunify the Muslims around their commonality, prior to disunity and discord»²⁴⁴. In such an understanding, when *sharī'ah* laws do not explicitly provide regulations on certain matters, recourse to individual *ijtihād* can be justified, whereas in all other cases *taqlid*, or imitation, should be accepted thus avoiding «divisive extremism that turns the nation into factions and mutually hostile groups»²⁴⁵. In short,

legitimate renewal includes all that the *umma* and the state hold dear, such as the sciences, arts, and industries; financial, administrative, and military systems; land, naval, and air installations. All these are considered a collective duty in Islam, and the entire *umma* sins when it neglects them. The *shari'a* does not restrict the *umma* in pursuing them. The only restrictions are to avoid inflicting or generating harm and transgression [...], to observe the [jurisprudential] principle according to which “Necessity permits the impermissible,” to assess the extent of this necessity, and to follow truth and justice²⁴⁶.

During this period the conflicts between liberal Western countries and socialist communist Eastern ones influences the Arab world, which is still controlled by European foreign powers. The intellectual debate still focuses on the possibility to reach full modernization, through secularisation, also following the Turkish Kemalist trends in the 1920s. Throughout the Arab world, communist and socialist views purport anti-imperialistic claims and secular solutions to counter religious backwardness. During the 1940s and 1950s, such ideas prompt the constitution of a variety of national and transnational socialist parties in Syria, Iraq and Egypt. On the other hand, Islamic reformist thought establishes itself as an alternative to both secularism and imperialism, trying to counter the loss of values and vision.

In Egypt, the dissatisfaction with the *de facto* continuation of the British economic and political control, supported by the ruler Faruq I, and the lack of parliamentary authority of the liberal Wafd Party exacerbate criticisms against false modernization. In 1928, the imam and teacher Hasan Al-Banna, inspired by the political thought of Muhammad 'Abduh and Rashid Rida, constitutes the 'جماعة الإخوان المسلمين' ['Society of

²⁴³ Ibid.

²⁴⁴ Rida, 1932:84/398.

²⁴⁵ Ibid.

²⁴⁶ Rida, 1932:85/398.

the Muslim Brothers']. Al-Banna aims at reforming society starting from the revival of the principles of Islam and sets out to counter Western modernization that has led to neglect traditional Muslim customs in favour of Western dissolute fashions. In his *risāla* 'نحو النور' ['Toward the Light']²⁴⁷, the Egyptian imam asserts that Islam contains in itself all the possible general and theoretical fundamentals as well as a detailed description of the best way of living and that in that sense it is the most complete guide for a good life:

The Islamic system with respect to the individual, the nation, the family, the relationship between the government and its people and its relationship with other nations has managed to bring together that which is all encompassing and general with that which is very precise and elaborate and has chosen the common good as well as giving it clarity. The Islamic system is the most perfect and most beneficial system known to mankind. This is supported by history and painstaking research in every aspect of national life²⁴⁸.

In this sense, the Islamic system should never be abandoned, but rather reacquired in a more authentic way, and one should not be afraid of a possible disengagement of foreign powers with the Egyptian nation because such choice would «disturb our political relations with them», since «those nations which are suspicious of us will not be content with us whether we follow Islam or not»:

If they are truly our friends, and mutual trust exists between us, their own spokesmen and politicians have already declared that every nation is free to adopt whatever path it wishes within its own borders, provided it does not infringe on the rights of others. It is up to all the leaders of these nations to understand that the status of international Islam is the most sacred status known to history, and that it has laid down the most firm and solid principles to guard and preserve this status²⁴⁹.

Furthermore, Al-Banna claims that abandoning Islam, subsequent secularism might have worked for Western countries to modernize, but that such method could not be considered as universal, since Islam is different from other religions:

Among the causes which have impelled some of the Eastern Nations to deviate from Islam, and to choose to imitate the West, was the study of the Western Renaissance made by their leaders, and their conviction that it was only accomplished by overthrowing religion,

²⁴⁷ Al-Banna, 2004.

²⁴⁸ Al-Banna, 2004:16/26.

²⁴⁹ Al-Banna, 2004:18/26.

destroying churches, freeing themselves from papal authority, controlling the clergy and prelates, putting an end to all manifestations of religious authority in the nation, and a definite separation of religion from the general policy of the state. If this is true in the case of the Western nations, it can never be the case for the Islamic nations, since the nature of Islamic teaching is quite unlike that of any other religion. The jurisdiction of the religious authorities in Islam is defined and limited. They are powerless to alter its statutes or to subvert its institutions, such that the fundamental principles of Islam, across the centuries, have kept pace with time, and have advocated progress, supported learning, and defended scholars²⁵⁰.

According to Al-Banna, «you cannot say that what happened in the West will also happen to Islam», because «the Men of Religion and Religion are not One and the Same». He also advances that, if the reason for adopting secularism should be the hostile attitude of Muslim religious authorities towards modernization and nationalist revival, such hostility should rather be considered «a flaw within the religious establishment itself»²⁵¹ with its choosing «selfish interests and worldly ambitions over the welfare of the country and the nation», and not an aversion of Islam as such toward what is good for Muslim people. Al-Banna also observes that the influence of Western terminology in the field of political thought has already affected the way of thinking of Eastern peoples, since some expressions used to describe the Western religious institutions are not applicable to Islam:

Is it not more productive for a nation to reform its religious authorities and to reconcile with them, rather than adopt an oppressive attitude towards them? Even if these expressions which have crept into our language by way of imitation, like ‘religious authorities’, are not in accord with our own usage, since this usage is peculiar to the West, in the sense of ‘clergy’. According to the Islamic usage, it includes every Muslim, for all Muslims from the least to the most outstanding of them, are ‘religious authorities’²⁵².

In the *risāla* 'السلام في الإسلام', ['Peace in Islam']²⁵³, while recognising the positive import of democracy that has carried freedom and empowerment of the people, Al-Banna also argues that thinking such system as an ideal has brought, on the one hand, to the

²⁵⁰ Al-Banna, 2004:19/26.

²⁵¹ Ibid.

²⁵² Al-Banna, 2004:20/26.

²⁵³ Al-Banna, 2004.

chaos of the two World Wars, and on the other, to the dissolution of the values of family and society:

The democratic system led the world for a while, encouraging many intellectuals as well as the masses to think of it as the ideal system. Nobody can ignore the freedom it has secured for peoples and nations alike, and the justice it has introduced to the human mind in allowing it to think freely, and to the human being as a whole in allowing him the freedom to fulfil himself; and, apparently, giving power to the people. Indeed, international relations after the First World War came as a proof of the legitimacy of these ideas and most of the world turned towards them wholeheartedly. However, it was not long before people realized that individuality and unlimited liberty can lead to chaos and many other short-comings, which ultimately led to the fragmentation of the social structure and family systems, and the eventual re-emergence of totalitarianism²⁵⁴.

After World War II, according to Al-Banna, the weaknesses of the democratic system have become evident since «the inspiration and aspirations of the people were shattered and the system of democracy did not lead to the empowerment of the people but to the establishment of chosen tyrants»²⁵⁵. In his view, the values of freedom and equality purported by democratic systems are already present in Islam, and constitute part of the everyday life of a good Muslim:

I once said, humorously, to an audience, "This prayer that we offer five times a day is nothing more than a daily exercise on a practical social system which contains the best of communism and democracy." In total surprise they asked: "How can that be?" I said that the best that the communist system has to offer is its promotion of equality, its attack on social classes, and its war on pride in private ownership upon which class is based. All these elements are present and completely felt by a Muslim when he enters the mosque. For when he first enters the mosque he knows that this holy place belongs to Allah, and Allah alone; and that there is no difference between one who finds shelter in it and one who only passes through. In it there is no young or old, no lord or slave and no discrimination nor classification²⁵⁶.

This notion of equality also entails the right of any Muslim to limit the power of imams: «The Imam does not act as he pleases», and whenever he does not behave in the right way, he should be corrected by «the young boy, the old man and the women

²⁵⁴ Al-Banna, 2004:2/29.

²⁵⁵ Al-Banna, 2004:3/29.

²⁵⁶ Ibid.

who prays behind him to correct his short-comings». The Imam, on his part, is obliged «to bow down to the truth, and correct his mistake in the light of their instructions». In this sense, in Al-Banna's view «there is nothing in democracy that is better than [...] [such, BQ] virtues»²⁵⁷, since no other man-made system could blend as completely as possible those virtues of freedom and equality as Islam.

The Society of the Muslim Brothers knows changing fortunes throughout the twentieth century. During the 1930s and 1940s, its influence grows considerably in the Arab world, with the number of local branches rapidly increasing and a gradual internal institutionalisation taking place. From a small association whose main objective is to favour social welfare through grassroots Islamic reformation, it becomes a large and widely disseminated cultural and political institution, supporting British anti-imperialistic policies; intensively using espionage and sabotage in support of German Nazi politics, and later countering the constitution of the State of Israel in Palestine. After its official dismantlement in 1948 following the assassination of the Egyptian prime minister by one of its members and the killing of its founder in 1949, the Society of the Muslim Brothers participates in the 1952 revolution and initially supports the Free Officer Movement that successfully overthrows King Farouq I.

In his work, 'فلسفة الثورة' ['The Philosophy of Revolution']²⁵⁸, Gamal 'Abd Al-Nasser narrates the events of the 1952 Egyptian revolution and reflects on a variety of aspects. He argues that

every nation on earth undergoes two revolutions: One political, in which it recovers its right of self government from an imposed despot or an army of aggression occupying its territory without its consent. The second revolution is social, in which the classes of society struggle against each other until justice for all citizens has been gained and conditions have become stable²⁵⁹.

According to Nasser, for the political revolution to occur, unity and mutual support, «as well as self-denial for the sake of the country as a whole»²⁶⁰ are necessary, while social revolution takes longer and difficult struggles to happen. Social revolution can be established only after a period of time in which «values are shaken and creeds are

²⁵⁷ Ibid.

²⁵⁸ Nasser, 1950.

²⁵⁹ Nasser, 1950:24.

²⁶⁰ Ibid.

relaxed; fellow-countrymen struggle against each other, as individuals and classes. Corruption, suspicion, hatred and selfishness dominate them»²⁶¹:

We now live in two revolutions: one demanding that we should unite together, love one another and strain every nerve to reach our goal; the other forcing us, in spite of ourselves, to disperse and give way to hatred, everyone thinking only of himself. This is exactly what happened to our society.

While in Europe political and social revolutions have happened «in an orderly manner» and «the stages of this evolution systematically succeeded one another»²⁶², in Egypt, the colonial control and modernization have invaded the country all of a sudden thus making it very difficult for the Egyptian society to assimilate such changes:

European countries eyed us covetously and regarded us as a short cut to their colonies in the East and the South. Torrents of ideas and opinions burst upon us, which we, at that stage of our evolution, were incapable of assimilating²⁶³.

In Nasser's view, the new Egyptian society has not settled yet and is «still boiling over and restless» in order one day to «continue its gradual evolution parallel with other nations which preceded it along the road»²⁶⁴.

Nasser also admits the need for consulting with «several leaders of public opinion of various classes and creeds»²⁶⁵ to safeguard political change through the design of the Egyptian Constitution and the creation of national institutions for promoting production. Such developments in the whole Africa, however, are countered by the European colonialist powers that he intends to resist:

The white man, representing several European countries, is trying again to repartition the continent. We cannot stand aside in face of what is taking place in Africa on the assumption that it does not concern or affect us²⁶⁶.

In order to enact change and make it well established in Egypt, according to Nasser, a third stage of development is necessary that refers to «the circle of our brethren in

²⁶¹ Nasser, 1950:24-25.

²⁶² Nasser, 1950:42.

²⁶³ Nasser, 1950:42-43.

²⁶⁴ Nasser, 1950:43.

²⁶⁵ Nasser, 1950:48.

²⁶⁶ Nasser, 1950:71.

faith». He thus advances that the pilgrimage to Makka, one of the pillars of Islam, has to be considered differently, not only should it be «a simple effort to buy indulgences after an eventful life», but it should rather be «a great political power». In this sense, he means to seek social and political agreement with other Muslim countries to counter the Western political and economic interference. According to Nasser, the *hajj* would have to become

a regular political congress wherein the leaders of Moslem states, their public men, their pioneers in every field of knowledge, their writers, their leading industrialists, merchants and youth meet to draw up in this universal Islamic Parliament the main lines of policy for their countries and their cooperation together until they meet again. They should meet reverently, strong, free from greed but active, submissive to the Lord but powerful against their difficulties and their enemies, dreaming of a new life, firm believers that they have a place under the sun which they should occupy for life²⁶⁷.

Only in this way it would be possible to unite in one faith millions of people, whose «tremendous potentialities» for international cooperation would «not deprive them of their loyalty to their countries but which guarantees for them and their brethren a limitless power»²⁶⁸.

At the time of his ascent, Nasser starts a program of agricultural reform and nationalisation of the Suez Canal that leads to strong conflicts with European foreign powers and Israel. At the international level, in order to counter foreign intervention, he seeks alliance with other Arab countries in the name of pan-Arab alliance, but discarding the option for religious unity.

In 1958 pan-Arabism is realised through the creation of the United Arab Republic with Syria, guided by Michel Aflaq's Arab Socialist Ba'ath Party in an attempt to defend Arab countries from foreign pressures during the Cold War. During this period, anti-imperialist policies merge socialist and secular political thought throughout the Arab world. Arab socialist movements of that time, however, generally support single-party government, and they do not consider the possibility of multi-party competitive elections. Socialist thinkers of the time, such as Zaki Al-Arsuzi and Michel Aflaq, consider freedom as a general value compatible with the

²⁶⁷ Ibid.

²⁶⁸ Nasser, 1950:72.

national society, and rather claim for a 'social democracy' that does not include liberal politics and capitalist economics.

The socialist Syrian philosopher Michel Aflaq claims that «a constitutional democracy, which is not accompanied by socialist legislation» is meaningless and dangerous in that it could be used by «the rich and proprietors so that they may continue their exploitation of the peoples». On the other hand, however, dictatorship is also a dangerous form of government, because even if it was addressed at the common good of the people, it would be a «precarious system, unsuitable and self-contradictory». This is because «it does not allow the consciousness of the people to grow and safeguard such reforms by their conviction and their fight»²⁶⁹.

Aflaq argues for a redefinition of the concept of democracy and liberty that should not be «confused with that kind of sham liberty behind which the reactionaries hide together with the exploiters of the people and the collaborators with imperialism». He rather encourages a more practical conception of democracy, by questioning

this empty and nebulous conception of theoretical liberty which does not differentiate between the people and their enemies, between the citizens of the homeland and the colonizers of the homeland, between those who believe in this liberty and those who take advantage of it for their interests while they are its archenemies²⁷⁰.

According to Aflaq, such conception is a «bourgeois and spineless understanding of liberty and democracy» directed against «the exploitation of feudalists, capitalists, profiteers and opportunists of all brands», who try to penetrate national press and government in order to control and inculcate a superficial notion of freedom:

Our view of liberty should always be a sound one. It is a new and strict liberty, which does not allow leaving matters unchecked. It is not negative, allowing corruption to take its course and let disorder grow but it is a positive and creative liberty. It is a liberty which stands against pressure, confusion and the plot against our national existence by our internal and external enemies, so that conditions remain healthy and conducive to the flowering and growth of this existence²⁷¹.

²⁶⁹ Aflaq, 1956a.

²⁷⁰ Aflaq, 1956b.

²⁷¹ Ibid.

The anti-imperialist democratic view supported by Arab socialist thinkers, inspired by the 1952 Egyptian revolution and by Nasser's socialist rule until 1970, is met with considerable approval in the Arab world, but does not actually result in a competitive electoral democracy. After the Arab defeat in the Six-Day War against Israel, Nasser's government starts to change, initiating a period of cautious liberalisation.

During his government, however, Nasser is deeply criticised for his authoritarian rule that gradually leads to eliminate all opponents in blunt and resolute ways. One such movement is the Society of the Muslim Brothers which, with the establishment of Nasser as the president of the newly enacted constitutional republic in 1956, after an initial period of cooperation, is abolished and has many of its members imprisoned following the accusation of attempting on Nasser's life. The Islamic claims of the Muslim Brothers to reform society are soon considered incompatible with Nasser's secular and nationalist views and are not taken into account during the following period of social reforms.

However, during the 1950s and 1960s, the Islamic political thought of the Muslim Brothers' leader Sayyid Qutb, arrested, tortured and imprisoned from 1954 to 1965 during Nasser's rule, and finally sentenced to death in 1966, exerts a considerable influence both in Egypt and in other Islamic countries.

In his book, 'معالم في الطريق', ['Milestones']²⁷², Qutb claims for a religious revival arguing that, even in the West, democracy has «become infertile to such an extent that it is borrowing from the systems of the Eastern bloc». According to the Egyptian scholar, liberal capitalist democracies in the West, in order to survive, are forced to integrate, «especially in the economic system», provisions to protect social justice. At the same time, also socialist political systems in the Eastern bloc mainly inspired by Marxist communist social theories have initially «attracted not only a large number of people from the East but also from the West, as it was a way of life based on a creed». Qutb asserts that even if Marxist theories have initially managed to inspire a number of people because it purports community values of equality and social justice, «on the whole this theory conflicts with man's nature and its needs»:

²⁷² Qutb, 2006.

This ideology prospers only in a degenerate society or in a society, which has become cowed as a result of some form of prolonged dictatorship. But now, even under these circumstances, its materialistic economic system is failing, although this was the only foundation on which its structure was based. [...] The main reason for this is the failure of the system of collective farming, or, one can say, the failure of a system, which is against human nature²⁷³.

In Qutb's view, the economic materialistic system is not suitable for any human being, because it intimidates and oppresses people with dictatorship and tyrannical power of equality. In the same way, Qutb criticises liberal and modernist thinkers who try to propose a blended political system, such as 'Islamic Democracy' or 'Islamic Socialism' for not being able to completely do away with the corrupt and depraved Western social, political and economic system. Rather they try to reach a compromise, in finding conceptual similarities between Islamic and Western political institutions, thus deceiving people:

Islam looked at them [the people, BQ] from a height, as this is its true position, and addressed them with extreme love and kindness, as this is its true temperament, and explained everything to them with complete clarity, without any ambiguity, as this is its method. It never said to them that it would not touch their way of living, their modes, their concepts and their values except perhaps slightly; it did not propose similarities with their system or manners to please them, as some do today when they present Islam to the people under the names of 'Islamic Democracy' or 'Islamic Socialism', or sometimes by saying that the current economic or political or legal systems in the world need not be changed except a little to be acceptable Islamically. The purpose of all this rationalization is to appease people's desires!²⁷⁴

According to Qutb, such way of dealing with foreign political concepts is a sort of rationalization ultimately instrumental to respond to people's appetites and interests. However, in his view, Islam should not attempt to reach a compromise with Western principles that he conceives of as '*jahili*', ignorant of the divine guidance. In this sense, modernity is considered as a sort of regression to pre-Islamic condition of ignorance and should be totally eliminated:

It is not the function of Islam to compromise with the concepts of Jahiliyyahh which are current in the world or to coexist in the same land together with a Jahili system. This was not

²⁷³ Qutb, 2006:24.

²⁷⁴ Qutb, 2006:150-151.

the case when it first appeared in the world, nor will it be today or in the future. Jahiliyyahh, to whatever period it belongs, is Jahiliyyahh; that is, deviation from the worship of One God and the way of life prescribed by Allah Almighty. It derives its system, laws, regulations, habits, standards and values from a source other than Allah Almighty. On the other hand, Islam is submission to Allah, and its function is to invite people away from Jahiliyyahh toward Islam²⁷⁵.

Jahiliyyah is thus intended as the «worship of some people by others», in such a way that «some people become dominant and make laws for others, regardless of whether these laws are against Allah's injunctions and without caring for the use or misuse of their authority». Rather than accept this situation for Muslim people, compromise should be rejected leading to the danger of creating rules that are contrary to Islamic values:

Islam cannot accept any mixing with Jahiliyyahh, either in its concept or in the modes of living which are derived from this concept. Either Islam will remain, or Jahiliyyahh: Islam cannot accept or agree to a situation which is half-Islam and half-Jahiliyyahh. In this respect Islam's stand is very clear. It says that the truth is one and cannot be divided; if it is not the truth, then it must be falsehood. The mixing and co-existence of the truth and falsehood is impossible. Command belongs to Allah Almighty, or otherwise to Jahiliyyahh; Allah's Shari'ah will prevail, or else people's desires²⁷⁶.

Qutb asserts that one should consider such aspects of Islam carefully when 'inviting people to Islam', «whether they are Believers or non-believers», since the fundamental feature of Islam is that it is «a comprehensive concept of life and the universe with its own unique characteristics», so that even if some concepts could be considered similar or compatible, this would be true only to some extent and according to some limited particular aspects, but would not entail essential equivalence:

The concept of human life in all its aspects and relationships which are derived from it is also a complete system which has its particular characteristics. This concept is basically against all the new or old Jahili concepts. Although there might be some details in which there are similarities between Islam and the Jahili concepts, in relation to the principles from which

²⁷⁵ Qutb, 2006:146.

²⁷⁶ Ibid.

these particulars are derived, the Islamic concept is different from all other theories with which man has been familiar²⁷⁷.

During the 1970s and 1980s, with the death of Gamal 'Abdel Nasser in 1970, and the ascent to presidency of Anwar Sadat, the imprisoned members of the Society of the Muslim Brothers are gradually released. On the other hand, the socialist influence in the Arab world is gradually diminished, while, in Egypt, Sadat starts a process of Corrective Revolution which aims at expelling all nasserist members of the government. He then gives considerable space for a politics of 'Infitah', an opening to private investment by the United States to the detriment of political and economic relations with the Soviet Union. Thanks to Sadat's foreign policy, Egypt manages to regain control on the Sinai, fallen under Israeli control in 1967, and to reopen the Suez Canal. However, such decision, which led to the stipulation of several agreements and a peace treaty with Israel in 1979, causes wide discontent in the rest of the Arab world that feels that the values of pan-Arabism and nasserism have been betrayed and thus expels Egypt from the Arab League.

During the 1970s and until present times, the political debate in the Arab world sees the gradual rise of liberal and progressive Islamic thinkers and scholars who advance the compatibility of Islam and modern liberal thought, by going back to the original message of the Qur'ān and reinterpreting modernist thinking and concepts. Such debate is carried out both by Islamic thinkers in their home countries and by Middle Eastern immigrants in the West, and encompasses a wide variety of positions and interpretations.

In the late 1960s, the Sudanese scholar Mahmoud Mohamed Taha, in his work, 'الرسالة الثانية من الإسلام', ['The Second Message of Islam']²⁷⁸ initiates a process of redefinition and reinterpretation of the Islamic political thought based on historiographical analysis of the Qur'ān, and asserts that in the sacred book two different and conflicting views of justice and equality are present. While the traditional *sharī'ah* rests on a backward political vision adapted to a seventh-century society, the classic jurisprudence ignores the more comprehensive and original *sharī'ah* law revealed during the Makkan period.

²⁷⁷ Qutb, 2006:145.

²⁷⁸ Taha, 1987.

Based on his reinterpretation, Taha claims that economic and social equality, intended as the establishment of good society purported by the Islam of the second message, consists of a socialist claim to remove all economic and political differences between Muslim people. According to Taha, such concept coincides with the notion of democracy:

Just as socialism is the product of the struggle between the "haves" and "have nots" in the material sphere, democracy is the first product of the struggle between those same extremes in the political sphere. Its purpose is the sharing of power. Democracy parallels socialism; they are as two wings of the society²⁷⁹.

However, the Sudanese scholar also argues that since socialism «requires greater social awareness», it should be preceded by a democracy which, «in the beginning, may be exercised by only a few enlightened individuals». At the same time, such socialism should be supported by «the riches of developed capitalism as well as the advances of modern technology»²⁸⁰.

Taha considers democracy not only as a form of government, but also as «a way of life», everywhere highly respected by people because it is considered the best method to achieve human dignity and honour:

The dignity of man is derived from the fact that he is most capable of all living things in learning and developing. The value of democracy is that it is the type of government most capable of providing opportunities for man to realize his dignity and honor. In a dictatorship, however, the government denies individuals the right to experiment and assume responsibility, thereby retarding their intellectual, emotional, and moral growth. In contrast, democracy is based on the right to make mistakes. This does not mean that people are encouraged to make mistakes for the sake of making mistakes, but rather is recognition of the fact that freedom requires a choice between various modes of action. Democracy implies learning how to choose, choosing well, and correcting previous mistakes²⁸¹.

According to the Sudanese scholar, the most relevant feature of democratic governments is that, contrary to what happens in dictatorship, individuals are encouraged to develop their own thinking and are held responsible for their choice. In this way, even if they are free to choose whatever solution they deemed convenient,

²⁷⁹ Taha, 1987:281.

²⁸⁰ Ibid.

²⁸¹ Taha, 1987:282.

they would be forced to take responsibility for their mistakes. However, «since the society of *mu'minin* [believers, BQ] was incapable of exercising individual freedom in choice and action, the Prophet was appointed as a guardian to prepare them for the responsibility of absolute individual freedom»²⁸². The supervising role of Prophet Muhammad aimed at instructing and preparing Muslims for democracy «for which they had to be sufficiently mature and intelligent»²⁸³.

Taha thus asserts that, in order to train Muslims to democracy, God has introduced the concept of *shūrā*, consultation, which, however does not directly indicate democracy, but rather a preparatory stage:

This is the verse of *shura* [consultation], and consultation, whenever mentioned, whether in this verse or in the following verse - "those who answered the call of their Lord, and perform the prayer, and their affairs are [decided] by *shura* [mutual consultation] and pay alms from what We have provided for them" (Sura 42, Verse 38) - does not refer to democracy. *Shura*, however, was a necessary stage in preparation for democracy, in due course²⁸⁴.

Shūrā, in his view, is not a synonym for democracy, or «an original Islamic precept» but it rather is a subsidiary phase in which «the mature individual» prepares the nation to democratic rule. Thus the «original precept of democracy is based on the verse, "Then remind them, as you are only a reminder. You have no domination over them." (Sura 88, Verses 21-22)». Instead of claiming control over the population, the democratic ruler should realise that he is only supposed to suggest or guide them, without being able to ultimately prevail over them.

Taha thus invites Muslims to consider the second message of Islam, the one of the Makkan period, which according to him, could make it possible to better reinterpret the modern world:

The Second Message calls for a return from the subsidiary verses to the original verses, which were temporarily abrogated because of circumstances and material and human limitations. We must now elevate legislation by evolving and basing it on the original Qur'anic verses. In this way we shall welcome the age of socialism and democracy and open

²⁸² Taha, 1987:282-283.

²⁸³ Taha, 1987:283.

²⁸⁴ Ibid.

the way to absolute individual freedom through worship and humane dealing with other people²⁸⁵.

By considering such second universal message of Islam, Muslim people could successfully reconcile the religious elements with the modern institutions of socialism and democracy.

Drawing on the historical analytic methodology of his master Mahmoud Muhammad Taha, the Sudanese scholar 'Abdullahi Ahmad Al-Na'im calls for a reformation of Islam «that would enable Muslims to seek to achieve their right to self-determination in terms of an Islamic identity». In this sense, he aims at «including the application of Islamic law, without violating the rights of others to self-determination». According to Al-Na'im it is impossible to apply *sharī'ah* and, at the same time, protect the rights of non-Muslims, so that he aims at showing

the negative consequences of the modern application of shari'a to demonstrate that it is not the appropriate vehicle for Islamic self-determination in the present context. An Islamic alternative to shari'a is provided as the appropriate framework for Muslims to exercise their right to self-determination while fully respecting the rights of others, whether within their own countries or in other lands²⁸⁶.

The Sudanese scholar claims that *sharī'ah* cannot be considered a sacred text, just like the Qur'ān and the *sunna*, because it is rather the product of religious authorities of past times, whose aim was to establish a firm and consistent doctrine and way of conduct for their times:

Shari'a was in fact constructed by Muslim jurists over the first three centuries of Islam. Although derived from the fundamental divine sources of Islam, the Qur'an and the *sunna*, *shari'a* is not divine because it is the product of human interpretation of those sources. Moreover, this process of construction through human interpretation took place within a specific historical context which is drastically different from our own. It should therefore be possible for contemporary Muslims to undertake a similar process of interpretation and application of the Qur'an and *sunna* in the present historical context²⁸⁷.

²⁸⁵ Ibid.

²⁸⁶ All citations Al-Na'im, 1990:237

²⁸⁷ Ibid.

Following such conclusions, contemporary Muslims should initiate a personal and individual process of reinterpretation of the sacred texts according to their actual present-day cultural context.

In his more recent work 'Islam and the Secular State'²⁸⁸, Al-Na'im argues against the enactment of *shari'ah* as public laws, and claims the need for the adoption of secular government:

Shari'a principles cannot be enacted and enforced by the state as public law and public policy solely on the grounds that they are believed to be part of *Shari'a*. If such enactment and enforcement is attempted, the outcome will necessarily be the political will of the state and not the religious law of Islam. The fact that ruling elites sometimes make such claims to legitimize their control of the state in the name of Islam does not mean that such claims are true²⁸⁹.

According to the Sudanese scholar, it is necessary to enact an «institutional separation of Islam and the state, despite the unavoidable connection between Islam and politics in present Islamic societies». Such paradox, in Al-Na'im's view, is required by the fact that even in an Islamic state, non-Muslim citizens should be given the right to participate in the government to a variety of extents:

The principles of popular sovereignty and democratic governance presuppose that citizens are sufficiently motivated and determined to participate in all aspects of self-governance, including organized political action to hold their government accountable and responsive to their wishes. This motivation and determination, which is partly influenced by the religious beliefs and cultural conditioning of the citizens of the state, must be founded on their appreciation of and commitment to the values of constitutionalism and human rights. This is why it is important to strive to justify my proposal from an Islamic perspective for Muslims, without denying the right of others to support the same position from their respective religious or philosophical positions²⁹⁰.

In this sense, Al-Na'im argues in favour of a condition of reciprocity between citizens with different religious backgrounds that have to accept «constitutionalism and

²⁸⁸ Al-Na'im, 2008.

²⁸⁹ Al-Na'im, 2008:1.

²⁹⁰ Al-Na'im, 2008:6.

democracy» as the «ultimate foundation of the state itself»²⁹¹ and to do anything they can to foster their establishment:

Significant reform of such views is necessary because of their powerful influence on social relations and the political behavior of Muslims, even when *Shari'a* principles are not directly enforced by the state. One premise of my approach is that Muslims are unlikely to actively support human rights principles and effectively engage in the process of constitutional democratic governance if they continue to maintain such views as part of their understanding of *Shari'a*²⁹².

Al-Na'im considers a fundamental and essential step toward real Islamic political reformation the acceptance and the creation of secular states instead of Islamic *Shari'ah*-based ones in the Middle East.

While Al-Na'im's approach to government and Islam entails an acknowledgement of the limits of *shari'ah* with respect to human rights and, as a consequence, proposes the secular approach to overcome its shortages, the Egyptian Qur'anic scholar Muhammad Khalaf-Allah, in his 1973 work 'والدولة القرآن', ['The Qur'an and the State']²⁹³ holds a different stance. He argues that since God has provided Muslims with «the best and most perfect of foundations and rules on which to build our government and to establish our state», it is possible to follow the Qur'an and at the same time, to retain «absolute freedom and full independence in our worldly concerns and social interests». Muslims have been granted the way of counsel, or *shūrā*, to manage and decide upon their affairs, so that «those knowledgeable ones of status, whom we trust, [could, BQ] look into these concerns and decide on our behalf in every period that which serves our interests and bestows happiness on our people»²⁹⁴.

Following Muhammad 'Abduh's interpretation of the concept of *shūrā*, he argues that the European and the Islamic governance are very similar apart from the fact that «[the Europeans] say that the *umma* is the source of laws», while «we say the same things with regard to matters for which there is no Qur'anic reference of mention in the *sunna* [...] and very few things have such references [in the Qur'an]». As for a

²⁹¹ Al-Na'im, 2008:35.

²⁹² Al-Na'im, 2008:39.

²⁹³ Khalaf-Allah, 1973.

²⁹⁴ Khalaf-Allah, 1973:42.

form of government based on representatives, while Western countries have no choice in adopting representative democratic models, Muslims are free to choose their form of government by adapting it to the demands of specific times:

[The Europeans] say there must exist those who would represent the people so that what they decide would be as if the people had decided it. We too say the same thing. They say that this is known as elections, and that they have different ways of organizing them. We have not been limited by the bounteous Qur'an to a specific way. We have the right to follow in every age the way we feel will achieve what is intended. [God] called those who represent the people "those in authority," which means those who are distinguished among the people, to whom people's interests are referred, whom the people feel safe in following. They may be confined to the center of government at times, as they were at the beginning of Islam²⁹⁵.

Furthermore, in the same way, Western and Islamic governments are bound to abide by the decisions of their representatives, and as in Western governments it is possible for the people to restrain the power of the rulers, such control is also considered essential in Islamic rule:

[The Europeans] say that if [the representatives] agree, the government must execute that which they agree upon. And the people must obey. They have the right to bring down the ruler if he does not execute their law. And we say the same thing. This is the real consensus which we consider to be one of the fundamentals of our law²⁹⁶.

However, in case a full consensus cannot be reached, both European and Islamic rulers should follow the principle of majority. In this sense, according to Khalaf-Allah, even if the decisions made by the majority were incorrect or unjust, it should be the Islamic ruler's duty to act accordingly:

[The Europeans] say that if they disagree, the opinion of the majority should be followed. We know that the Prophet acceded to the opinion of the majority, even if it was incorrect, as occurred during the battle of Uhud. And this position on his part, peace be upon him, trained us. The opinion of the majority is not the correct opinion-but it is the one on which people with real interests agree²⁹⁷.

²⁹⁵ Khalaf-Allah, 1973:45.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

A similar comparative stance is advanced by the Omani Sadek Jawad Sulaiman, who in a 1996 interview argues that «as a concept and as a principle, *shūrā* in Islam does not differ from democracy». In his view, «both *shura* and democracy arise from the central consideration that collective deliberation is more likely to lead to a fair and sound result for the social good than individual preference».

He argues that the reason for rejecting the possibility to establish an equivalence of meaning between the two terms is that they are not put into their own contexts respectively. He thus continues claiming that «both concepts also assume that majority judgement tend to be more comprehensive and accurate than minority judgment». Moreover, considered as principles, *shūrā* and democracy entail the notion of equality both in rights and duties:

As principles, *shura* and democracy proceed from the core idea that all people are equal in rights and responsibilities. Both thereby commit to the rule of the people through application of the law rather than the rule of individuals or a family through autocratic decree. Both affirm that a more comprehensive fulfilment of the principles and values which humanity prospers cannot be achieved in a non-democratic, non-shura environment²⁹⁸.

Thus *shūrā* is not considered «incompatible with the basic elements of a democratic system», since, in the Qur'ān, it is described «as a principle governing the public life of the society of the faithful rather than a specifically ordained system of governance». In this sense, he asserts that

the more any system constitutionally, institutionally, and practically fulfils the principle of *shura*- or, for that matter, the democratic principle- the more Islamic that system becomes²⁹⁹.

In Sulaiman's opinion, even if there are specific differences between the two concepts, and in general in the history of those two words, the very claim that such differences make it impossible for Arab people to adopt democratic forms of government because of their Arab or Islamic values and traditions is unfair and biased:

There are cultural specifics rooted in the history of every nation that might justify differences in how the democratic principle is applied, but no Arab or Islamic cultural specifics that

²⁹⁸ All quotations Sulaiman, 1996:98.

²⁹⁹ Ibid.

explain the level of civic degeneration with which we Arabs are afflicted today. It is neither an Arab particularity nor an article of the Islamic faith that freedom of speech be suffocated in our national experience, that our people be denied free elections, that our affairs be conducted without the benefit of consensus, and that peaceful political activity be forbidden to our masses. It is neither Arabic nor Islamic that our nation's fate should rest in the hands of a few persons unbound by constitutional restraints³⁰⁰.

According to Suleiman, there is a «perverse, unfair, or bad judgment» lying in such claim that makes Arabs inferior or not yet culturally «ready for democratic or *Shura* governance». Such claims consequently lead to conclude that Arabs do «not appreciate the democratic principle and values needed to embrace the rule of law, as opposed to the rule of individuals». Quite oppositely:

Any nation that emerged from the civilization of Islam was enjoined to exercise *Shura*. Such nations were nurtured with the principles of justice, equality, and human dignity, values which sustain and enhance the human experience. Such nations simply cannot be less qualified to exercise democracy than other nations.

Democracy and *Shūrā* are thus, according to Suleiman «synonymous in conception and principle», in spite of their different «details of application to conform to local custom». In this sense, they both reject «any government lacking the legitimacy of free elections, accountability, and the people's power, through the constitutional process, to impeach the ruler for violation of trust».

Similarly, they both reject «hereditary rule, for wisdom and competence are never the monopoly of any one individual or family», as well as not accepting «government by force, for any rule sustained by coercion is illegitimate» and forbidding «privileges— political, social, economic— claimed on the basis of tribal lineage or social prestige».

Shura and democracy are thus one and the same concept. They prod us to find better and better realizations of the principles of justice, equality, and human dignity in our collective socio-political experience. These principles merit implementation in national life across the entire Arab homeland. Let us hope that *Shura* or democracy— the choice of terms makes no difference— will find supporters who aspire to a new Arab renaissance³⁰¹.

³⁰⁰ Ibid.

³⁰¹ Ibid.

The Tunisian modernist philosopher Rachid Ghannouchi, in a 1993 paper 'The Participation of Islamists in a non-Islamic Government'³⁰² advances against secularism that even when an ideal Islamic democratic state could not be enacted because of the presence of secular rules, it would be possible for Islamic movements to engage in secular states with the aim of changing the system from the inside. According to Ghannouchi, «the problem facing the concept of power-sharing does not lie in the difficulty of convincing the Islamists to accept democracy, pluralism and power sharing», because

the current general trend in Islamic circles is to adopt power-sharing - even in a secular style government- as a means for achieving mutual goals such as national solidarity, respect for human rights, civil liberties, cultural, social and economic development, and the deterrence of external threats³⁰³.

The problem being faced by modernist thinkers is that the secular rule does not allow Islamists to participate or form political parties to participate in the local political life, just like any other group:

The real problem lies in convincing the "other", that is the ruling regimes, of the principle of "the people's sovereignty" and of the right of Islamists - just like other political groups - to form political parties, engage in political activities and compete for power or share in power through democratic means³⁰⁴.

Ghannouchi asserts the right of Islamic political parties to be involved in elections, and he interprets as undemocratic the fact that Western 'democratic' countries as well as national secular elites are united in trying to prevent such political movements from engaging into politics:

The punishment of the Islamic victors in the Tunisian and Algerian elections- which have regrettably been taking place with the consent of Western democracies and the support of local "secular theological elites" that are allied with the oppressive regimes in both countries - provides a decisive evidence that the root of the problem in the Muslim world lies in the

³⁰² Ghannouchi, 1993.

³⁰³ Ghannouchi, 1993:95.

³⁰⁴ Ibid.

hegemony of despotism. Our main task now is to combat despotism in favor of a genuine and true transition to democracy³⁰⁵.

According to Ghannouchi, the problem with electoral democracy is the fact that it is subject to the despotism of the majority, with the most powerful parties forming strong coalitions to the detriment of other weaker minority groups.

During the first decade of the twentieth century the debate on democracy in the Arab world encompasses different positions and starts to introduce in the debate over Islamic reformation the concept of democracy as a procedure, rather than a value, in an attempt to go beyond the sterile debate over crystallized anti-democratic Islamic positions and Western stifled secular democratic discourse. The Swiss contemporary scholar Tariq Ramadan argues for a different conception of reform that does not only entail adaptation to the developments of society, thus merely accepting the current situation, but that also needs to provide ethical guidance in order to have an impact on them. In his book 'Radical Reform'³⁰⁶, Ramadan asserts that «the innovative, bold, creative spirit of early times [had, BQ] given way to timid approaches that only consider reform in terms of adapting to the world and no longer with the will and energy to change it»³⁰⁷. In this sense, he asserts the importance

to distinguish between "adaptation reform", which requires religious, philosophical, and legal thought just to adapt to the evolutions of societies, the sciences, and the world, and "transformation reform", which equips itself with the spiritual, intellectual, and scientific means to act on the real, to master all the fields of knowledge, and to anticipate the complexity of social, political, philosophical, and ethical challenges³⁰⁸.

Ramadan aims at offering «an ethical contribution» that could change and reform the current situation through «more soul, humanity, and positive creativity» and by giving relevance «to societies, to the sciences, and to human progress»³⁰⁹.

The Swiss scholar argues that secularisation in Muslim countries has not brought positive consequences as it has previously happened in the Western ones, since,

³⁰⁵ Ibid.

³⁰⁶ Ramadan, 2009.

³⁰⁷ Ramadan, 2009:3.

³⁰⁸ Ibid.

³⁰⁹ Ramadan, 2009:7.

instead of creating the conditions for the establishment of democracy, it has caused the rise of autocratic regimes:

The Western equation *secularization = freedom = religious pluralism = democracy* has no equivalent in Muslim-majority societies where, through the historical experiences of the past century, the equation has tended to associate other representations that would rather sound like: *secularization = colonialism = de-Islamization = dictatorship*³¹⁰.

As a consequence, the Muslim thought starts to reject Western imperialism that seeks to impose on society its own «development models» in such a way that it «has settled into a role of [...] denial based on otherness». This also causes Muslim thought to lose its «own points of reference», without being able to «develop a vision from within, relying on its own richness and assets»³¹¹.

On the other hand, Western liberal thought continues to propound the «distinction between the private and the public spheres», that lies «at the heart of Western societies, which are going through true identity crises». In this sense, Ramadan criticises Rawls for asserting that pluralism can only exist in the presence of a neutral public space, considered «as the achievement of secularization and liberal democracies». On the contrary, he claims that «no public sphere can be wholly neutral culturally or religiously», because specific local history, tradition, collective psychology inherently impose «a specific cultural shading to the given nation's public sphere»³¹². Such opposition brings to a contradictory situation:

Contemporary Islamic thought is very critical of "Western models" in the name of a particular philosophy of life and a strong conception of ethics, but in effect it ends up imitating the technically highest performing models in terms of quantitative success and, without true critical assessment, reproducing systems based on productivist conceptions that are very little concerned with the quality of ethical requirements³¹³.

In the debate for democratisation, such contradictions become even more apparent since «assimilations and reductions occurred, preventing critical debate by oversimplifying it in a dualistic manner: for or against democracy», with each option mutually excluding and countering the other. As a consequence, in the same way

³¹⁰ Ramadan, 2009:264-265. Italics in the original.

³¹¹ Ramadan, 2009:265.

³¹² All quotations Ramadan, 2009:267.

³¹³ All quotations Ramadan, 2009:279.

Islamic thought shelters behind sterile traditions, liberal thought also becomes dogmatic thus suffocating «critical and democratic debate». As Ramadan puts it:

Democracy is often presented in the West as "a value" supposed to be either "Western" or "universal", or, with no fear of contradiction, both at the same time. Thus presented, "the critique of democracy" becomes suspicious and its instigators tend to be lumped with old-time idealistic Communists defending the "dictatorship of the proletariat" or new Muslim radicals advocating a theocratic implementation of the *shari'ah*³¹⁴.

According to Ramadan, democracy should not be considered as a value but as a procedure, «a generic system encompassing a set of organizational and institutional models for universal, fundamental values and principles»³¹⁵. Further confirmation for such aspect comes from consideration of «the issue on an international level»³¹⁶, where

being democratic has never been enough to guarantee the promotion of peace, the respect of human rights, dignity, freedom, autonomy, etc.[...] The constructive critique of contemporary democratic models must be undertaken on that wider level, first of all, by identifying what they do not guarantee in terms of respecting values, which must absolutely be reformed if we are to be consistent. Repeating that it is the least bad system cannot justify passivity about denouncing its perversions and excesses³¹⁷.

By viewing democracy as a universal value, one would fail to consider its limitations as a system that could and should be optimised: «Idealistic discourse about "democracy" as a value struggles to hide the need for debate about democracy as a system apt to be both perfected and alienated»³¹⁸.

From another perspective, democracy also starts to be viewed as a universal and indisputable value that could go beyond the sterile debate between Eastern Islamic undemocratic values and Western liberal democratic ones. The Moroccan scholar Mohammed Abed Al-Jabri, in his work 'Democracy, Human Rights and Law in Islamic Thought'³¹⁹, asserts that democracy should not be viewed only as a procedure, but also as carrying with it different values and goals. He argues that

³¹⁴ Ramadan, 2009:283.

³¹⁵ Ibid.

³¹⁶ Ramadan, 2009:282.

³¹⁷ Ramadan, 282-283.

³¹⁸ Ramadan, 2009:283.

³¹⁹ Al-Jabri, 2009.

considering democracy as the result of «the reasons for its rise in Europe», thus using it as a replicable process elsewhere without impinging on a country's values would «only produce a certain interpretation of history, with some degree of success». On the contrary, analysing the kinds of objectives that legislators, intellectuals and political activists aim at achieving through democracy in the Arab world would lead to an aware political construction, «the making of history, which is what we need most». In this sense, Al-Jabri claims that democracy should be considered as a universal value whose positive import could not and should not be disputed:

Democracy today is not merely a subject for history, it is also a basic necessity for the modern human being who is no longer a mere figure, but a citizen whose identity is defined by a great number of rights. [...] Therefore, democracy should be viewed not as a process that may be applied in one society or another, but as an essential process to be established and applied. It is the only atmosphere wherein the rights of citizenship can be enjoyed by the people, on the one hand, while it enables the rulers to enjoy the legitimacy that justifies their rule, on the other³²⁰.

Al-Jabri thus claims that «the democratic legitimacy, today, is the only acceptable legitimacy; there is no alternative to it»³²¹, and that «any objectives posed by the state today cannot be put above the ‘rights of the human being and citizen’», but rather the interests of the state, as well as its objectives, should «stem from these rights and be in their service»³²². In his opinion,

viewing democracy as a principle, or a system whereby man enjoys his citizenship rights, gives it precedence over channels and institutions wherein these rights are exercised. This is like a patient’s right to be cured, which takes precedence over the means by which that cure is effected, such as medicines and hospitals. [...] It is true that applying democracy comes through the so-called civil society institutions, but we should remember also that the rise of such institutions is part of democracy itself. The more the various democratic rights are exercised, the more these institutions grow; and the more these institutions dominate the society, the stronger the democratic system, and so on³²³.

Considering democracy as a principle, however, does not exclude that it is also «a sound and positive method to regulate relations inside the society in a rational

³²⁰ All quotations Al-Jabri, 2009:169.

³²¹ Ibid.

³²² Al-Jabri, 2009:170.

³²³ Ibid.

manner», but it does not entail that the same procedures are applicable to any country. Democracy as a principle would thus make the economic and cultural changes, as well as «the move from one social, political or ideological position to another an easy and spontaneous process». As Al-Jabri puts it:

Class and institution barriers, in such cases, become movable and easy to cross. To shift from the extreme right to the extreme left or the other way around, from poverty to wealth [...] is to shift allegiance to a person or a party, to shift from one ideology to another, to change attire (which has become an ideological symbol for some elites). These have all become quite uncontrollable, which opens the way to all possibilities³²⁴.

Since without smooth transitional democratic methods, economic and political changes could be subject to unruly actions, the Moroccan scholar views democracy as «a historical necessity», and the only possible way of institutionalising and managing «this major process of transition»³²⁵. The only unacceptable alternative to it would be «frustration and chaos, which will lead to civil wars»³²⁶. He thus claims that

free democratic expression, the recognition of difference and diversity, in addition to the rotation of power, are the basic conditions which ensure, or at least help to direct, the movement and the conflict within the process of transition properly and safely³²⁷.

Civil society institutions «such as parties, societies, unions and elected councils» would prove useful in managing «the conflict, the movement and the transition inside society towards historical progress»³²⁸.

The Algerian scholar Mohammed Arkoun also criticises the polarisation between Islamic thought and Western liberal democracy using an epistemological historical approach, trying to move beyond the debate between polarised opposing positions. In his 2002 work 'The Unthought in Contemporary Islamic Thought'³²⁹, Arkoun sets out to analyse the modern and contemporary «focus on the achievements of reason», and «on the critical control of the rationalities» that aims at setting «the spatial limits assigned to the thinkable». In this sense, any tradition, be it Islam,

³²⁴ Al-Jabri, 2009:171.

³²⁵ Al-Jabri, 2009:171.

³²⁶ Al-Jabri, 2009:172.

³²⁷ Al-Jabri, 2009:171-172.

³²⁸ Al-Jabri, 2009:172.

³²⁹ Arkoun, 2002.

Christianity, or modernity allow for only certain thinkable discourses, thus limiting and discarding other arguments as irrational. On a political level, he argues that «when we speak today about the modes of communication required by political correctness, we are clearly referring to limits imposed by political and social pressures on the innovative and critical faculties of reason»³³⁰. As Arkoun puts it:

A number of ideas, values, explanations, horizons of meaning, artistic creations, initiatives, institutions and ways of life are thereby discarded, rejected, ignored or doomed to failure by the long-term historical evolution called tradition or 'living tradition' according to dogmatic theological definitions. Voices are silenced, creative talents are neglected, marginalized or obliged to reproduce orthodox frameworks of expression, established forms of aesthetics, currently received rules of judgement, evaluation, communication, transmission, teaching, relating to others...³³¹

In case a particular tradition is left unchanged for a long time, «the field of the unthinkable is expanded and maintained for centuries» thus making the intellectual and critical field narrow and weak and «there is little space left for the thinkable». Arkoun's understanding is strongly connected to the language in which such thought and unthought matters are conceived, since he believes that different languages restrain or deploy thinking in different ways:

The unthought is made up of the accumulated issues declared unthinkable in a given **logosphere**. A **logosphere** is the linguistic mental space shared by all those who use the same language with which to articulate their thoughts, their representations, their collective memory, and their knowledge according to the fundamental principles and values claimed as a unifying *weltanschauung*. I use this concept to introduce the important dimension of the linguistic constraints of each language on the activities of thought³³².

A 'logosphere' for Arkoun should not be intended however as a particular national language, but rather as a discursive context in which thought and thinkable matters can also be expanded and changed. In his view, when an increasing number of people «with different cultural backgrounds» comes to use the same language,

³³⁰ Arkoun, 2002:11.

³³¹ Arkoun, 2002:11-12.

³³² Arkoun, 2002:12. Bold in the original.

it becomes a common logosphere which will affect the configuration of the faculties of the human mind and, consequently, will contribute to the creation of frontiers between the thinkable and the unthinkable, the thought and the unthought³³³.

Arkoun claims that, in Muslim countries, the unthinkable and the unthought are subject to «a dual censorship», not only exercised by the state, but also «imposed by public opinion, especially on matters related to religion». Muslim intellectuals thus interiorise «this dual control in the name of the Nation, or the religion, adding self-censorship to that already imposed from outside»³³⁴.

Viewed in this way, the unthinkable and the unthought depend on «any discursive statement», because «any proposition is an act of power whether followed by a result or not». In this sense, all kinds of linguistic utterances imply a «selection from the range of significations in any tradition, thus an orientation of meaning in a particular direction from all the possible horizons of expectation of any given speaker of a particular language»³³⁵. Through the linguistic act of power, any person can contribute to the establishment of what should be the thinkable and the unthinkable:

From clan leader, tribal chief or village mayor to king, caliph, sultan, emperor or president, from the smallest republic or kingdom to today's United States; from bishop, rabbi, village imam to pope, chief mufti or chief rabbi: all of these exercise control over the thinkable and the unthinkable, over the selection of what is thought in the orthodox line, and over what has to be eliminated and remain unthought if intellectually subversive³³⁶.

In 2003 seminal paper ' Rethinking Islam Today'³³⁷, Arkoun further argues that «Islamic revivalism and the activities of those who are its real or perceived proponents have monopolized the discourse on Islam», leaving silent the large part of Muslim thinkers and intellectuals. In this sense, he claims that human and social scientists «have failed to liberate Islamic studies from pro- and anti-Orientalism clichés», because Islam and the West mutually recognise themselves as unchanging, fixed realities. He thus argues for the need to study Islam with an epistemological approach that would allow for rethinking Islam starting not from singular historical or

³³³ Ibid.

³³⁴ Arkoun, 2002:13.

³³⁵ All quotations Arkoun, 2002:20.

³³⁶ Arkoun, 2002:20-21.

³³⁷ Arkoun, 2003.

political events, but from a broader contextual inscription of those happenings³³⁸.

According to the Algerian scholar,

there is a need to encourage and initiate audacious, free, productive thinking on Islam today. The so-called Islamic revivalism has monopolized the discourse on Islam; the social scientists, moreover, do not pay attention to what I call the "silent Islam"-the Islam of true believers who attach more importance to the religious relationship with the absolute of God than to the vehement demonstrations of political movements. I refer to the Islam of thinkers and intellectuals who are having great difficulties inserting their critical approach into a social and cultural space that is, at present, totally dominated by militant ideologies³³⁹.

The expanding focus on Islam in such a monopolistic revivalist fashion has left unspoken, as well as unthought «all the cultures and systems of thought related to pagan, polytheistic, *jahili* (pre-Islamic), or modern secularized societies»³⁴⁰ thus accommodating in the category of the thinkable orthodox Islamic thought only their revivalist creeds.

In a more comprehensive analysis of the Islamic thought, examined in comparison with a variety of other Eastern and Western cultural understandings, Arkoun argues that, in the contemporary world, the space once covered by religious interpretations is now growingly being occupied by secular scientific understandings:

The social-historical space in which religions emerged, exercised their functions, and shaped cultures and collective sensibilities is being replaced by the secular positivist space of scientific knowledge, technological activities, material civilization, individual pragmatic ethics and law³⁴¹.

However, since «scientific knowledge is divided into separate, technical, highly specialized disciplines», a 'nostalgia' for the universal and overarching understanding power of religion generates religious revivalism in a variety of contexts. In this sense,

positivist scientific knowledge has discredited or eliminated religious functions in society without providing an adequate alternative to religion as a symbol of human existence and a

³³⁸ All quotations Arkoun, 2003:18.

³³⁹ Arkoun, 2003:18-19.

³⁴⁰ Arkoun, 2003:20.

³⁴¹ Arkoun, 2003:37.

source of unifying ethical values for the group. This happened in Western societies under the name of secularism (or laïcisme in French), liberalism, and socialism³⁴².

Arkoun gives secularism a strong significance in order to «overcome fanatic divisions imposed by the dogmatic, superstitious use of religion», but he also thinks that «the specific role of religion as a source for symbols in human existence» should be recognised. In this sense, he asserts that «Islam is not better prepared than Christianity to face the challenge of secularism, intellectual modernity, and technological civilization»³⁴³. In his understanding,

the so-called religious revivalism is a powerful secular movement disguised by religious discourse, rites, and collective behaviors; but it is a secularization without the intellectual support needed to maintain the metaphysical mode of thinking and to search for an ethical coherence in human behavior³⁴⁴.

The Algerian scholar thus calls for the constructive building of a new humanism to integrate religions as cultures and not as dogmas for confessional groups. This would also entail the use not only of traditional theological or sociological interpretations, but also of «semiotics and linguistics», which, in his view, could «create the possibility of reading religious texts» with a new epistemological approach. Such intellectual investigations should aim at discovering the «increasing domination of Western patterns of thought which have not been duly criticized, controlled, or mastered in Western societies themselves»³⁴⁵.

In such understanding, Arkoun gives particular attention to the fact that any political action is based on what people could identify as meaningful:

Man agrees to obey, to be devoted, and to obligate his life when he feels a "debt of meaning" to a natural or a supernatural being. This may be the ultimate legitimacy of the state understood as the power accepted and obeyed by a group, community, or nation. The crisis of meaning started when each individual claimed himself as the source of all or true meaning; in this case, there is no longer any transcendent authority³⁴⁶.

³⁴² Arkoun, 2003:38.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Arkoun, 2003:39.

In this sense, political power is viewed as dependent upon the capacity to build a meaningful and sustainable world of significations, that could be in any case and any time «manipulated by forces devoted to the conquest of power»³⁴⁷. Thus, the linguistic and epistemological study of such forces would provide for a better understanding of the strategies and the consequences of the ongoing processes of power construction in the world.

Similarly to Arkoun's methodology, in 'Reformation of Islamic Thought'³⁴⁸, the Egyptian Qur'ānic scholar Nasr Abu Zayd employs a hermeneutic approach to the study of the Qur'ān, claiming that «there is neither an objective, nor an innocent interpretation». In this sense, he analyses the Qur'ān from a historical critical perspective and observes that the hermeneutical principle of Islamic thought based on distinguishing between what are «'ambiguous' or 'revocable' (*mutashabih*) verses on the one hand, and 'clear' or 'irrevocable' (*muhkam*) verses on the other» is on the practical level untenable.

Abu Zayd explains that even if Islamic scholars «logically agreed that the irrevocable should be the norms to interpret, or rather to disambiguate, the revocable, [...] when it came to the implementation of this principle they disagreed [...], and so, the Quran became a battlefield for the adversaries to situate their political, social and theological positions»³⁴⁹. In this sense, when analysing the Qur'ān as a discourse, instead of a text, it is possible to notice that «the jurists' work was basically to unfold the meaning» of Qur'ān and «to re-encode this meaning in various social contexts». However, the Qur'ān should not be considered as a binding legal document since the legal stipulations in it «are expressed in discourse style, and these reveal a context of engagement with human needs in specific times»³⁵⁰.

By contextualising the Qur'ān, the immediate change in perspective would open up «the appropriation of the intended 'meaning' into every paradigm of meaning» and provide «multiple options and a variety of solutions, as well as an open gate of understanding»³⁵¹. Abu Zayd thus concludes that

³⁴⁷ Ibid.

³⁴⁸ Abu Zayd, 2006.

³⁴⁹ Abu Zayd, 2006:93.

³⁵⁰ Abu Zayd, 2006:95.

³⁵¹ Ibid.

to claim that the body of *sharia* literature is binding for all Muslim communities, notwithstanding time and space, is simply to ascribe divinity to the human historical production of thought. If this is the case, there is no obligation to establish a theocratic state claimed as Islamic. Such a demand is nothing but an ideological call to establish an unquestionable theo-political authority; this would recreate a devilish dictatorial regime at the expense of the spiritual and ethical dimension of Islam³⁵².

After disconnecting the Qur'ān from its legal understanding, it is also possible to analyse the concept of *shūrā* as «a practice pre-dating Islam and Islamic society, [...] an instrument of social ethics that involved discussion among tribal elders regarding actions in a given situation»³⁵³. *Shūrā* has not been introduced by Islam, but it was rather a tribal practice:

It is a historical phenomenon, and I would leave it as a historical practice. And what I would observe in contextualizing the Quran in this instance would be that in the pre-Islamic context the heads of tribes used to meet in specific places called *dar al-Nadwa*, places of congress. They might meet on several occasions to discuss the problems of the new Prophet. [...] However, *shura* cannot be developed into something democratic because it is traditional. More generally, political theory should be based on the fact that in Islam, in the Quran, there is no political theory; there are no political principles, not even for traditional society. What is mentioned about traditional society is rather descriptive³⁵⁴.

According to Abu Zayd, since the practice of *shūrā* was a pre-Islamic practice encroached with tribal society, it could never be considered as equivalent to Western political theory and more than that, it could not be regarded as carrying legal binding consequences. In this sense, in the Quran there could never be any political system, because rather than telling «Muslims what they should do» or mentioning «the state or its governance», it basically describes traditional rules and customs of that historical period. From this stems the Abu Zayd's claim that «it is open to Muslims to choose whatever they wish, and thus it is not Islam that stands against democracy, progress or modernity»³⁵⁵. Such critical approach to Islamic history brings him to think that

³⁵² Ibid.

³⁵³ All quotations Abu Zayd, 2006:96.

³⁵⁴ Ibid.

³⁵⁵ Abu Zayd, 2006:96.

just like the classical theologians, both the modernists and their opponents are trying to situate their position in the Quran by implicitly or explicitly claiming its status as a text. As a text, it should be free of contradiction, given that God is the author. Whatever the interpreter wanted to prove, historical background was always employed in verification or justification; after all, history is also open to miscellaneous readings³⁵⁶.

In this sense, he argues that in the same way classical jurists and theologians provide their interpretation of the Qur'ān, «the proponents of modern hermeneutics endeavor to articulate their positions by creating a focal point of gravity that can be claimed as universal – the irrevocable and the eternal truth», while «the anti-modernist would merely shift the focal point of gravity to claim the opposite»³⁵⁷. Such way of dealing with the Qur'ān only as a text, entails that

the Quran is at the mercy of the ideology of its interpreter; for a communist, the Quran would reveal communism, for a fundamentalist the Quran would be a highly fundamentalist text and for a feminist it would be a feminist text³⁵⁸.

Abu Zayd thus proposes to develop a different notion of Qur'ān, considering it as a discourse rather than only a text, and analysing its 'horizontal dimension', which entails the a broad canonization of Islam as an «act of the Prophet's gradual propagation of the message of the Quran, after he had received it»³⁵⁹. By following such a horizontal dimension, the Islamic scholars' unoriginal analysis of specific verses of the Qur'ān does not contribute to the establishment or questioning of the mainstream interpretation:

For Muslim scholars, the Quran was always a text from the moment of its canonization until the present moment. Yet, if we pay close attention to the Quran as discourse or discourses, it is no longer sufficient to re-contextualize one or more passages in the fight against literalism and fundamentalism, or against a specific historical practice that seems inappropriate for our modern context. Similarly, it is not enough to invoke modern hermeneutics to justify the historicity and hence the relativity of every mode of understanding, while in the meantime

³⁵⁶ Abu Zayd, 2006:98.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Abu Zayd, 2006:99

claiming that our modern interpretation is more appropriate and more valid. What these inadequate approaches produce is either polemic or apologetic hermeneutics³⁶⁰.

In this view, rather than producing sterile apologetic or polemic interpretations, it is necessary to rethink the Qur'ān «without re-invoking its living status as a 'discourse', whether in academia or in everyday life»³⁶¹. Only in such a way would it be possible to achieve «democratic and open hermeneutics» that would allow for the definition of «the meaning of life»³⁶². In order to avoid the manipulation of religious thought and to allow for the construction of meaning, it is necessary to empower communities through a democratic hermeneutics, that requires people to be involved in the dialogical power:

If we are serious about freeing religious thought from power manipulation, whether political, social, or religious, and want to empower the community of believers to formulate 'meaning', we need to construct open democratic hermeneutics. The empirical diversity of religious meaning is part of human diversity around the meaning of life in general, which is supposed to be a positive value in the context of modern life. To reconnect the question of the meaning of the Quran to that of the meaning of life, it is now imperative to note that the Quran was the outcome of dialogue, debate, augment, acceptance and rejection, both with pre-Islamic norms, practices and culture, and with its own previous assessments, presuppositions and assertions³⁶³.

Abu Zayed considers the Qur'ān as the result of debates and interpretations stemming from acceptance and refusal of different viewpoints from the pre-Islamic to the modern age. In this sense, in order for the Qur'ān to make sense in present times, it is necessary to democratise the interpretive tools by extending their use to the whole community of believers, who, each through their religious diversities, can make sense of the Sacred Text again.

Following this brief overview of the concept of democracy in the Arab world it is now possible to describe general provisional characteristics and factors that have contributed to build the understanding of democracy in such region.

³⁶⁰ Ibid.

³⁶¹ Abu Zayd, 2006:98-99.

³⁶² Abu Zayd, 2006:99

³⁶³ Abu Zayd, 2006:99.

Firstly, the notion of democracy in the Arab world is not only a simple transfer of the word and procedure of democracy from the experience of the French Revolution into a colonised area, which in turn has been inspired by the principles of freedom and equality. Such process of transfer is rather part of a larger and deeper economic and political situation influenced by the crisis of the Ottoman Empire.

Secondly, the very notion and possibility to actually transfer a concept from one culture into another should be carefully considered. In this regard, it seems plausible to conclude that it would be impossible to account for all the aspects and factors that contribute to the shaping of a concept such that of democracy in any culture, be that what today is called 'Western' or 'Arab'. The very impossibility to define once and for all such historical, social, linguistic, geographical and cultural concepts would make any conclusion in the transfer of meaning only provisional.

Thirdly, there seems to be in the notion of democracy in the Arab world a gradual process of redefinition and questioning of the concept which in modern times has started with its appearance as a significant and relevant concept in the Arab region. Such redefinition has been carried out, according to the historical period, by different scholars of classical Islam, academic intellectuals and political activists.

Fourthly, such thinkers could be grouped according to their general attitude toward modernization and its satellite concepts of freedom, equality, democracy, human rights, and the like, into different strands of thought such as modernist, Salafist, reformist, liberal reformist, secularists, socialist etc., based on the specific historical period in which they have lived and interpreted the concept of democracy.

In the next paragraph, such aspects will be used to define the more specific context of the notion of democracy in the twenty-first century Egyptian uprisings and in the period in which the 2012 Egyptian Constitution was formulated, issued and approved, as well as perceived, questioned and debated worldwide.

3.3 Case Study: The 2012 Egyptian Constitution and its translation into English by Dr. Nivien Saleh

In the previous paragraphs, a brief overview of the concept of democracy in the accounts of non-Western and post-colonial scholars was provided, with a specific final focus on the concept of democracy in the Arab World. Such overview made it possible to conclude that the renewed interest into the concept of democracy is part of a process of redefinition to make it more inclusive of new 'non-Western' political and cultural diversity. In this paragraph, a translational approach will be used to evaluate how and to what extent, through the politics of translation, the modern concept of democracy acquires different meanings according to the cultural context in which it is used. In this sense, a specific representation of democracy will be examined, which is the translation into English of the 2012 Egyptian Constitution by the Egyptian-German scholar, Nivien Saleh, in her professional website. As has already been stated in the first chapter, translation will not be intended as a transfer of meaning from a source to a target text, so that they have the same meaning, but it will rather be viewed as a process of communication that gradually changes the meaning of an original to adapt it to the receiving cultural context. As a consequence, the aim of such analysis will not be to find out whether the concept of democracy in the 2012 Egyptian Constitution has the same meaning in one of its translations into English, since this could never be the case. Equivalence here is considered a political space of negotiation of meaning that introduces an acceptable amount of newness in the receiving culture while inscribing it in local discourses. As a consequence, translation will be viewed as a personal interpretation of a text, and, as such, it could never be an objective one. In this way, the main aim will be to find out what the cultural context and the purpose for translating might be, and how, at a language level, such motivations could contribute to building broader discourses on democracy and ultimately influence its definition at an international level.

In the next paragraph, the translational methodology chosen for such analysis will be introduced and explained. In the second paragraph the actual analysis of the case study will be carried out, while in the concluding third paragraph some preliminary remarks on the findings will be given.

3.3.1 Analysing the political aspects in translation studies: the socio-narrative theory

As already asserted in the previous chapters, the notion of translation in this work does not refer to an operation of transferring meaning from a source to a target text, so that the original value is preserved. This is because, even though translators could deliberately aim at safeguarding authenticity and know, understand and speak the languages they work with at a mother-tongue level, they would never be able to translate 'objectively'. Partial/personal translation is inevitable due to the impossibility to control a large number of variables that include, but are not limited to, cultural aspects related to the translator's training, their interests and opinions and, ultimately, to their experiences in life. More generally, one should also take into account the interventions of the individuals who interact while writing, editing, retranslating, publishing, reading, interpreting and receiving the translated texts. In this sense, translation is always influenced by factors that inevitably cause a textual transformation in the first place.

Secondly, such textual transformation always results in a cultural and political intervention, because any text can influence, modify and definitively impact on its own production environment. Considered as such, the political import of a translated text could be defined as its impact on a broader cultural receiving context, in terms of its affecting the behaviour of individuals and groups, based on the kind of narrative it establishes, supports, and/or rejects.

Such definition of translation requires an approach that could effectively connect textual analysis to the texts' broader context of production and reception, considering democracy not only as a single word to be transferred into a translated text, but also as a broader discourse that is not limited to textual representation. Most of translational analytical tools used in different fields of Translation Studies are devised to analyse literary translated texts and usually presuppose a comparison between two texts into two different languages. Such texts are assumed to address generally similar audiences both in the original and the receiving culture and focus on the analysis of the internal coherence of literary translated texts, based on the types of translational choices made by translators. These tools also postulate an equivalence

between the original and the translation that could be assessed based on the analysis of translation shifts of meaning³⁶⁴. Other models presuppose that it is possible to infer a series of more or less general assumptions, standards or norms³⁶⁵ against which it would be possible to compare translated texts, and ultimately seem to support a notion of equivalence that, even though could be negotiated at any given time and place, it would still retain a certain degree of predictability. In this sense, by considering all the variables that influence the translation process, it would be possible to establish a quality standard to be used for the sake of comparison. Translation could also be analysed through functionalist models³⁶⁶, that aim at finding the objectives for carrying out such translation, also through register, style and discourse analysis³⁶⁷. In an attempt to integrate additional variables to the act of translation, some models define and predict translational choices using a variety of methods based on the role of the translator as an agent, influenced by external happenings and constrictions, as well as internal preferences and orientations³⁶⁸. In other cases, the analysis of the degree of deviance is assessed based on statistically relevant amounts of translated texts through the use of software and corpora³⁶⁹. Other analytical tools seem to propose to analyse some words as culturally-oriented items, with culture intended as a stable and well defined system of references and meanings³⁷⁰. In all these types of models, some or, at times all, aspects related to the cultural and contextual background of the original texts, as well as those of their translations and ultimately of the translators, editors, and readership involved in the process must perforce be considered as fixed, uniform and unchanging. Text analysis is thus carried out trying to remove some of the variables in an attempt to produce more precise predictions. Even if some of the analytical tools try to integrate cultural

³⁶⁴ Vinay & Darbelnet, 1958; Nida, 1964; Catford, 1965; Aixelà, 1996, Blum-Kulka, 1986/2004, Leuven-Zwart, 1990.

³⁶⁵ Even-Zohar, 1978/2004; Toury, 1980/2004, Schäffner, 2002, Chesterman, 1997.

³⁶⁶ Reiss, 1971/2004; Reiss and Vermeer, 1984; Vermeer, 1989; Holz-Mänttari, 1984; Nord, 1991.

³⁶⁷ House, 1977; Hatim & Mason, 1990; 1997; Schäffner, 2002;.

³⁶⁸ Levy, 1967/2000, Munday, 2012.

³⁶⁹ Baker, 1995; 2004; Munday, 1998; 2002; Laviosa, 2002.

³⁷⁰ See, for example, Aixelà, (1996), who defines Culture-Specific Items as *«those textually actualized items whose function and connotations in a source text involve a translation problem in their transference to a target text, whenever this problem is a product of the nonexistence of the referred item or of its different intertextual status in the cultural system of the readers of the target text»* (p.58, Italics in the original). In this acception, a translation problem is considered to be objectively definable and would not depend on the translator's subjective opinion.

variables and connect the texts with broader cultural contexts, a more flexible approach, which requires analysis of broad cultural discourses, instead of only texts, appears to best adapt to the definition of translation given above. According to Hermans, it is necessary to realise that the very fact «that the study of translation translates translation, and does so in compromised and compromising ways, obliges us to reconsider not just what we know, but how we know»³⁷¹. In this sense, even if such analytical tools could effectively produce relevant outcomes at a textual level, a more comprehensive method would allow to better address the epistemological assumptions of translation.

For these reasons, and based on the definition of translation given above, it appears to be more relevant to consider a constructivist approach to translation that takes into account the unpredictability of variables and that stems from the consideration of the translator's situatedness. The analysis of the case study will thus be carried out using the socio-narrative theory devised by Mona Baker for translational purposes in her work 'Translation and Conflict: A Narrative Account'³⁷². In her work, Baker defines narratives as 'dynamic entities' that «change in subtle or radical ways as people experience and become exposed to new stories on a daily basis». In this sense, a narrative theory would assume that «people's behaviour is ultimately guided by the stories they come to believe about the events in which they are embedded, rather than by their gender, race, colour of skin, or any other attribute». Furthermore, since narratives are dynamic, a person's «positioning in relation to other participants in interaction» depends on «a variety of divergent, criss-crossing, often vacillating narratives». Finally, the dynamic nature of narratives also entails that, since our understanding of the world continually changes through our experience, they have a «'significant subversive or transformative potential'»³⁷³ in that they introduce new concepts into mainstream discourses either supporting and/or contrasting them.

Narrative in this sense should not be considered a specific literary genre, but an overarching idea based on the assumption that any kind of text is first of all

³⁷¹ Hermans, 2002.

³⁷² Baker, 2006.

³⁷³ Baker, 2006:24,0/630.

accounted for, told, and interpreted by an agent who is embedded into a specific context and vision of the world. In this sense, Baker describes narrative as overlapping «to some extent with Foucault's 'discourse' [...] especially in its emphasis on the normalizing effect of publicly disseminated representations». However, she continues, «the concept of narrative is much more concrete and accessible, compared with the abstract notion of discourse as a vehicle for social and political processes» and «much more so than discourse, the notion of narrative is not restricted to public representations but applies equally to individual stories»³⁷⁴. In this sense, «narrative tends on the whole to be treated as the principal and inescapable mode by which we experience the world»³⁷⁵. Drawing on the notion of narrative theorised by Jerome Bruner³⁷⁶, Walter Fisher³⁷⁷ and Somers and Gibson³⁷⁸, Baker defines narratives as «public and personal 'stories' that we subscribe to and that guide our behaviour, [...] the stories we tell ourselves, not just those we explicitly tell other people, about the world(s) in which we live»³⁷⁹.

An advantage for using such method is the fact that «categories, whether scientific or otherwise, do not exist outside the narrative within which they are constituted». In this sense, also scientific texts are always included in specific narratives that carry political consequences:

The process of (narrative) categorization is far from disinterested, even in the most abstract and apparently 'objective' of sciences, such as statistics. Scientific theories and reports are narratives in the sense that they are ultimately 'stories' that have a beginning, middle and end. More specifically, narrative does much of the work that we identify with 'objective' scientific discourse. It is narrativity that turns the continuous flow of experience into a set of delineated categories that can be processed in various ways, and this [...] includes scientific categories³⁸⁰.

Another important consequence of such method is that «it acknowledges the constructedness of narratives»³⁸¹ by making it possible

³⁷⁴ Ibid.

³⁷⁵ Baker, 2006:41,0/630.

³⁷⁶ Bruner, 1991.

³⁷⁷ Fisher, 1984.

³⁷⁸ Somers and Gibson, 1994.

³⁷⁹ Baker, 2006:72,0/630.

³⁸⁰ Baker, 2006:44,0/630.

³⁸¹ Baker, 2006:28,0/630.

to deal with the individual text and the broader set of narratives in which it is embedded, and it encourages us to look beyond the immediate, local narrative as elaborated in a given text or utterance to assess its contribution to elaborating wider narratives in society³⁸².

Narrative is thus more broadly intended as a way to flexibly categorise «the world into types of character, types of event, bounded communities» and systematize «experience by ordering events in relation to each other – temporally, spatially, socially». As a consequence, narratives also intervene in classifying «behaviour along a moral and socially sanctioned cline into valued vs. non-valued, normal vs. eccentric, rational vs. irrational, legitimate vs. non-legitimate, legal vs. criminal». In this sense, all narratives, included the scientific ones are inscribed into a «process of legitimation and justification that is ultimately political in import». Thus, whether or not translators are aware of such political import, they ultimately contribute in legitimising and supporting certain political actions and positions in the world that «can be highly threatening in a direct political sense»³⁸³.

Narrativity should ultimately be considered as a way to normalise «the accounts it projects over a period of time, so that they come to be perceived as self-evident, benign, uncontestable and non-controversial»³⁸⁴. In the same way, narratives participate in «constructing or deconstructing an enemy, 'an other *who* is so foreign and distant that *who* becomes *it*». Translators participate in such construction or deconstruction when «circulating and resisting the narratives that turn the *whos* of our time into the *its* whose suffering is either justifiable or at best simply 'regrettable'». Most of the times, they might do it without completely noticing, pretending to be simply neutral or objective when they translate:

Bennett and Edelman (1985:159) remind us that 'stock political narratives disguise and digest ideology for people who prefer to represent themselves as passive or objective reporters of the world around them'. It is also stock political narratives that we often digest, translate and circulate 'passively', without stopping to consider their implications for those we readily relegate to the category of *it*, the 'regrettable' victims of collateral damage³⁸⁵.

³⁸² Ibid.

³⁸³ Baker, 2006:47,0/630.

³⁸⁴ Baker, 2006:50,0/630.

³⁸⁵ Baker, 2006:59,0/630. Italics in the original.

This aspect is caused by the fact that nobody can avoid to give coherence to their own experience of the world, looking for coherent patterns, assuming that «events and happenings are verifiable by reference to some 'reality'» and attributing believability to a specific narrative:

The assumption of the constructedness of narratives means that in practice we can neither isolate and independently assess individual elements in a narrative nor assume that a default, chronological or logical storyline can be fully separated from the perspective of a given narrator. At the same time, because we have to take a position in relation to a variety of public, historical and personal narratives in order to act in the real world, we have to make judgements about the veracity and credibility of narratives that touch our lives. In other words, the constructedness of narratives and our embeddedness in them do not preclude us from reasoning about them³⁸⁶.

In such a view, one could never appeal to an only shared vision of the world, or to some kind of objectivity, but should rather accept the existence of different, and at the same time coherent visions of the world:

The assumption of constructedness does not simply mean the rejection of *a* truth in relation to a given set of events or the assertion that no one has direct access to *a* reality. Rather, acknowledging the constructed nature of narratives means that we accept the potential existence and worth of multiple truths. This is a key issue in claiming that narratives have political import and that they can unsettle and contest hegemonic views of the world³⁸⁷.

The presence of many truths also encompasses the possibility that while some narratives «may be completely at odds with each other; some may differ only in minor details or points of emphasis». In any case, however, depending on the contexts, some narratives may become more widely accepted than others «through various processes of reinforcement and contestation». Both the reinforcement and contestation, however, entail the return to past traditions and narratives by reviving them:

To contest and challenge the present, both individuals and communities will draw on past narratives to highlight salient features of the current situation as elaborated in their narrative of the here and now.

³⁸⁶ Baker, 2006:68,0/630.

³⁸⁷ Baker, 2006:71,0/630.

Such recourse should not be intended as a simple representation, and reinterpretation, but also as «a means of control» which «socializes individuals into an established social and political order», by limiting «the stock of identities from which individuals may choose a social role for themselves».

The process of inscribing oneself into a specific narrative could happen in a more or less informed fashion, so that some people could end up being less aware of their position:

When people invest very heavily in specific versions of a narrative, giving up or adjusting those versions could result in major personal trauma for them. In this case, they simply cannot entertain other versions of the narrative nor agree a resolution to a conflict informed by a competing narrative. Eventually, they may end up isolating themselves within their own narrative communities, circles of people who subscribe to a similar version of the narrative(s) they regard as central to their lives.

Baker argues that translation should be viewed as an extremely important activity in the construction of narratives «especially given the fact that most conflicts today are not restricted to specific monolingual communities but have to be negotiated in the international arena». In this sense, «even local, domestic conflicts now typically have to be negotiated cross-culturally and cross-linguistically in view of the multicultural composition of most societies»³⁸⁸. Thus, translators play a key political role in their reshaping texts according to well-established or resisting narratives of the world, and in reformulating some of them based on different worldviews and with culturally-blended features:

Every time a version of the narrative is retold or translated into another language, it is injected with elements from other, broader narratives circulating within the new setting or from the personal narratives of the retellers. The embellished version in turn may get retold in – and 'contaminate' – versions of the narrative in other languages and settings.

At the translational level, this could happen in different ways and could envisage that aspects and elements from different narratives «are added, emphasised, downplayed or simply suppressed through numerous processes of mediation»³⁸⁹. In such an understanding, an increased awareness of such processes or at least examination of

³⁸⁸ Baker, 2006:81,0/630. All citations.

³⁸⁹ Baker, 2006:85,0/630. All citations.

«assumptions encoded in narratives» could help bring to light obscured «patterns of domination and oppression that exclude the experiences of large sectors of society while legitimating and promoting those of the political, economic and cultural elite». With this regard, Baker acknowledges that «there is also general agreement in the literature that narrative both reproduces the existing power structures and provides a means of contesting them», but she also admits that «the dynamics of this intricate interplay between dominance *and* resistance is difficult to capture»³⁹⁰.

In this sense, the ultimate purpose for choosing the case study of a translation into English of the 2012 Egyptian Constitution moves in the direction of eventually finding not only elements of domination in the mainstream discourse about democracy, but also factors of resistance. To this extent, instead of analysing a typical postcolonial case study in which the ethnocentric notion of democracy is imported into a postcolonial country, I propose to study here the translation of the concept of democracy from a postcolonial country, culture and language, that is Egypt, into a 'Western', mainly academic context.

It seems also worth mentioning that, since the eighteenth century's cultural and economic relations with European countries, the resort to constitutions in the Arab world in general, and in Egypt in particular, has always been extremely effective in managing and fostering the establishment or the repression of winning or opposing political groups³⁹¹. In that respect, the analysis of a constitution is a way to examine a specific representation of a period in the Egyptian political debate in which, after the uprisings that led to Mubarak's ousting, a new political group tries to protect and represent its political interests.

In the following paragraph I will use some analytical categories of Baker's socio-narrative theory to look for eventual changes and redefinitions of the concept of democracy in the light of the analysis of the local contexts in which the Constitution and its translation have been produced.

³⁹⁰ Baker, 2006:89. Italics *i* the original.

³⁹¹ See for instance Brown, 2003 and 2008. For further insights on the relevance of constitutionalism in the Middle East see Arjomand, 2008, specifically Arjomand 2008a; Brown, 2008; as well as Lombardi & Brown, 2006; Lombardi, 2006; Moustafa 2007.

3.3.2 *A translational analysis of democracy*

The following analysis will consider democracy as a narrative that informs different large or small cultural contexts. As showed in Chapter 1 and in paragraphs 3.1 and 3.2, democracy has always served as a gathering point of different values and interpretations of political and social justice. As a consequence, the notion of democracy will be defined at the same time as a universal value, as part of a local discourse, and finally as an individual understanding. Instead of considering such views on democracy as distinct and separate entities, I will treat them as different layers or spheres of meaning that can continually influence each other and that are also affected by other external narratives, thus contributing to establish and ultimately modify the broadest notion of democracy. I will then analyse how the conception of democracy as a secular universal value can be inscribed into a particular local context. Within such brief analysis, I will examine the way in which narratives communicate and exchange meaning through translation in order to identify politically-relevant strategies of meaning and translating. What follows is a breakdown of democracy into three different narrative typologies that could be significant for the case study according to Baker's narrative theory.

In the first stance, democracy can be defined here as a meta- or master narrative. Baker defines master/meta-narratives as those «'in which we are embedded as contemporary actors in history ... Progress, Decadence, Industrialization, Enlightenment, etc.'»³⁹². In such definition, a meta- or master narrative started as a more limited narrative that was later extended to other contexts and places. Thus, in this sense, democracy as intended in modern times could be thought to have been initiated or, rather, perceived to have gained relevance in the late eighteenth century in the United States, and to have gradually been disseminated into other areas, such as Europe, lately being transferred into further broader regions in the world. As shown in the first chapter, nowadays democracy is considered to be an undisputable and incontestable universal value that anyone should hold valid independent of their personal beliefs. As Baker argues, a meta/master-narrative is such because it «has persisted for decades and [...] the lives of ordinary individuals across the planet have

³⁹² Somers & Gibson, 1994:61, in Baker, 2006:153.

been influenced by it»³⁹³. She also propounds an explanation for the establishment of a specific meta/master-narrative, arguing that «political and economic dominance may indeed be the prime factor determining the survival and circulation of political meta-narratives»³⁹⁴. In this sense, it is possible to identify different trends at varying levels and periods of time that might be relevant for the analysis of the case under consideration.

Firstly, according to a widespread political postcolonial narrative, democracy is today viewed as a result of the United States' economic and cultural politics of control over various parts of the world. Similarly, at a more circumscribed local level in the past, it could also be observed that, in the nineteenth century, the wealthy modern imperialist European countries started relations with the Ottoman Empire and Egypt as part of their struggle for power over the Mediterranean Sea. On the other hand, however, one should also mention that the Ottoman Empire, by employing modernization strategies and military innovations taken from European colonial powers and accepting to relate itself to such culturally-diverse peoples, was seeking to regain control over its large uncontrolled territories, and, at the same time, to defend itself from the very same European military intervention. Such acceptance of cultural models may have served as a less conflicted way to allow for the inescapable political and economic influence of the foreign powers over the Empire. At this level, the welcoming of newness in different contexts always appears a contested one, and entails enthusiastic support, resolute rejections and mixed selective reinterpretations³⁹⁵. From such broad range of outcomes and reactions, innovation and change are always the result of a complex blend of patterns of acceptance and resistance.

³⁹³ Baker, 2006:153,0/630.

³⁹⁴ Baker, 2006:156,5/630.

³⁹⁵ In his discourse analysis on the concept of democracy in contemporary Egyptian political debate, Dunne, 2003 appears to move in a similar direction when he states that democracy in 2003 Mubarak's Egypt is «especially available or suitable for use in accomplishing necessary social interactional work such as identity construction, positioning, and negotiation of power relations». In his view, the Egyptian political debate over democracy should be considered a way of guiding the reinterpretation of democracy, viewed by Egyptians as an «irresistible external discourse» to be in turn appropriated and exploited to Egypt's advantage, partly embraced, readapted, but also treated with skepticism, ignored or rejected thus positioning oneself «vis-à-vis one's colleagues and rivals» (All citations Dunne, 2003:129).

In this sense, it seems interesting to consider «the way in which a longstanding, established meta-narrative may be used to lend weight and psychological salience to a developing public or meta-narrative»³⁹⁶. Baker defines public narratives as «stories elaborated by and circulating among social and institutional formations larger than the individual, such as the family, religious or educational institution, the media, and the nation»³⁹⁷. According to Baker,

the effects of invoking established meta-narratives, with their own specific histories, to promote new ones can never be predicted, because these histories can release different associations and details in the minds of one's immediate audience as well as the opponents that the evoked meta-narrative is meant to subdue or discredit³⁹⁸.

To this regard, since the effects of such extension of the meta-narrative of democracy could not be entirely predicted, it is necessary to envisage the possibility that meta-narratives may be contested or accepted in a variety of different modes, even in the same cultural contexts. It should thus be expected that democracy as a universal value could also be partly or completely questioned by a great variety of public narratives which aim at adapting it to local contexts. While maintaining an overlapping structure on the meaning of democracy, public narratives also introduce, through different strategies, some innovative aspects and concepts in the general meta/master-narrative of democracy as a universal value. Deliberative and participatory democracy, Bell's illiberal democracy, the Indian subaltern studies' notion of democracy, as well as the Latin American³⁹⁹ one could be such examples.

In the case considered here, democracy in the twentieth century Arab world could be imagined as the result of a variety of conflicting public narratives, among which blended liberal, socialist, nationalist, secular, anti-capitalist and Islamic narratives of democracy have been proposed. During the 1980s and 1990s, Islamist political parties increased their visibility through a growing involvement of grassroots cultural, economic and political movements⁴⁰⁰.

³⁹⁶ Baker, 2006:160,0/630.

³⁹⁷ Baker, 2006:118,0/630.

³⁹⁸ Baker, 2006:153,5/630.

³⁹⁹ See paragraph 3.1.

⁴⁰⁰ Esposito & Voll, 1996; Zaki, 1995; Ismail, 2003, El-Gobashi, 2005; Bayat, 2007; Zubaida, 2011; Pioppi, 2011; 2014, Browers, 2009.

For instance, Ismail⁴⁰¹ explains that

the fortunes of Islamism as a political movement are conditioned by the structures of opportunities, and by political configurations and contingent identities. In their interaction with the state, and other political and social actors, Islamists have adopted a multitude of strategies, ranging from outright confrontation and violent action to agitation in the public sphere to infiltration of societal spaces⁴⁰².

In the wake of the twenty-first century, this led Islamist political movements to win elections in a variety of Arab countries such as Palestine, Lebanon and Egypt, as a result of an extensive recourse to electoralism⁴⁰³. In particular, political Islam in Egypt is considered one of the most powerful movements in the Arab world⁴⁰⁴. These major strategic changes could be accounted for by a variety of factors, such as the influence of the liberal Islamic thinkers that started in the 1970s⁴⁰⁵, the exacerbation of the conflict with Israel, as well as the need to counter Western imperialist politics with a strong and appealing Islamic alternative, after the failure of nationalist and pan-Arab movements⁴⁰⁶.

According to El-Ghobashy, in Egypt, such transformations were prompted by «a decisive move away from the uncompromising notions of Sayyid Qutb [...] toward a cautious reinterpretation of the ideas of founder al-Banna», that made the Society of the Muslim Brothers shift «from a religious mass movement to what looks very much like a modern political party». The electoralist turn of the Muslim Brothers led them to confront and be influenced by «common institutional variables on the organization and ideology of both secular and religious political parties»⁴⁰⁷. This also caused among the Islamist political parties in Egypt disdain and reproach, with the accusations from the anti-secular and anti-capitalist movement Jama'at al-Islamiyya of «helping to build the institutions of the secular regime»⁴⁰⁸. Similarly, El-Ghobashy explains that the notion of democracy propounded by the Muslim Brothers was an

⁴⁰¹ Ismail, 2003.

⁴⁰² Ismail, 2003:176.

⁴⁰³ El-Ghobashy, 2005.

⁴⁰⁴ Ayubi, 1993.

⁴⁰⁵ El-Ghobashy, 2005; Bayat, 2007; Pioppi, 2011; 2014.

⁴⁰⁶ Burgat, 2003; Zubaida, 2011.

⁴⁰⁷ El-Ghobashy, 2005:375.

⁴⁰⁸ Abdalla, 1990; in El-Ghobashy, 2005:379.

appropriation of the discourse regarding the compatibility of democracy with Islamic principles supported by liberal Islamic thinkers in the 1980s:

A related innovation is the Ikhwan's appropriation of moderate Islamist thinkers' works authenticating democracy with Islamic concepts. Democracy here is defined as (1) broad, equal citizenship with (2) binding consultation of citizens with respect to governmental personnel and policies, and (3) protection of citizens from arbitrary state action⁴⁰⁹.

The Muslim Brothers' contemporary public narrative about democracy could be considered as the result of a specific adaptation of certain elements of democracy as a universal value to the Arab Egyptian electoral context. In this sense, the Muslim Brothers claimed the compatibility of democracy with the principles of Islam. As Baker puts it:

Which variant of a narrative persists and acquires currency is of course largely a question of the power structures in which the various narrative versions are embedded as well as the determination with which their proponents promote and defend them⁴¹⁰.

Thanks to the engagement of large parts of the Egyptian civil society that was previously excluded from political participation, the Muslim Brothers gradually managed to build a wide and diversified political consensus that led them to become the first opposition party in the 2005 parliamentary elections. After the 2011 Egyptian Revolution⁴¹¹, which forced President Hosni Mubarak to resign and led to presidential elections in June 2012, Muhammad Morsi, the candidate for the ' حزب ' الحرية والعدالة', ['The Freedom and Justice Party'], an exponent of the Society of the Muslim Brothers, was elected as the fifth President of Egypt. A product of such public narrative of the Muslim Brothers principles is the 2012 Egyptian Constitution⁴¹².

The adjective 'ديمقراطي' ['democratic', BQ] appears five times, more precisely twice in the Preamble; once in Part 1, Chapter 1, Article 1; and once respectively in Part 2, Chapter 2, Articles 52 and 53. From a comparative analysis of the preceding 1971

⁴⁰⁹ El-Ghobashi, 2005:374. 'Ikhwan' in the first line is the transliteration of 'إخوان', 'srehtorB ro ,gnirrefer to the Society of the Muslim Brothers.

⁴¹⁰ Baker, 2006:118,0/630.

⁴¹¹ For further details on the Arab uprisings see Haddad, Bsheer, Abu-Rish, 2012.

⁴¹² For the full Arabic text of the 2012 Egyptian Constitution see, 'مشروع دستور الجمهورية مصر العربية', 'Mashrou'u dustour al-Jumhuriyya Misr al-'Arabiyya, Appendix A.

Constitution, the 2012 and the 2014⁴¹³ ones, it is possible to observe that reference to democratic rule and principles can be retrieved in the preambles of all the texts. It is also possible to conclude the same for the first article defining the State in each Constitution⁴¹⁴, as well as for the articles that regulate the rights to form syndicates and trade unions⁴¹⁵.

However, what appears remarkable for the sake of analysis is that the noun 'ديمقراطية' [democracy', BQ] can be found only once and, more specifically, reference to democracy is in Part 1, Chapter 1, Article 6. Quite differently from what is stated not only in the previous 1971 Egyptian Constitution, but also in the following 2014 one, in Part 1, Chapter 1, Article 6 of the 2012 Egyptian Constitution, the form of government is defined as based «على مبادئ الديمقراطية والشورى, والمواطنة» [on the principles of democracy and *shūrā*, and citizenship', BQ]⁴¹⁶.

In such definition of the form of government, it is possible to notice a juxtaposition of the word 'ديمقراطية', which is a transliteration of the English term 'democracy' or possibly of the French word 'démocratie', and the term 'شورى', [shūrā', BQ]⁴¹⁷ typically considered an Islamic concept for meaning 'consultation'⁴¹⁸. According to Baker, the specific narrative feature of 'relativity' or 'hermeneutic composability'

⁴¹³ Issued after the military coup d'etat that removed President Morsi and suspended the 2012 Constitution. It is possible to find original documents of past constitutional documents and of the current Egyptian Constitution both in Arabic and English online on the World Intellectual Property Organization website: <http://www.wipo.int/wipolex/en/profile.jsp?code=EG>, last accessed: 21/02/2015.

For a quick Arabic and English comparison of the three constitutions visit the Comparative Constitutions Project website at <http://comparativeconstitutionsproject.org/egyptian-constitution-arabic/> and <http://comparativeconstitutionsproject.org/comparing-the-egyptian-constitution/>.

⁴¹⁴ Respectively in Part 1: The State, Article 1 in the 1971 Constitution; Part 1: 'State and Society', Chapter 1: 'Political Principles', Article 1: 'Nature of the Republic, and of the Egyptian people' in the 2012 Constitution; and Chapter 1: 'The State', Article 1: 'Nature of the Republic' in the 2014 Constitution.

⁴¹⁵ Respectively in Part 3: 'Public Freedoms, Rights and Duties', Article 56 in the 1971 Constitution, in Part 2: 'Rights and Freedoms', Chapter 2: 'Civil and Political Rights', Article 52: 'Right to form syndicates' and Article 53: 'Trade Unions' in the 2012 Constitution, and Chapter 3: 'Public Rights, Freedoms and Duties', Article 76: 'Right to form syndicates', and Article 77: 'Trade Unions', in the 2014 Constitution.

⁴¹⁶ My translation. Mashrou' dustour al-Jumhuriyya Misr al-'Arabiyya: For further discussion and clarification on the concept of *shura* in the Arab political thought refer to Chapter 2, paragraph 2.3.

⁴¹⁷ The word 'shura' is repeated many times in the 2012 Constitution, and it is mostly used to talk about the 'مجلس الشورى', ['Shura Council', BQ] the upper house of the Egyptian Parliament, abolished by the 2014 Constitution. Apart from many occurrences to refer to such institution, in the 2012 Constitution it is used only once to describe the process of consultation in the article examined here, in Part 1, Chapter 1, Article 6.

⁴¹⁸ For a historical reconstruction of the Islamic use of 'shura' to mean 'democracy' see paragraph 3.2 as well as Moussalli, 2001.

concentrates on the fact that «it is impossible for the human mind to make sense of isolated events or of a patchwork of events that are not constituted as a narrative»⁴¹⁹.

Bruner thus argues that

this hermeneutic property marks narrative both in its construction and in its comprehension. For narratives do not exist, as it were, in some real world, waiting there patiently and eternally to be veridically mirrored in a text. [...] The events themselves need to be *constituted* in the light of the overall narrative⁴²⁰.

Such combination appears to be instrumental while attempting to reinscribe the meta-narrative of democracy as a universal value into the Muslim Brothers' public narrative that purported the compatibility between democracy and Islamic principles. Their choice attempts at normalising a religious concept, namely *shūrā*, by inscribing it into a binding and official document such as the Constitution of an entire nation, and using it to define a form of government together with the term 'democracy'.

Another aspect that seems to support such strategy of normalisation is the fact that the word *shūrā* is repeated many times in the 2012 Constitution, and it is mostly used to talk about the 'مجلس الشورى', or 'Majlis Ash-shūra' ['Shura Council', BQ] the upper house of the Egyptian Parliament. Introduced in the 1980 through a constitutional amendment, the 'مجلس الشورى' has now been abolished. Such institution appears to play an important role in supporting the Muslim Brothers' narrative of compatibility between democracy and *shūrā*⁴²¹.

This process of normalisation should be also considered as a way not only to formally and legally support the introduction of a new concept into the Egyptian political understanding of government and democracy, but also to start a process of legitimation. According to Baker, while «public narratives may initially be elaborated within a narrow, domestic context», in order to survive they also need to be «articulated in other dialects, languages, and non-domestic contexts»⁴²². In her

⁴¹⁹ Baker, 2006:205,0/630.

⁴²⁰ Bruner 1991:8, in Baker, 2006:205,0/630.

⁴²¹ It seems remarkable to observe that before being abolished in 2013, 'Majlis Ash-shūra' has been highly debated with regard to its constitutionality from November 2012 until July 2013. Despite President Morsi's attempt at making such institution acceptable to larger portions of the population, the 'Majlis Ash-shūra' was finally ruled unconstitutional by the High Constitutional Court in June 2013, and dissolved in July 2013, two days after Morsi's ousting by the military.

⁴²² All citations from Baker, 2006/135,0/630.

view, in order for public narratives to endure and be recognised as such, the role of translation is extremely important:

It goes without saying that narratives do not travel across linguistic and cultural boundaries, and certainly do not develop into global meta-narratives, without the direct involvement of translators and interpreters. [...] It is also worth pointing out that growing numbers of professional and non-professional translators and interpreters are now actively setting out to elaborate alternative narratives that can challenge the oppressive public and meta-narratives of our time⁴²³.

As stated by Baker, «individuals in any society either buy into the official or semi-official versions of such public narratives or dissent from them»⁴²⁴, thus choosing, whether consciously or not, to reinterpret such public narratives or to question them by hindering their representations. More often than not, such reinterpretation is not mutually exclusive and would rather initiate a process of partial representation in which, independently of public narratives being considered worth to be reproduced or not, some aspects are given more resonance than others.

With regard to translation, Baker states that the role of professional and non-professional translators is extremely important when reinterpreting non-mainstream marginal public narratives. In this sense, from the stance of democracy as meta-narrative, the public narrative holding that democracy is compatible with Islamic principles should be interpreted as a marginal understanding that is currently trying to develop into a broader public narrative and to influence the meta-narrative of democracy as a universal value. Professional and non-professional translators could thus reinterpret and revive public narratives through their individual, ontological ones, which can be defined as «personal stories that we tell ourselves about our place in the world and our own personal history»⁴²⁵. In the case outlined here, the personal narrative of doctor Nivien Saleh appears to be closely connected to her broader understanding of democracy. Baker argues that such personal stories should be thought of as connected to more broadly shared or collective narratives, which could be considered here local public narratives, that allow an individual to make sense of their life. Although ontological narratives

⁴²³ Baker, 2006: 163,5/630-167/630.

⁴²⁴ Baker, 2006:118:630.

⁴²⁵ Baker, 2006:104:630

ultimately remain focused on the self and its immediate world, they are interpersonal and social in nature, because '[t]he person has to exist, to tell their story, in a social world – they are a situated, located self'⁴²⁶. In concrete terms, this means that 'even the most personal of narratives rely on and invoke collective narratives – symbols, linguistic formulations, structures, and vocabularies of motive – without which the personal would remain unintelligible and uninterpretable'⁴²⁷.

Personal and collective narratives are thus mutually interrelated because, while, on the one hand, ontological narratives determine the constitution of more widely shared public narratives; on the other hand, such social narratives influence and restrain the individuals' ones:

Ontological narratives, then, are dependent on and informed by the collective narratives in which they are situated. But they are also crucial for the elaboration and maintenance of these same narratives. In the first instance, shared narratives, the stories that are told and retold by numerous members of a society over a long period of time, provide the blueprints for ontological narratives, including the blueprints for the social roles and spaces that an individual can inhabit. Indeed, we are as constrained by these shared narratives as by concrete forms of oppression from which we might suffer on a daily basis⁴²⁸.

In the case of Dr. Nivien Saleh, her ontological narrative is retold in her personal professional website⁴²⁹ in which she identifies herself as a bicultural person, who has managed to coalesce Islamic and secular European elements:

Born to a mother from the Black Forest and a father from Alexandria, Egypt, she grew up on the German-Swiss border. By blending the starkly divergent backgrounds of her parents, she developed a bicultural perspective that combines Islamic Middle Eastern and secular European ideas and that shapes her writings to this day⁴³⁰.

In this sense, it is possible to imagine that her personal narrative is influenced by at least two different cultural stances, that she herself describes as divergent.

From her introduction, it is also possible to infer her personal and professional interest with reference to democracy, since she also writes: «She is an expert on the politics and culture of the Middle East, ways of democratizing governance at the

⁴²⁶ Whitebrook, 2001:24, in Baker, 2006: 104,0/630.

⁴²⁷ Ewick & Silbey 1995:211–212, in Baker, 2006: 104,0/630.

⁴²⁸ Baker, 2006:104,0/630.

⁴²⁹ Saleh, <http://niviensaleh.info/>, last accessed: 21/02/2015.

⁴³⁰ Saleh, <http://niviensaleh.info/about/>, last accessed: 21/02/2015.

national and global level, and the use of information technology for advancing democracy»⁴³¹. Furthermore, her position on democracy can be easily observed in her brief description of her 2010 work 'Third World Citizens and the Information Technology Revolution'⁴³²:

Its major finding is that the rule-making processes of the information technology revolution have profoundly disenfranchised the residents of poorer world regions and in particular of Egypt. If Third World citizens are to be empowered, the solution must go beyond support for democracy at the national level. It must include democratization of global governance as well⁴³³.

Her view of democracy could be defined as a 'progressive narrative' which «depicts a pattern of change for the better»⁴³⁴ and «offers the opportunity for people to see themselves and their environment as capable of improvement»⁴³⁵. Another aspect that should be observed is the fact that Saleh is an Assistant Professor of Global Studies at the Thunderbird School of Global Management in the United States, Arizona, and, as such, she is a member of the American academic scholarship that actively contributes to the redefinition and discussion of the concept of democracy in the contemporary political thought. In her website, Saleh proposes a translation into English of the 2012 Egyptian Constitution⁴³⁶.

Baker explains that ontological narratives usually tend to be «in line with specific collective narratives» to support and legitimize them. However, she also argues that «personal narratives can be deliberately used to unsettle the social order. They can be 'rescued' and emphasised in order to resist dominant narratives, to elaborate an alternative narrative of the world»⁴³⁷. In analysing Saleh's translation, it seems relevant to classify textual elements into two different categories.

The first series of aspects deals with formal and paratextual features. According to Baker, translators

⁴³¹ Saleh, <http://niviensaleh.info/>, last accessed: 21/02/2015.

⁴³² Saleh, 2010.

⁴³³ Saleh, <http://niviensaleh.info/about/>, last accessed: 21/02/2015.

⁴³⁴ Baker, 2006:117,0/630.

⁴³⁵ Gergen and Gergen, 1997:175, in Baker, 2006:117,0/630.

⁴³⁶ See Appendix B. Saleh, <http://niviensaleh.info/constitution-egypt-2012-translation/>, last accessed:--

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⁴³⁷ All citations from Baker, 2006:108,3/630.

resort to various strategies to strengthen or undermine particular aspects of the narratives they mediate, explicitly or implicitly. These strategies allow them to dissociate themselves from the narrative position of the author or speaker or, alternatively, to signal their empathy with it.

To this regard, translators can «accentuate, undermine or modify aspects of the narrative(s) encoded in the source text or utterance». Considering Saleh's translation, a relevant feature is the translator's 'repositioning in paratextual commentary', which according to Baker allows the translator to take a stance in a specific collective narrative: «introductions, prefaces, footnotes, glossaries [...] are among the numerous sites available to translators for repositioning themselves, their readers and other participants in time and space»⁴³⁸. With this regard, Saleh introduces her translation by openly explaining the reason why she decided to translate the Constitution:

After reading an English translation of the constitution that Egypt Independent published in stages beginning November 30, 2012, the day the constitutional assembly adopted the final draft, I was startled by critical comments that people who had read both the original and English versions made in the feedback section of the page. In hindsight I believe that this translation – an excellent one considering that it was produced on the fly – was actually of an earlier constitutional draft.

So I decided to do my own translation. Its source is a document I downloaded from AlJazeera Mubasher – or AlJazeera Live. AlJazeera Mubasher posted it on November 30, 2012, affirming that it was indeed the final draft.

So does the constitution deserve the bad reputation it has had among rights activists? I suggest you judge for yourself!⁴³⁹

From the preceding introduction, it is possible to conclude that Saleh decided to translate the Constitution because she was surprised by the generally negative and critical reactions to the approval of the Constitution. In the last paragraph, the rhetorical question: «So does the constitution deserve the bad reputation it has had among rights activists?», appears to be conducive to conclude that she generally

⁴³⁸ All citations from Baker, 2006:327,0/630.

⁴³⁹ Saleh, <http://niviansaleh.info/2013/02/09/egypt-constitution-english-2/>, last accessed: 21/02/2015. Underlined words are hyperlinked.

thinks that rights activists who criticised the Constitution overstated its failing to respect human rights.

Another interesting reflection on the formal plane is her choice to make the translation hyperlinked so that one could navigate within and outside the website to easily reach other texts related to the debate. Such feature suggests that readers could be free to choose the topics they are interested into and opens up to the possibility to reconstruct the debate over the constitution in a more independent fashion. This sense of openness to opinion formation is also present in her final invitation: «I suggest you [judge for yourself!](#)». However, this aspect contributes to establish a sense of freedom of choice that is also fostered by the idea that Saleh's translation is a transparent and objective rendition. Readers are thus encouraged to assume that her translation is the direct equivalent of the Egyptian Constitution.

The second sets of reflections are more specifically related to the translation of Article 6 in Chapter 1 of the Constitution in which the form of government is defined as based on the 'principles of democracy and *shūrā*, and citizenship'⁴⁴⁰. Nivien Saleh's translation of those words is the following: «based on the principles of democracy, consultation ([shura](#)), and citizenship», with the bracketed word 'shura' hyperlinked and sending to the English Wikipedia page for 'shura'. It appears to be significant to consider Saleh's translation of these words with reference to the feature of 'relativity' or 'hermeneutic composability' mentioned above. Baker argues that translators «necessarily reconstruct narratives by weaving together relatively or considerably new configurations in every act of translation». As a consequence, translators, according to their personal standing with regard to the text that they have to translate, choose the appropriate strategy to support or question the narratives inscribed in the source text. To this extent, translating the Constitution into another language and culture «inevitably results in a form of 'contamination', whereby the original narrative itself may be threatened with dilution or change». On the other hand, however, it is not always the case that keeping some concepts unchanged in the source language would not limit their loss of meaning, since readers of the translated texts, will try to find a consistent interpretation of such unknown foreign terms. In this sense,

⁴⁴⁰ Mashrou' dustour al-Jumhuriyya Misr al-'Arabiyya: 6. My translation.

retaining key concepts in a foreign language cannot suppress relationality and its consequences. For one thing, foreign words simply get pressed into service as another resource for addressing existing needs, as elaborated in local narratives⁴⁴¹.

Far from considering such process that we could call cultural translation good or bad in itself, Baker argues that «relationality functions both as a constraint and as a resource for elaborating new narratives»⁴⁴². In this sense, «the use of this one element from the narrative world of the target culture triggers a set of interpretations that are a function of its own relational context in the public narratives of the target readers»⁴⁴³. In the case of Saleh's translation of the Constitution, it seems plausible to say that she translates 'shura' with 'consultation', to provide an immediate meaning to the readers, so that they can directly relate the word 'consultation' to the similar 'democracy' in terms of their cultural context. Moreover, in order to limit contamination of an Islamic politically-relevant term, she adds in brackets the transliterated Arabic word 'shura'. Furthermore, since the Arabic word could sound foreign, but still not necessarily Islamic and political to some readers, she also hyperlinks the word sending it to the Wikipedia explanation of 'shūrā'. It thus seems reasonable to assume that in providing a translation of 'shūrā' as 'consultation', while still introducing reference to the Islamic principles more explicitly, Saleh is attempting to further disseminate the debate that stemmed from the comparison between democracy and *shura* that could be unknown to other people.

To provisionally sum up the analysis carried out so far, it could be concluded that, based on formal and substantive findings, Saleh's translation of the Egyptian Constitution conveys a notion of democracy that supports the public narrative of the Muslim Brothers.

In the next paragraph, the analysis carried out so far will be placed into a broader context to show the consequences of such politics of translation and to highlight the import and relevance of the translational study of political concepts.

⁴⁴¹ All citations Baker, 2006:207,8/630.

⁴⁴² Baker, 2006:216,2/630.

⁴⁴³ Baker, 2006:210,6/630.

3.3.3 Concluding remarks on the analysis

Democracy nowadays has become a undisputable concept that, to a greater or lesser extent, influences political systems throughout the world. In a more inclusive fashion, democracy is considered a universal value that everybody should pursue and foster in order to gain freedom and equality. In this sense, only democratic regimes, states and governments are thought to grant freedom and equality to their citizens, also resulting to be the only good political institutions. The standards that anyone should abide by in order to be deemed democratic are devised according to the normative political theory of liberal democracy. Such notion of democracy proposes to evaluate the degree of democracy of a country based on what are claimed to be objective and value-free standards, ultimately arguing for their compatibility with the whole variety of differences and values globally. However, when such standards have come to be applied with the aim of democratising other countries, various difficulties and considerable resistance have arisen, also uncovering problems in dealing with other kinds of internal 'national' diversities.

Even if the concept of democracy has always been a contested one, a new wave of criticisms was initiated in the late twentieth century, proposing to redefine such standards in a more inclusive way. This was the case with the notion of deliberative and participatory democracy, Bell's concept of illiberal democracy and the notion of Islamic democracy in the Middle East; as well as the questioning of the normative political theory by the Indian and the Latin American subaltern groups.

In the present work, a translational approach has been used to study how such criticisms try to gain more relevance in the international arena, thus attempting to redefine the notion of democracy in a more inclusive manner. With this regard, the process of redefinition of the concept of democracy has been examined through translation and transfer into different cultural settings. What follows is a brief account of the outcomes produced by translational analysis of a single case, namely the concept of democracy in the 2012 Egyptian Constitution and in its translation into English by doctor Nivien Saleh.

The case considered here shows one of the possible ways in which the universal secular notion of democracy can be inscribed into a local political context, namely the

Egyptian constitutional narrative into Arabic, thus being also partly redefined and adjusted to local political demands. Furthermore, its retranslation into English has been studied as a means to propose a concept of democracy, reshaped by a different political understanding, so that it could survive at an international level and get to influence the concept of universal secular democracy. Such process is visually represented in Figure 1 below and can be summed up as follows, along two loosely defined trajectories.

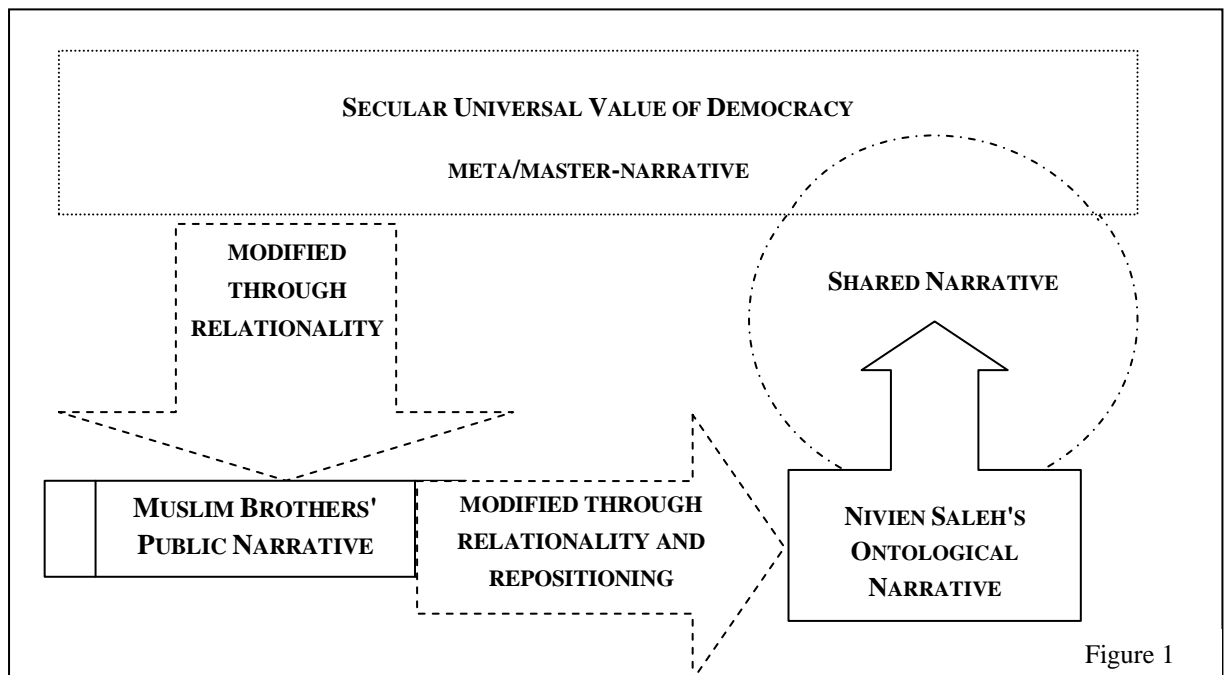


Figure 1

Firstly, the meta-narrative of democracy as a secular universal value that influences the notion of good government of each individual, in Egypt, affects political thinkers in the twentieth century. Such political scholars and intellectuals produce different public and collective narratives to adapt the notion of democracy as a universal secular value to the current political situation of the country. One of such public narratives is that of the Society of the Muslim Brothers, which, since its founding by Hasan Al-Banna in 1928 and throughout the twentieth century, has undergone changing fortunes. Having been constituted as a mass movement inspired by the return to the principles of Islam in order to counter the cultural and political profligacy of modernization, the Society of the Muslim Brothers has gradually evolved into a proper political party, highly knowledgeable about procedural electoral

politics. Further than that, the Muslim Brothers have created a public narrative that is deeply connected with the emerging Islamic liberal thought, while seeking compatibility of Islamic principles with democracy. Their current public narrative is thus disseminated to a large part of the population and strengthened thanks to the engagement of grassroots cultural, religious and political movements during the 1980s and 1990s. Such electoral politics has brought the Muslim Brothers to be the strongest opposition party in 2011, and, after the Egyptian Revolution, it has allowed the Freedom and Justice Party to win the presidential elections with their candidate Muhammad Morsi. As a result, the Muslim Brothers, inspired by liberal political thought, in the 2012 Egyptian Constitution have resorted to relationality to propound a form of government based on the principles of democracy and *shūrā*. Such document results to be in line with their public narrative of compatibility and officially legitimates their Islamic political import.

The second narrative line entails the translation of the 2012 Egyptian Constitution by the German-Egyptian scholar Nivien Saleh. Following her blended Islamic and secular European political convictions on democracy, and agreeing on the worth of the Muslim Brothers' public narrative, Saleh decides to create an English version of the Constitution in her personal professional website. Such translation aims at making the 2012 Egyptian Constitution more accessible to its detractors, hoping to provide a more informed and comprehensive account of such public narrative. The Egyptian Constitution has thus been translated into English and devised in order to foster its dissemination through the narrative features of repositioning and relativity in translation. With regard to repositioning, Saleh has openly explained the reason for translating the Constitution and has created a broadly hyperlinked version of the document that includes further information on traditional Islamic political concepts and on the ongoing debate on the 2012 Egyptian Constitution. As for the translation of the article related to the form of government based on the principles of democracy and *shūrā*, she has provided an educational version in which an English term 'consultation' is accompanied by the transliterated and bracketed 'shura', hyperlinked to its English Wikipedia explanation. Considering that Saleh works at an American prominent academic institution with a focus on Global Management, in which she is an Assistant Professor of Global Studies, her translation of the Egyptian Constitution

could be plausibly considered as an example of resistant ontological narrative. This is because in a traditional American academic setting the mainstream notion of democracy could be expected to be a secularised one, usually incompatible with Islamic principles. Finally, her intervention in support of the Muslim Brothers' public narrative could be well inscribed into a developing shared narrative that accepts 'moderate' Islamist political thought as a relevant political interlocutor with mainstream liberal democracy, with which, given her initial statements on her personal website, she is expected to be in close contact. In this sense, she could also be considered to be in a favourable position to influence the ongoing process of redefinition of the meta-narrative of secular universal democracy based on current Islamic liberal thought that, to varying degrees, purports the compatibility of Islamic and democratic principles.

Conclusions

The ongoing debate over the compatibility of Islam with democracy and about the possibility to carry on the process of democratisation in the Middle East in general and in the Arab countries in particular encompasses a variety of positions, opinions and convictions¹. The present work does not aim at demonstrating the validity of any of such stances, but it rather assumes that it is impossible and yet at the same time of little help to find out whether such political, cultural and religious concepts are compatible or not. In this sense, it seems more interesting to assume that their compatibility can be both argued for and against at the same time, depending on the political and economic demands of local groups and individuals.

Drawing on such assumption, this work rather suggests that firstly the question of compatibility presupposes the will to extend certain democratic models and concepts to contexts in which such forms of government are not perceived to be present and operating.

Secondly, such transfer of political concepts into different cultural settings should not be considered as a value-free linguistic translation, nor as a neutral way to enhance common political understanding or promote the common good. Rather, the very fact that such supposedly scientific equivalence is ensured and perceived to be as such is a consequence of the political imports of translation. With this regard, equivalence is illusorily established to extend the meaning of a concept to other contexts also determining a change in its descriptive potentials. This also entails a will to control what is recognised as other which exists not only in the economic, cultural, and political fields, but first and foremost in language.

In his 1970 paper 'Concept Misformation in Comparative Politics'², Giovanni Sartori argues against what he calls 'conceptual stretching, or straining' in the comparative studies of political concepts. According to him, the use of vague and loosely distinct categories devised by social scientists to define political concepts and ultimately to include foreign contexts and experiences denotes a lack of awareness in research methodology. In his view, this process would result in such indeterminacy that might

¹ Owen, 1992; Zaki, 1995; Esposito & Voll, 1996; Salamé, 2001; Leca, 2001; Fahmy, 2002; Browsers, 2009; Diamond, 2010; Zubaida, 2011; Pioppi, 2011, 2014; Corrao & Maffettone, 2014.

² Sartori, 1970.

make political concepts lose their original meaning thus being of little use for empirical research.

From a linguistics perspective, however, a language's tendency to change could also be interpreted as a way of adjusting words to the changing world in which individuals live. Political scientists, as any other individuals, might feel the need to rediscuss traditional categories in order to include those differences that they perceive to be politically relevant³. Language change, as well as the ongoing redefinition of categories, could thus be considered as an incessant process of modification that contributes to the establishment and extension of certain politically-relevant values.

In addition, as also Sartori puts it, the will to extend and contaminate other cultural contexts could be conceived as a means to control otherness and newness. Such determinations and actualisations of language in translation however should not only be considered part of a neocolonial imposition coming from the most powerful countries to the detriment of the colonised ones, but rather as a two-way strategy for the political exchange of meanings and political significance as well as power and resources⁴.

With this regard, even though it is possible to recognise an asymmetrical distribution of power, strategies of resistance should not be disregarded nor underrated since they make it possible to negotiate the meaning of key internationally-recognised political concepts⁵, thus contributing to change, or, as Sartori would put it, stretch the shared meaning of a concept. The case study considered in this work is only one example of how the renegotiation of meaning takes place in ways that, despite their revealing

³ As an example, Brown (2012) appears to echo the postcolonial and subaltern criticisms to normative political theory, when he criticises the introduction of «normative connotations of democracy into political analysis». With this regard, he propounds a cautious application of the mainstream definition of democracy that is too simplistically and definitively described as «a result of competitive elections with widespread suffrage». Rather, he seems to stretch such definition to include Islamist political movements that, even in the absence of such preconditions, engage in grassroots consultation and political discussion (All citations Brown, 2012:217).

⁴ For instance, Browsers (2006) calls for a different transcultural or cross-cultural approach in Comparative Political Thought to describe a «less unidirectional transformative process». In her view, the change of political concepts in cross-cultural encounters is usually accounted for as a 'partial assimilation' (Dallmayr, 1996, in Browsers, 2006) lacking «the other half of this cultural borrowing: the activity and efforts on the part of those who translate and transport concepts cross-culturally, and in a way that leaves neither the concept nor its new home unchanged» (All citations Browsers, 2006:216).

⁵ Esposito & Voll, 1996 state the importance to learn from the competing definitions of democracy, including the notion of 'Islamic democracy'.

patterns of asymmetrical power relations, cannot be completely predicted, determined, and controlled.

الجمعية التأسيسية
لوضع مشروع دستور جديد للبلاد
**

مشروع دستور
جمهورية مصر العربية

(الجمعة: 16 من محرم سنة 1434هـ
الموافق: 30 من نوفمبر سنة 2012 م)

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ديباجة وثيقة الدستور

نحن جماهير شعب مصر،

بسم الله الرحمن الرحيم ويعونه،

هذا هو دستورنا.. وثيقة ثورة الخامس والعشرين من يناير، التي فجرها شبابنا،
والتف حولها شعبنا، وانحازت إليها قواتنا المسلحة.
بعد أن رفضنا فى ميدان التحرير وفى طول البلاد وعرضها كل صور الظلم
والقهر والطغيان والاستبداد والإقصاء والنهب والفساد والاحتكار.
وجاهرنا بحقوقنا الكاملة "عيش، حرية، عدالة اجتماعية، كرامة إنسانية"،
مشفوعة بدماء شهدائنا وآلام مصابينا وأحلام أطفالنا وجهاد رجالنا ونسائنا.
واستعدنا أجواء حضارتنا العظيمة وعبق تاريخنا الزاهر؛ فأقمنا أعرق دولة على
ضفاف النيل الخالد، عرفت معانى المواطنة والمساواة وعدم التمييز، وقدمت للعالم أول
أبجديات الكتابة، وأطلقت عقيدة التوحيد ومعرفة الخالق، واحتضنت أنبياء الله ورسالاته
السماوية، وزينت صفحات التاريخ الإنساني بمواكب الإبداع.
واستمرارا لثورتنا الطاهرة التي وحدت المصريين على كلمة سواء، لبناء دولة
ديمقراطية حديثة؛ نعلن تمسكنا بالمبادئ التالية:
أولاً: الشعب مصدر السلطات؛ يؤسسها، وتستمد منه شرعيتها، وتخضع لإرادته..
ومسئولياتها وصلاحياتها أمانة تحملها، لا امتيازات تتحصن خلفها.
ثانياً: نظام حكم ديمقراطى؛ يرسخ التداول السلمى للسلطة، ويعمق التعددية السياسية
والحزبية، ويضمن نزاهة الانتخابات، وإسهام الشعب فى صنع القرارات الوطنية.
ثالثاً: كرامة الفرد من كرامة الوطن.. ولا كرامة لوطن لا تكرم فيه المرأة؛ فالنساء
شقائق الرجال، وشريكات فى المكتسبات والمسئوليات الوطنية.
رابعاً: الحرية حق، فكرا وإبداعا ورأيا، وسكنا وأملاكا وحلاً وترحالاً، وضع الخالق
أصولها فى حركة الكون وفطرة البشر.
خامساً: المساواة وتكافؤ الفرص بين الجميع: مواطنين ومواطنات؛ فلا تمييز، ولا
وساطة، ولا محاباة، فى الحقوق والواجبات.

سادسا: سيادة القانون أساس حرية الفرد، ومشروعية السلطة، وخضوع الدولة للقانون؛ فلا يعلو صوت على قوة الحق، والقضاء مستقل شامخ، صاحب رسالة سامية في حماية الدستور وإقامة موازين العدالة وصون الحقوق والحريات.

سابعا: الوحدة الوطنية فريضة، وركيزة بناء الدولة المصرية الحديثة وانطلاقتها نحو التقدم والتنمية؛ ترسخها قيم التسامح والاعتدال والوسطية وكفالة الحقوق والحريات لجميع المواطنين دون تفرقة بين أبناء الجماعة الوطنية.

ثامنا: الدفاع عن الوطن شرف وواجب؛ وقواتنا المسلحة مؤسسة وطنية محترفة محايدة لا تتدخل في الشأن السياسى، وهى درع البلاد الواقى.

تاسعا: الأمن نعمة كبرى؛ تسهر عليه شرطة تعمل فى خدمة الشعب وحمايته، وفرض موازين العدالة، فلا عدل بلا حماية، ولا حماية بغير مؤسسات أمنية تحترم كرامة الإنسان وسيادة القانون.

عاشرا: الوحدة أمل الأمة العربية؛ نداء تاريخ ودعوة مستقبل وضرورة مصير، يعضدها التكامل والتآخى مع دول حوض النيل والعالم الإسلامى الامتداد الطبيعى لعبقريّة موقع مصر ومكانها على خريطة الكون.

حادى عشر: ريادة مصر الفكرية والثقافية، تجسيد لقواها الناعمة ونموذج عطاء بحرية مبدعيها ومفكريها، وجامعاتها، ومجامعها العلمية واللغوية ومراكزها البحثية، وصحافتها وفنونها وآدابها وإعلامها، وكنيستها الوطنية، وأزهرها الشريف الذى كان على امتداد تاريخه قواما على هوية الوطن، راعيا للغة العربية الخالدة، والشريعة الإسلامية الغراء، ومنازة للفكر الوسطى المستتير.

نحن جماهير شعب مصر،

إيماننا بالله ورسالاته،

وعرفانا بحق الوطن والأمة علينا،

واستشعارًا لمسئوليتنا الوطنية والإنسانية،

نقتدى ونلتزم بالثوابت الواردة بهذا الدستور، الذى نقبله ونمنحه لأنفسنا، مؤكداً عزمنا الأكيد على العمل به والدفاع عنه، وعلى حمايته واحترامه من قبل جميع سلطات الدولة والكافة.

الباب الأول: مقومات الدولة والمجتمع

الفصل الأول

المقومات السياسية

المادة (1)

جمهورية مصر العربية دولة مستقلة ذات سيادة، موحدة لا تقبل التجزئة، ونظامها ديمقراطي.

والشعب المصرى جزء من الأمتين العربية والإسلامية، ويعتز بانتمائه لحوض النيل والقارة الأفريقية وبامتداده الآسيوى، ويشترك بإيجابية فى الحضارة الإنسانية.

المادة (2)

الإسلام دين الدولة، واللغة العربية لغتها الرسمية، ومبادئ الشريعة الإسلامية المصدر الرئيسى للتشريع.

المادة (3)

مبادئ شرائع المصريين من المسيحيين واليهود المصدر الرئيسى للتشريعات المنظمة لأحوالهم الشخصية، وشئونهم الدينية، واختيار قياداتهم الروحية.

المادة (4)

الأزهر الشريف هيئة إسلامية مستقلة جامعة، يختص دون غيره بالقيام على كافة شئونه، ويتولى نشر الدعوة الإسلامية وعلوم الدين واللغة العربية فى مصر والعالم. ويؤخذ رأى هيئة كبار العلماء بالأزهر الشريف فى الشئون المتعلقة بالشريعة الإسلامية.

وتكفل الدولة الاعتمادات المالية الكافية لتحقيق أغراضه.

وشيخ الأزهر مستقل غير قابل للعزل، يحدد القانون طريقة اختياره من بين أعضاء هيئة كبار العلماء.

وكل ذلك على النحو الذى ينظمه القانون.

المادة (5)

السيادة للشعب يمارسها ويحميها، ويصون وحدته الوطنية، وهو مصدر السلطات؛ وذلك على النحو المبين في الدستور.

المادة (6)

يقوم النظام السياسي على مبادئ الديمقراطية والشورى، والمواطنة التي تسوى بين جميع المواطنين في الحقوق والواجبات العامة، والتعددية السياسية والحزبية، والتداول السلمي للسلطة، والفصل بين السلطات والتوازن بينها، وسيادة القانون، واحترام حقوق الإنسان وحرياته؛ وذلك كله على النحو المبين في الدستور. ولا يجوز قيام حزب سياسي على أساس التفرقة بين المواطنين؛ بسبب الجنس أو الأصل أو الدين.

المادة (7)

الحفاظ على الأمن القومي، والدفاع عن الوطن وحماية أرضه، شرف وواجب مقدس. والتجنيد إجباري؛ وفقا لما ينظمه القانون.

الفصل الثانى: المقومات الاجتماعية والأخلاقية

المادة (8)

تكفل الدولة وسائل تحقيق العدل والمساواة والحرية، وتلتزم بتسيير سبل التراحم والتكافل الاجتماعى والتضامن بين أفراد المجتمع، وتضمن حماية الأنفس والأعراض والأموال، وتعمل على تحقيق حد الكفاية لجميع المواطنين؛ وذلك كله فى حدود القانون.

المادة (9)

تلتزم الدولة بتوفير الأمن والطمأنينة وتكافؤ الفرص لجميع المواطنين، دون تمييز.

المادة (10)

الأسرة أساس المجتمع، قوامها الدين والأخلاق والوطنية. وتحرص الدولة والمجتمع على الالتزام بالطابع الأصيل للأسرة المصرية، وعلى تماسكها واستقرارها، وترسيخ قيمها الأخلاقية وحمايتها؛ وذلك على النحو الذى ينظمه القانون.

وتكفل الدولة خدمات الأمومة والطفولة بالمجان، والتوفيق بين واجبات المرأة نحو أسرتها وعملها العام.

وتولى الدولة عناية وحماية خاصة للمرأة المعيلة والمطلقة والأرملة.

المادة (11)

ترعى الدولة الأخلاق والآداب والنظام العام، والمستوى الرفيع للتربية والقيم الدينية والوطنية، والحقائق العلمية، والثقافة العربية، والتراث التاريخى والحضارى للشعب؛ وذلك وفقا لما ينظمه القانون.

مادة (12)

تحمى الدولة المقومات الثقافية والحضارية واللغوية للمجتمع، وتعمل على تعريب التعليم والعلوم والمعارف.

المادة (13)

إنشاء الرتب المدنية محظور.

الفصل الثالث: المقومات الاقتصادية

المادة (14)

يهدف الاقتصاد الوطنى إلى تحقيق التنمية المطردة الشاملة، ورفع مستوى المعيشة وتحقيق الرفاه، والقضاء على الفقر والبطالة، وزيادة فرص العمل والإنتاج والدخل القومى.

وتعمل خطة التنمية على إقامة العدالة الاجتماعية والتكافل، وضمان عدالة التوزيع، وحماية حقوق المستهلك، والمحافظة على حقوق العاملين، والمشاركة بين رأس المال والعمل فى تحمل تكاليف التنمية، والاقتسام العادل لعوائدها. ويجب ربط الأجر بالإنتاج، وتقريب الفوارق بين الدخل، وضمان حد أدنى للأجور والمعاشات يكفل حياة كريمة لكل مواطن، وحد أقصى فى أجهزة الدولة لا يستثنى منه إلا بناء على قانون.

المادة (15)

الزراعة مقوم أساسى للاقتصاد الوطنى، وتلتزم الدولة بحماية الرقعة الزراعية وزيادتها، وتعمل على تنمية المحاصيل والأصناف النباتية والسلالات الحيوانية والثروة السمكية وحمايتها، وتحقيق الأمن الغذائى، وتوفير متطلبات الإنتاج الزراعى وحسن إدارته وتسويقه، ودعم الصناعات الزراعية. وينظم القانون استخدام أراضى الدولة؛ بما يحقق العدالة الاجتماعية، ويحمى الفلاح والعامل الزراعى من الاستغلال.

المادة (16)

تلتزم الدولة بتنمية الريف والبادية، وتعمل على رفع مستوى معيشة الفلاحين وأهل البادية.

المادة (17)

الصناعة مقوم أساسى للاقتصاد الوطنى، وتحمى الدولة الصناعات الاستراتيجية، وتدعم التطور الصناعى، وتضمن توطین التقنيات الحديثة وتطبيقاتها. وترعى الدولة الصناعات الحرفية والصغيرة.

المادة (18)

الثروات الطبيعية للدولة ملك الشعب، وعوائدها حق له، تلتزم الدولة بالحفاظ عليها، وحسن استغلالها، ومراعاة حقوق الأجيال فيها. ولا يجوز التصرف في أملاك الدولة، أو منح امتياز باستغلالها، أو التزام مرفق عام، إلا بناء على قانون. وكل مال لا مالك له فهو ملك الدولة.

المادة (19)

نهر النيل وموارد المياه ثروة وطنية، تلتزم الدولة بالحفاظ عليها وتنميتها، ومنع الاعتداء عليها. وينظم القانون وسائل الانتفاع بها.

المادة (20)

تلتزم الدولة بحماية شواطئها وبحارها وممراتها المائية وبحيراتها، وصيانة الآثار والمحميات الطبيعية، وإزالة ما يقع عليها من تعديات.

المادة (21)

تكفل الدولة الملكية المشروعة بأنواعها العامة والتعاونية والخاصة والوقف، وتحميها؛ وفقا لما ينظمه القانون.

المادة (22)

للأموال العامة حرمة، وحمايتها واجب وطني على الدولة والمجتمع.

المادة (23)

ترعى الدولة التعاونيات بكل صورها، وتدعمها، وتكفل استقلالها.

المادة (24)

الملكية الخاصة مصونة، تؤدي وظيفتها الاجتماعية في خدمة الاقتصاد الوطني دون انحراف أو احتكار، وحق الإرث فيها مكفول. ولا يجوز فرض الحراسة عليها إلا في الأحوال المبينة في القانون، وبحكم قضائي؛ ولا تتزع إلا للمنفعة العامة، ومقابل تعويض عادل يُدفع مقدما. وذلك كله وفقا لما ينظمه القانون.

المادة (25)

تلتزم الدولة بإحياء نظام الوقف الخيري وتشجيعه.
وينظم القانون الوقف، ويحدد طريقة إنشائه وإدارة أمواله، واستثمارها، وتوزيع عوائده على مستحقيها؛ وفقا لشروط الواقف.

المادة (26)

العدالة الاجتماعية أساس الضرائب وغيرها من التكاليف المالية العامة.
ولا يكون إنشاء الضرائب العامة ولا تعديلها ولا إلغاؤها إلا بقانون، ولا يُعفى أحد من أدائها في غير الأحوال المبينة في القانون. ولا يجوز تكليف أحد بأداء غير ذلك من الضرائب والرسوم إلا في حدود القانون.

المادة (27)

للعاملين نصيب في إدارة المشروعات وفي أرباحها، ويلتزمون بتنمية الإنتاج والمحافظة على أدواته وتنفيذ خطته في وحداتهم الإنتاجية، وفقا للقانون.
ويكون تمثيل العمال في مجالس إدارة وحدات القطاع العام في حدود خمسين بالمائة من عدد الأعضاء المنتخبين في هذه المجالس. ويكفل القانون تمثيل صغار الفلاحين وصغار الحرفيين بنسبة لا تقل عن ثمانين بالمائة في عضوية مجالس إدارة الجمعيات التعاونية الزراعية والصناعية.

المادة (28)

تشجع الدولة الادخار، وتحمى المدخرات وأموال التأمينات والمعاشات.
وينظم القانون ذلك.

المادة (29)

لا يجوز التأميم إلا لاعتبارات الصالح العام، ويقانون، ومقابل تعويض عادل.

المادة (30)

المصادرة العامة للأموال محظورة.
ولا تجوز المصادرة الخاصة إلا بحكم قضائي.

الباب الثانى: الحقوق والحريات

الفصل الأول: الحقوق الشخصية

المادة (31)

الكرامة حق لكل إنسان، يكفل المجتمع والدولة احترامها وحمايتها.
ولا يجوز بحال إهانة أى إنسان أو ازدراؤه.

المادة (32)

الجنسية المصرية حق، وينظمه القانون.

المادة (33)

المواطنون لدى القانون سواء؛ وهم متساوون فى الحقوق والواجبات العامة، لا تمييز بينهم فى ذلك.

المادة (34)

الحرية الشخصية حق طبيعى؛ وهى مصونة لا تمس.

المادة (35)

فيما عدا حالة التلبس، لا يجوز القبض على أحد ولا تفتيشه ولا حبسه ولا منعه من التنقل ولا تقييد حريته بأى قيد إلا بأمر قضائى مسبب يستلزمه التحقيق.
ويجب أن يبلغ كل من تقييد حريته بأسباب ذلك كتابة خلال اثنتى عشرة ساعة، وأن يقدم إلى سلطة التحقيق خلال أربع وعشرين ساعة من وقت تقييد حريته؛ ولا يجرى التحقيق معه إلا فى حضور محاميه؛ فإن لم يكن نذب له محام.
ولكل من تقييد حريته، ولغيره، حق التظلم أمام القضاء من ذلك الإجراء والفصل فيه خلال أسبوع، وإلا وجب الإفراج حتما.
وينظم القانون أحكام الحبس الاحتياطى ومدته وأسبابه، وحالات استحقاق التعويض وأدائه عن الحبس الاحتياطى، أو عن تنفيذ عقوبة صدر حكم بات بإلغاء الحكم المنفذة بموجبه.

المادة (36)

كل من يقبض عليه، أو يحبس، أو تقيّد حرّيته بأى قيد، تجب معاملته بما يحفظ كرامته. ولا يجوز تعذيبه، ولا ترهيبه، ولا إكراهه، ولا إيذاؤه بدنياً أو معنوياً. ولا يكون حجزه ولا حبسه إلا في أماكن لائقة إنسانياً وصحياً، وخاضعة للإشراف القضائي.

ومخالفة شيء من ذلك جريمة يُعاقب مرتكبها، وفقاً للقانون. وكل قول صدر تحت وطأة أي مما تقدم، أو التهديد بشيء منه، يهدر ولا يعول عليه.

المادة (37)

السجن دار تأديب وتهذيب وإصلاح؛ يخضع للإشراف القضائي، ويحظر فيه كل ما ينافي كرامة الإنسان، أو يعرض صحته للخطر. وتُعنى الدولة بتأهيل المحكوم عليهم، وتيسر لهم سبل الحياة الكريمة بعد الإفراج عنهم.

المادة (38)

لحياة المواطنين الخاصة حرمة، وسريتها مكفولة. ولا يجوز مصادرة المراسلات البريدية والبرقية والإلكترونية والمحادثات الهاتفية وغيرها من وسائل الاتصال؛ ولا مراقبتها، ولا الاطلاع عليها إلا لمدة محددة، وفي الأحوال التي يبينها القانون، وبأمر قضائي مسبب.

المادة (39)

للمنازل حرمة. وفيما عدا حالات الخطر والاستغاثة، لا يجوز دخولها، ولا تفتيشها، ولا مراقبتها إلا في الأحوال المبينة في القانون، وبأمر قضائي مسبب يحدد المكان والتوقيت والغرض. ويجب تنبيه من في المنازل قبل دخولها أو تفتيشها.

المادة (40)

الحياة الآمنة حق تكفله الدولة لكل مقيم على أراضيها، ويحمي القانون الإنسان مما يهدده من ظواهر إجرامية.

المادة (41)

لجسد الإنسان حرمة، ويحظر الإتجار بأعضائه. ولا يجوز أن تجرى عليه التجارب الطبية أو العلمية بغير رضاه الحر الموثق، ووفقا للأسس المستقرة في العلوم الطبية، وعلى النحو الذى ينظمه القانون.

المادة (42)

حرية التنقل والإقامة والهجرة مكفولة.
ولا يجوز بحال إبعاد أي مواطن عن إقليم الدولة، ولا منعه من العودة إليه.
ولا يكون منعه من مغادرة الدولة، ولا فرض الإقامة الجبرية عليه إلا بأمر قضائي مسبب، ولمدة محددة.

الفصل الثاني: الحقوق المدنية والسياسية

المادة (43)

حرية الاعتقاد مصونة.

وتكفل الدولة حرية ممارسة الشعائر الدينية وإقامة دور العبادة للأديان السماوية؛ وذلك على النحو الذى ينظمه القانون.

المادة (44)

تُحظر الإساءة أو التعريض بالرسول والأنبياء كافة.

المادة (45)

حرية الفكر والرأى مكفولة.

ولكل إنسان حق التعبير عن رأيه بالقول أو الكتابة أو التصوير أو غير ذلك من وسائل النشر والتعبير.

المادة (46)

حرية الإبداع بأشكاله المختلفة حق لكل مواطن.

وتنهض الدولة بالعلوم والفنون والآداب، وترعى المبدعين والمخترعين، وتحمى إبداعاتهم وابتكاراتهم، وتعمل على تطبيقها لمصلحة المجتمع. وتتخذ الدولة التدابير اللازمة للحفاظ على التراث الثقافى الوطنى، وتعمل على نشر الخدمات الثقافية.

المادة (47)

الحصول على المعلومات والبيانات والإحصاءات والوثائق، والإفصاح عنها، وتداولها، حق تكفله الدولة لكل مواطن؛ بما لا يمس حرمة الحياة الخاصة، وحقوق الآخرين، ولا يتعارض مع الأمن القومى.

وينظم القانون قواعد إيداع الوثائق العامة وحفظها، وطريقة الحصول على المعلومات، والتظلم من رفض إعطائها، وما قد يترتب على هذا الرفض من مساءلة.

المادة (48)

حرية الصحافة والطباعة والنشر وسائر وسائل الإعلام مكفولة. وتؤدى رسالتها بحرية واستقلال لخدمة المجتمع والتعبير عن اتجاهات الرأى العام والإسهام فى تكوينه وتوجيهه فى إطار المقومات الأساسية للدولة والمجتمع والحفاظ على الحقوق والحريات والواجبات العامة، واحترام حرمة الحياة الخاصة للمواطنين ومقتضيات الأمن القومى؛ ويحظر وقفها أو غلقها أو مصادرتها إلا بحكم قضائى. والرقابة على ما تنشره وسائل الإعلام محظورة، ويجوز استثناء أن تفرض عليها رقابة محددة فى زمن الحرب أو التعبئة العامة.

المادة (49)

حرية إصدار الصحف وتملكها، بجميع أنواعها، مكفولة بمجرد الإخطار لكل شخص مصرى طبيعى أو اعتبارى. وينظم القانون إنشاء محطات البث الإذاعى والتليفزيونى ووسائل الإعلام الرقمية وغيرها.

المادة (50)

للمواطنين حق تنظيم الاجتماعات العامة والمواكب والتظاهرات السلمية، غير حاملين سلاحا، ويكون ذلك بناء على إخطار ينظمه القانون. وحق الاجتماعات الخاصة مكفول دون إخطار، ولا يجوز لرجال الأمن حضورها أو التتصت عليها.

المادة (51)

للمواطنين حق تكوين الجمعيات والمؤسسات الأهلية والأحزاب بمجرد الإخطار، وتمارس نشاطها بحرية، وتكون لها الشخصية الاعتبارية. ولا يجوز للسلطات حلها أو حل هيئاتها الإدارية إلا بحكم قضائى؛ وذلك على النحو المبين بالقانون.

المادة (52)

حرية إنشاء النقابات والاتحادات والتعاونيات مكفولة. وتكون لها الشخصية الاعتبارية، وتقوم على أساس ديمقراطي، وتمارس نشاطها بحرية، وتشارك في خدمة المجتمع وفي رفع مستوى الكفاءة بين أعضائها والدفاع عن حقوقهم. ولا يجوز للسلطات حلها أو حل مجالس إدارتها إلا بحكم قضائي.

المادة (53)

ينظم القانون النقابات المهنية، وإدارتها على أساس ديمقراطي، وتحديد مواردها، وطريقة مساءلة أعضائها عن سلوكهم في ممارسة نشاطهم المهني وفق مواثيق شرف أخلاقية. ولا تنشأ لتنظيم المهنة سوى نقابة مهنية واحدة. ولا يجوز للسلطات حل مجلس إدارتها إلا بحكم قضائي، ولا تفرض عليها الحراسة.

المادة (54)

لكل شخص حق مخاطبة السلطات العامة كتابة وبتوقيعه. ولا تكون مخاطبتها باسم الجماعات إلا للأشخاص الاعتبارية.

المادة (55)

مشاركة المواطن في الحياة العامة واجب وطني؛ ولكل مواطن حق الانتخاب، والترشح، وإبداء الرأي في الاستفتاء. وينظم القانون مباشرة هذه الحقوق. وتلتزم الدولة بإدراج اسم كل مواطن بقاعدة بيانات الناخبين دون طلب، متى توافرت فيه شروط الناخب. وتكفل الدولة سلامة الاستفتاءات والانتخابات وحيدتها ونزاهتها. وتدخل أجهزتها بالتأثير في شيء من ذلك جريمة يعاقب عليها القانون.

المادة (56)

ترعى الدولة مصالح المصريين المقيمين بالخارج، وتحميهم، وتكفل حقوقهم وحيرياتهم، وتعينهم على أداء واجباتهم العامة نحو الدولة والمجتمع المصري، وتشجع إسهامهم في تنمية الوطن.

وينظم القانون مشاركتهم في الانتخابات والاستفتاءات.

المادة (57)

تمنح الدولة حق اللجوء للأجانب المحرومين في بلادهم من الحقوق والحريات العامة التي يكفلها الدستور .

ويحظر تسليم اللاجئين السياسيين .

وكل ذلك وفقا لما ينظمه القانون .

الفصل الثالث: الحقوق الاقتصادية والاجتماعية

المادة (58)

لكل مواطن الحق في التعليم عالي الجودة، وهو مجاني بمراحله المختلفة في كل مؤسسات الدولة التعليمية، وإلزامي في مرحلة التعليم الأساسي، وتتخذ الدولة كافة التدابير لمد الإلزام إلى مراحل أخرى.

وتُعنى الدولة بالتعليم الفني، وتشجعه، وتشرف على التعليم بكل أنواعه، وتخصص له نسبة كافية من الناتج القومي.

وتلتزم جميع المؤسسات التعليمية العامة والخاصة والأهلية وغيرها بخطة الدولة التعليمية وأهدافها؛ وذلك كله بما يحقق الربط بين التعليم وحاجات المجتمع والإنتاج.

المادة (59)

حرية البحث العلمي مكفولة. والجامعات والمجامع العلمية واللغوية ومراكز البحث العلمي مستقلة، وتخصص لها الدولة نسبة كافية من الناتج القومي.

المادة (60)

اللغة العربية مادة أساسية في مراحل التعليم المختلفة بكل المؤسسات التعليمية. والتربية الدينية والتاريخ الوطني مادتان أساسيتان في التعليم قبل الجامعي بكل أنواعه.

وتلتزم الجامعات بتدريس القيم والأخلاق اللازمة للتخصصات العلمية المختلفة.

المادة (61)

تلتزم الدولة بوضع خطة شاملة للقضاء على الأمية وتجفيف منابعها لكافة الأعمار، من الذكور والإناث. وتتولى تنفيذها بمشاركة المجتمع خلال عشر سنوات من تاريخ العمل بالدستور.

المادة (62)

الرعاية الصحية حق لكل مواطن، تخصص له الدولة نسبة كافية من الناتج القومي. وتلتزم الدولة بتوفير خدمات الرعاية الصحية، والتأمين الصحى وفق نظام عادل على الجودة، ويكون ذلك بالمجان لغير القادرين. وتلتزم جميع المنشآت الصحية بتقديم العلاج بأشكاله المختلفة لكل مواطن فى حالات الطوارئ أو الخطر على الحياة. وتشرف الدولة على كافة المنشآت الصحية، وتتحقق من جودة خدماتها، وتراقب جميع المواد والمنتجات ووسائل الدعاية المتصلة بالصحة؛ وتصدر التشريعات وتتخذ كافة التدابير التى تحقق هذه الرقابة.

المادة (63)

لكل شخص الحق فى بيئة صحية سليمة. وتلتزم الدولة بصون البيئة وحمايتها من التلوث، واستخدام الموارد الطبيعية؛ بما يكفل عدم الإضرار بالبيئة، والحفاظ على حقوق الأجيال فيها.

المادة (64)

العمل حق وواجب وشرف لكل مواطن، تكفله الدولة على أساس مبادئ المساواة والعدالة وتكافؤ الفرص. ولا يجوز فرض أى عمل جبرا إلا بمقتضى قانون. ويعمل الموظف العام فى خدمة الشعب، وتتيح الدولة الوظائف العامة للمواطنين على أساس الجدارة، دون محاباة أو وساطة، ومخالفة ذلك جريمة يعاقب عليها القانون. وتكفل الدولة حق كل عامل فى الأجر العادل والإجازات، والتقاعد والتأمين الاجتماعى، والرعاية الصحية، والحماية ضد مخاطر العمل، وتوافر شروط السلامة المهنية فى أماكن العمل؛ وفقا للقانون. ولا يجوز فصل العامل إلا فى الحالات المنصوص عليها فى القانون. والإضراب السلمى حق، وينظمه القانون.

المادة (65)

تكرم الدولة شهداء ثورة الخامس والعشرين من يناير وغيرهم من شهداء الحرب والواجب الوطنى والمصابين فيها. وتكفل الرعاية اللازمة لأسرهم، وللمصابين، وللمحاربين القدامى، ولأسر المفقودين فى الحرب وما فى حكمها. ويكون لهم ولأبنائهم ولزوجاتهم الأولوية فى فرص العمل. وكل ذلك وفقاً لما ينظمه القانون.

المادة (66)

تكفل الدولة خدمات التأمين الاجتماعى. ولكل مواطن الحق فى الضمان الاجتماعى؛ إذا لم يكن قادراً على إعالة نفسه أو أسرته، فى حالات العجز عن العمل أو البطالة أو الشيخوخة، وبما يضمن لهم حد الكفاية.

المادة (67)

تعمل الدولة على توفير معاش مناسب لصغار الفلاحين والعمال الزراعيين والعمالة غير المنتظمة، ولكل من لا يتمتع بنظام التأمين الاجتماعى. وينظم القانون ذلك.

المادة (68)

المسكن الملائم والماء النظيف والغذاء الصحى حقوق مكفولة. وتتبنى الدولة خطة وطنية للإسكان؛ تقوم على العدالة الاجتماعى، وتشجيع المبادرات الذاتية والتعاونيات الإسكانى، وتنظيم استخدام أراضى الدولة لأغراض العمران؛ بما يحقق الصالح العام، ويحافظ على حقوق الأجيال.

المادة (69)

ممارسة الرياضة حق للجميع. وعلى مؤسسات الدولة والمجتمع اكتشاف الموهوبين رياضياً ورعايتهم، واتخاذ ما يلزم من تدابير لتشجيع ممارسة الرياضة.

المادة (70)

لكل طفل، فور الولادة، الحق فى اسم مناسب، ورعاية أسرية، وتغذية أساسية، ومأوى، وخدمات صحية، وتنمية دينية ووجدانية ومعرفية.

وتلتزم الدولة برعايته وحمايته عند فقدانه أسرته، وتكفل حقوق الطفل المعاق وتأهيله واندماجه فى المجتمع.

ويحظر تشغيل الطفل، قبل تجاوزه سن الإلزام التعليمى، فى أعمال لا تناسب عمره، أو تمنع استمراره فى التعليم.

ولا يجوز احتجاز الطفل إلا لمدة محددة، وتوفر له المساعدة القانونية، ويكون احتجازه فى مكان مناسب؛ يراعى فيه الفصل بين الجنسين، والمراحل العمرية، ونوع الجريمة، والبعد عن أماكن احتجاز البالغين.

المادة (71)

تكفل الدولة رعاية النشء والشباب، وتأهيلهم وتنميتهم روحيا وخلقيا وثقافيا وعلميا وبدنيا ونفسيا واجتماعيا واقتصاديا، وتمكينهم من المشاركة السياسية الفاعلة.

المادة (72)

تلتزم الدولة برعاية ذوى الإعاقة صحيا وتعليميا واقتصاديا واجتماعيا، وتوفر لهم فرص العمل، وترتقى بالثقافة الاجتماعية نحوهم، وتهيئ المرافق العامة بما يناسب احتياجاتهم.

المادة (73)

يُحظر كل صور القهر، والاستغلال القسرى للإنسان، وتجارة الجنس.
ويُجرم القانون كل ذلك.

الفصل الرابع: ضمانات حماية الحقوق والحريات

المادة (74)

سيادة القانون أساس الحكم فى الدولة.
واستقلال القضاء وحصانة القضاة ضمانتان أساسيتان لحماية الحقوق
والحريات.

المادة (75)

التقاضى حق مصون ومكفول للناس كافة.
وتلتزم الدولة بتقريب جهات التقاضى وسرعة الفصل فى القضايا.
ويحظر تحصين أى عمل أو قرار إدارى من رقابة القضاء.
ولا يحاكم شخص إلا أمام قاضيه الطبيعى؛ والمحاكم الاستثنائية محظورة.

المادة (76)

العقوبة شخصية، ولا جريمة ولا عقوبة إلا بنص دستورى أو قانونى، ولا توقع
عقوبة إلا بحكم قضائى، ولا عقاب إلا على الأفعال اللاحقة لتاريخ نفاذ القانون.

المادة (77)

فيما عدا الأحوال التى يحددها القانون، لا تقام الدعوى الجنائية إلا بأمر من
جهة قضائية مختصة.
والمتهم برئ حتى تثبت إدانته فى محاكمة قانونية عادلة تكفل له فيها ضمانات
الدفاع؛ وكل متهم فى جنائية يجب أن يكون له محام يدافع عنه، ويحدد القانون
الجنح التى يجب أن يكون للمتهم محام فيها.
وينظم القانون استئناف الأحكام الصادرة فى جنحة أو جنائية.
وتوفر الدولة الحماية للمجنى عليهم والشهود والمتهمين والمبلغين عند
الاقتضاء.

المادة (78)

حق الدفاع أصالة أو بالوكالة مكفول.

ويضمن القانون لغير القادرين ماليا وسائل الالتجاء إلى القضاء، والدفاع أمامه عن حقوقهم.

المادة (79)

تصدر الأحكام وتنفذ باسم الشعب. وامتناع الموظف العام المختص عن تنفيذها أو تعطيل تنفيذها جريمة يعاقب عليها القانون؛ وللمحكوم له في هذه الحالة حق رفع الدعوى الجنائية مباشرة إلى المحكمة المختصة.

المادة (80)

كل اعتداء على أى من الحقوق والحريات المكفولة في الدستور جريمة لا تسقط عنها الدعوى الجنائية ولا المدنية بالتقادم، وتكفل الدولة تعويضاً عادلاً لمن وقع عليه الاعتداء.

وللمضور إقامة الدعوى الجنائية عنها بالطريق المباشر.

وللمجلس القومى لحقوق الإنسان إبلاغ النيابة العامة عن أى انتهاك لهذه الحقوق، وله أن يتدخل في الدعوى المدنية منضماً إلى المضور، وأن يطعن لمصلحته في الأحكام.

المادة (81)

الحقوق والحريات اللصيقة بشخص المواطن لا تقبل تعطيلاً ولا انتقاصاً. ولا يجوز لأى قانون ينظم ممارسة الحقوق والحريات أن يقيد بها بما يمس أصلها وجوهرها.

وتُمارس الحقوق والحريات بما لا يتعارض مع المقومات الواردة في باب الدولة والمجتمع بهذا الدستور.

الباب الثالث: السلطات العامة

الفصل الأول: السلطة التشريعية

الفرع الأول: أحكام مشتركة

المادة (82)

تتكون السلطة التشريعية من مجلس النواب ومجلس الشورى.
ويمارس كل منهما سلطاته على النحو المبين فى الدستور.

المادة (83)

لا يجوز الجمع بين عضوية مجلس النواب ومجلس الشورى؛ ويحدد القانون حالات عدم الجمع الأخرى.

المادة (84)

فيما عدا الحالات الاستثنائية التى يحددها القانون، يتفرغ عضو مجلس النواب أو الشورى لمهام العضوية، ويحتفظ له بوظيفته أو عمله؛ وذلك وفقا لما ينظمه القانون.

المادة (85)

ينوب العضو عن الشعب بأسره، ولا تقيد نيابته بقيد ولا شرط.

المادة (86)

يؤدى العضو أمام مجلسه، قبل أن يباشر عمله، اليمين الآتية: «أقسم بالله العظيم أن أحافظ مخلصا على النظام الجمهورى، وأن أحترم الدستور والقانون، وأن أرعى مصالح الشعب رعاية كاملة، وأن أحافظ على استقلال الوطن وسلامة أراضيه».

المادة (87)

تختص محكمة النقض بالفصل في صحة عضوية أعضاء المجلسين، وتقدم إليها الطعون خلال مدة لا تجاوز ثلاثين يوماً من تاريخ إعلان النتيجة النهائية للانتخاب، وتفصل في الطعن خلال ستين يوماً من تاريخ وروده إليها. وفي حالة الحكم ببطلان العضوية، تبطل من تاريخ إبلاغ المجلس بالحكم.

المادة (88)

لا يجوز لعضو أى من المجلسين طوال مدة العضوية، بالذات أو بالواسطة، أن يشتري أو يستأجر شيئاً من أموال الدولة، ولا أن يؤجرها أو يبيعها شيئاً من أمواله، ولا أن يقايضها عليه، ولا أن يبرم معها عقد التزام أو توريد أو مقابلة. ويتعين على العضو تقديم إقرار ذمة مالية، عند شغل العضوية وعند تركها وفي نهاية كل عام، يعرض على مجلسه. وإذا تلقى العضو هدية نقدية أو عينية؛ بسبب العضوية أو بمناسبة، تؤول ملكيتها إلى الخزنة العامة للدولة. وكل ذلك على النحو الذى ينظمه القانون.

المادة (89)

لا يُسأل العضو عما بيديه من آراء تتعلق بأعماله فى المجلس الذى ينتمى إليه.

المادة (90)

لا يجوز، فى غير حالة التلبس، اتخاذ أى إجراء جنائى ضد العضو إلا بإذن سابق من مجلسه. وفى غير دور الانعقاد يتعين أخذ إذن مكتب المجلس، ويخطر المجلس عند أول انعقاد بما اتخذ من إجراء. وفى كل الأحوال يتعين البت فى طلب اتخاذ الإجراء الجنائى ضد العضو خلال ثلاثين يوماً على الأكثر، وإلا اعتبر الطلب مقبولاً.

المادة (91)

يتقاضى العضو مكافأة يحددها القانون.

المادة (92)

مقر مجلسى النواب والشورى مدينة القاهرة.
ويجوز لأى منهما فى الظروف الاستثنائية عقد جلساته فى مكان آخر؛ بناء على طلب رئيس الجمهورية، أو ثلث عدد أعضاء المجلس.
واجتماع المجلس على خلاف ذلك، وما يصدر عنه من قرارات، باطل.

المادة (93)

جلسات مجلس النواب ومجلس الشورى علنية.
ويجوز انعقاد أى منهما فى جلسة سرية؛ بناء على طلب رئيس الجمهورية، أو الحكومة، أو رئيس المجلس، أو عشرين من أعضائه على الأقل؛ ثم يقرر المجلس ما إذا كانت المناقشة فى الموضوع المطروح أمامه تجرى فى جلسة علنية أو سرية.

المادة (94)

يدعو رئيس الجمهورية كلاً من مجلس النواب ومجلس الشورى للانعقاد للدور العادى السنوى قبل يوم الخميس الأول من شهر أكتوبر، فإذا لم تتم الدعوة يجتمع كل منهما بحكم الدستور فى اليوم المذكور.
ويستمر دور الانعقاد العادى لمدة ثمانية أشهر على الأقل، ويفض رئيس الجمهورية دور الانعقاد بعد موافقة كل مجلس، ولا يجوز ذلك لمجلس النواب قبل اعتماده الموازنة العامة للدولة.

المادة (95)

يجوز انعقاد أى من المجلسين فى اجتماع غير عادى؛ لنظر أمر عاجل، بناء على دعوة من رئيس الجمهورية، أو الحكومة، أو طلب موقع من عشر أعضاء المجلس على الأقل.

المادة (96)

لا يكون انعقاد أى من مجلسى النواب والشورى صحيحاً، ولا تتخذ قراراته، إلا بحضور أغلبية أعضائه.

وفى غير الأحوال المشترط فيها أغلبية خاصة، تصدر القرارات بالأغلبية المطلقة للحاضرين. وعند تساوى الآراء يعتبر الأمر الذى جرت المداولة فى شأنه مرفوضاً.

المادة (97)

ينتخب كل مجلس رئيسا ووكيلين من بين أعضائه المنتخبين في أول اجتماع لدور الانعقاد السنوي العادي الأول، لمدة الفصل التشريعي لمجلس النواب، ونصف الفصل التشريعي لمجلس الشورى. وإذا خلا مكان أحدهم ينتخب المجلس من يحل محله إلى نهاية مدة سلفه.

وفي جميع الأحوال يجوز لثلث أعضاء أى من المجلسين، في أول اجتماع لدور الانعقاد السنوي العادي، طلب إجراء انتخابات جديدة لأى من رئيس المجلس ووكليه.

المادة (98)

عند تولى رئيس مجلس النواب، أو رئيس مجلس الشورى، منصب رئيس الجمهورية بصفة مؤقتة، يتولى أكبر الوكيلين سنا رئاسة المجلس طوال تلك المدة.

المادة (99)

يضع كل مجلس لائحته الداخلية لتنظيم العمل فيه وكيفية ممارسة اختصاصاته؛ وتنتشر في الجريدة الرسمية.

المادة (100)

يختص كل مجلس بالمحافظة على النظام داخله، ويتولى ذلك رئيس المجلس. ولا يجوز لأى قوة مسلحة دخول أى من المجلسين أو الوجود على مقربة منه إلا بطلب من رئيس المجلس.

المادة (101)

لرئيس الجمهورية، وللحكومة، ولكل عضو فى مجلس النواب، اقتراح القوانين. ويحال كل مشروع قانون إلى اللجنة النوعية المختصة بمجلس النواب؛ لفحصه وتقديم تقرير عنه إلى المجلس.

ولا يحال الاقتراح بقانون المقدم من أحد الأعضاء إلى اللجنة النوعية، إلا إذا أجازته اللجنة المختصة بالمقترحات، ووافق المجلس على ذلك. فإذا رفضت اللجنة الاقتراح بقانون وجب أن يكون قرارها مسيبا.

وكل اقتراح بقانون قدمه أحد الأعضاء، ورفضه المجلس، لا يجوز تقديمه ثانية فى دور الانعقاد نفسه.

المادة (102)

لا يجوز لأى من مجلسى النواب والشورى إقرار مشروع قانون إلا بعد أخذ الرأى عليه.

ولكل مجلس حق التعديل والتجزئة فى المواد، وفيما يعرض من التعديلات. وكل مشروع قانون يقره أحد المجلسين يبعث به إلى المجلس الآخر، ولا يجوز له أن يؤخره عن ستين يوماً، لا تدخل فيها العطلة التشريعية. ولا يكون قانوناً إلا إذا أقره المجلسان.

المادة (103)

إذا قام خلاف تشريعى بين المجلسين، تشكل لجنة مشتركة من عشرين عضواً يختار كل مجلس نصفهم من بين أعضائه بناء على ترشيح لجنته العامة؛ وذلك لاقتراح نصوص للمواد محل الخلاف.

وتعرض هذه المقترحات على كل من المجلسين؛ فإذا لم يوافق أحدهما عليها، يعرض الأمر على مجلس النواب ويؤخذ بما ينتهى إليه من قرار يصدره بأغلبية عدد الأعضاء.

المادة (104)

يبلغ مجلس النواب رئيس الجمهورية بكل قانون أقر؛ ليصدره خلال خمسة عشر يوماً من تاريخ إرساله؛ فإذا اعترض عليه رده إلى المجلس خلال ثلاثين يوماً من ذلك التاريخ.

وإذا لم يرد القانون فى هذا الميعاد، أو أقره مجلس النواب ثانية بأغلبية ثلثى عدد الأعضاء، استقر قانوناً وأصدر.

فإذا لم يقره المجلس لا يجوز تقديمه فى دور الانعقاد نفسه قبل مضى أربعة أشهر من تاريخ صدور القرار.

المادة (105)

لأى من أعضاء المجلسين إبداء اقتراح برغبة فى موضوع عام إلى رئيس مجلس الوزراء أو أحد نوابه أو أحد الوزراء.

المادة (106)

يجوز لعشرين عضوا من مجلس النواب، أو عشرة من مجلس الشورى، على الأقل، طلب مناقشة موضوع عام لاستيضاح سياسة الحكومة بشأنه.

المادة (107)

لكل عضو، في مجلس النواب أو مجلس الشورى، الحق في الحصول على أية بيانات أو معلومات تتعلق بأداء عمله في المجلس، وذلك بمراعاة أحكام المادة (47) من الدستور.

المادة (108)

لكل مواطن أن يتقدم بالمقترحات المكتوبة إلى أي من مجلسي النواب والشورى بشأن المسائل العامة.
وله أن يقدم إلى أي منهما شكاوى، يحيلها كل مجلس إلى الوزراء المختصين، وعليهم أن يقدموا الإيضاحات الخاصة بها إذا طلب المجلس ذلك، ويحاط صاحب الشكوى بنتيجتها.

المادة (109)

يحق لرئيس مجلس الوزراء ونوابه والوزراء ونوابهم حضور جلسات المجلسين، أو إحدى لجانهما، ويكون حضورهم وجوبيا بناء على طلب أي من المجلسين، ولهم أن يستعينوا بمن يرون من كبار الموظفين.
ويجب أن يستمع إليهم كلما طلبوا الكلام، وعليهم الرد على القضايا موضع النقاش، دون أن يكون لهم صوت معدود عند أخذ الرأي.

المادة (110)

يقبل كل مجلس استقالة أعضائه، ويجب أن تقدم مكتوبة، ويشترط لقبولها ألا يكون المجلس قد بدأ في اتخاذ إجراءات إسقاط العضوية ضد العضو المستقيل.

المادة (111)

لا يجوز إسقاط العضوية فى أى من المجلسين إلا إذا فقد العضو الثقة والاعتبار، أو فقد أحد شروط العضوية التى انتخب على أساسها، أو أخل بواجباتها. ويجب أن يصدر قرار إسقاط العضوية، من المجلس الذى ينتمى إليه العضو، بأغلبية ثلثى الأعضاء.

المادة (112)

إذا خلا مكان عضو أحد المجلسين، قبل انتهاء مدته بستة أشهر على الأقل، وجب شغل مكانه طبقا للقانون، خلال ستين يوما من تاريخ تقرير المجلس خلو المكان. وتكون مدة العضو الجديد مكملة لعضوية سلفه.

الفرع الثاني: مجلس النواب

المادة (113)

يشكل مجلس النواب من عدد لا يقل عن ثلاثمائة وخمسين عضواً، ينتخبون بالاقتراع العام السري المباشر.

ويشترط في المترشح لعضوية مجلس النواب أن يكون مصرياً، متمتعاً بحقوقه المدنية والسياسية، حاصلًا على شهادة إتمام التعليم الأساسي على الأقل، وألا تقل سنه، يوم فتح باب الترشح، عن خمس وعشرين سنة ميلادية.

ويبين القانون شروط العضوية الأخرى، ونظام الانتخاب، وتقسيم الدوائر الانتخابية بما يراعى التمثيل العادل للسكان والمحافظات.

المادة (114)

مدة عضوية مجلس النواب خمس سنوات ميلادية، تبدأ من تاريخ أول اجتماع له.

ويجرى الانتخاب لتجديد المجلس خلال الستين يوماً السابقة على انتهاء مدته.

المادة (115)

يتولى مجلس النواب سلطة التشريع، وإقرار السياسة العامة للدولة، والخطة العامة للتنمية الاقتصادية والاجتماعية، والموازنة العامة للدولة، ويمارس الرقابة على أعمال السلطة التنفيذية؛ وذلك كله على النحو المبين في الدستور.

ويحدد القانون طريقة إعداد الخطة العامة للتنمية الاقتصادية والاجتماعية، وعرضها على مجلس النواب.

المادة (116)

يجب أن تشمل الموازنة العامة للدولة كافة إيراداتها ومصروفاتها دون استثناء.

ويُعرض مشروعها على مجلس النواب قبل تسعين يوماً على الأقل من بدء السنة المالية، ولا تكون نافذة إلا بموافقة عليها؛ ويتم التصويت عليه بابا بابا.

ويجوز لمجلس النواب أن يعدل النفقات الواردة في مشروع الموازنة، عدا التي ترد تنفيذاً لالتزام محدد على الدولة. وإذا ترتب على التعديل زيادة في إجمالي النفقات، وجب أن يتفق المجلس مع الحكومة على تدبير مصادر للإيرادات تحقق إعادة التوازن بينهما؛ وتصدر الموازنة بقانون يجوز أن يتضمن تعديلاً في قانون قائم بالقدر اللازم لتحقيق هذا التوازن.

وإذا لم يتم اعتماد الموازنة الجديدة قبل بدء السنة المالية عُمل بالموازنة القديمة لحين اعتمادها.

ويحدد القانون السنة المالية، وطريقة إعداد الموازنة العامة، وأحكام موازنات المؤسسات والهيئات العامة وحساباتها.

المادة (117)

تجب موافقة مجلس النواب على نقل أي مبلغ من باب إلى آخر من أبواب الموازنة العامة، وعلى كل مصروف غير وارد بها، أو زائد على تقديراتها، وتصدر الموافقة بقانون.

المادة (118)

ينظم القانون القواعد الأساسية لجباية الأموال العامة وإجراءات صرفها.

المادة (119)

يعين القانون قواعد منح المرتبات والمعاشات والتعويضات والإعانات والمكافآت التي تنقرر على الخزنة العامة للدولة؛ ويحدد حالات الاستثناء منها، والجهات التي تتولى تطبيقها.

المادة (120)

لا يجوز للسلطة التنفيذية الاقتراض، أو الحصول على تمويل، أو الارتباط بمشروع يترتب عليه إنفاق مبالغ من الخزنة العامة للدولة لمدة مقبلة، إلا بعد موافقة مجلس النواب.

المادة (121)

يجب عرض الحساب الختامي للموازنة العامة للدولة على مجلس النواب، في مدة لا تزيد على ستة أشهر من تاريخ انتهاء السنة المالية؛ ويعرض معه التقرير السنوي للجهاز المركزي للمحاسبات وملاحظاته على الحساب الختامي. ويتم التصويت على الحساب الختامي بابا بابا؛ ويصدر بقانون. وللمجلس أن يطلب من الجهاز المركزي للمحاسبات أية بيانات أو تقارير أخرى.

المادة (122)

لمجلس النواب أن يشكل لجنة خاصة، أو يكلف لجنة من لجانها، بفحص نشاط إحدى الجهات الإدارية أو الهيئات، أو المشروعات العامة؛ وذلك من أجل تقصى الحقائق في موضوع معين، وإبلاغ المجلس بحقيقة الأوضاع المالية أو الإدارية أو الاقتصادية، أو إجراء تحقيقات في أي موضوع يتعلق بعمل من الأعمال السابقة أو غيرها، ويقرر المجلس ما يراه مناسباً في هذا الشأن.

وللجنة في سبيل القيام بمهمتها أن تجمع ما تراه من أدلة، وأن تطلب سماع من ترى سماع أقواله، وعلى جميع الجهات أن تستجيب إلى طلبها، وأن تضع تحت تصرفها ما تطلبه من وثائق أو مستندات أو غير ذلك.

المادة (123)

لكل عضو من أعضاء مجلس النواب أن يوجه إلى رئيس مجلس الوزراء، أو أحد نوابه، أو أحد الوزراء، أسئلة في أي موضوع يدخل في اختصاصاتهم، وعليهم الإجابة عن هذه الأسئلة.

ويجوز للعضو سحب السؤال في أي وقت، ولا يجوز تحويل السؤال إلى استجواب في الجلسة نفسها.

المادة (124)

لكل عضو في مجلس النواب أن يقدم طلب إحاطة أو بيان عاجلاً، إلى رئيس مجلس الوزراء أو أحد نوابه أو أحد الوزراء في الأمور العامة العاجلة ذات الأهمية. ويتعين على الحكومة الرد.

المادة (125)

لكل عضو في مجلس النواب توجيه استجواب لرئيس مجلس الوزراء أو أحد نوابه أو أحد الوزراء؛ لمحاسبتهم عن الشؤون التي تدخل في اختصاصاتهم. ويناقش المجلس الاستجواب بعد سبعة أيام على الأقل من تاريخ تقديمه، إلا في حالات الاستعجال التي يراها وبعد موافقة الحكومة.

المادة (126)

لمجلس النواب أن يقرر سحب الثقة من رئيس مجلس الوزراء أو أحد نوابه أو أحد الوزراء.

ولا يجوز عرض طلب سحب الثقة إلا بعد استجواب، وبناء على اقتراح عُشر أعضاء المجلس، ويصدر المجلس قراره خلال سبعة أيام على الأكثر من مناقشة الاستجواب، ويكون سحب الثقة بأغلبية الأعضاء.

وفى كل الأحوال، لا يجوز طلب سحب الثقة فى موضوع سبق للمجلس أن فصل فيه فى دور الانعقاد نفسه.

وإذا قرر المجلس سحب الثقة من رئيس مجلس الوزراء، أو من أحد الوزراء وأعلنت الحكومة تضامنها معه قبل التصويت، وجب أن تقدم الحكومة استقالته. وإذا كان قرار سحب الثقة متعلقاً بأحد أعضاء الحكومة وجبت استقالته.

المادة (127)

لا يجوز لرئيس الجمهورية حل مجلس النواب إلا بقرار مسبب، وبعد استفتاء الشعب.

ولا يجوز حل المجلس خلال دور انعقاده السنوى الأول، ولا للسبب الذى حل من أجله المجلس السابق.

ويصدر رئيس الجمهورية قراراً بوقف جلسات المجلس وإجراء الاستفتاء على الحل خلال عشرين يوماً على الأكثر، فإذا وافق المشاركون فى الاستفتاء بأغلبية الأصوات الصحيحة على الحل أصدر رئيس الجمهورية قرار الحل، ودعا إلى انتخابات مبكرة خلال ثلاثين يوماً على الأكثر من تاريخ صدور القرار، ويجتمع المجلس الجديد خلال الأيام العشرة التالية لإعلان النتيجة النهائية.

وإذا لم توافق هذه الأغلبية على الحل، يتعين على رئيس الجمهورية أن يستقيل من منصبه.

وإذا لم يتم إجراء الاستفتاء أو الانتخابات فى الميعاد المحدد، يعود المجلس إلى الانعقاد من تلقاء نفسه فى اليوم التالى لانقضاء الميعاد.

الفرع الثالث: مجلس الشورى

المادة (128)

يشكل مجلس الشورى من عدد لا يقل عن مائة وخمسين عضواً، ينتخبون بالاقتراع العام السرى المباشر. ويجوز لرئيس الجمهورية أن يعين عدداً لا يزيد على عُشر عدد الأعضاء المنتخبين.

المادة (129)

يشترط فى المترشح لعضوية مجلس الشورى أن يكون مصرياً، متمتعاً بحقوقه المدنية والسياسية، حاصلًا على إحدى شهادات التعليم العالى على الأقل، وألا تقل سنه يوم فتح باب الترشح عن خمس وثلاثين سنة ميلادية. ويبيّن القانون شروط العضوية الأخرى، وأحكام الانتخاب، وتقسيم الدوائر الانتخابية.

المادة (130)

مدة عضوية مجلس الشورى ست سنوات ميلادية، تبدأ من تاريخ أول اجتماع له، ويتجدد نصف عدد الأعضاء كل ثلاث سنوات؛ وفقاً لما ينظمه القانون.

المادة (131)

عند حل مجلس النواب، ينفرد مجلس الشورى باختصاصاتهما التشريعية المشتركة؛ وتعرض القوانين التى يقرها مجلس الشورى خلال مدة الحل على مجلس النواب، فور انعقاده، لتقرير ما يراه بشأنها.

وعند غياب المجلسين، إذا طرأ ما يستوجب الإسراع باتخاذ تدابير لا تحتل التأخير، يجوز لرئيس الجمهورية أن يصدر قرارات لها قوة القانون، تعرض على مجلس النواب ومجلس الشورى، بحسب الأحوال، خلال خمسة عشر يوماً من تاريخ انعقادهما.

فإذا لم تعرض، أو عرضت ولم تقر، زال بأثر رجعى ما كان لها من قوة القانون، إلا إذا رأى المجلس اعتماد نفاذها عن الفترة السابقة، أو تسوية ما ترتب عليها من آثار بوجه آخر.

الفصل الثاني

السلطة التنفيذية

الفرع الأول: رئيس الجمهورية

المادة (132)

رئيس الجمهورية هو رئيس الدولة، ورئيس السلطة التنفيذية؛ يرعى مصالح الشعب، ويحافظ على استقلال الوطن وسلامة أراضيه، ويراعى الحدود بين السلطات. ويباشر اختصاصاته على النحو المبين في الدستور.

المادة (133)

ينتخب رئيس الجمهورية لمدة أربع سنوات ميلادية، تبدأ من اليوم التالي لانتهاء مدة سلفه؛ ولا يجوز إعادة انتخابه إلا لمرة واحدة. وتبدأ إجراءات انتخاب رئيس الجمهورية قبل انتهاء مدة الرئاسة بتسعين يوماً على الأقل؛ ويجب أن تعلن النتيجة قبل نهاية هذه المدة بعشرة أيام على الأقل. ولا يجوز لرئيس الجمهورية أن يشغل أى منصب حزبي طوال مدة الرئاسة.

المادة (134)

يشترط فيمن يترشح رئيساً للجمهورية أن يكون مصرياً من أبوين مصريين، وألا يكون قد حمل جنسية دولة أخرى، وأن يكون متمتعاً بحقوقه المدنية والسياسية، وألا يكون متزوجاً من غير مصري، وألا تقل سنه، يوم فتح باب الترشح، عن أربعين سنة ميلادية.

المادة (135)

يشترط لقبول الترشح لرئاسة الجمهورية أن يزكى المترشح عشرون عضواً على الأقل من الأعضاء المنتخبين في مجلسي النواب والشورى، أو أن يؤيده ما لا يقل عن عشرين ألف مواطن، ممن لهم حق الانتخاب، في عشر محافظات على الأقل؛ ويحد أدنى ألف مؤيد من كل محافظة منها.

ولا يجوز في جميع الأحوال أن يكون التأييد لأكثر من مرشح. وينظم القانون ذلك.

المادة (136)

ينتخب رئيس الجمهورية عن طريق الاقتراع العام السرى المباشر، وذلك بالأغلبية المطلقة لعدد الأصوات الصحيحة. وينظم القانون إجراءات انتخاب رئيس الجمهورية.

المادة (137)

يؤدى رئيس الجمهورية أمام مجلسى النواب والشورى، قبل مباشرة مهام منصبه، اليمين الآتية: «أقسم بالله العظيم أن أحافظ مخلصا على النظام الجمهورى، وأن أحترم الدستور والقانون، وأن أرعى مصالح الشعب رعاية كاملة، وأن أحافظ على استقلال الوطن وسلامة أراضيه». ويكون أداء اليمين أمام مجلس الشورى عند حل مجلس النواب.

المادة (138)

يحدد القانون المعاملة المالية لرئيس الجمهورية؛ ولا يجوز أن يتقاضى أى مرتب أو مكافأة أخرى، ولا أن يزاول طوال مدة توليه المنصب، بالذات أو بالواسطة، مهنة حرة أو عملا تجاريا أو ماليا أو صناعيا، ولا أن يشتري أو يستأجر شيئا من أموال الدولة، ولا أن يوجرها أو يبيعها شيئا من أمواله، ولا أن يقايضها عليه، ولا أن يبرم معها عقد التزام أو توريد أو مقاولة. ويتعين على رئيس الجمهورية تقديم إقرار ذمة مالية، عند توليه المنصب وعند تركه وفى نهاية كل عام؛ يعرض على مجلس النواب. وإذا تلقى بالذات أو بالواسطة هدية نقدية أو عينية؛ بسبب المنصب أو بمناسبته، تؤول ملكيتها إلى الخزانة العامة للدولة. وكل ذلك على النحو الذى ينظمه القانون.

المادة (139)

يختار رئيس الجمهورية رئيساً لمجلس الوزراء، ويكلفه بتشكيل الحكومة وعرض برنامجها على مجلس النواب خلال ثلاثين يوماً على الأكثر؛ فإذا لم تحصل على الثقة يكلف رئيس الجمهورية رئيساً آخر لمجلس الوزراء من الحزب الحائز على أكثرية مقاعد مجلس النواب؛ فإذا لم تحصل حكومته على الثقة خلال مدة مماثلة، يختار مجلس النواب رئيساً لمجلس الوزراء ويكلفه رئيس الجمهورية بتشكيل الحكومة، على أن تحصل على الثقة خلال مدة أخرى مماثلة، وإلا يحل رئيس الجمهورية مجلس النواب، ويدعو لانتخاب مجلس جديد خلال ستين يوماً من تاريخ صدور قرار الحل.

وفي جميع الأحوال يجب ألا يزيد مجموع المدد المنصوص عليها في هذه المادة على تسعين يوماً.

وفي حالة حل مجلس النواب، يعرض رئيس مجلس الوزراء تشكيل حكومته وبرنامجها على مجلس النواب في أول اجتماع له.

المادة (140)

يضع رئيس الجمهورية، بالاشتراك مع مجلس الوزراء، السياسة العامة للدولة، ويشرفان على تنفيذها، على النحو المبين في الدستور.

المادة (141)

يتولى رئيس الجمهورية سلطاته بواسطة رئيس مجلس الوزراء ونوابه والوزراء؛ عدا ما يتصل منها بالدفاع والأمن القومي والسياسة الخارجية، والسلطات المنصوص عليها بالمواد (139)، (145)، (146)، (147)، (148)، (149) من الدستور.

المادة (142)

يجوز لرئيس الجمهورية أن يفوض بعض اختصاصاته لرئيس مجلس الوزراء أو لنوابه أو للوزراء أو للمحافظين؛ وذلك على النحو الذي ينظمه القانون.

المادة (143)

لرئيس الجمهورية دعوة الحكومة للاجتماع للتشاور فى الأمور المهمة؛ ويتولى رئاسة الاجتماع الذى يحضره، ويطلب من رئيس مجلس الوزراء ما يراه من تقارير فى الشأن العام.

المادة (144)

لرئيس الجمهورية أن يلقى بياناً حول السياسة العامة للدولة، فى جلسة مشتركة لمجلسى النواب والشورى عند افتتاح دور انعقادهما العادى السنوى. ويجوز له عند الاقتضاء إلقاء بيانات أخرى، أو توجيه رسائل إلى أى من المجلسين.

المادة (145)

يمثل رئيس الجمهورية الدولة فى علاقاتها الخارجية، ويبرم المعاهدات، ويصدق عليها بعد موافقة مجلسى النواب والشورى. وتكون لها قوة القانون بعد التصديق عليها ونشرها؛ وفقاً للأوضاع المقررة. وتجب موافقة المجلسين بأغلبية ثلثى أعضائهما على معاهدات الصلح والتحالف وجميع المعاهدات التى تتعلق بحقوق السيادة. ولا يجوز إقرار أى معاهدة تخالف أحكام الدستور.

المادة (146)

رئيس الجمهورية هو القائد الأعلى للقوات المسلحة، ولا يعلن الحرب، ولا يرسل القوات المسلحة إلى خارج الدولة، إلا بعد أخذ رأى مجلس الدفاع الوطنى، وموافقة مجلس النواب بأغلبية عدد الأعضاء.

المادة (147)

يعين رئيس الجمهورية الموظفين المدنيين والعسكريين ويعزلهم، ويعين الممثلين السياسيين للدولة ويقبلهم، ويعتمد الممثلين السياسيين للدول والهيئات الأجنبية؛ على النحو الذى ينظمه القانون.

المادة (148)

يعلن رئيس الجمهورية، بعد أخذ رأى الحكومة، حالة الطوارئ؛ على النحو الذى ينظمه القانون؛ ويجب عرض هذا الإعلان على مجلس النواب خلال الأيام السبعة التالية.

وإذا حدث الإعلان فى غير دور الانعقاد وجبت دعوة المجلس للانعقاد فوراً للعرض عليه، وفى حالة حل المجلس يعرض الأمر على مجلس الشورى؛ وذلك كله بمراعاة المدة المنصوص عليها فى الفقرة السابقة. وتجب موافقة أغلبية عدد أعضاء كل من المجلسين على إعلان حالة الطوارئ، ويكون إعلانها لمدة محددة لا تتجاوز ستة أشهر، لا تمد إلا لمدة أخرى مماثلة بعد موافقة الشعب فى استفتاء عام. ولا يجوز حل مجلس النواب أثناء سريان حالة الطوارئ.

المادة (149)

لرئيس الجمهورية العفو عن العقوبة أو تخفيفها.
ولا يكون العفو الشامل إلا بقانون.

المادة (150)

لرئيس الجمهورية أن يدعو الناخبين للاستفتاء فى المسائل المهمة التى تتصل بمصالح الدولة العليا.
وإذا اشتملت الدعوة للاستفتاء على أكثر من موضوع، وجب التصويت على كل واحد منها.
ونتيجة الاستفتاء ملزمة لجميع سلطات الدولة وللکافة فى جميع الأحوال.

المادة (151)

إذا قدم رئيس الجمهورية استقالته، وجه كتاب الاستقالة إلى مجلس النواب.

المادة (152)

يكون اتهام رئيس الجمهورية بارتكاب جناية أو بالخيانة العظمى؛ بناء على طلب موقع من ثلث أعضاء مجلس النواب على الأقل؛ ولا يصدر قرار الاتهام إلا بأغلبية ثلثي أعضاء المجلس.

وبمجرد صدور هذا القرار يوقف رئيس الجمهورية عن عمله؛ ويعتبر ذلك مانعا مؤقتا يحول دون مباشرة رئيس الجمهورية لاختصاصاته حتى صدور الحكم. ويحاكم رئيس الجمهورية أمام محكمة خاصة يرأسها رئيس مجلس القضاء الأعلى وعضوية أقدم نواب رئيس المحكمة الدستورية العليا ومجلس الدولة وأقدم رئيسين بمحاكم الاستئناف، ويتولى الادعاء أمامها النائب العام؛ وإذا قام بأحدهم مانع حل محله من يليه فى الأقدمية.

وينظم القانون إجراءات التحقيق والمحاكمة ويحدد العقوبة؛ وإذا حكم بإدانة رئيس الجمهورية أعفى من منصبه مع عدم الإخلال بالعقوبات الأخرى.

المادة (153)

إذا قام مانع مؤقت يحول دون مباشرة رئيس الجمهورية لسلطاته حل محله رئيس مجلس الوزراء.

وعند خلو منصب رئيس الجمهورية؛ للاستقالة أو الوفاة أو العجز الدائم عن العمل أو لأى سبب آخر، يعلن مجلس النواب خلو المنصب ويخطر المفوضية الوطنية للانتخابات، ويباشر رئيس مجلس النواب مؤقتا سلطات رئيس الجمهورية. ويحل مجلس الشورى ورئيسه محل مجلس النواب ورئيسه فيما تقدم فى حالة حل مجلس النواب.

وفى جميع الأحوال يجب أن ينتخب الرئيس الجديد فى مدة لا تتجاوز تسعين يوما من تاريخ خلو المنصب.

ولا يجوز للقائم بأعمال الرئيس أن يترشح لهذا المنصب، ولا أن يطلب تعديل الدستور، ولا أن يحل مجلس النواب، ولا أن يقيل الحكومة.

المادة (154)

إذا تزامن خلو منصب رئيس الجمهورية مع إجراء استفتاء أو انتخاب لأحد مجلسى النواب أو الشورى، تعطى الأسبقية لانتخاب رئيس الجمهورية، ويستمر المجلس لحين إتمام انتخاب الرئيس.

الفرع الثانى: الحكومة

المادة (155)

تتكون الحكومة من رئيس مجلس الوزراء ونوابه والوزراء.
ويتولى رئيس مجلس الوزراء رئاسة الحكومة، ويشرف على أعمالها، ويوجهها
فى أداء اختصاصاتها.

المادة (156)

يشترط فيمن يعين رئيسا لمجلس الوزراء أو عضوا بالحكومة، أن يكون مصرياً،
متمتعاً بحقوقه المدنية والسياسية، بالغاً من العمر ثلاثين سنة ميلادية على الأقل،
وأن يكون قد حمل جنسية دولة أخرى ولم يتنازل عنها خلال عام من بلوغه سن
الثامنة عشر.

ولا يجوز الجمع بين عضوية الحكومة وعضوية أى من مجلسى النواب
والشورى، وإذا عين أحد أعضائهما فى الحكومة، يخلو مكانه فى مجلسه من تاريخ
هذا التعيين، وتطبق أحكام المادة (112) من الدستور.

المادة (157)

يؤدى رئيس مجلس الوزراء وأعضاء الحكومة قبل مباشرة مهام مناصبهم، أمام
رئيس الجمهورية، اليمين الآتية: «أقسم بالله العظيم أن أحافظ مخلصاً على النظام
الجمهورى، وأن أحترم الدستور والقانون، وأن أرعى مصالح الشعب رعاية كاملة، وأن
أحافظ على استقلال الوطن وسلامة أراضيه».

المادة (158)

يحدد القانون المعاملة المالية لرئيس مجلس الوزراء، وأعضاء الحكومة، ولا يجوز
لأى منهم أن يتقاضى أى مرتب أو مكافأة أخرى، ولا أن يزاول، طوال مدة توليه
منصبه، بالذات أو بالواسطة، مهنة حرة أو عملاً تجارياً أو مالياً أو صناعياً، ولا أن
يشترى أو يستأجر شيئاً من أموال الدولة، ولا أن يؤجرها أو يبيعها شيئاً من أمواله، ولا
أن يقايضها عليه، ولا أن يبرم معها عقد التزام أو توريد أو مقابله.

ويتعين على عضو الحكومة تقديم إقرار ذمة مالية، عند توليه المنصب وعند
تركه وفى نهاية كل عام، يعرض على مجلس النواب.

وإذا تلقى أى منهم هدية نقدية أو عينية؛ بسبب منصبه أو بمناسبته، تؤول
ملكيتها إلى الخزنة العامة للدولة؛ وذلك كله على النحو الذى ينظمه القانون.

المادة (159)

تمارس الحكومة، بوجه خاص، الاختصاصات الآتية:

1. الاشتراك مع رئيس الجمهورية فى وضع السياسة العامة للدولة والإشراف على تنفيذها.
2. توجيه أعمال الوزارات والجهات والهيئات العامة التابعة لها، والتنسيق بينها ومتابعتها.
3. إعداد مشروعات القوانين والقرارات.
4. إصدار القرارات الإدارية وفقاً للقانون، ومراقبة تنفيذها.
5. إعداد مشروع الموازنة العامة للدولة.
6. إعداد مشروع الخطة العامة للدولة.
7. عقد القروض ومنحها، وفقاً لأحكام الدستور.
8. متابعة تنفيذ القوانين، والمحافظة على أمن الوطن وحماية حقوق المواطنين ومصالح الدولة.

المادة (160)

يتولى الوزير رسم السياسة العامة لوزارته، ومتابعة تنفيذها، والتوجيه والرقابة، فى إطار السياسة العامة للدولة.

المادة (161)

يجوز لأى من أعضاء الحكومة إلقاء بيان أمام أى من مجلسى النواب والشورى، أو إحدى لجانها، عن موضوع يدخل فى اختصاصه. ويناقش المجلس، أو اللجنة، هذا البيان، ويبدى ما يراه بشأنه.

المادة (162)

يصدر رئيس مجلس الوزراء اللوائح اللازمة لتنفيذ القوانين، بما ليس فيه تعطيل أو تعديل أو إعفاء من تنفيذها، وله أن يفوض غيره فى إصدارها، إلا إذا حدد القانون من يصدر اللوائح اللازمة لتنفيذها.

المادة (163)

يصدر رئيس مجلس الوزراء اللوائح اللازمة لإنشاء المرافق والمصالح العامة وتنظيمها بعد موافقة مجلس الوزراء. فإذا رتب ذلك أعباء جديدة على الموازنة العامة للدولة، وجبت موافقة مجلس النواب.

المادة (164)

يصدر رئيس مجلس الوزراء لوائح الضبط بعد موافقة مجلس الوزراء.

المادة (165)

يحدد القانون السلطة المختصة بتعيين الموظفين المدنيين وعزلهم، وينظم اختصاصات الوظائف الرئيسية، ومسئوليات الموظفين، وحقوقهم، وضماناتهم.

المادة (166)

لرئيس الجمهورية، وللنائب العام، وللمجلس النواب بناء على طلب موقع من ثلث أعضائه على الأقل، اتهام رئيس مجلس الوزراء أو أى من أعضاء الحكومة، بما قد يقع منهم من جرائم خلال تأدية أعمال مناصبهم أو بسببها. وفى جميع الأحوال لا يصدر قرار الاتهام إلا بموافقة ثلثى أعضاء مجلس النواب، ويوقف من يتقرر اتهامه عن عمله إلى أن يقضى فى أمره، ولا يحول انتهاء خدمته دون إقامة الدعوى عليه أو الاستمرار فيها.

المادة (167)

إذا تقدمت الحكومة أو أحد أعضائها بالاستقالة، وجب تقديم كتاب الاستقالة إلى رئيس الجمهورية.

الفصل الثالث

السلطة القضائية

الفرع الأول: أحكام عامة

المادة (168)

السلطة القضائية مستقلة، تتولاها المحاكم على اختلاف أنواعها ودرجاتها، وتصدر أحكامها وفقاً للقانون. ويبين القانون صلاحياتها. والتدخل في شئون العدالة أو القضايا جريمة لا تسقط بالتقادم.

المادة (169)

تقوم كل جهة أو هيئة قضائية على شئونها؛ ويكون لكل منها موازنة مستقلة، ويؤخذ رأيها في مشروعات القوانين المنظمة لشئونها؛ وذلك وفقاً لما ينظمه القانون.

المادة (170)

القضاة مستقلون، غير قابلين للعزل، لا سلطان عليهم في عملهم لغير القانون، وهم متساوون في الحقوق والواجبات. ويحدد القانون شروط وإجراءات تعيينهم، وينظم مساءلتهم تأديبياً؛ ولا يجوز نديهم إلا ندباً كاملاً، وللجهات وفي الأعمال التي يحددها القانون؛ وذلك كله بما يحفظ استقلال القضاء وإنجاز أعماله.

المادة (171)

جلسات المحاكم علنية، إلا إذا قررت المحكمة سريتها؛ مراعاة للنظام العام أو الآداب. وفي جميع الأحوال يكون النطق بالحكم في جلسة علنية.

الفرع الثاني: القضاء والنيابة العامة

المادة (172)

يختص القضاء بالفصل في كافة المنازعات والجرائم عدا ما تختص به جهة قضائية أخرى. ويفصل في المنازعات المتعلقة بشئون أعضائه.

المادة (173)

النيابة العامة جزء لا يتجزأ من القضاء، تتولى التحقيق ورفع ومباشرة الدعوى الجنائية عدا ما يستثنيه القانون، ويحدد القانون اختصاصاتها الأخرى. ويتولى النيابة العامة نائب عام يعين بقرار من رئيس الجمهورية، بناء على اختيار مجلس القضاء الأعلى، من بين نواب رئيس محكمة النقض والرؤساء بالاستئناف والنواب العامين المساعدين، وذلك لمدة أربع سنوات، أو للمدة الباقية حتى بلوغه سن التقاعد أيهما أقرب، ولمرة واحدة طوال مدة عمله.

الفرع الثالث: مجلس الدولة

المادة (174)

مجلس الدولة جهة قضائية مستقلة؛ يختص دون غيره من جهات القضاء بالفصل في كافة المنازعات الإدارية ومنازعات التنفيذ المتعلقة بأحكامه. ويتولى الدعاوى والطعون التأديبية، والإفتاء في المسائل القانونية للجهات التي يحددها القانون، ومراجعة وصياغة مشروعات القوانين والقرارات ذات الصفة التشريعية التي تحال إليه، ومراجعة العقود التي تكون الدولة طرفاً فيها. ويحدد القانون اختصاصاته الأخرى.

الفرع الرابع: المحكمة الدستورية العليا

المادة (175)

المحكمة الدستورية العليا جهة قضائية مستقلة، مقرها مدينة القاهرة، تختص دون غيرها بالفصل في دستورية القوانين واللوائح. ويحدد القانون اختصاصاتها الأخرى، وينظم الإجراءات التي تتبع أمامها.

المادة (176)

تشكل المحكمة الدستورية العليا من رئيس وعشرة أعضاء، ويبين القانون الجهات والهيئات القضائية أو غيرها التي ترشحهم، وطريقة تعيينهم، والشروط الواجب توافرها فيهم، ويصدر بتعيينهم قرار من رئيس الجمهورية.

المادة (177)

يعرض رئيس الجمهورية أو مجلس النواب مشروعات القوانين المنظمة لمباشرة الحقوق السياسية وللاقتخابات الرئاسية والتشريعية والمحلية على المحكمة الدستورية العليا قبل إصدارها، لتقرير مدى مطابقتها للدستور. وتصدر قرارها في هذا الشأن خلال خمسة وأربعين يوماً من تاريخ عرض الأمر عليها؛ وإلا عُدم إصدارها للقرار إجازة للنصوص المقترحة.

فإذا قررت المحكمة عدم مطابقة نص أو أكثر لأحكام الدستور وجب إعمال مقتضى قرارها.

ولا تخضع القوانين المشار إليها في الفقرة الأولى للرقابة اللاحقة المنصوص عليها في المادة (175) من الدستور.

المادة (178)

تنشر في الجريدة الرسمية أحكام المحكمة الدستورية العليا، وقراراتها الصادرة بشأن الرقابة السابقة بمشروعات القوانين المنظمة لمباشرة الحقوق السياسية وللاقتخابات الرئاسية والتشريعية والمحلية.

وينظم القانون ما يترتب على الحكم بعدم دستورية نص تشريعي من آثاره.

الفرع الخامس: الهيئات القضائية

المادة (179)

هيئة قضايا الدولة هيئة قضائية مستقلة، تتولى الادعاء العام المدنى والنيابة القانونية عن الدولة فى المنازعات، والرقابة الفنية على إدارات الشؤون القانونية فى الجهاز الإدارى للدولة.

وتختص بإعداد العقود، وتسوية المنازعات، التى تكون الدولة طرفاً فيها؛ وذلك على النحو الذى ينظمه القانون.

ويحدد القانون اختصاصاتها الأخرى.

ويكون لأعضائها الضمانات والحقوق والواجبات المقررة لأعضاء السلطة القضائية.

المادة (180)

النيابة الإدارية هيئة قضائية مستقلة، تتولى التحقيق فى المخالفات المالية والإدارية، وتحريك ومباشرة الدعوى التأديبية أمام محاكم مجلس الدولة، واتخاذ الإجراءات القانونية لمعالجة أوجه القصور فى أداء المرافق العامة، ويحدد القانون اختصاصاتها الأخرى.

ويكون لأعضائها الضمانات والحقوق والواجبات المقررة لأعضاء السلطة القضائية.

الفرع السادس: المحاماة

المادة (181)

المحاماة مهنة حرة، وهى ركن من أركان العدالة، يمارسها المحامى فى استقلال، ويتمتع أثناء تأدية عمله بالضمانات التى تكفل حمايته وتمكينه من مباشرة هذا العمل؛ وذلك على النحو الذى ينظمه القانون.

الفرع السابع: الخبراء

المادة (182)

يؤدى الأعضاء الفنيون بالشهر العقارى، وخبراء الطب الشرعى، والخبراء القضائيون، أعمالهم باستقلال، ويكفل لهم القانون الضمانات والحماية اللازمة لتأدية أعمالهم.

الفصل الرابع

نظام الإدارة المحلية

الفرع الأول: التقسيم الإدارى المحلى للدولة

مادة (183)

تقسم الدولة إلى وحدات إدارية محلية، تتمتع بالشخصية الاعتبارية، وتشمل المحافظات والمراكز والمدن والأحياء والقرى؛ ويجوز أن تضم الوحدة الواحدة أكثر من قرية أو حى، وأن تنشأ وحدات إدارية أخرى تكون لها الشخصية الاعتبارية؛ وذلك كله على النحو الذى ينظمه القانون، بما يكفل دعم اللامركزية، وتمكين الوحدات الإدارية من توفير المرافق والخدمات المحلية، والنهوض بها، وحسن إدارتها.

مادة (184)

تكفل الدولة ما تحتاجه الوحدات المحلية من معاونة فنية وإدارية ومالية، وتضمن التوزيع العادل للمرافق والخدمات والموارد وتقريب مستويات التنمية والمعيشة بين هذه الوحدات؛ طبقاً لما ينظمه القانون.

مادة (185)

تدخل فى موارد الوحدات المحلية الضرائب والرسوم ذات الطابع المحلى الأصلية والإضافية. وتتبع فى جبايتها القواعد والإجراءات المتبعة فى جباية أموال الدولة.

وكل ذلك على النحو الذى ينظمه القانون.

مادة (186)

ينظم القانون تعاون الوحدات المحلية فى الأعمال ذات النفع المشترك، ووسائل التعاون بينها وبين أجهزة الدولة.

مادة (187)

ينظم القانون طريقة اختيار المحافظين ورؤساء الوحدات الإدارية المحلية الأخرى، ويحدد اختصاصاتهم.

الفرع الثانى: المجالس المحلية

مادة (188)

تنتخب كل وحدة محلية مجلساً بالاقتراع العام السرى المباشر لمدة أربع سنوات.

ويشترط فى المترشح لعضوية المجلس المحلى ألا تقل سنه، يوم فتح باب الترشح، عن واحد وعشرين سنة ميلادية.
ويضم إلى عضوية المجلس ممثلون عن أجهزة السلطة التنفيذية فى الوحدة المحلية دون أن يكون لهم صوت معدود.
وينتخب كل مجلس رئيسه ووكيله من بين أعضائه المنتخبين.
وينظم القانون شروط الترشح الأخرى، وإجراءات الانتخاب.

مادة (189)

يختص المجلس المحلى بكل ما يهم الوحدة التى يمثلها، وينشئ ويدير المرافق المحلية والأعمال الاقتصادية والاجتماعية والصحية وغيرها؛ وذلك على النحو الذى ينظمه القانون.

مادة (190)

قرارات المجلس المحلى الصادرة فى حدود اختصاصه نهائية، ولا يجوز تدخّل السلطة التنفيذية فيها، إلا لمنع تجاوز المجلس لهذه الحدود، أو الإضرار بالمصلحة العامة، أو بمصالح المجالس المحلية الأخرى.
وعند الخلاف على اختصاص هذه المجالس تفصل فيه على وجه الاستعجال الجمعية العمومية لقسمى الفتوى والتشريع بمجلس الدولة؛ وذلك كله وفقاً لما ينظمه القانون.

مادة (191)

يضع كل مجلس محلى موازنته وحسابه الختامى، على النحو الذى ينظمه فى القانون

مادة (192)

لا يجوز حل المجالس المحلية بإجراء إدارى شامل.
وينظم القانون طريقة حل أى منها وإعادة انتخابه.

الفصل الخامس

الأمن القومى والدفاع

الفرع الأول: مجلس الأمن القومى

المادة (193)

ينشأ مجلس للأمن القومى يتولى رئيس الجمهورية رئاسته، ويضم فى عضويته رئيس مجلس الوزراء، ورئيسى مجلسى النواب والشورى، ووزراء الدفاع، والداخلية، والخارجية، والمالية، والعدل، والصحة، ورئيس المخابرات العامة، ورئيسى لجنتى الدفاع والأمن القومى بمجلسى النواب والشورى.

ويختص بإقرار استراتيجيات تحقيق أمن البلاد، ومواجهة حالات الكوارث والأزمات بشتى أنواعها، واتخاذ ما يلزم لاحتوائها، وتحديد مصادر الأخطار على الأمن القومى المصرى فى الداخل والخارج والإجراءات اللازمة للتصدى لها على المستويين الرسمى والشعبى.

وللمجلس أن يدعو من يرى من ذوى الخبرة والاختصاص لحضور اجتماعه دون أن يكون لهم صوت محدود.

ويحدد القانون اختصاصاته الأخرى ونظام عمله.

الفرع الثانى: القوات المسلحة

المادة (194)

القوات المسلحة ملك للشعب مهمتها حماية البلاد والحفاظ على أمنها وسلامة أراضيها، والدولة وحدها هى التى تنشئ هذه القوات. ويحظر على أى فرد أو هيئة أو جهة أو جماعة إنشاء تشكيلات أو فرق أو تنظيمات عسكرية أو شبه عسكرية.

ويكون للقوات المسلحة مجلس أعلى على النحو الذى ينظمه القانون.

المادة (195)

وزير الدفاع هو القائد العام للقوات المسلحة، ويعين من بين ضباطها.

المادة (196)

ينظم القانون التعبئة العامة، ويبين شروط الخدمة والترقية والتقاعد فى القوات المسلحة. وتختص اللجان القضائية لضباط وأفراد القوات المسلحة دون غيرها بالفصل فى كافة المنازعات الإدارية الخاصة بالقرارات الصادرة فى شأنهم.

الفرع الثالث: مجلس الدفاع الوطنى

المادة (197)

ينشأ مجلس للدفاع الوطنى، يتولى رئيس الجمهورية رئاسته، وبضم فى عضوبته رئيس مجلس الوزراء، ورئيسى مجلسى النواب والشورى، ووزراء الدفاع والخارجية والمالية والداخلية ورئيس المخابرات العامة ورئيس أركان حرب القوات المسلحة وقادة القوات البحرية والجوية والدفاع الجوى ورئيس هيئة عمليات القوات المسلحة ومدير إدارة المخابرات الحربية والاستطلاع.

ويختص بالنظر فى الشئون الخاصة بوسائل تأمين البلاد وسلامتها، ومناقشة موازنة القوات المسلحة، ويجب أخذ رأيه فى مشروعات القوانين المتعلقة بالقوات المسلحة. ويحدد القانون اختصاصاته الأخرى.

ولرئيس الجمهورية أن يدعو من يرى من المختصين والخبراء لحضور اجتماع المجلس دون أن يكون لهم صوت معدود.

الفرع الرابع: القضاء العسكرى

المادة (198)

القضاء العسكرى جهة قضائية مستقلة، يختص دون غيره بالفصل فى كافة الجرائم المتعلقة بالقوات المسلحة وضباطها وأفرادها.

ولا يجوز محاكمة مدنى أمام القضاء العسكرى إلا فى الجرائم التى تضر بالقوات المسلحة؛ ويحدد القانون تلك الجرائم، ويبين اختصاصات القضاء العسكرى الأخرى.

وأعضاء القضاء العسكرى مستقلون، غير قابلين للعزل، ويكون لهم كافة الضمانات والحقوق والواجبات المقررة لأعضاء الجهات القضائية.

الفرع الخامس: الشرطة

المادة (199)

الشرطة هيئة مدنية نظامية، رئيسها الأعلى رئيس الجمهورية، وتؤدى واجبها فى خدمة الشعب، ولولاؤها للدستور والقانون، وتتولى حفظ النظام والأمن والآداب العامة، وتنفيذ ما تفرضه القوانين واللوائح، وتكفل للمواطنين طمأنينتهم وحماية كرامتهم وحقوقهم وحررياتهم، وذلك كله؛ على النحو الذى ينظمه القانون، وبما يمكن أعضاء هيئة الشرطة من القيام بواجباتهم.

الباب الرابع
الهيئات المستقلة والأجهزة الرقابية
الفصل الأول: أحكام مشتركة
المادة (200)

تتمتع الهيئات المستقلة والأجهزة الرقابية، المنصوص عليها في الدستور، بالشخصية الاعتبارية العامة، والحياد، والاستقلال الفنى والإدارى والمالى. ويحدد القانون الهيئات المستقلة والأجهزة الرقابية الأخرى. ويتعين أخذ رأى كل هيئة أو جهاز منها فى مشروعات القوانين واللوائح المتعلقة بمجال عملها.

المادة (201)

تقدم تقارير الهيئات المستقلة والأجهزة الرقابية إلى كل من رئيس الجمهورية ومجلس النواب ومجلس الشورى، خلال ثلاثين يوماً من تاريخ صدورها. وعلى مجلس النواب أن ينظرها، ويتخذ الإجراء المناسب حيالها فى مدة لا تتجاوز ستة أشهر من تاريخ ورودها إليه. وتنتشر هذه التقارير على الرأى العام. وتبلغ الأجهزة الرقابية سلطات التحقيق المختصة بما تكتشفه من دلائل على ارتكاب مخالفات أو جرائم. وكل ذلك على النحو الذى ينظمه القانون.

المادة (202)

يعين رئيس الجمهورية رؤساء الهيئات المستقلة والأجهزة الرقابية بعد موافقة مجلس الشورى، وذلك لمدة أربع سنوات قابلة للتجديد لمرة واحدة. ولا يعزلون إلا بموافقة أغلبية أعضاء المجلس، ويحظر عليهم ما يحظر على الوزراء.

المادة (203)

يصدر قانون بتشكيل كل هيئة مستقلة أو جهاز رقابى، يحدد الاختصاصات الأخرى غير المنصوص عليها فى الدستور، ونظام عملها؛ ويمنح أعضائها الضمانات اللازمة لأداء عملهم. ويبين القانون طريقة تعيينهم وترقيتهم ومساءلتهم وعزلهم، وغير ذلك من أوضاعهم الوظيفية بما يكفل لهم الحياد والاستقلال.

الفصل الثانى

الأجهزة الرقابية

الفرع الأول: المفوضية الوطنية لمكافحة الفساد

المادة (204)

تختص المفوضية الوطنية لمكافحة الفساد بالعمل على محاربة الفساد، ومعالجة تضارب المصالح، ونشر قيم النزاهة والشفافية وتحديد معاييرها، ووضع الاستراتيجية الوطنية الخاصة بذلك كله، وضمان تنفيذها بالتنسيق مع الهيئات المستقلة الأخرى، والإشراف على الأجهزة المعنية التى يحددها القانون.

الفرع الثانى: الجهاز المركزى للمحاسبات

المادة (205)

يتولى الجهاز المركزى للمحاسبات الرقابة على أموال الدولة، والجهات الأخرى التى يحددها القانون.

الفرع الثالث: البنك المركزى

المادة (206)

يضع البنك المركزى السياسة النقدية والائتمانية والمصرفية، ويشرف على تنفيذها، ويراقب أداء الجهاز المصرفى، ويعمل على تحقيق استقرار الأسعار؛ وله وحده حق إصدار النقد.

وذلك كله فى إطار السياسة الاقتصادية العامة للدولة.

الفصل الثالث

المجلس الاقتصادى والاجتماعى

المادة (207)

يقوم المجلس الاقتصادى والاجتماعى على دعم مشاركة فئات المجتمع فى إعداد السياسات الاقتصادية والاجتماعية والبيئية، وتعزيز الحوار المجتمعى. ويجب على كل من الحكومة ومجلس النواب ومجلس الشورى أخذ رأى المجلس الاقتصادى والاجتماعى فى هذه السياسات ومشروعات القوانين المتعلقة بها. ويُشكل هذا المجلس من مائة وخمسين عضوا كحد أدنى، تختارهم تنظيماتهم المنتخبة من نقابات واتحادات وجمعيات الفلاحين والعمال والمهنيين وغيرهم من فئات المجتمع، على ألا يقل تمثيل العمال والفلاحين عن خمسين بالمائة من أعضاء المجلس.

ولا يجوز الجمع بين عضوية هذا المجلس وعضوية الحكومة أو أى من المجالس النيابية.

ويبين القانون طريقة تشكيل المجلس، وانتخاب رئيسه، ونظام عمله، ووسائل تقديم توصياته إلى سلطات الدولة.

الفصل الرابع

المفوضية الوطنية للانتخابات

المادة (208)

تختص المفوضية الوطنية للانتخابات وحدها بإدارة الاستفتاءات والانتخابات الرئاسية والنيابية والمحلية، بدءاً من إعداد قاعدة بيانات الناخبين وإبداء الرأى فى تقسيم الدوائر، وتحديد ضوابط التمويل والإنفاق الانتخابى والإعلان عنه، وغير ذلك من إجراءات، حتى إعلان النتيجة. ويجوز أن يُعهد إليها بالإشراف على انتخابات التنظيمات النقابية وغيرها. وذلك كله على النحو الذى ينظمه القانون.

المادة (209)

يتولى إدارة المفوضية الوطنية للانتخابات مجلس مكون من عشرة أعضاء ينتدبون بالتساوى من بين نواب رئيس محكمة النقض، ورؤساء محاكم الاستئناف، ونواب رؤساء مجلس الدولة وقضايا الدولة والنيابة الإدارية، يختارهم مجلس القضاء الأعلى والمجالس الخاصة لتلك الهيئات بحسب الأحوال من غير أعضائها، ويكون نديهم للعمل بالمفوضية على سبيل التفرغ لدورة واحدة مدتها ست سنوات؛ وتكون رئاستها لأقدم أعضائها من محكمة النقض. ويتجدد انتخاب نصف عدد أعضاء المجلس كل ثلاث سنوات. وللمفوضية أن تستعين بمن تراه من الشخصيات العامة والمتخصصين وذوى الخبرة فى مجال الانتخابات، ويكون لها جهاز تنفيذى. وكل ذلك على النحو الذى ينظمه القانون.

المادة (210)

يتولى إدارة الاقتراع والفرز فى الاستفتاءات والانتخابات، التى تديرها المفوضية، أعضاء تابعون لها، تحت الإشراف العام لمجلس المفوضية، ويمنحون الضمانات اللازمة لأداء عملهم بما يكفل لهم الحياد والاستقلال. واستثناءً من ذلك تسند المفوضية الإشراف على الاقتراع والفرز لأعضاء من السلطة القضائية والهيئات القضائية لمدة عشر سنوات على الأقل من تاريخ العمل بالدستور؛ وذلك كله على النحو الذى ينظمه القانون.

المادة (211)

تختص المحكمة الإدارية العليا بالفصل فى الطعون على قرارات المفوضية الوطنية للانتخابات المتعلقة بالاستفتاءات وبالانتخابات النيابية والرئاسية ونتائجها، ويكون الطعن على انتخابات المحليات أمام محكمة القضاء الإدارى. وينظم القانون إجراءات الطعون والفصل فيها وفقاً لمواعيد محددة بما لا يخل بسير العملية الانتخابية، أو إعلان نتائجها النهائية. ولا يجوز الطعن على النتائج النهائية للاستفتاءات أو الانتخابات الرئاسية بعد إعلانها. وفى كل الأحوال يجب أن يتم إعلان النتائج النهائية خلال مدة لا تتجاوز ثمانية أيام من تاريخ الاقتراع.

الفصل الخامس

الهيئات المستقلة

الفرع الأول: الهيئة العليا لشؤون الوقف

المادة (212)

تقوم الهيئة العليا لشؤون الوقف على تنظيم مؤسساته العامة والخاصة، وتشرف عليها وتراقبها، وتضمن التزامها بأنماط أداء إدارية واقتصادية رشيدة، وتنتشر ثقافة الوقف في المجتمع.

الفرع الثاني: الهيئة العليا لحفظ التراث

المادة (213)

تُعنى الهيئة العليا لحفظ التراث بتنظيم وسائل حماية التراث الحضارى والعمرانى والثقافى المصرى، والإشراف على جمعه، وتوثيقه وصون موجوداته، وإحياء إسهاماته فى الحضارة الإنسانية. وتعمل هذه الهيئة على توثيق ثورة الخامس والعشرين من يناير وثورات مصر فى العصر الحديث.

الفرع الثالث: المجلس الوطنى للتعليم والبحث العلمى

المادة (214)

يختص المجلس الوطنى للتعليم والبحث العلمى بوضع استراتيجية وطنية للتعليم بكل أنواعه وجميع مراحلها، وتحقيق التكامل فيما بينها، والنهوض بالبحث العلمى، ووضع المعايير الوطنية لجودة التعليم والبحث العلمى، ومتابعة تنفيذ هذه الاستراتيجية.

الفرع الرابع: الهيئات المستقلة للصحافة والإعلام

المادة (215)

يتولى المجلس الوطنى للإعلام تنظيم شئون البث المسموع والمرئى وتنظيم الصحافة المطبوعة والرقمية وغيرها.

ويكون المجلس مسئولاً عن ضمان حرية الإعلام بمختلف صوره وأشكاله والمحافظة على تعدديته، وعدم تركزه أو احتكاره، وعن حماية مصالح الجمهور، ووضع الضوابط والمعايير الكفيلة بالتزام وسائل الإعلام المختلفة بأصول المهنة وأخلاقياتها، والحفاظ على اللغة العربية، ومراعاة قيم المجتمع وتقاليد البناء.

المادة (216)

تقوم الهيئة الوطنية للصحافة والإعلام على إدارة المؤسسات الصحفية والإعلامية المملوكة للدولة، وتطويرها، وتنمية أصولها، وضمان التزامها بأداء مهنى وإدارى واقتصادى رشيد.

الباب الخامس

الأحكام الختامية والانتقالية

الفصل الأول: تعديل الدستور

المادة (217)

لكل من رئيس الجمهورية ومجلس النواب طلب تعديل مادة أو أكثر من مواد الدستور؛ ويجب أن يذكر في الطلب المواد المطلوب تعديلها وأسباب التعديل؛ فإذا صدر طلب التعديل من مجلس النواب وجب أن يوقعه خمس عدد الأعضاء على الأقل.

وفي جميع الأحوال، يناقش مجلسا النواب والشورى طلب التعديل خلال ثلاثين يوماً من تاريخ تسلمه، ويصدر كل مجلس قراره بقبول طلب التعديل كلياً أو جزئياً بأغلبية عدد أعضائه.

وإذا رفض الطلب لا يعاد طلب تعديل المواد ذاتها قبل حلول دور الانعقاد التالي.

المادة (218)

إذا وافق المجلسان على طلب تعديل الدستور، يناقش كل منهما نصوص المواد المطلوب تعديلها بعد ستين يوماً من تاريخ الموافقة؛ فإذا وافق على التعديل ثلثا أعضاء كل مجلس، عرض على الاستفتاء الشعبى خلال ثلاثين يوماً من تاريخ صدور هذه الموافقة.

ويكون التعديل نافذاً من تاريخ إعلان نتيجة الاستفتاء بالموافقة.

الفصل الثانى: أحكام عامة

المادة (219)

مبادئ الشريعة الإسلامية تشمل أدلتها الكلية، وقواعدها الأصولية والفقهية، ومصادرها المعتمدة، فى مذاهب أهل السنة والجماعة.

المادة (220)

مدينة القاهرة عاصمة الدولة. ويجوز نقل العاصمة إلى مكان آخر بقانون.

المادة (221)

يحدد القانون علم الدولة، وشعارها، وأوسمتها، وشاراتها، وخاتمها، ونشيدها الوطنى.

المادة (222)

كل ما قرره القوانين واللوائح من أحكام قبل صدور الدستور يبقى نافذاً. ولا يجوز تعديلها ولا إلغاؤها إلا وفقاً للقواعد والإجراءات المقررة فى الدستور.

المادة (223)

تنتشر القوانين فى الجريدة الرسمية خلال خمسة عشر يوماً من تاريخ إصدارها، ويعمل بها بعد ثلاثين يوماً من اليوم التالى لتاريخ نشرها، إلا إذا حددت لذلك ميعاداً آخر.

ولا تسرى أحكام القوانين إلا على ما يقع من تاريخ العمل بها، ولا يترتب عليها أثر فيما وقع قبلها، ومع ذلك يجوز فى غير المواد الجنائية والضريبية النص فى القانون على خلاف ذلك بموافقة أغلبية ثلثى أعضاء مجلس النواب.

المادة (224)

تجرى انتخابات مجلسى النواب والشورى والمجالس المحلية وفقاً للنظام الفردى أو نظام القوائم أو الجمع بينهما، أو بأى نظام انتخابى يحدده القانون.

المادة (225)

يعمل بالدستور من تاريخ إعلان موافقة الشعب عليه فى الاستفتاء؛ وذلك بأغلبية عدد الأصوات الصحيحة للمشاركين فى الاستفتاء.

الفصل الثالث: أحكام انتقالية

المادة (226)

تنتهى مدة رئيس الجمهورية الحالى بانقضاء أربع سنوات من تاريخ تسلمه مهام منصبه، ولا يجوز إعادة انتخابه إلا مرة أخرى.

المادة (227)

كل منصب، يعين له الدستور أو القانون مدة ولاية محددة، غير قابلة للتجديد أو قابلة لمرة واحدة، يحتسب بدء هذه الولاية من تاريخ شغل المنصب. وتنتهى الولاية فى جميع الأحوال متى بلغ صاحبها السن المقررة قانوناً لتقاعد شاغلها.

المادة (228)

تتولى اللجنة العليا للانتخابات القائمة فى تاريخ العمل بالدستور، الإشراف الكامل على أول انتخابات تشريعية تالية، وتؤول أموال هذه اللجنة واللجنة العليا للانتخابات الرئاسية إلى المفوضية الوطنية للانتخابات، فور تشكيلها.

المادة (229)

تبدأ إجراءات انتخاب أول مجلس نواب خلال ستين يوماً من العمل بالدستور، وينعقد فصله التشريعى الأول خلال عشرة أيام على الأكثر من تاريخ إعلان النتيجة النهائية للانتخابات.

ويمثل العمال والفلاحون فى هذا المجلس بنسبة لا تقل عن خمسين بالمائة من عدد أعضائه.

ويقصد بالعامل كل من يعمل لدى الغير مقابل أجر أو مرتب. ويقصد بالفلاح كل من امتن الزراعة لمدة عشر سنوات على الأقل سابقة على ترشحه لعضوية المجلس.

ويبين القانون المعايير والضوابط الواجب توافرها لاعتبار المرشح عاملاً أو فلاحاً.

المادة (230)

يتولى مجلس الشورى القائم بتشكيله الحالى سلطة التشريع كاملة من تاريخ العمل بالدستور حتى انعقاد مجلس النواب الجديد.

وتنتقل إلى مجلس النواب، فور انتخابه، السلطة التشريعية كاملة لحين انتخاب مجلس الشورى الجديد؛ على أن يتم ذلك خلال سنة من تاريخ انعقاد مجلس النواب.

المادة (231)

تكون الانتخابات التشريعية التالية لتاريخ العمل بالدستور بواقع ثلثي المقاعد لنظام القائمة، والثلث للنظام الفردي، ويحق للأحزاب والمستقلين الترشح في كل منهما.

المادة (232)

تمنع قيادات الحزب الوطني المنحل من ممارسة العمل السياسي والترشح للانتخابات الرئاسية والتشريعية لمدة عشر سنوات من تاريخ العمل بالدستور. ويقصد بالقيادات كل من كان، في الخامس والعشرين من يناير 2011، عضوا بالأمانة العامة للحزب الوطني المنحل أو لجنة السياسات أو بمكتبه السياسي، أو كان عضوا بمجلس الشعب أو الشورى في الفصلين التشريعيين السابقين على قيام الثورة.

المادة (233)

تؤلف أول هيئة للمحكمة الدستورية العليا، عند العمل بهذا الدستور، من رئيسها الحالي وأقدم عشرة من أعضائها. ويعود الأعضاء الباقون إلى أماكن عملهم التي كانوا يشغلونها قبل تعيينهم بالمحكمة.

المادة (234)

يسرى الحكم الخاص باستئناف الأحكام الصادرة في الجنايات المنصوص عليها في الفقرة الثالثة من المادة 77 من الدستور بعد سنة من تاريخ العمل به.

المادة (235)

يستمر العمل بنظام الإدارة المحلية القائم إلى أن يتم تطبيق النظام المنصوص عليه في الدستور بالتدريج خلال عشر سنوات من تاريخ العمل به.

المادة (236)

تلغى جميع الإعلانات الدستورية الصادرة من المجلس الأعلى للقوات المسلحة ورئيس الجمهورية منذ الحادى عشر من فبراير سنة 2011 وحتى تاريخ العمل بالدستور، ويبقى نافذاً ما ترتب عليها من آثار في الفترة السابقة.

Appendix B

THE 2012 CONSTITUTION OF EGYPT, TRANSLATED BY NIVIEN SALEH, WITH INDEX

Subject matter: This is a translation of the constitution that the Egyptian people adopted via popular referendum in December of 2012. The original on which this translation is based was downloaded from [ALJazeera Mubasher](#), which identifies the document as the final version of the constitution.

Index: This translation comes with a hyperlinked index. For the reader's convenience it is offered in two forms: Index One is appended to the translation and can be found by clicking [here](#). Index Two is external to the translation, [here](#). In Index Two, whenever you click on an indexed article, that article will open in a new browser window.

Additional info: For more information on how this translation came about and for a note on the gendered character of its language, click [here](#).

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PREAMBLE

We the People of Egypt,

In the name of God, the Merciful, and with His assistance, state:

This is our Constitution, the document of the revolution of January 25, 2012, which our youth began, around which our People gathered, and with which our armed forces sided.

Having rejected in Tahrir Square and across the country all forms of injustice, subjugation, tyranny, despotism, exclusion, plunder, corruption, and monopoly;

Having publicly claimed our right to “Bread, Freedom, Social Justice, and Human Dignity” through the blood of our martyrs, the pain of our injured, the dreams of our children, and the struggle of our men and women;

Having regained the spirit of our mighty culture and our luminous history – we constructed the most ancient of states on the banks of the eternal Nile, one that knew the meanings of citizenship, equality, and absence of discrimination, and that gave the world its first alphabet, launched the monotheistic faith, established the knowledge of the Creator, embraced God’s prophets and heavenly messages, and embellished the pages of human history with a parade of inventions -;

Continuing our pure revolution that united Egyptians in order to build a modern democratic state;

Declare our adherence to these principles: .

First: The People is the source of all powers. It generates the powers; they derive their legality from the People and are subject to its will. The responsibilities and authorizations that these powers entail are a duty one fulfills, not a privilege behind which one hides.

Second: The system of government is democratic. It entrenches the peaceful transfer of power and deepens pluralism in politics and among parties. It includes fair elections and the People’s contribution to national decisions.

Third: The dignity of the person is equivalent to the dignity of the homeland. There is, moreover, no dignity for a homeland in which the woman does not enjoy dignity; for women are the sisters of men and partners with respect to national achievements and responsibilities.

Fourth: Freedom of thought, creativity, opinion, housing and property is a right. So is the freedom to choose between staying in a place or leaving. The Creator rooted this freedom in the movement of the cosmos and in human nature.

Fifth: Equality of opportunity is there for all, both for male and female citizens. There is no discrimination, intercession, or favoritism when it comes to rights and duties.

Sixth: The rule of law is the foundation for individual freedom, the legitimacy of power, and the state’s respect for the law. No voice will drown out the force of what is right. The judiciary is independent and has the supreme task to protect the Constitution, carry the scales of justice, and guard rights and freedoms.

Seventh: National unity is a duty. It is the cornerstone on top of which the modern Egyptian state and its movement toward progress and development are built. It is solidified by the

values of tolerance, justice, and moderation, and by the guarantee of rights and freedoms for all citizens without discrimination.

Eighth: Defending the homeland is an honor and an obligation. Our armed forces are a neutral, professional national institution that does not interfere in the political process. It is the country's defensive shield.

Ninth: Security is a great blessing. It is guaranteed by a police that works for the sake and protection of the People. The police imposes justice, for there is no justice without security and no security without security institutions that respect human dignity and the rule of law.

Tenth: Unity is the hope of the Arab community (*umma*). It is history's call, an invitation into the future, and a fixed destiny. It is strengthened by integration and friendly cooperation with the states of the Nile basin and the Islamic world, both being a natural extension of Egypt's strategic status and the venue through which Egypt claims its place in the world.

Eleventh: Egypt's intellectual and cultural leadership express the nation's soft power. They also form a model of providing by granting freedom to creators, intellectuals, universities, scientific and linguistic associations, research centers, journalism, arts and letters, the media, the national Church, and lastly the noble *Azhar*, which throughout history has been responsible for shaping the identity of our homeland, has served as patron to the eternal Arabic language and the glorious law of Islam (*sharia*), and stood as a beacon for moderate, enlightened thought.

We the People of Egypt,

Believing in God and His messages,

Recognizing our responsibility towards the homeland and the (Arabic or Islamic) community (*umma*),

Conscious of our national and human responsibility,

Commit to being guided by the principles of this Constitution, which we adopt and grant ourselves, affirming our steadfast determination to submit to it and defend it, and pledging that all state authorities as well as the People shall guard and respect it.

PART ONE: ELEMENTS OF STATE AND SOCIETY

Chapter 1: Political Elements

Article 1

The Arab Republic of Egypt is an independent, united sovereign state that cannot be divided. Its system is democratic.

The Egyptian People forms part of both the Arab and the Islamic community (*umma*). It is proud to belong to the Nile basin and the African continent, reach into Asia, and contribute positively to human civilization.

Article 2

Islam is the state's religion, and Arabic is its official language. The principles of Islamic law (*sharia*) form the main source of legislation.

Article 3

For Egyptian Christians and Jews, the principles of their religious law will be the main source in regulating their personal status, matters pertaining to their religion, and the selection of their spiritual leadership.

Article 4

The noble Azhar is an independent Islamic institution of higher learning. It handles all its affairs without outside interference. It leads the call into Islam and assumes responsibility for religious studies and the Arabic language in Egypt and the world. The Azhar's Body of Senior Scholars is to be consulted in matters pertaining to Islamic law (*sharia*).

The state guarantees the financial means needed to fulfill these tasks.

The Sheikh of the Azhar is independent and cannot be dismissed from his position. The law determines the process by which he is selected from among the members of the Body of Senior Scholars.

All this will proceed as stipulated by law.

Article 5

Sovereignty belongs to the People. The People will practice and protect it and preserve Egypt's national unity. The People is the source of power, as stipulated in the provisions of the Constitution.

Article 6

The political system is based on the principles of democracy, consultation (*shura*), and citizenship, which together regulate public rights and duties among the citizens. It is also based on pluralism in politics and among parties, the peaceful transfer of power, the separation and balance of powers, the rule of law, as well as respect for human rights and freedoms; all this happens according to the provisions of this Constitution.

No political party may be based on discrimination of gender or origin or religion.

Article 7

Keeping the nation safe is an honor and a sacred obligation, so is the defense of the homeland and the protection of its soil. Armed service is compulsory, as regulated by law.

Chapter 2: Societal and Moral Elements**Article 8**

The state guarantees the ways of realizing justice, equality and freedom. It commits itself to facilitating the expression of compassion and solidarity among members of society. It guarantees the protection of individuals and their families and of property. It works toward securing the basic necessities for all citizens, as prescribed by law.

Article 9

The state commits itself to providing security, tranquility and equality of opportunity for all citizens, without discrimination.

Article 10

The family is the foundation of society. The family's foundations are religion, morality, and patriotism.

Both state and society seek to preserve the inherent character of the Egyptian family, its cohesion, stability, and moral character, and to protect the family as specified by law.

The state guarantees mother-and-child services that are free of charge and pledges to reconcile the woman's duties toward her family with her work in the public sphere.

The state provides special protections for female breadwinners, divorced women, and widows.

Article 11

The state promotes morality, decency, and public order, as well as a high level of education and religious and patriotic values, scientific truths, the Arab culture, and the historical and civilizational patrimony of the People.

All this as specified by law.

Article 12

The state protects society's culture and language and works toward the Arabization of teaching, the sciences, and the nation's knowledge base, as specified by law.

Article 13

The introduction of civilian rank titles is forbidden.

Chapter 3: Economic Elements**Article 14**

The national economy aims at steady and comprehensive development, at elevating the standard of living and realizing welfare, at combatting poverty and unemployment, and at increasing job opportunities, production, and national income.

The development plan works toward establishing social justice and solidarity, guaranteeing distributive justice, protecting the rights of the consumer, safeguarding the rights of the workers, engendering cooperation between capital and labor in defraying the costs of development, and ensuring a fair distribution of income.

Earnings must be linked to production; income disparities must be lessened; a minimum level for earnings and pensions enabling a life of dignity for every citizen must be guaranteed, as well as an income cap for state agencies. There can be no exceptions unless this is grounded in law.

Article 15

Agriculture is an essential element of the national economy. The state commits itself to the protection of agricultural land and its reclamation. It works toward developing and protecting

crops, vegetables, animal products, and the abundance of fish. It will realize food security and provide what is required for agricultural production, improving its management and marketing, and supporting the agri-industry.

The law regulates the use of state land in a way that realizes social justice and protects both the farmer and agricultural worker from exploitation.

Article 16

The state commits itself to developing the countryside and the desert and works toward raising the standard of living of farmers and desert dwellers.

Article 17

Industry is an essential component of the national economy. The state protects strategic industries, supports industrial development, and guarantees the introduction of modern technologies and their applications.

The state sponsors both craft industries and small enterprises.

Article 18

The People owns the state's natural wealth and is entitled to its returns. The state commits itself to safeguarding this wealth and its proper use and to respecting the rights of future generations.

The disbursement of state funds, permission of their use, and privatization of public land and facilities are prohibited except for purposes specifically permitted by law.

The state owns any property lacking an owner.

Article 19

The River Nile and its water constitute national wealth. The state commits itself to safeguarding and developing it and to prohibiting its abuse. The law specifies the ways of utilizing it.

Article 20

The state commits itself to protecting its beaches, oceans, waterways, and lakes; it guarantees the maintenance of monuments and nature reserves and the removal of whatever encroaches on them illegally.

Article 21

The state guarantees legal ownership, be it public, cooperative, private, or in the form of religious endowments, and protects it, as specified by law.

Article 22

The public funds are inviolable. Protecting them is a national obligation both for the state and society.

Article 23

The state sponsors cooperatives in all their forms, supports them, and guarantees their independence.

Article 24

Private property is inviolable. Managed ethically and without monopoly, it fulfills its societal

function by serving the national economy. The right to inherit private property is guaranteed. Property may only be confiscated in circumstances specified by law. This requires a court ruling and is permissible only if doing so is in the public interest and fair compensation is provided upfront.

All this happens as specified by law.

Article 25

The state commits itself to reviving and encouraging the system of religious endowments.

The law regulates religious endowments.

It defines the process for founding them, administering their assets, investing these assets, and distributing their returns among the beneficiaries according to the rules specific to each endowment.

Article 26

Social justice is the cornerstone for assessing taxes and other ways of defraying public costs.

The creation, amendment, and cancellation of the tax code can only happen through law.

Only under circumstances specified by law may a taxpayer be exempted from taxation; and no one must be charged beyond these taxes and fees unless the law permits it.

Article 27

The workers have a share in the management of projects and their earnings. They commit themselves to developing production, safeguarding its tools, and carrying out the production plan in their work units, as stipulated by law.

The number of worker representatives in the management assemblies of the public sector units must approximate fifty percent of total elected members.

The law guarantees that small farmers and small craftsmen are represented with at least 80 percent membership in the management assemblies of agricultural and industrial cooperatives.

Article 28

The state encourages the practice of saving and protects the savings and assets of insurance and retirement providers.

This is regulated by law.

Article 29

Nationalization is illegal unless it occurs for the public good, in compliance with the law, and with fair compensation.

Article 30

The confiscation of public property is forbidden.

The confiscation of private property is illegal unless it occurs with a court order.

PART TWO: RIGHTS AND FREEDOMS

Chapter 1: Personal Rights

Article 31

Every person is entitled to dignity. Society and state both guarantee that it will be respected and protected.

No person must suffer insult or scorn.

Article 32

The Egyptian citizenship is a right. It is regulated by law.

Article 33

The citizens enjoy equality before the law. They have identical rights and public duties. There is no discrimination among them.

Article 34

Personal freedom is a natural right. It is inviolable and untouchable.

Article 35

Unless caught in the act, a person can only be arrested, searched, jailed, prevented from travel, or in any other way restricted in his freedom if doing so follows a court order.

Anyone whose freedom has been curtailed is entitled to receive a written notice listing the reasons within twelve hours. Within 24 hours of the curtailment of his freedom, a person must be brought before the investigating authority. This must happen in the presence of his attorney. If he does not have an attorney, one will be provided for him.

Anyone whose freedom has been constrained, and anyone else, has the right to lodge a complaint before the judge in regards to this procedure and receive a decision within a week. If a decision has not been issued within that time, the person must be released.

The law specifies the rules for detention, its duration, its reasons, and for the right to compensation either for temporary detention or for the completion of a sentence that a court has revoked.

Article 36

Anyone who has been arrested, jailed, or restricted in his freedom in any form is entitled to being treated in a way that respects his dignity. He must not be tortured, threatened, or degraded. He must not be harmed physically or mentally.

He must only be detained or jailed in locations that are hygienic and becoming to a human being and that are under judicial supervision.

Any deviation from these instructions is a crime that will be punished, as stipulated by law.

Any statement made under such illegal circumstances or elicited under threat of such circumstances shall be considered null and void.

Article 37

Prison is a place of correction, reformation, and rehabilitation. It is under judicial supervision.

In it, anything that violates human dignity or exposes an inmate to health risks is forbidden.

The state is responsible for the rehabilitation of the sentenced. Upon release, it eases their transition into a life of dignity.

Article 38

Citizens' private life is inviolable, and respect for its secrecy is guaranteed. Postal messages, telegrams, electronic messages, phone conversations, and other means of communication must not be intercepted or inspected. Only under circumstances specified by law and with a court order may they be intercepted for a defined duration.

Article 39

Homes are inviolable. Unless there is imminent danger, they must only be entered, searched, or put under surveillance under circumstances specified by law and with a court order that defines the place, time, and purpose of the intrusion. Before entry and search a warning must be issued to whomever is in the home.

Article 40

Living in safety is a right. The state guarantees it to anyone living on its soil. The law protects the human being from any criminal threats.

Article 41

The human body is inviolable, and trade in its parts is prohibited. No medical or scientific experiments may be carried out on it unless the person's free consent has been reliably obtained. Such experiments must be grounded in the stable foundations of the medical sciences. Details are stipulated by law.

Article 42

The freedom of movement and the choice to stay or leave are guaranteed.

No citizen may be removed from the state's territory or be prohibited from returning to it. He must not be prohibited from leaving the state, and he is under no obligation to reside on its territory against his will, unless by court order and for a limited time.

Chapter 2: Civil and Political Rights**Article 43**

The freedom of belief is inviolable.

The state guarantees the right to practice one's religious rites and establish places of worship for the heavenly religions. Details are specified by law.

Article 44

It is forbidden to insult any messengers or prophets.

Article 45

The freedom of thought and opinion are guaranteed.

Every person has the right to express his opinion in speaking, writing, image, or otherwise.

Article 46

Every citizens has the right to creative expression in its various forms.

The state promotes the sciences and the arts and letters. It sponsors creators and inventors, protects their creations and innovations, and works toward applying these creations for the good of society.

The state takes the necessary measures for preserving the nation's cultural heritage and works toward spreading cultural services.

Article 47

Citizens have the right to access information, data, statistics, and documents, and to disclose and circulate them. The state guarantees this right. The right is constrained by the inviolability of private life, the rights of others, and exigencies of national security.

The law specifies the principles by which public documents are accessed and archived. It determines how information is acquired and complaints against information denials are lodged. It also specifies how accountability for such denials is established.

Article 48

The freedom of journalism, the press, the publishing industry, broadcasting, and other media is guaranteed. Their free and independent message serves society, expressing, forming, and directing public opinion. All this happens within the framework of the essential elements of state and society, the preservation of rights, freedoms, and societal duties, respect for the sanctity of citizens' private lives, and the requirements of national security. It is forbidden to censor, terminate, or sequester the media without a court ruling. It is illegal to censor material that the media are putting out. An exception is limited censorship in times of war or public mobilization.

Article 49

The right to issue and own newspapers in all their forms is guaranteed to any natural or legal Egyptian person that provides notification.

The law regulates the establishment of broadcasting and television stations as well as digital and other media.

Article 50

The citizens have the right to organize public gatherings and engage in peaceful, unarmed demonstrations. This requires a notification as stipulated by law.

The right to private gatherings is guaranteed, and no notification is necessary. Security personnel must not be in attendance, nor may they eavesdrop on the gatherings.

Article 51

The citizens have the right to create associations, institutions, and parties. Only notification is necessary. They practice their activities freely and are legal persons.

The authorities are prohibited from dissolving their administrative organs unless under court order. This is specified by law.

Article 52

The freedom to establish syndicates, unions, and cooperatives is guaranteed. They are legal persons, arise from democratic foundations, and freely engage in their activities. They serve society, raise the level of competence among its members, and defend their rights.

Only in execution of a court ruling may the authorities dissolve them or their management assemblies.

Article 53

The law regulates the professional syndicates and ensures their democratic management. It defines their financial resources and the method by which syndicate members, in exercise of their professional activities, are held to high ethical standards. There can be only one professional syndicate per profession.

Only in execution of a court ruling may the authorities dissolve a syndicate's management assembly, and they may not put them under surveillance.

Article 54

Each person has the right to petition the public authorities in writing and with his own signature. Only associations that are legal persons can have an individual submit a petition on their behalf.

Article 55

It is a national duty for citizens to participate in public life. Every citizen has the right to vote, run for election, and express his opinion through a referendum. The law specifies these rights. The state commits itself to entering each citizen who is eligible to vote into the voter registry without requiring an application.

The state guarantees the peacefulness and integrity of referenda and elections. State organs that interfere in these processes with the goal of influencing them are committing crimes punishable by law.

Article 56

The state represents and protects the interests of citizens living abroad, and it guarantees their rights and freedoms and holds them to fulfilling their public duties towards the Egyptian state and Egyptian society. It encourages their contribution to developing the homeland.

The law regulates their participation in elections and referenda.

Article 57

The state grants asylum to foreigners deprived in their home country of rights and freedoms that are guaranteed by the Constitution.

The extradition of political refugees is prohibited.

Details are specified by law.

Chapter 3: Economic and Social Rights**Article 58**

Every citizen has the right to a high-quality education. It is provided free of charge at its various levels at all state-owned educational institutions. Basic education is mandatory. The state takes all necessary measures to make higher educational stages mandatory as well.

The state supports and encourages technical education. It oversees all aspects of education and allocates to it a sufficient share of the national budget.

All educational institutions, be they public, private, communal, or a combination thereof, commit themselves to the state's educational plan and its goals. All this happens to enhance the linkage between education and the needs of both society and production.

Article 59

The freedom of scientific research is guaranteed. Universities, scientific and linguistic associations, as well as scientific research institutes are independent. The state assigns them an adequate share of the national budget.

Article 60

The Arabic language is an essential subject in the various stages of education. This applies to all educational institutions. Religious education as well as national history form essential subjects at all levels preceding the university.

The universities commit themselves to teaching the norms and ethical foundations at the heart of their various scientific specializations.

Article 61

The state commits itself to devising a comprehensive plan for combatting illiteracy among males and females, spanning the age groups. It works towards eradicating its causes. With participation from society, it implements the plan within ten years from the date this Constitution enters into effect.

Article 62

Every citizen has the right to health care, and the state assigns a sufficient share of the national budget to its provision. The state commits itself to providing health care services and health insurance through a system that is both just and of high quality. These services will be free of charge to those unable to pay.

All health establishments commit themselves to providing emergency treatment in its various forms to every citizen.

The state supervises all health establishments and ensures the quality of their services. It also supervises all resources, products, and forms of communication having to do with health.

It initiates the pertinent legislation and takes all necessary measures to accomplish its supervisory mandate.

Article 63

Every person has the right to a healthy, undamaged environment. The state commits itself to the inviolability of the environment and its protection against pollution. It also commits itself to using natural resources in a way that will not harm the environment and to preserving the rights of all generations to it.

Article 64

Work constitutes a right, a duty, and an honor for every citizen. The state guarantees it on the basis of equality, justice, and equality of opportunity.

Forced labor is permissible only to the extent stipulated by law.

The public servant works to serve the People; the state awards government employment to citizens according to merit, without favoritism. Any deviation from this is a crime punishable by law.

The state guarantees every worker's right to a fair income and vacation days. It also guarantees pensions, social security, health care, protection against occupational hazards, the availability of safety provisions in the work place, in accordance with the law.

Workers may only be fired under circumstances that are specified by law.

Peaceful strike is a right, regulated by law.

Article 65

The state honors those who fell or were injured during the January 25 Revolution, during the wars, or while otherwise serving in the line of duty. It guarantees the necessary care for their families, the injured themselves, the veterans, the families of those who went missing in action during the wars and similar situations. They, their children, and their spouses have priority in employment.

Details are specified by law.

Article 66

The state guarantees social insurance services.

Every citizen has the right to social security, which guarantees a minimum level of sustenance, if he does not have the means to provide for himself or his family, is unable to work, unemployed, or of old age.

Article 67

The state works toward providing adequate pensions for small farmers, non-unionized agricultural workers, and all those who lack access to the system of social security.

Details are specified by law.

Article 68

Adequate housing, clean water, and healthy nourishment are guaranteed rights.

The state issues a national housing plan. Its cornerstones are social justice, the encouragement of individual initiative, and housing cooperatives; The state uses state land for purposes of construction if doing so advances the public good and preserves the rights of future generations.

Article 69

Physical exercise is a right for all.

It is the task of both state institutions and the society to discover talented athletes and nurture them and to take the necessary measures to encourage physical exercise.

Article 70

Every child, upon birth, is entitled to a proper name, care by his or her family, nutrition and shelter, health services, religious, emotional, and intellectual development.

The state commits itself to the child's care and protection in the case of loss of family. It guarantees the rights of the handicapped child, his socialization, and the child's absorption into society.

Before children have reached the age at which the compulsory stage of education is completed, they must not be put to work in occupations that are not age-appropriate. It is further forbidden to prevent them from completing their education.

A child may only be detained for a limited period and must be given legal assistance. He must be detained in an appropriate location. Such a location observes the separation of the sexes, takes into account the developmental stages of youth offenders and the nature of their crimes, and keeps them removed from adult detainees.

Article 71

The state guarantees care for children and youth. It ensures that they develop and are being prepared for their role in society, both spiritually, morally, culturally, intellectually, physically, psychologically, socially, and economically.

Article 72

The state commits itself to providing health care, education, and care for the physically, mentally, economically, and socially handicapped.

The state commits itself to providing healthcare, education, economic help, and social support for the handicapped, to providing employment opportunities for them and to improving societal perceptions of them, and to making public facilities accessible to them.

Article 73

Compulsion in all its forms is prohibited. This includes the exploitation of human beings and sex trade. The law treats these acts as crimes.

Chapter 4: Guarantees to Protect Rights and Freedoms

Article 74

The supreme rule of the law is the foundation of government in the country.

The independence of the judiciary and the immunity of judges both guarantee the protection of rights and freedoms.

Article 75

The right to a trial is inviolable and guaranteed to all.

The state commits itself to making the courts coordinate their work and to ensuring that cases are decided swiftly.

No action or administrative decision is immune to judicial review.

A person must only be tried before his assigned judge. Exceptional courts are prohibited.

Article 76

Sentences must be personal. There can be no crime and no sentence unless it is laid down in the Constitution or in law. A sentence can only be assessed by judicial verdict. A law cannot penalize actions that predate the law's passage.

Article 77

Except under circumstances defined by law, criminal proceedings are only to be undertaken under order from a competent judicial authority.

The suspect is innocent until proven guilty in a just legal trial that grants him the right to defense. Every felony suspect must receive an attorney that defends him. The law defines the misdemeanors that necessitate legal representation for the suspect.

The law regulates the appeals procedures for both felonies and misdemeanors.

Where appropriate, the state provides protection for the victims of a felony, the witnesses, the suspects, and informants.

Article 78

The right to defense – either self-defense or defense by an attorney – is guaranteed.

To the financially strapped the law guarantees recourse to the judiciary and the ability to defend their rights in front of it.

Article 79

Verdicts are issued and executed in the name of the People. A competent public servant who fails to execute a ruling or unnecessarily delays it is committing a crime punishable by law.

In that case the harmed party has the immediate right to bring a felony suit to a competent court.

Article 80

There is to be no statute of limitations in criminal or civil law when it comes to assaults on rights or freedoms granted by this Constitution. The state guarantees just indemnification to anyone who has suffered such an assault.

The harmed party immediately wins the right to launch criminal proceedings.

The National Council on Human Rights is to inform the Public Prosecutor of any violation of these rights; it may join the harmed party in civil proceedings and help it obtain remedy.

Article 81

The rights and freedoms that attach to the citizen must not be impaired. No law regulating the practice of these rights and freedoms may narrow their intent and essence.

The rights and freedoms are to be practiced in such a way that they do not conflict with the provisions of Part One of this Constitution, which covers the elements of state and society.

PART THREE: THE PUBLIC POWERS***Chapter 1: The Legislative Power*****FIRST SECTION: COMMON PROVISIONS****Article 82**

The legislative power consists of the House of Representatives and the Consultative Assembly.

Each exercises its authority in accordance with the Constitution.

Article 83

It is forbidden to be at once a member in the House of Representatives and the Consultative Assembly. The law defines other cases in which the accumulation of public offices is illegal.

Article 84

Unless exceptional circumstances defined by law warrant it, the members of the House of Representatives and the Consultative Assembly are to devote themselves fully to the tasks arising from their membership. Their employment or occupation is to be held open for them, as specified by law.

Article 85

The member represents the People in its entirety. His role as representative is not to be constrained in any way.

Article 86

Before beginning his term of office, the member delivers the following oath before his chamber: "I swear by God Almighty that I will faithfully preserve the republican system, that I will respect the Constitution and the law, that I will fully devote myself to defending the People's interest, that I will guard the independence of the nation and integrity of its soil."

Article 87

The Court of Cassation decides on the validity of membership for the members of both chambers; any challenge is to be submitted within thirty days after the final announcement of the election results. Upon receiving a challenge, the Court has sixty days to reach a verdict. If it annuls a membership, that annulment shall take effect on the day the chamber in question is informed of the ruling.

Article 88

During their tenure, members of either chamber must not – either in person or by proxy – purchase or rent state property. They must not sell or rent out their own property to the state or engage in a barter transaction with the state. Neither must they enter a contract with the state in which they figure as a supplier or contractor.

The member is to provide a financial disclosure statement when his membership takes effect, when it ends, and at the end of each year during his tenure. The statement is to be presented to the member's chamber.

If the member receives a monetary or in-kind gift as a result or on the occasion of his membership, the gift becomes the property of the state treasury.

All this happens as specified by law.

Article 89

The member must not be questioned over opinions he expresses in relation to his work in the chamber to which he belongs.

Article 90

Unless the member is caught red-handed in a criminal act, it is only permissible to bring criminal proceedings against him if his chamber has given its consent. If the chamber is not

in session, the consent of the chamber's administrative office must be obtained. The chamber itself must be notified at its first meeting of the measures that were taken.

In all cases, the decision on the request for launching criminal proceedings against the member must be made within thirty days. If within that time frame no decision is made, the application for launching criminal proceedings is considered granted.

Article 91

The member shall receive a remuneration that is defined by law.

Article 92

Both the House of Representatives and the Consultative Assembly convene in Cairo.

Under exceptional circumstances either chamber may hold its sessions in a different location, provided that the President of the Republic or a third of the chamber's membership have requested so.

Any meeting of the chamber in contravention to these principles is invalid. The same is true for decisions issued under these circumstances.

Article 93

The sessions of the House of Representatives and the Consultative Assembly are public.

Either chamber may hold a closed session, provided that the President of the Republic has demanded so, or the government, or the president of the chamber, or at least twenty of its members. In that case the chamber decides if the matter before it shall be discussed in open or closed session.

Article 94

The President of the Republic invites both the House of Representatives and the Consultative Assembly to begin their regular annual session before the first Thursday in October. If the two chambers do not receive an invitation, both will convene on that day under mandate from the Constitution.

The regular legislative session lasts at least eight months. The President of the Republic ends the legislative session with the agreement of the two chambers; the House of Representatives, however, must not be dismissed before passing the state's general budget.

Article 95

Either of the two chambers may convene for an extraordinary session in order to consider an urgent matter. This happens following an invitation by the President of the Republic, or the Government, or the request of at least a tenth of the chamber's membership.

Article 96

A session of the House of Representatives or the Consultative Assembly is valid only if a majority of chamber members are present. Only then are its decisions valid.

Unless circumstances call for a qualified majority, the chamber issues its decisions with an absolute majority of those present. In case of a tie, the matter under vote is considered rejected.

Article 97

During the first meeting of the first regular annual session of the chamber's term, each chamber elects a president and two deputies from among its voting members, to hold that office for the entire legislative term in the House of Representatives, and half the legislative term in the Consultative Assembly. If either of them vacates their seat, the chamber will elect a replacement for the remainder of the predecessor's term.

During the first meeting of either chamber's regular annual session a third of its members may call for new elections for either the chamber president or his deputies.

Article 98

If the president of either the House of Representatives or the Consultative Assembly temporarily assumes the post of the President of the Republic, the older of the two deputies assumes the post of chamber president for that same period.

Article 99

Each chamber compiles its internal statutes to govern its work and carry out its specific responsibilities. It then publishes them in the Official Gazette.

Article 100

Each chamber is to preserve its own internal order. The chamber's president carries the responsibility for that.

No armed forces are permitted to enter either chamber or reside in its vicinity unless the chamber's president has requested so.

Article 101

The President of the Republic, the Government, and every member of the House of Representatives may propose legislation.

Each legislative bill is referred to the appropriate specialized committee within the House of Representatives, both for the purpose of examining the bill and for presenting a report about it to the full chamber.

A bill introduced by a member must not be referred to the appropriate committee unless the Bill Assignment Committee authorizes it and the chamber agrees to it. If the Bill Assignment Committee refuses referral, its decision must be accompanied by reasons.

A bill that the chamber has rejected must not be reintroduced in the same legislative session.

Article 102

Neither the House of Representatives nor the Consultative Assembly may pass a law without voting on it.

Each chamber has the right to amend bills before it and to segment both bills and proposed amendments.

Each bill approved by one chamber is passed on to the other. The second chamber must make its decision on the bill within sixty days and prior to the legislative recess. A bill does not become law unless approved by both chambers.

Article 103

If the two chambers disagree on legislation, they form a joint committee of twenty. Each chamber chooses half that number from among its members, in response to candidacies from its Committee of the Whole. The goal is to propose changes to the disputed text.

These proposals are submitted to both chambers. If neither of them agrees to it, the matter is referred to the House of Representatives, which makes the final decision with the majority of its members.

Article 104

The House of Representatives informs the President of the Republic of every bill that has passed the chambers, so that the President can sign it into law within fifteen days of receipt. If the President of the Republic vetoes the bill, he returns it to the House of Representatives within thirty days of receipt.

If he does not return the bill by that deadline, or if the House of Representatives overrides his veto by a two-thirds majority, the bill becomes law and is issued.

If the House fails to override the presidential veto, four months must pass from the date of the failed override vote before the bill may be reintroduced within the same legislative session.

Article 105

Each member of either chamber may direct questions about a topic of public interest to the Prime Minister, one of his deputies, or one of the ministers.

Article 106

Twenty members of the House of Representatives or ten members of the Consultative Assembly may demand discussion of a topic of public interest to clarify the government's policy towards it.

Article 107

Each member of the House of Representatives or the Consultative Assembly has the right to obtain statements or information that relate to his work in the chamber. This right must be exercised in accordance with Article 47 of this Constitution.

Article 108

Every citizen may address written proposals about issues of public interest to either the House of Representatives or the Consultative Assembly.

He may direct complaints to either chamber, which in turn transmits them to the competent ministers. The ministers must provide explanations pertaining to the complaint, if the chamber demands it. The complainant gets notified of the outcome of his complaint.

Article 109

The Prime Minister, his deputies, the ministers, and their deputies may attend the sessions of both chambers or their committees. They must attend if either chamber has demanded it.

They may enlist the assistance of high ranking government officials.

They must be heard whenever they wish to speak. They must answer on any topic that is under discussion, but they do not have voting rights.

Article 110

Each chamber accepts the resignation of its members, which must be submitted in writing. The chamber may only accept the resignation if it has not launched measures to strip the resigning member of his membership.

Article 111

No member may be stripped of his membership in either chamber unless he has lost trust and respect or unless he no longer meets the criteria that were prerequisites for his election, or if he violated one of them.

Revocation of a membership requires a two-thirds majority within the chamber to which the member belongs.

Article 112

If a member of either chamber vacates his membership at least six months before his term expires, the vacancy must be filled in accordance with the law. This must happen within sixty days from the date on which the chamber reported the vacancy.

The term of the substituting member lasts until the term of the vacating member is completed.

SECOND SECTION: THE HOUSE OF REPRESENTATIVES**Article 113**

The House of Representatives is composed of no fewer than 350 members, elected by universal, secret, and direct ballot.

To be eligible for membership in the House of Representatives, a candidate must be Egyptian, enjoy all civil and political rights, and have acquired at least his certificate of basic education. By the date the registration of candidates opens, he must be at least 25 years of age.

The law specifies other conditions for membership, the voting system, and the definition of electoral districts in such a way that it ensures the just representation of the population and the governorates.

Article 114

The term of membership in the House of Representatives is five years; It begins on the date of the term's first meeting. The elections for the following term are held in the sixty last days of the current term.

Article 115

The House of Representatives wields the power to approve the public policy of the state, the public plan for economic and social development, and the general budget of the state. It also exercises oversight over the actions of the executive. All this happens in accordance with the provisions of this Constitution.

The law defines how the public plan for economic and social development is to be drafted and how it is to be presented to the House of Representatives.

Article 116

The general budget of the state must contain all revenues and expenditures without exception.

The draft budget is to be presented to the House of Representatives at least ninety days before the fiscal year begins. It does not become operational unless the House has agreed to it. The vote on the budget occurs chapter by chapter.

The House of Representatives may alter the expenses listed in the draft budget with the exception of those that occur in response to a defined payment obligation of the state. If the budget amendments result in an increase of expenditures, the House and the Government must agree on revenue sources that will return the budget to balance. The budget is passed as a law, and provisions to balance the budget may be contained in amendments. If the new budget is not passed before the new fiscal year, the old budget will continue to apply until the new budget has been passed.

The law defines the fiscal year, the procedure of compiling the general budget, and the budgeting and bookkeeping rules for the public institutions and organizations.

Article 117

The consent of the House of Representatives is required before any sum can be moved from one chapter of the general budget to another. It is also required before any expenditures can be made that are not contained in the general budget or before expenditure estimates can be adjusted upwards. The consent is issued by law.

Article 118

The law regulates the principles that govern the raising of public funds and the procedures for spending them.

Article 119

The law governs the principles for awarding salaries, pensions, compensations, subsidies, and bonuses that are taken from the state treasury. The law also defines the exceptions to these principles and the authorities in charge of their application.

Article 120

Without prior consent from the House of Representatives the executive is prohibited from borrowing, obtaining financing, or engaging in a project that commits funds from the state treasury into the future.

Article 121

The closing account of the general state budget must be presented to the House of Representatives no later than six months after the fiscal year has expired; the annual report of the Central Accounting Office and its comments on the closing account will accompany it.

Voting on the closing account takes place chapter by chapter, and is passed as a law.

The House may demand any additional statements or reports from the Central Accounting Office.

Article 122

The House may either form a special committee or assign one of its standing committees to investigate public projects or the activities of an administrative department or organization, in order to determine the facts of the topic at hand. The committee then informs the chamber of

the financial, administrative, or economic situation, or of the progress it has made in investigating past or other activities. On these grounds the chamber decides upon the proper course of action.

In order to carry out its mandate, the committee may collect evidence and demand to hear the statements it deems necessary. All departments must comply with its demands and submit any documents and other materials it requires.

Article 123

Every member of the House of Representatives may direct questions at the Prime Minister, one of his deputies, or one of the ministers, about any topic that falls in their purview. It is their duty to answer these questions.

The member may withdraw his question at any time, but he may not turn his question into an interrogation.

Article 124

Every member of the House of Representatives may request information or urgent statements from the Prime Minister, one of his deputies, or one of the ministers about important matters of public interest.

The government is obliged to respond.

Article 125

Every member of the House of Representatives may direct questions at the Prime Minister, one of his deputies, or one of the ministers, in order to hold them accountable for the matters falling within their purview.

The chamber debates the questions seven or more days after they have been submitted. In urgent cases and after agreement with the government, the chamber may debate them sooner.

Article 126

The House of Representative may decide to withdraw confidence from the Prime Minister, one of his deputies, or one of the ministers.

Only after questioning may a motion to withdraw confidence be introduced. Doing so requires the support of ten percent of the chamber's membership. The chamber makes its decision no later than seven days after discussing the questioning. The withdrawal of confidence requires a majority of members.

It is, in all cases, forbidden to withdraw confidence over a matter that the chamber decided in the current legislative session.

If the chamber decides to withdraw confidence from the Prime Minister or from one of the ministers, and if the Government declared its allegiance to him before the no-confidence motion was put to a vote, the Government must resign.

If a motion to withdraw confidence is targeted at a Government member and the motion passes, then that Government member must resign.

Article 127

The President of the Republic may only dissolve the House of Representatives after justifying his decision and successfully subjecting it to a referendum.

The chamber must not be dissolved during its first annual session, and it may not be dissolved for the same reason that justified the dissolution of the last chamber.

The President of the Republic has at most twenty days to both suspend the chamber's session and hold the referendum about the chamber's dissolution. If in the referendum the majority of citizens submitting a valid ballot agree with the dissolution, the President of the Republic issues the decision to dissolve and an invitation to early elections. Elections are to happen at most thirty days after the dissolution has been announced. The new chamber gathers within the first ten days after the final election result has been announced.

If the majority of citizens submitting a valid ballot fails to support the dissolution, the President of the Republic must resign from his position.

If the referendum or the elections do not happen within the required time frame, the chamber, without prompting, returns to its session on the day after the deadline has expired.

THIRD SECTION: THE CONSULTATIVE ASSEMBLY**Article 128**

The Consultative Assembly is composed of no fewer than 150 members, elected by universal, secret, direct ballot. In addition, the President of the Republic may appoint the equivalent of at most one tenth of the elected membership.

Article 129

A candidate for the Consultative Assembly must be Egyptian, enjoy his civil and political rights, and hold at least a certificate of higher education. By the date the registration of candidates opens, he must be at least 35 years of age.

The law specifies other conditions for membership, the voting system, and the definition of electoral districts.

Article 130

The term of membership in the Consultative Assembly is six years; It begins on the date of the term's first meeting. Fifty percent of the members stand for election every three years, in accordance with the law.

Article 131

If the House of Representatives is dissolved, the Consultative Assembly assumes the legislative responsibilities that were previously shared; the bills that the Consultative Assembly passes during this period of dissolution will be submitted for decision to the House of Representatives as soon as it is back in session.

If neither chamber is in session and it is important that measures be taken swiftly, the President of the Republic may issue decrees that assume the force of law. They are submitted to the House of Representatives and the Consultative Assembly, as the situation permits, within fifteen days of the date they resume their session.

If the decrees are not submitted to the two chambers, or if they are submitted but not passed, they lose their legal power with retroactive effect, unless the chamber affirms their validity for the previous period, or unless it addresses the decree's consequences in a different manner.

Chapter 2: The Executive Power

FIRST SECTION: THE PRESIDENT OF THE REPUBLIC

Article 132

The President of the Republic is the head of state and the leader of the executive power; he pursues the People's interests, preserves the independence of the homeland and its territorial integrity, and upholds the separation of powers.

He carries out his responsibilities in accordance with the Constitution.

Article 133

The President of the Republic is elected for a four-year term, which begins on the day after the term of his predecessor has expired. He may be reelected once.

The process of electing the President of the Republic begins at least ninety days before the previous presidential term expires. The election result must be announced at least ten days before the previous presidential term expires.

The President of the Republic must not hold any party office during his presidency.

Article 134

A candidate for the presidency must be Egyptian and have two Egyptian parents; he must never have held the citizenship of another state; he must enjoy his civil and political rights and must not be married to a non-Egyptian spouse. By the date the registration of candidates opens, he must be at least 40 years of age.

Article 135

To be electable, a candidate must receive endorsements from at least twenty of the combined elected membership of the House of Representatives and the Consultative Assembly, or enlist the endorsements of at least twenty thousand citizens from at least ten governorates who are entitled to vote. At least 1,000 endorsements must come from each of ten governorates.

Nobody may endorse more than one candidate. This is specified by law.

Article 136

The President of the Republic is elected by universal, secret, and direct ballot. The candidate who attracts the absolute majority of valid ballots wins. The law specifies the procedures for electing the President of the Republic.

Article 137

The President of the Republic, before both the House of Representatives and the Consultative Assembly, and before beginning his term of office, delivers the following oath: "I swear by God Almighty that I will faithfully preserve the republican system, that I will respect the

Constitution and the law, that I will fully devote myself to defending the People's interest, that I will guard the independence of the nation and integrity of its soil.”

If the House of Representatives is dissolved, the oath of office is taken before the Consultative Assembly.

Article 138

The law defines financial transactions permissible to the President of the Republic. He must not receive a second salary or other compensation. While in office, he must not – either in person or by proxy – engage in a free profession or work in the trade, finance, or industry sector. He must not purchase or rent state property. He must not sell or rent out his own property to the state or engage in a barter transaction with the state. Neither must he enter a contract with the state in which he figures as a supplier or contractor.

The President of the Republic is to provide a financial disclosure statement when his membership takes effect, when it ends, and at the end of each year during his tenure. The statement is to be presented to the House of Representatives.

If the President, either in person or by proxy, receives a monetary or in-kind gift as a result or on the occasion of his membership, the gift becomes the property of the state treasury.

All this happens as specified by law.

Article 139

The President of the Republic selects a Prime Minister and directs him to form a Government and submit its program to the House of Representatives within at most thirty days. If the Government does not win the chamber's confidence, the President of the Republic appoints another Prime Minister from the party that holds the greatest number of seats in the House of Representatives. If that Prime Minister's Government does not win confidence within the same time frame, the House of Representatives elects a Prime Minister, whom the President of the Republic then tasks with forming a Government, in the hopes that it wins the chamber's confidence within another thirty-day period. If this does not happen, the President of the Republic dissolves the House of Representatives and calls for elections of a new House. The election is to happen within sixty days from the date the decision to dissolve was issued.

The combined time periods set forth in this article must not exceed 90 days.

If the House of Representatives is dissolved, the Prime Minister presents his Government and its program to the incoming House of Representatives. This happens during the chamber's first meeting.

Article 140

The President of the Republic, with participation from the Council of Ministers, sets out official state policy. Then both supervise its implementation in accordance with the Constitution.

Article 141

The President of the Republic wields his powers through the person of the Prime Minister, his

deputies, and the ministers. This does not apply to the areas of defense, national security, and foreign policy, and for the powers set forth in articles 139, 145, 146, 147, 148, 149 of this Constitution.

Article 142

The President of the Republic may delegate some of his competencies to the Prime Minister, his deputies, the ministers, or the governor. This happens in accordance with the law.

Article 143

The President of the Republic may invite the Government to deliberate important matters in a cabinet meeting; he presides over the meetings and charges the Prime Minister with compiling whatever reports on public affairs he deems necessary.

Article 144

As soon as both the House of Representatives and the Consultative Assembly have begun their annual legislative session, the President of the Republic may convene a combined meeting of the two chambers and deliver an address about the public policy of the state. If necessary, the President may make other statements or address either of the two chambers.

Article 145

The President of the Republic represents the state in its foreign relations. He concludes treaties. Once both chambers agree to the treaties, they are considered ratified. Once issued, these treaties have the force of law, in accordance with agreed-upon rules. Peace treaties, pacts, and all treaties dealing with the rights of sovereignty must be passed with a two-thirds majority in both chambers in order to be considered ratified. No treaty must be adopted that violates the rules of this Constitution.

Article 146

The President of the Republic is the commander-in-chief of the armed forces. Only after a vote in the National Defense Council and the agreement of the majority of the House of Representatives may he declare war or send the armed forces beyond state borders.

Article 147

The President of the Republic appoints both civilian and military public servants, and he dismisses them. He appoints the state's diplomatic representatives and removes them from office. He also receives the diplomatic representatives of foreign states and the appointees of foreign organizations in accordance with the law.

Article 148

After consultation with the Government and in accordance with the law, the President of the Republic declares the state of emergency. This declaration must be submitted to the House of Representatives within the following seven days.

If the declaration is made while the House is in recess, it must promptly be called back into session. If the chamber has been dissolved, the declaration must be made to the Consultative Assembly and within the seven-day period stipulated in the previous paragraph.

For the state of emergency to take effect, the consent of the majority in each of the two chambers is necessary. The declaration is valid for a specified period not to exceed six months. It can be extended once and for a period of similar length. Such an extension requires the prior consent of the People, expressed in a public referendum.

The House of Representatives must not be dissolved while the state of emergency is in effect.

Article 149

The President of the Republic has the power to issue a pardon for a crime or reduce a sentence.

A universal pardon is valid only if passed as a law.

Article 150

The President of the Republic may call for a referendum to decide upon important questions of the highest national interest.

If the referendum covers more than one topic, each topic requires its own vote.

The result of the referendum is binding for all state powers and the public.

Article 151

To tender his resignation, the President of the Republic must submit it in writing to the House of Representatives.

Article 152

The President of the Republic is impeached for felony or high treason if at least a third of the members of the House of Representatives sponsor a motion of impeachment, and the House passes the motion with a two-thirds majority.

As soon as the impeachment is in effect, the President of the Republic stops all work. This stoppage is treated as the result of a temporary hindrance that prevents the President of the Republic from assuming his responsibilities. It ends once the verdict is announced.

The President of the Republic is to be tried before a special tribunal headed by the President of the High Council of Judges and staffed by the senior deputies of the President of the High Constitutional Court and the State Council, and the two most senior presidents of the appeals courts. The Public Prosecutor assumes the role of prosecutor. If the most senior person is unable to play his part, the person next in seniority takes his place.

The law specifies the procedures of the trial as well as the sentence. If found guilty, the President of the Republic is relieved of his duties. This does not preclude additional penalties.

Article 153

If a temporary hindrance prevents the President of the Republic from exercising his powers, the Prime Minister takes over his responsibilities.

If the position of the President of the Republic is vacant, be it due to resignation, death, long-term disability, or any other cause, the House of Representatives declares the position vacant and notifies the National Elections Commission. The President of the House of Representatives temporarily assumes the powers belonging to the President of the Republic.

If the House of Representatives is dissolved, the Consultative Assembly assumes its responsibilities, and the President of the Consultative Assembly assumes the responsibilities of the President of the House of Representatives.

The new President of the Republic must be elected within a time frame not exceeding 90 days from the date the position was declared vacant.

The person temporarily shouldering the duties of the presidency cannot be a candidate for that office. He cannot demand amendments to the Constitution, dissolve the House of Representatives or dismiss the Government.

Article 154

If the presidency is vacant while a referendum or an election for either the House of Representatives or the Consultative Assembly are being prepared, the election of the President of the Republic takes priority. The respective chamber will remain operative until the presidential election is completed.

SECOND SECTION: THE GOVERNMENT

Article 155

The Government consists of the Prime Minister, his deputies, and the ministers. The Prime Minister heads the Government, supervises its work, and directs it in the performance of its duties.

Article 156

To qualify for being Prime Minister or a member of the Government, a person must be Egyptian, enjoy his civil and political rights, and be at least thirty years of age. He must not have held the citizenship of another state or must have renounced it within one year after turning eighteen.

It is forbidden to combine a membership in the Government with a membership in either the House of Representatives or the Consultative Assembly. Should a member of either chamber be appointed into Government, his seat becomes vacant from the date of the appointment, and the rules of Article 112 of this Constitution apply.

Article 157

Before assuming their positions, the Prime Minister and the members of the Government deliver the following oath before the President of the Republic: "I swear by God Almighty that I will faithfully preserve the republican system, that I will respect the Constitution and the law, that I will fully devote myself to defending the People's interest, that I will guard the independence of the nation and integrity of its soil."

Article 158

The law defines the financial transactions permissible to the prime minister and any member of the Government. Neither of them must receive a second salary or other compensation. While in office, he must not – either in person or by proxy – engage in a free profession, or work in the trade, finance, or industry sector. He must not purchase or rent state property. He must not sell or rent out his own property to the state or engage in a barter transaction with

the state. Neither must he enter a contract with the state in which he figures as a supplier or contractor.

The member is to provide a financial disclosure statement when he takes office, when he leaves office, and at the end of each year. The statement is to be presented to the House of Representatives. If any member of the Government receives a monetary or in-kind gift as a result or on the occasion of his position, the gift becomes the property of the state treasury, in accordance with the law.

Article 159

The Government has the following responsibilities:

1. Together with the President of the Republic, it draws up the state's public policy and supervises its implementation.
2. It directs the work of the ministries, and of organizations that are affiliated with them, and it coordinates among them.
3. It prepares bills and motions.
4. It issues administrative decrees in accordance with the law and monitors their execution.
5. It prepares the general budget of the state.
6. It prepares the general plan of the state.
7. It contracts loans and grants in accordance with the provisions of the Constitution.
8. It pursues the execution of the law, preserves national security, and protects the rights of the citizens and the interests of the state.

Article 160

Within the general policy framework of the state, each minister designs the general policy of his ministry, pursues its execution, monitors, directs, and controls it.

Article 161

Any member of the Government may deliver a statement about a matter within his purview before the House of Representatives, the Consultative Assembly, or one of their respective committees. The chamber or committee discusses that statement and issues an opinion about it.

Article 162

The Prime Minister issues the regulations necessary for implementing the law. He does so without obstructing or altering the mandate contained in the law or creating exemptions to that mandate. He may delegate the right to issue regulations, unless the law itself stipulates who shall issue the regulations necessary for its implementation.

Article 163

The Prime Minister issues the regulations to establish facilities, enable public services, and directs them both with the consent of the Council of Ministers. If this creates new burdens on the state treasury, the agreement of the House of Representatives is required.

Article 164

To issue regulations, the Prime Minister needs the consent of the Council of Ministers.

Article 165

The law defines the power to hire and dismiss civilian public servants and creates job descriptions at the senior level of public service. It defines the responsibilities and rights of public servants and the guarantees granted them.

Article 166

The President of the Republic, the Public Prosecutor, and one third of the House of Representatives may submit a motion to impeach the Prime Minister or a member of the Government for crimes committed during or because of their tenure.

The decision to impeach is made if two thirds of the membership of the House of Representatives support the impeachment motion. A person who has been impeached is relieved of his duties until a verdict is reached. That a Government member terminates his service without being prosecuted does not preclude the possibility of bringing charges against him at a later time.

Article 167

If the entire Government or only one of its members tenders their resignation, they must submit it in writing to the President of the Republic.

Chapter 3: The Judicial Power**FIRST SECTION: GENERAL RULES****Article 168**

The judicial power is independent. It is exercised by the courts of varying specializations and levels of jurisdiction. They pass their rulings in accordance with the law. The law determines their jurisdictions. Interference in the affairs of the courts is a crime that has no statute of limitations.

Article 169

Every judicial body administers its own affairs and has its own budget. On legislative bills governing their affairs these bodies are to be asked for their opinion. This happens in accordance with the law.

Article 170

The judges are independent. They cannot be terminated. They are beholden to no authority other than the law, and they are equal in rights and duties.

The law prescribes the conditions and procedures of their employment, and it stipulates how judges are to be held accountable. A judge can only be appointed with a full mandate, both with respect to his jurisdiction and with respect to the powers that the law has granted him. This is to happen in a manner that preserves the independence of the judiciary and its ability to do its work.

Article 171

Court sessions are public unless a court, out of considerations for public order or decency, decides to conduct its proceedings in closed chambers. The verdict is to be pronounced in open session.

SECOND SECTION: THE JUDICIARY AND THE PUBLIC

PROSECUTION

Article 172

The judiciary adjudicates all disputes and crimes except those adjudicated by a separate judicial branch. It also rules on disputes over the affairs of its members.

Article 173

The Public Prosecution is an integral part of the judiciary. It investigates, indicts, and prosecutes criminal cases other than those exempted by law. The law defines additional competencies.

The Public Prosecution is led by the Public Prosecutor. He is appointed by the President of the Republic, who chooses from among the deputies to the President of the Court of Cassation, the presidents of the appeals courts, and the assistant public prosecutors. The appointment is made upon recommendation from the High Council of Judges. It is valid for four years or until the appointee reaches retirement age, whichever happens sooner. He may only be appointed once during his professional life.

THIRD SECTION: THE STATE COUNCIL

Article 174

The State Council is an independent judicial branch. It alone adjudicates administrative disputes and disputes over the execution of its verdicts. It is responsible for disciplinary proceedings and their appeals. It issues judicial opinions on legal questions to the venues that the law defines. It reviews and rewords bills and legislative decisions that are referred to it, and it reviews contracts in which the state is a party.

The law defines its other competencies.

FOURTH SECTION: THE HIGH CONSTITUTIONAL COURT

Article 175

The High Constitutional Court is an independent judicial branch. Its seat is in the city of Cairo. It alone decides on the constitutionality of laws and regulations.

The law defines its other competencies and regulates the procedures that are to be followed before the Court.

Article 176

The High Constitutional Court is composed of the president and ten members. The law defines the judicial bodies and other judicial branches that nominate these members. It also

defines the procedure of their appointment and the conditions they must meet to qualify. Justices are appointed by decree from the President of the Republic.

Article 177

The President of the Republic or the House of Representatives submit the bills that govern political rights as well as presidential, legislative, and local elections to the High Constitutional Court before issuing them, so that the Court may examine their constitutionality *ex ante*. It issues its decision on this matter within 45 days of receiving it. If the Court does not issue a ruling, the bill becomes law.

If the Court rules that parts of the bill are unconstitutional, its ruling must be implemented.

The laws referred to it for *ex ante* review are not eligible for the ex post review covered by Article 175 of the Constitution.

Article 178

The rulings of the High Constitutional Court are published in the Official Gazette. The same is true for the decisions it issues during its *ex ante* review of bills governing political rights, as well as the presidential, legislative, and local elections.

The law determines what happens to a legislative text that has been found unconstitutional.

FIFTH SECTION: JUDICIAL BODIES

Article 179

The State Affairs Body is an independent judicial body. It pursues civil claims on behalf of the state and legally represents the state in disputes. It supervises the legal affairs of the state bureaucracy.

It prepares contracts and settles disputes in which the state is a party, in accordance with the law.

The law defines its other competencies.

The members of the State Affairs Body receive the guarantees and have the rights and duties that attach to all members of the judiciary.

Article 180

The Administrative Prosecution is an independent judicial body. It investigates financial and administrative irregularities, launches disciplinary proceedings before the courts of the State Council, and takes legal action to address shortcomings of public facilities. The law defines its other competencies.

Its members have the guarantees, rights, and duties that attach to all members of the judiciary.

SIXTH SECTION: THE LEGAL PROFESSION

Article 181

The legal profession is a free profession and indispensable for achieving justice. Attorneys enjoy independence as they practice law. While engaged in their professional work, they

enjoy the guarantees that ensure their protection and that enable them to do their work effectively. This happens in accordance with the law.

SEVENTH SECTION: EXPERTS

Article 182

Notaries, practitioners of forensic medicine, and judicial experts are independent as they conduct their work. The law grants them the guarantees and protections that are necessary for their work.

Chapter 4: The System of Local Administration

FIRST SECTION: THE LOCAL ADMINISTRATIVE DIVISION OF THE STATE

Article 183

The state is divided into local administrative units that are legal persons: governorates, regions, cities, districts, and villages. A local unit may contain several villages or districts, and it may establish additional administrative units that are legal persons in their own right. This happens in accordance with the law, the principle of decentralization, and the desire to empower the administrative units to provide good local facilities and services, achieve advancement and realize good governance.

Article 184

The state guarantees the necessary technical, administrative, and financial assistance to the local units, as well as a fair distribution of facilities, services, and resources. The state, in accordance with the law, is to even out disparities in development and living standards among the units.

Article 185

The local units support their operations with original and supplementary taxes and fees that are local in nature. In collecting these dues, the units follow the principles and procedures that apply to collecting funds for the state.

All happens in accordance with the law.

Article 186

The law regulates the cooperation among local units on activities of common interest. It also regulates the cooperation between the units and organs of the state.

Article 187

The law regulates the selection of the governors and the selection of the leaders of the other local administrative units. It also regulates their competencies.

SECOND SECTION: THE LOCAL ASSEMBLIES

Article 188

Each local unit elects an assembly through universal, secret and direct ballot. The assembly's mandate lasts four years.

A candidate for a seat in the local assembly must be at least 21 years of age by the date the registration of candidates opens.

The local assembly includes the local representatives of the executive. These representatives have no vote.

Every assembly elects its president and his vice president from among its elected members.

The law specifies other conditions for candidacy as well as the election procedures.

Article 189

The local assembly deals with all matters that are of concern to the unit it represents. It establishes and directs local facilities, and it conducts economic, social, health-related, and other activities in accordance with the law.

Article 190

Decisions that the local unit reaches on matters within its purview are final. The executive may only interfere in them for the purpose of preventing the assembly from going beyond its purview or to secure the public good or the good of the other local assemblies.

In the case of disputes over the competencies of these assemblies, the board for legislation and advisory opinions of the State Council makes a swift ruling, based on the law.

Article 191

Every assembly draws up its own budget and issues a final account, in accordance with the law.

Article 192

The local assemblies may not be dissolved by blanket administrative decree.

The law governs the procedure for dissolving a local council and calling for a new election.

Chapter 5: National Security and Defense**FIRST SECTION: THE NATIONAL SECURITY COUNCIL****Article 193**

A National Security Council shall be created, to be chaired by the President of the Republic. Its membership includes the Prime Minister, the presidents of the House of Representatives and the Consultative Assembly, the ministers of defense, interior, foreign affairs, finance, justice, and health, the Director of General Intelligence, the chairmen of the committees for defense and national security in both the House of Representatives and the Consultative Assembly.

The Council authorizes the strategies for ensuring the security of the country, deals with disasters and crises in all its forms, and adopts the necessary measures for containment. It

identifies the threats to homeland security within and beyond the national borders and the measures and steps that both the state and the People must take to thwart them.

The Council may invite additional persons with the requisite expertise and competence to its meetings. The invitees do not have the right to vote.

The law defines additional competencies of the Council and its operating procedures.

SECOND SECTION: THE ARMED FORCES

Article 194

The armed forces are owned by the People. Their role is to protect the country and preserve the security and integrity of its soil. The state alone creates such forces. It is forbidden for any person, group, or association to create formations or squadrons, or either military or paramilitary organizations.

The armed forces have a high council, as specified by law.

Article 195

The Minister of Defense is the general commander of the armed forces. He is appointed from among the officers.

Article 196

The law regulates the system of conscription, and it defines the conditions for service, promotion, and retirement in the armed forces.

The judicial committees for officers and personnel of the armed forces alone decide on all administrative disputes internal to the armed forces.

THIRD SECTION: THE NATIONAL DEFENSE COUNCIL

Article 197

A National Defense Council shall be established, to be chaired by the President of the Republic. Its membership includes the Prime Minister, the presidents of the House of Representatives and the Consultative Assembly, the ministers of defense, foreign affairs, finance, and interior, the Director of General Intelligence, the Chief of Staff of the Armed Forces, and the commanders of the airforce, navy, and air defense, as well as the Director of the Body of Armed Force Field Operations and the Director of War Intelligence and Reconnaissance.

The Council examines all matters pertaining to preserving the safety and integrity of the country. It discusses the budget of the armed forces. It must be consulted on legislative bills that relate to the armed forces.

The law defines its other competencies.

The President of the Republic may invite persons with competence and expertise to the meetings of the Council. They do not have the right to vote.

FOURTH SECTION: THE MILITARY JUDICIARY

Article 198

The military judiciary is an independent branch of the judiciary. It alone decides on all crimes related to the armed forces, their officers, and personnel.

Civilians may not be tried by the military judiciary unless they are accused of crimes that hurt the armed forces. The law specifies these crimes as well as other competencies of the military judiciary.

Members of the military judiciary are independent. They cannot be dismissed, and they have the guarantees, rights, and duties that attach to all members of the judiciary.

FIFTH SECTION: THE POLICE**Article 199**

The police is a disciplinarian civilian organization with the President of the Republic as its highest leader. It carries out its duties in the name of the People, and its loyalty is to the Constitution and the law. It preserves public order, security, and decency, and implements the law and executive decrees. It guarantees to the citizens tranquility and the protection of their dignity, their rights and freedoms. All this happens in accordance with the law and in a way that allows police officers to carry out their duties.

PART FOUR: INDEPENDENT BODIES AND SUPERVISORY ORGANS***Chapter 1: Common Provisions*****Article 200**

The independent bodies and supervisory organs listed in the Constitution are public legal persons that are neutral and technically, administratively, and financially independent.

The law governs the other independent bodies and supervisory organs.

All bodies and supervisory organs must be consulted on legislative bills and draft decrees relating to their domain of work.

Article 201

All independent bodies and supervisory organs must submit the reports they compile to the President of the Republic, the House of Representatives, and the Consultative Assembly. This must happen within thirty days of publication.

Upon receipt of the reports the House of Representatives has six months to review them and take appropriate action. Then it submits the reports to public opinion.

The supervisory organs inform the competent executive organs of any evidence of wrongdoing, irregularity, or crime. This happens in accordance with the law.

Article 202

The President of the Republic appoints the chairmen of the independent bodies and supervisory organs after agreement with the Consultative Assembly. The appointment lasts for four years and can be renewed once. The chairmen can only be fired with the agreement

of a majority in the Consultative Assembly. The same prohibitions that govern ministers apply to them.

Article 203

The law regulates the composition of each independent body or supervisory organ. It defines additional competencies that have not been listed in the Constitution and specifies their operating procedures. It grants their staff members the guarantees necessary for their work. The law defines the procedures for employment, promotion, accountability and dismissal. It specifies other conditions that guarantee the neutrality and independence of staff members.

Chapter 2: The Supervisory Organs

FIRST SECTION: THE NATIONAL COMMISSION TO COMBAT

CORRUPTION

Article 204

The National Commission to Combat Corruption specializes in fighting corruption and eliminating conflicts of interest. It also spreads the values of integrity and transparency, setting standards for both. It draws up the national strategy dedicated to these goals and ensures its implementation in cooperation with the other independent bodies. It supervises the organs that the law identifies as relevant.

SECOND SECTION: THE CENTRAL ACCOUNTING OFFICE

Article 205

The Central Accounting Office monitors the state funds and other offices that the law specifies.

THIRD SECTION: THE CENTRAL BANK

Article 206

The Central Bank lays down the monetary, credit, and banking policy and supervises its implementation. It monitors the performance of the banking sector and works to achieve price stability. It alone has the right to issue currency. All this must happen within the general economic policy of the state.

Chapter 3: The Economic and Social Council

Article 207

The Economic and Social Council supports the participation of social groups in the drafting of economic, social, and environmental policies, and it aims to strengthen societal dialogue.

The Government, the House of Representatives, and the Consultative Assembly must solicit the opinion of the Social and Economic Council on these very policies and on legislative proposals that are related to them.

The Council consists of 150 members at a minimum. They are chosen by the elected syndicates, unions, and associations of farmers, workers, professionals, and other social groups. Workers and farmers must have at least fifty percent representation in the Council.

It is forbidden to combine a membership in the Council with a membership in the Government or one of the parliamentary chambers.

The law specifies how the Council is to be formed, how its president is to be elected, how it does its work and how it submits its recommendations to the state authorities.

Chapter 4: The National Elections Commission

Article 208

The National Elections Commission alone is responsible for administering referenda, as well as presidential, parliamentary, and local elections. Their mandate includes preparing the voter registry, providing input into the division of electoral districts, defining limits on election financing and spending, and announcing these limits. It also covers other measures and ends with the announcement of results.

The Commission may also be entrusted with supervising the elections to syndicates and other representative organizations.

Details are specified by law.

Article 209

The National Elections Commission is led by a council composed of ten members. They are selected evenly from among the deputies of the President of the Court of Cassation, the presidents of the courts of appeals, deputies of the presidents of the State Council and the State Affairs Body, and the Administrative Prosecution. They are elected by the High Council of Judges and the special councils of the afore-mentioned bodies. These bodies cannot vote for their own members. The mandate to work for the council is full-time and lasts for one term of six years. The council is chaired by the most senior member that comes from the Court of Cassation.

In elections that are to be held every three years, half of the council's seats are to be opened to election.

The Commission may call upon public figures or experts in the field of elections, and it has its own executive organ. Details are specified by law.

Article 210

Individuals affiliated with the National Elections Commission manage the process of voting and vote counting for the referenda and for elections that are under the Commission's auspices. In that, they are supervised by the council of the National Elections Commission.

They are granted the necessary guarantees to do their work with neutrality and independence.

As an exception to this rule the Commission assigns the supervision of voting and vote counting to members of the judiciary and of judicial bodies. This mandate lasts at least ten years from the Constitution's entry into force. Details are specified by law.

Article 211

Decisions by the National Elections Commission that relate to referenda, the parliamentary and presidential elections, and their results are appealed to and decided by the High Administrative Court. Local elections are appealed to an administrative court.

The law specifies the appeals procedures in a way that does not disrupt the electoral process, which includes the announcement of the final results. The final results of referenda and presidential elections must not be appealed once they have been announced.

The final results must be announced no later than eight days after the polls have closed.

Chapter 5: The Independent Bodies

FIRST SECTION: THE HIGH BODY FOR RELIGIOUS ENDOWMENT

AFFAIRS

Article 212

The High Body for Religious Endowment Affairs organizes its public and private endowments, supervising and monitoring them. It ensures their adherence to standards of managerial and fiscal prudence and popularizes religious endowments among society.

SECOND SECTION: THE HIGH BODY FOR HERITAGE

PRESERVATION

Article 213

The High Body for Heritage Preservation organizes the protection of Egypt's civilizational, architectural, and cultural heritage. It supervises all heritage sites, and it documents the maintenance of artifacts. In addition, it raises awareness of the contribution that this heritage has made to human civilization.

The High Body also documents the Revolution of January 25 and the other Egyptian revolutions that happened in the modern era.

THIRD SECTION: THE NATIONAL COUNCIL FOR EDUCATION AND

SCIENTIFIC RESEARCH

Article 214

The National Council for Education and Scientific Research designs a national strategy for education in all its forms and stages and works toward deepening their integration. It

revitalizes scientific research, and sets national standards for excellence in teaching and research. It then pursues the implementation of its strategy.

FOURTH SECTION: THE INDEPENDENT BODIES FOR JOURNALISM

AND THE MEDIA

Article 215

The National Media Council organizes the affairs of radio and television, and it organizes the press, be it disseminated in print, by digital means, or otherwise. It preserves the pluralism of the media, preventing their concentration or monopolization, and it protects the interests of the public. The permissions and standards it creates ensure that the different media abide by norms of professionalism and decency, preserve the Arabic language, and observe the values and constructive traditions of society.

Article 216

The National Body for the Press and the Media administers and develops the journalism and media establishments owned by the state. It also ensures their commitment to professionalism and managerial and fiscal prudence.

PART FIVE: FINAL AND TRANSITIONAL PROVISIONS

Chapter 1: Constitutional Amendments

Article 217

Both the President of the Republic and the House of Representatives may request an amendment to one or more articles of the Constitution. In their request, each must specify the articles that are to be amended and the reasons for amendment. If the request comes from the House, it must be signed by at least one fifth of its membership.

Both the House of Representatives and the Consultative Assembly complete their discussion of the amendment request within thirty days from the date of receipt. Each chamber can decide to accept the request in whole or in part. This decision requires support from the majority of the chamber's membership.

If the request is rejected, it may not be reintroduced in the current legislative session.

Article 218

If both chambers agree to the amendment request, each chamber discusses the articles whose amendment is sought. It does so sixty days from the date of agreement. If each chamber accepts the amendment with a two-thirds majority, the amendment will be subjected to a popular referendum no later than thirty days after the date of acceptance.

The amendment becomes operative on the date its adoption by referendum is announced.

Chapter 2: General Provisions

Article 219

The principles of Islamic law (*sharia*) include general evidence, the foundational principles of Islamic jurisprudence (*usul al-fiqh*), the reliable sources from among the Sunni schools of thought (*madhahib*).

Article 220

Cairo is the capital of the state. The decision to move the capital to another location must be passed as a law.

Article 221

The law determines the state flag and emblem, as well as the state medals and badges. It defines the state's seal and the national anthem.

Article 222

All laws and decrees issued before the Constitution was passed remain in effect. They may only be amended or canceled in accordance with the provisions of the Constitution.

Article 223

No later than fifteen days after its passage, a law is to be published in the Official Gazette. It enters into effect thirty-one days from the date of publication, unless it specified a different date.

Legal provisions apply only once the law in question has entered into effect, not retroactively. Exceptions are possible for laws that do not apply to crime or taxation. In that case the law must pass the House of Representatives with a two-thirds majority.

Article 224

Elections to the House of Representatives, the Consultative Assembly, and local councils are based on a single winner voting system , a list system , a combination thereof, or any other electoral system specified by law.

Article 225

The Constitution enters into effect on the date its popular adoption by referendum has been announced. The Constitution is considered adopted if it garners the majority of valid ballots.

Chapter 3: Transitional Provisions**Article 226**

The current term of the President of the Republic ends four years after his taking office. He may be reelected once.

Article 227

In any office for which the Constitution or the law specifies a limited term, be it single or

once-renewable, the term begins on the date on which the office is assumed. The term always ends once its incumbent reaches the legal retirement age.

Article 228

The High Elections Committee in existence at the time this Constitution enters into effect is responsible for supervising the first legislative elections thereafter. Its funds and those of the High Committee for the Presidential Elections pass over to the National Elections Commission once it is established.

Article 229

The procedures for electing the first House of Representatives begin no later than sixty days after the Constitution enters into effect. Its legislative term begins no later than ten days after the final election results have been announced.

In this House, the workers and farmers are to have at least fifty percent representation.

Any individual who works for another and receives a wage or a salary is considered a worker.

Any individual who worked in agriculture for a period of at least ten years prior to his candidacy to the House of Representatives is considered a farmer.

The law specifies the standards and permissions that qualify a candidate as a worker or farmer.

Article 230

The current Consultative Assembly assumes all legislative powers starting on the date the Constitution enters into effect and ending when the new House of Representatives is seated.

Once the House of Representatives is elected, all legislative powers pass over to it until the new Consultative Assembly is elected, which is to happen within a year after the House of Representatives is seated.

Article 231

In the legislative elections that follow the entry into effect of the Constitution, two thirds of the seats are to be filled through the list system. One third is to be filled through the single winner system. Parties and independent candidates may run under either of the two systems.

Article 232

Leaders of the dissolved National Democratic Party are banned for a period of ten years after the Constitution enters into effect from engaging in political work and standing for presidential and legislative elections. Anyone is considered a leader of the National Democratic Party who, on January 25, 2011, was a member of the party's general secretariat or the policies committee or the political bureau, or who held a seat in the People's Assembly or the Consultative Assembly during the two legislative terms preceding the Revolution.

Article 233

Once the Constitution enters into effect, the first High Constitutional Court is composed of its current president and its ten most senior members. The remaining members return to the positions they held prior to being appointed to the Court.

Article 234

The special provision for appealing verdicts on crimes that are listed in the third part of Article 77 of the Constitution apply for one year after the Constitution enters into effect.

Article 235

The current system of local administration remains in existence until the system provided in the Constitution is implemented. This is to happen in stages over a period of ten years after the Constitution enters into effect.

Article 236

All constitutional declarations that the Supreme Council of the Armed Forces and the President of the Republic issued between February 11, 2011, and the entry into effect of the Constitution are hereby repealed. But their effects on the past remain in existence.

Notes on Transliteration

In the Arabic alphabet there are 28 letters, which in words are generally bound one another and are written from right to left. These aspects make the writing of Arabic using the Latin alphabet a difficult enterprise, not only because of orthography, but also for differences in phonetics and pronunciation.

There exists a wide range of transliteration and transcription standards that also reflect the way the Latin alphabet is pronounced in different languages. For instance, transliteration into the English alphabet is usually different from that which is carried out into the French, Spanish, German or Italian alphabets. This is because there are noticeable differences in the pronunciation of each letter also in languages that share the very same Latin alphabet.

For this reason, it is important to remind the reader that Arabic terms mentioned in this work might be retrieved and read with different transliteration systems and standards. This is because, even though I have attempted to use one and the same standard to write Arabic terms, other authors cited in the dissertation might choose to follow a different one. To avoid further confusion, in the glossary in the next pages I have added possible variants of transliteration where necessary.

The following Notes and table illustrate the transliteration standard I have chosen to use. Such system is the official Library of Congress⁶ one, which, in my opinion, appears to be one of the most common and intuitive transliteration systems for English speakers.

Notes

1. For the use of *alif* to support *hamzah*, see rule 2. For the romanization of *hamzah* by the consonantal sign ' (alif), see rule 8(a). For other orthographic uses of *alif* see rules 3-5.
2. The *Maghribī* variations **ا** and **آ** are romanized *f* and *q* respectively.
3. *ö* in a word in the construct state is romanized *t*. See rule 7(b).

⁶ Further information available on the Library of Congress website <http://www.loc.gov/catdir/cpsd/romanization/arabic.pdf>, last accessed: 21/02/2015.

Letters of the Alphabet

Initial	Medial	Final	Alone	Romanization
ا	ا	ا	ا	omit (see Note 1)
ب	ب	ب	ب	b
ت	ت	ت	ت	t
ث	ث	ث	ث	th
ج	ج	ج	ج	j
ح	ح	ح	ح	h
خ	خ	خ	خ	kh
د	د	د	د	d
ذ	ذ	ذ	ذ	dh
ر	ر	ر	ر	r
ز	ز	ز	ز	z
س	س	س	س	s
ش	ش	ش	ش	sh
ص	ص	ص	ص	ṣ
ض	ض	ض	ض	ḍ
ط	ط	ط	ط	ṭ
ظ	ظ	ظ	ظ	ẓ
ع	ع	ع	ع	' (ayn)
غ	غ	غ	غ	gh
ف	ف	ف	ف	f (see Note 2)
ق	ق	ق	ق	q (see Note 2)
ك	ك	ك	ك	k
ل	ل	ل	ل	l
م	م	م	م	m
ن	ن	ن	ن	n
هـ	هـ	هـ ، هـ	هـ ، هـ	h (see Note 3)
و	و	و	و	w
ي	ي	ي	ي	y

Vowels and Diphthongs

اَ	a	اِ	ā (see Rule 5)	اِي	ī
اُ	u	اِي	á (see Rule 6(a))	اُو	aw
اِ	i	اُو	ū	اِي	ay

Glossary

‘ulamā’ / ‘ulama / ulama / ulema’: literally 'scholars', also generally used for traditional scholars of Islam, experts in sharī‘ah and all the religious educated people of Islam.

dār al-Nadwa / dar an-Nadwa : assembly hall of Makkan elite consultation during prophet Muhammad's Makkan period.

fiqh/fikh: Islamic jurisprudence; the result of sharī‘ah and sunna interpretation carried out by the ‘ulamā’; human understanding of sharī‘ah.

hadīth / hadīth: report of the teachings and sayings of the prophet Muhammad.

hajj / ḥajj / ḥaġġ: pilgrimage.

hijra / hijrah / hiġrah / hiġrah: migration of the Muslims from Makka to Medina in 622.

ijtihād / ijtihad: independent judgement, creative intellectual effort by Islamic scholars and jurists who interpret sharī‘ah to make laws.

jāhili / jahili / ġāhili: literally 'ignorant', it refers to the pre-Islamic period.

Makkan/Meccan (period): the period from 570 to 622 a.D., in which the prophet Muhammad stayed in Makka and received the first revelation before his migration (hijra) to Medina.

mu'min / mumin (plur: mu'minūn / muminun): Muslim believer.

mujtahid: Islamic scholar who interprets sharī‘ah through ijtihād

muhkam: decisive, clear; it refers to the Qur'ānic verses that are unquestionably clear and are not open to interpretation.

mutashabih : allegorical, figurative; it refers to the Qur'ānic verses that are symbolic and are thus open to interpretation.

nahḍah / nahda: awakening, renaissance. It usually refers to a period of cultural renaissance which started in the late nineteenth century in Egypt, and that influenced the whole Arab world.

Qur'ān / Qur'an / Quran / Koran: the sacred book of Islam.

risāla / risala / risalah: message, letter; it refers to a message which connects God and the mankind usually containing Islamically-interpreted guidelines, rules and suggestions and written by "ulamā" and other educated scholars.

shari^ʿ / shari'/ shari / šarī^ʿ: accepted by or compatible with the revealed law of Islam.

sharī^ʿah / shari'a/shari'ah/sharia / šarī^ʿah: the revealed canonical law of Islam.

shaykh / sheik / sheikh / shayk: honorific term, in the past used to denote the leader or the ruler of a tribe.

shūrā / shura: consultation. It refers to the Islamic concept of consultation, mentioned in the Qur'ān, that, when making decisions that involve other people, suggests to discuss such common affairs together.

sunna / sunnah: collection of the prophet Muhammad's teachings and practices in of his life considered as a prescriptive lifestyle model for Muslims.

ṣūrah /sura / surah: chapter of the Qur'ān.

tafsīr / tafseer: interpretation, analysis.

taqlīd / taqleed: imitation. It refers to the Islamic legal practice of following the guidelines of an Islamic scholar, mujtahid who interprets sharī'ah .

umma / ummah: community, people, nation. It generally refers to a group of people with a common culture. It is also used in the Qur'ān to indicate the religious Muslim community of believers.

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