Memory & Knowledge for Studies

The Law in the Age of the Market

From Protecting Society to Serving Capital



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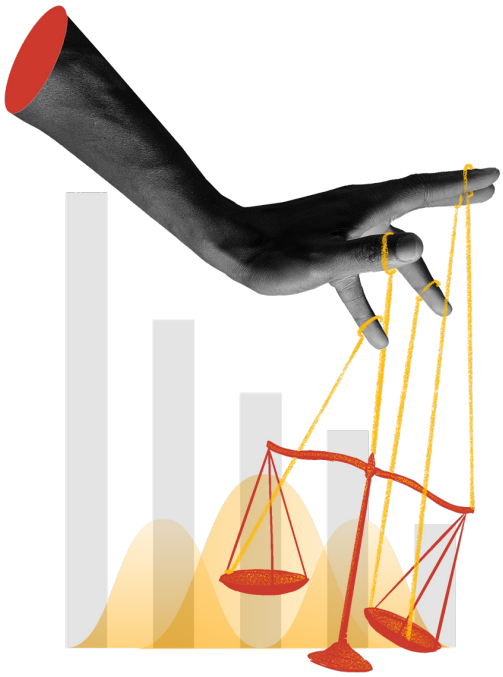
01

Introduction | Reshaping the Law within the Market Logic



Can the law remain the framework that protects justice when it is reshaped within the logic of the market? This is not an abstract question or philosophical speculation; rather, it is a question that touches upon the everyday texts and decisions that govern people's lives. Neoliberalism has not only changed economic policies but has also rewritten the language of the law itself. Concepts such as "public benefit" and "social interest" are now interpreted through the lens of the market, and legal texts are translated into investment figures, privatization percentages, and land deals.

David Harvey argue that neoliberalism is not merely an economic transformation, but a political project aimed at reshaping the balance between capital and labor by dismantling the social and legal institutions established to limit the power of the market.[1] This reflects a fundamental shift in the function of the law, where its role becomes intertwined with economics, transforming it into a tool for achieving specific interests. What was supposed to be a standard for protecting individuals and society has often become a mechanism for distributing privileges and restructuring society according to the whims of capital.

This shift did not occur suddenly. Rather, it has deep intellectual roots, tracing back to the theories of Friedrich Hayek and Milton Friedman, who saw the free market as the sole agent capable of achieving efficiency and prosperity, and considered state intervention—especially through social legislation—to be the source of dysfunction and deviation. As some studies define it, neoliberalism is portrayed as a philosophy advocating for "limited constitutional democracy and a modest welfare state." [2]

In the 1970s, this ideology began to translate into practical policies in global power centers. In Britain [3], between 1980 and 1993, successive Conservative governments enacted a series of laws that curtailed the powers of trade unions and restricted the right to strike. This period included six major pieces of legislation that imposed restrictions on strike voting mechanisms, required unions to follow strict procedures, and expanded their legal accountability, significantly diminishing their ability to mobilize and organize. [4]

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1 . David Harvey, A Brief History of Neoliberalism, translated by Walid Shehadeh, Syrian General Authority for Books Publications, Damascus 2013, p. 35 and beyond.

2 . Brown, Wendy. Undoing the Demos: Neoliberalism's Stealth Revolution. New York: Zone Books, 2015.

3 . David Harvey, ibid.

4 . House of Commons Library. Trade Union Law Since 1980: A Chronology. Briefing Paper No. CBP-7882, 13 June 2019, pp. 4–6.

In the United States, Ronald Reagan embarked on "market liberalization" policies by removing financial restrictions on banks and markets under the banner of "achieving efficiency." This was not merely a matter of reducing spending or privatizing public institutions, but rather a rewriting of laws to favor capital. [5] These policies expanded globally with the "prescriptions" of the International Monetary Fund and the World Bank, which went beyond simply providing loans; they imposed structural conditions that impacted the economic and legal policies of countries, particularly in the Global South. Market liberalization became intertwined with the reshaping of legal frameworks to facilitate the integration of economies into the global market.

This transformation has even affected the very definition of law. It is no longer written according to the traditional logic that balances power and rights, but rather adopts the language of the market. Rights such as education, health, or housing have gradually been transformed into "services" subject to the laws of supply and demand. Legal vocabulary itself has changed: words like "incentives," "investment," and "privatization" have become the keys that unlock the doors to privileges in legal texts.

In terms of rights, legislation is supposed to adhere to three indispensable principles: legitimacy (being enacted within the constitutional framework), necessity (responding to a genuine need), and proportionality (not placing undue burdens on the most vulnerable). These principles are enshrined in many constitutions and find their broader reference point in texts such as the International Covenant on Economic, Social and Cultural Rights. However, with neoliberalism, these principles have become mere decorative labels accompanying texts that serve the logic of the market: legitimacy has become a formality; laws are issued in a procedurally "sound" manner but open the door to privileges for a select few. Necessity has become a ready-made rhetoric—"reform," "saving the economy," "attracting investment"—while proportionality has completely disappeared, replaced by a stark equation: those who can pay are protected, and those who cannot are left out.

The Egyptian experience clearly embodies this transformation. Since the beginning of the nineties, laws such as Law 203 of 1991 were not merely procedural texts for regulating the public sector, but rather a gateway for redistributing wealth and selling off state assets.[6]

This economic liberalization in Egypt is understood within the framework of "authoritarian neoliberalism," rooted in accumulation strategies based on the dispossession of the working classes. This capitalist penetration forced peasants to become wage laborers in order to survive due to a lack of access to land, thus altering work relations.[7] Successive investment laws followed, granting massive exemptions to local and foreign capital, presented as "general" legislation while in reality granting specific privileges. Even land and housing laws followed the same logic: housing was no longer a social obligation of the state but rather an "investment opportunity" seized by those with the ability to enter the market.

All of this brings us back to the deeper question: Has the law in Egypt – and in other countries that have embarked on the same path – remained a neutral framework expressing justice, or has it become a key factor in rearranging society according to the priorities of capital? This question is not a theoretical luxury; because it determines how we read the texts themselves: Is the "right to housing" an actual legal right, or an item on a list of investment privileges? Does "public interest" really mean protecting society, or financing market privileges?

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5. "President Reagan put forth an economic policy which aimed to reduce government regulation, lower taxes, and promote free market capitalism as a means to stimulate economic growth and increase individual wealth."

6. Gad, Mohamed, and Mubarak, Emad. Edited by: Amr Adel, The Privatization Process: A Critical Reading from Economic and Legal Perspectives, Memory and Knowledge Studies, 2022.

7. Al-Nour, Saqr. Edited by: Reem Saad. Erasing the Effects of Agrarian Reform and the Social Disdain for Agricultural Tenants. Memory and Knowledge Studies, 2023.

This paper begins precisely from this point: reading the law in the age of the market, not as a rigid set of texts, but as a living structure reshaped over decades by neoliberalism. We will examine the shifts in major concepts—how has the idea of the public interest changed? How has a right been transformed into a privilege? How have private contracts become the dominant model at the expense of public legislation?—and we will scrutinize specific Egyptian examples to see how the law itself has become an arena of conflict between "a right" and "a deal". What this paper offers is not a definitive answer, but rather the beginning of a debate that this series will continue, to understand not only how legal texts are written, but also the logic to which they are subject.

02

Shifting Concepts | From Public Interest to the Logic of Privileges



The Law has never been an entity isolated from economics and politics, but for decades it retained at least a symbolic function: protecting society from excessive inequality and regulating the relationship between the state and the individual, and between the individual and the market. This function was translated - at least in theory - into what are known as social rights: the right to housing, education, health, and work. The formulation of these rights was based on a clear concept: that the state bears a positive obligation toward its citizens, and that law is the instrument that guarantees this obligation.

But since the rise of neoliberalism, this role has been completely redefined. As market logic has advanced, the law has begun to be restructured according to new priorities, not necessarily justice or protection, but efficiency, flexibility, and investment attractiveness [8]. Here, legal concepts themselves begin to shift: what was a "right" is redefined as a "service," what was a "public interest" is recast as a "creative environment," and what was a "social obligation" becomes an "investment opportunity." This transformation is not merely a linguistic manipulation; it is a fundamental change in the deep structure of the law. [9]

Let's take the concept of "public interest" as an example. In classical legal traditions, public interest referred to what benefits all citizens as a whole, regardless of their social class or purchasing power. This included, for instance, providing public transportation, subsidizing education and healthcare, protecting natural resources, and guaranteeing a minimum standard of living. [10] However, with neoliberalism, public interest is redefined to become synonymous with facilitating the movement of capital, attracting investors, or increasing GDP, even if these "results" come at the expense of large segments of the population. The law now justifies massive projects with phrases like "achieving sustainable development" or "attracting foreign direct investment" [11] even if these projects displace populations; burden them with debt, or waste resources. It is

8. Ikram, Khaled, The Egyptian Economy in Half a Century: From the July Revolution to the End of the Millennium, translated by Magdi Abdel-Hadi. Cairo: The Egyptian General Book Organization, 2021, p. 443 and beyond.

9. Sultany, Nimer. "Law's Ideology: Neoliberalism and Developmentalism in Egyptian Jurisprudence." I•CON: International Journal of Constitutional Law, Vol. 22, No. 2 (2024), pp. 255–291.

10. Abdel Aal, Salah Sayed, The Role of the State Council in Protecting the Public Interest and Guaranteeing its Continuity, a paper submitted to the Third International Scientific Conference, Faculty of Sharia and Law, Tanta, 2021.

11. State Information Service. "Prime Minister reviews proposals to attract more foreign direct investment."

therefore not surprising to find phrases in many modern Egyptian economic laws such as "stimulating investment to achieve public interest" or "enabling the private sector to play its role in comprehensive development." These phrases are not innocent linguistic manipulations, but rather reflect a reversal of the conceptual order itself: public interest is no longer something independent of the market, but is now measured solely by its own standards.

This shift parallels the transformation of the concept of justice from a necessary balance within society to merely an "equal opportunity" within the market. This transformation is fundamental because it shifts justice from its social scope to the individual, competitive scope. The state is no longer required to redistribute resources to reduce inequalities; it suffices to guarantee a "free market" that everyone – in theory – can access, even if some enter without any real ability or competitive means. Neoliberal justice is not concerned with distributive justice but with procedural justice: Did we follow the rules? Was everyone able to enter the race? This question becomes a cover that legitimizes enormous inequalities, as long as the formal rules have been adhered to. Positivist and pragmatic legal philosophy tends to prioritize social and economic interests of the dominant power at the moment the laws are enacted. [12]

With this shift, individual contracts have become the new benchmark for the relationship between citizens and the state. Everything is being restructured into a "contractual" framework: the citizen "purchases" health or education services from a "service" provider, and the state withdraws into the role of coordinator or general guarantor, rather than direct implementer. This is evident in the sweeping transformations affecting the health, education, and housing sectors in Egypt, where these services are increasingly delivered through public-private partnerships, partial privatization, or "performance contracts." In these contracts, the state becomes a partner in a profit-driven project, and its primary function becomes protecting the rights of the investment partner, not necessarily protecting the rights of the citizen as the original entitled party. [13]

These conceptual shifts have not always been explicitly stated. Often, they are cloaked in familiar legal language, justified by "economic necessity," and defended as modernization of the state. But the result is frequently the stripping of these concepts of their historical and social context. When public services are subjected to the logic of profit, and when the public interest is defined according to market indicators, the law itself becomes an instrument for imposing a new worldview: one that reclassifies citizens not according to their needs or rights, but according to their purchasing power.

In the Egyptian case, these transformations have been evident since the 1990s, but they deepened radically after 2013. While at one point it was possible to speak of a balance—albeit a fragile one—between social and market logic, the scales have now tipped decisively in favor of the market [14], supported by constitutional changes, legislative amendments, and an economic vision that explicitly declares the state no longer responsible for guaranteeing rights, but rather for "facilitating performance" and "stimulating growth." This will be discussed in more detail in the next section of this paper.

12. Sultany, Nimer. "Law's Ideology: Neoliberalism and Developmentalism in Egyptian Jurisprudence." I▪CON: International Journal of Constitutional Law, Vol. 22, No. 2 (2024), pp. 255–291.

13 . Al-Marghani, Elhami, and Moussa, Rajai, Privatization of Services and Neoliberal Policies, Development Support Center for Consulting and Training, 2007.

14 . Cox, Erin. "Neoliberalism and Revolution in Egypt." 2015.

03

When legal texts become a tool for market reproduction



It is difficult to understand the legal transformations that Egypt has undergone in the last three decades without examining the texts that played a central role in reshaping the relationship between state and society. These texts are not merely technical tools or regulations, but rather evidence of the conceptual shift we discussed earlier: from law as a tool of protection to law as a tool of redistribution in favor of the market.

The clearest beginning was with Law 203 of 1991, known as the "Public Business Sector Law" [15], which opened the door to the privatization of public sector companies. The law was issued at a pivotal moment, coinciding with the signing of the Structural Adjustment Agreement with the International Monetary Fund. It was not merely an administrative regulation, but rather an early declaration of the state's transformation from producer to regulator.

The official discourse justified privatization by claiming it would achieve economic efficiency, reduce the burden of subsidies on the budget, and attract new investments. However, a careful reading of the law and its implementation reveals that "public interest" was redefined as synonymous with "financial and economic interest." Instead of considering the impact of privatization on workers, the geographical distribution of wealth, or the services provided, its success was measured by "revenue volume", "number of completed transactions" and "improved financial performance"—often only after the fact. [16] The law faced early and objective criticism for deviating from the objectives set forth in the (then) constitution and disregarding the sanctity of public property and the duty to protect and support it, as stipulated in Article 33 of the 1971 constitution. [17] Furthermore, the law itself stipulated that the general assembly of subsidiary companies consisted of "shareholders from private legal entities or individuals contributing to the company's capital" [18] thus allowing private capital to participate in decisions regarding the fate of public assets. This law was not isolated, but rather part of a broader legislative context that began in the 1990s and was later expanded. Its most prominent feature was a series of investment laws. Law No. 8 of 1997 was a clear example of legislation written in market terms[19], offering investors unprecedented incentives and exemptions.

However, this language evolved and deepened with Investment Law No. 72 of 2017, which went beyond mere incentives, granting investors additional protection from potential legal challenges. This reinforces the notion that "investment" is a paramount interest, superseding any social or environmental considerations. These laws present "investment" as a public interest in and of itself. Once an investor fulfills the formal requirements (registration, licensing, minimum capital), they receive tax and customs exemptions, facilitated profit repatriation, and immunity from third-party challenges. It is often difficult to hold them accountable

15. Law No. 203 of 1991 issuing the Public Business Sector Companies Law, Official Gazette, Issue No. 24 bis, June 19, 1991.

16. Okasha, Hamdi Yassin, Corrupt Privatization and the Schemes to Sell Egypt, Abu Al-Majd Printing House, 2022. See also: Ramadan, Fatima. "Strategic Litigation: Workers and Public Sector Privatization Between Politics and Law." In: The Rise and Fall of the Egyptian Labor Movement, ed. Amr Adly and Fatima Ramadan. Al-Maraya Cultural Production House, 2017, p. 119 and beyond.

17. Article 33 of the 1971 Constitution states, "Public property is inviolable, and its protection and support are the duty of every citizen in accordance with the law, as it is a pillar of the nation's strength, a foundation of the socialist system, and a source of the people's well-being."

18 . Article 27 of Law No. 203 of 1991.

19. Law No. 8 of 1997 issuing the Investment Guarantees and Incentives Law, Official Gazette, Issue No. 19 bis, May 11, 1997.

for the environmental, health, or local labor market impact of their projects, as the "public interest" has been redefined within the legal text itself. Thus, it becomes clear that what is called "investment promotion" is not presented as a tool to achieve social goals (creating job opportunities, stimulating development in remote areas, supporting national industries), but as an end in itself, which means that the law abandons its balancing function and turns into a facilitator of unequal relationships.

The third example that clearly demonstrates the impact of neoliberal transformations in the law is the issue of land and housing. Over the decades, we have shifted from viewing the right to housing as an obligation of the state (as stipulated in the 1971 Constitution and later in the 2014 Constitution) to considering it an investment opportunity available to those with access to the real estate market. This reflects the erosion of the protection that civil law once afforded to the right to housing as a right of the beneficiary and their family, without extending to its disposal or rental to others.

The New Urban Communities Authority played a pivotal role in this process, shifting its function from planning new cities for residents to providing land to real estate developers, thus becoming a key partner in transforming land into a commodity and housing into assets. Laws such as Law No. 93 of 2008 concerning social housing, and Law No. 182 of 2018 concerning the regulation of public contracts, reshaped the relationship between citizens and the state in the housing sector. The state is no longer obligated to provide housing for those unable to afford it, but rather regulates a real estate market where units are offered under contractual terms that vary according to payment capacity. Furthermore, the demand for housing units in the real estate market now includes those seeking real estate investment, confirming that the legislative framework is geared towards serving the market, not just social needs. The right to housing has been transformed into a real estate product over which citizens compete, and the state treats them as "clients" rather than rights holders.

These three models—privatization, investment, and housing—are merely indicators of a deeper transformation that has affected the very core of the state's legal function. The state no longer represents social equilibrium, but rather a legal bias governed by market logic. Herein lies the danger of neoliberalism: not that it rewrites policies, but that it rewrites the law itself, rendering it a "legitimate" mechanism for producing inequality.

04

Latent resistances: Does the legal text stand a chance to regain its function?



Despite the profound transformations that Egypt's legal structure has undergone since the 1990s, and despite the neoliberal pervasiveness of texts, institutions, and discourse, the law—like any social system—does not always function as a monolithic entity. Rather, it sometimes retains latent spaces of resistance: cracks in the texts, judicial principles, or loopholes in the logic of domination, which can be exploited—even if only temporarily—to create margins for action within an ever-shrinking system.

Among these areas, one can focus on the Egyptian administrative judiciary, which, particularly at the beginning of the millennium, issued rulings that expressed a logic contrary to neoliberal hegemony, even if it did not entirely break with it. In rulings such as halting the privatization of the Tanta Flax Company, canceling the sale of land for the Madinaty project (a huge housing project) and invalidating the privatization of certain public companies, the administrative judge revived concepts such as "public funds," "distributive justice," and "not harming the social interest" as a basis for reviewing contracts and laws. These rulings were not revolutionary, but they confirmed that the law itself was not entirely decided in favor of the market. For example, in the Tanta Flax and Oils Company ruling, the First Circuit of the Supreme Administrative Court ruled to "uphold the invalidity of the privatization of the Tanta Flax and Oils Company, return its assets, including land and real estate, to the state, reinstate the employees to their previous positions, and grant them all their financial rights." [20]

This ruling represents a judicial rejection of the transfer of state assets to private capital based on procedures marred by suspicions of squandering public funds, and it affirms that privatization must serve the public interest, not harm it. Furthermore, the argument presented by the buyer's lawyer that the administrative court lacked jurisdiction to hear the case, because the company's sale contract is considered "a civil contract falling under the jurisdiction of civil courts," confirms that private capital seeks to shield its contracts from public oversight by altering their legal classification.

Furthermore, some provisions of the Egyptian Constitution—despite their internal contradictions—remain untapped potential, such as Article 27 concerning "balanced growth and social solidarity"[21] Article 33

20 . Okasha, Hamdi Yassin, Corrupt Privatization and the Plans to Sell Egypt, ibid.

21. Article 27 of the Constitution: "The economic system aims to achieve prosperity in the country through sustainable development and social justice, ensuring an increase in the real growth rate of the national economy, raising the standard of living, increasing job opportunities, reducing unemployment rates, and eradicating poverty. The economic system adheres to standards of transparency and governance, supports competitiveness, encourages investment, promotes balanced growth geographically, sectorally, and environmentally, and prevents monopolistic practices, while maintaining financial and trade stability, a fair tax system, regulating market mechanisms, guaranteeing various forms of ownership, and balancing the interests of different parties, thus preserving workers' rights and protecting consumers. The economic system is socially committed to ensuring equal opportunities, the fair distribution of development returns, reducing income disparities, and guaranteeing a minimum wage and pension that ensures a decent standard of living, as well as a maximum wage in the public sector for all wage earners, in accordance with the law."

concerning "protection of public and private property"[22] and Article 78 concerning "the right to housing"[23]. These provisions, at least theoretically, constitute a basis upon which to hold accountable laws that perpetuate inequality.

But what complicates matters is that these resistances are not always stable or subject to generalization. Administrative court rulings, despite their importance, do not hold broad binding forced and are often rendered ineffective through appeals or disregard for their implementation. Constitutional texts, on the other hand, are frequently left in a state of limbo, used merely as rhetorical decoration without genuine legislative translation. Thus, the law itself becomes an area of tension: promising one thing in one instance and contradicting it in another.

This contradiction should not be interpreted as evidence of the law's innocence or the possibility of "easy reform," but rather as part of the complexity of the legal structure shaped by neoliberalism: it does not remove rights from texts, but rather neutralizes them; it does not deny the public interest, but rather empties it of its substance. Therefore, reading the law as an arena of contradiction does not imply reliance on technical legal reform, but rather necessitates a twofold deconstruction: on the one hand, revealing the limits of these legal resistances, and attempting to expand them and transform them into spaces for social and institutional action, on the other.

In this context, it becomes possible—indeed, necessary—to rethink the law not only as an instrument of control, but also as a potential arena for conflict. This conflict is not waged solely in courtrooms or legislative committees, but also in public discourse, in the interpretation of texts, and in the daily practices that reproduce the meaning of "right" and "justice." As long as there remains a sentence in a legal text that refers to social justice, or a ruling that challenges a corrupt deal, or a space for interpretation granted to an independent judge, the confrontation is not yet over. This does not mean that the stakes must be entirely legal, but it does mean that the law, despite its transformation, has not been entirely transformed. What this paper attempts to encourage is precisely this kind of thinking: thinking that does not absolve the law, but does not surrender to it; that does not see it as a neutral arbiter, but also does not see it as merely a flawless instrument. Between these two extremes, an alternative legal policy can begin, one that starts with questioning logic, not just reforming the text.

22 . Article 33 of the Constitution: "The State protects three types of property: public property, private property, and cooperative property."

23. Article 78 of the Constitution: "The State guarantees citizens the right to adequate, safe, and healthy housing that preserves human dignity and achieves social justice. The State is committed to developing a national housing plan that takes into account environmental considerations, ensures the contribution of individual and cooperative initiatives to its implementation, and regulates the use of state lands and provides them with basic utilities within the framework of a comprehensive urban plan for cities and villages and a population distribution strategy, in a manner that achieves the public good, improves the quality of life for citizens, and preserves the rights of future generations. The State is also committed to developing a comprehensive national plan to address the problem of informal settlements, including replanning, providing infrastructure and utilities, and improving the quality of life and public health. The State guarantees the provision of the necessary resources for implementation within a specified timeframe."

05

Latent resistances: Does the legal text stand a chance to regain its function?



This paper has shown how, in the era of neoliberalism, law is no longer a neutral framework for justice, but has become a key instrument for restructuring society in favor of capital. We have traced this transformation through three overlapping levels: first, a conceptual shift where public interest, justice, and rights have been redefined to conform to market logic; second, the rewriting of legal texts to legitimize privatization, expand investment privileges, and dismantle the right to housing; and third, the neutralization of latent spaces of resistance that emerge in some judicial rulings or constitutional texts.

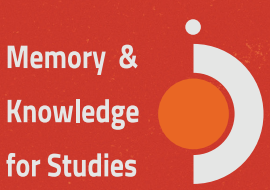
Based on this analysis, this paper does not conclude with definitive answers, but rather with questions that are more complex than those with which it began. When the law itself becomes part of the market structure, rather than an instrument for regulating it; when legislative texts are rewritten to serve those who have, not those who need; and when rights are redefined as "opportunities", justice as "efficiency," and public interest as "investment attractiveness," then what is required is not reforming the law from within, but holding it accountable from without.

The real question is no longer just: how do we amend the texts to become more just? Rather: is it still possible to talk about justice within a legal system that has been completely subjected to the logic of the market? And can the same texts that legitimized privileges, legalized the withdrawal of the state, and dismantled the guarantees of the weaker groups be an actual entry point to social balance?

This does not mean withdrawing from the legal arena or the struggle for reform, but rather rearranging the battleground: viewing the law as a reflection of the balance of power, not as a neutral framework. It means understanding that the problem lies not only in the "misapplication" of the law, but in its very structure: in the language, the concepts, and the foundational principles upon which it is built.

In Egypt, as in many countries, the discourse of "legislative reform" continues to be presented as the solution to every crisis: from housing to education, employment, and healthcare. But the reality is that many of these crises stem not from the absence of law, but from its pervasive presence as a tool for restructuring reality according to a logic of privilege. So, should we be content with reforming the structures, or should we re-examine the very assumptions upon which this law is built?

This paper does not claim to offer an alternative model, but it does open the door to a more fundamental question: Can law be an instrument of social justice in an era of neoliberal hegemony? And what does this require in terms of deconstructing the existing legal structure and redefining the function of legislation? The "Neoliberalism and Law" series will continue to unpack this complex relationship between the market and legislation. This first paper, which began by analyzing the shift in concepts and tracing its reflection in the Egyptian context, is merely an introduction. The other side of the issue—how this logic is resisted both within and outside the legal system—will be the question addressed in the next paper.



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