

The Egyptian revolution in and out of the juridical space: an inquiry into labour law and the workers' movement in Egypt

Mai Taha*†

Abstract

Since the spark of the Egyptian revolution in January 2011, issues of political party law reform, constitutional declarations, and the institution of free and fair elections have taken the lead in mainstream politics, and at times, relegated the role of organised labour to mere economic agitation and disruption of an already 'disrupted' life, in the eyes of the Egyptian public. In contrast to mainstream depiction of the labour movement as a 'single issue' movement, this paper shows the decisive political role of labour struggles that took place both inside and outside the judicial and legal systems, in the years leading up to the events of 25 January. This paper identifies the diversity of tactics used by the labour movement, and its unique approach to legality – a defensive legality approach, where legality and illegality are both taken seriously as legitimate tactics of resistance. The defensive legality approach recognises the violence and coerciveness of the legal form, as well as the tactical potential of recourse to the legal system to defend the labour movement. The experience of Egyptian workers in the wake of the 25 January revolution reveals the politics and the limits of law, as well as the significance of tactically and defensively using the law.

I Introduction

On the morning of 8 February 2011, as thousands of protesters gradually filled Tahrir Square marking two weeks since the spark of the revolution, the Helwan steelworkers announced that the working class has officially 'joined' the Egyptian revolution (Omar, 2011). A nationwide domino of strikes from Cairo to Alexandria, Mahalla and Suez spread across the country. In the Suez Canal alone, which is responsible for 8 per cent of world trade, 6,000 workers went on strike (Stigset and Sulugiuc, 2011). By 9 February, around 300,000 workers were on strike across fifteen governorates (Alexander, 2011). A week earlier, on 30 January, the Egyptian Federation of Independent Trade Unions (EFITU) was formed and announced from the heart of Tahrir Square, 'the palimpsest of Egyptian society' (Beinin, 2011, p. 189; Shokr, 2012, p. 41). While many have claimed that the workers 'joined the revolution' at a later stage, collective labour action has, especially since the 2006 Mahalla textile workers' strike, initiated a wave of revolutionary action, that in addition to other forces in society, culminated in Tahrir Square and eventually cracked the regime's edifice. Since the spark of the revolution, issues of political party law reform, constitutional declarations, and the institution of free and fair elections have taken the lead in mainstream politics, and at

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† Faculty of Law, University of Toronto. Email: mai.taha@utoronto.ca

times, relegated the role of organised labour to mere economic agitation and disruption of an already 'disrupted' life, in the eyes of the Egyptian public (Brown, 2013, p. 46; Shokr, 2012, p. 45).¹ Contrary to this position, the labour movement has fuelled numerous uprisings that preceded the events of 25 January 2011. Organised labour intervened in issues relating to labour law reform,² labour organising and collective bargaining,³ independent trade union movements (CTUWS, 2011), and the campaign for the institution of a fair minimum wage and its effective legal enforcement (Carr, 2012). It also exerted immense political pressures on the state through its explicitly political demands, such as the call for the resignation of the prime minister, and its increasingly militant job actions.

This paper studies the recent history of the labour movement and its curious uses of the law, specifically prior to the events of 25 January 2011. It locates the labour movement within a larger social struggle that has been developing and growing since the 1990s. The strikes of the 1990s and the 2000s attracted the leading labour activists of the 1970s, and created a new younger generation of activists (Zemni, De Smet and Bogaert, 2012, p. 10). The trajectory of this larger social struggle shows the influential role of the labour movement in both supporting the revolution, and in drawing new layers of the working class into the revolution, including networks of working-class towns that supported popular resistance (De Smet, 2012, p. 152; Zemni *et al.*, 2012, p. 11). Workers' agency – reflected in illegal forms of resistance, as well as the different uses of the law in defence of the workers' movement – is instrumental in understanding the history of the labour movement, and the structures that constrained it. This paper shows how the labour movement, in the years leading up to the 25 January revolution, has only tactically (and not in principle) used labour law and the legal system, oscillating between the realms of legality and illegality.

In what follows, I first give a short history of labour codification in Egypt from the adoption of the 1959 Unified Labour Code under the Nasser regime until its reform in 2003. I focus specifically on the main legal problems that faced Egyptian workers under the premiership of Ahmed Nazif and his 2004 technocratic cabinet, which embarked upon an unrelenting programme of privatisation, austerity and the curtailment of workers' rights. Second, I demonstrate how the labour movement's diversity of tactics created a unique approach to labour law, one that occupies the realms of legality and illegality as equally legitimate spaces for resistance. The labour movement both tactically and defensively used the law, through the Administrative Court decision to raise the national minimum wage. The movement was also operating outside the law, through the creation of the first *illegal* independent trade union and the reclamation of public spaces through wildcat strikes and workers' uprisings. Finally, I conclude with the prospects of formulating a progressive approach to labour law in Egypt, one that acknowledges law's limits, but seeks its support in defence of the labour movement and its struggles with the state and the business class. As such, this approach is also an inadvertent critique of a mere philanthropic or reformist disposition to labour matters, or as part of corporate governance policy and corporate social responsibility

1 The 2011 constitutional referendum is a good example. For more information on the outcome, the drafting committee and the implications, see Egyptian Referendum (2012), online: <<http://referendum.eg/84-slideshow/158-2011-03-20-19-09-58.html>> (last accessed 9 July 2012).

2 See, for example, the National Initiative to Change and Reform the Egyptian Labour Code, led by Engineer Riham El-Minshawy, online: <<http://www.facebook.com/pages/الحملة-القومية-للتغيير-و-اصلاح-قانون-العمل-المصري/166047133452273?sk=wall>> (last accessed 9 July 2012).

3 For detailed coverage of strikes and labour actions, see Hossam El-Hamalawy's coverage at <<http://www.arabawy.org/>> (last accessed 9 July 2012) and Jano Charbel's coverage at <<http://she212.blogspot.com/>>. See also the Centre for Trade Union and Workers' Services (CTUWS) at <<http://www.ctuws.com/>> and the Egyptian Centre for Economic and Social Rights at <<http://ecesr.com/>> (last accessed 9 July 2012).

propaganda,⁴ or of a view that sees law and the juridical space as a revolutionary or transformative one in and of itself.

II Egyptian labour law and social struggle

During Egypt's declared socialist years under Gamal Abdel Nasser's leadership, a number of labour laws were enacted leading eventually to the Unified Labour Code of 1959, which was later modified in 1976 and adopted first in 1981 and finally in 2003. Despite a period of a consolidated declared socialist system during the Nasser years, the labour legal regime has been largely co-opted by the state since 1956. More specifically, labour legislation came to directly reflect the propaganda of a self-proclaimed socialist regime (Posusney, 1997, pp. 60, 61).⁵ After the 1952 coup d'état that was later popularly endorsed, socialistic policies slowly became part of the regime's strategy to consolidate the labour movement under the state apparatus. Not surprisingly, labour law during the 1950s and 1960s did not necessarily represent the business class, as was the case particularly in the 1990s and beyond, but represented the state bureaucracy. The state was acting as a guarantor of social and welfare benefits through a 'socialised' labour legal regime (Pollock, 1982, p. 72).

The 1956 Constitution seemed to initially create a more progressive legal foundation. The Constitution, in its preamble, called for social justice in a democratic and socialist co-operative society. Article 53 singled out employer–employee relationships as central in the application of social justice requirements. Article 52 famously provided a right to work for all Egyptians.⁶ This, unlike in North America, included fairness and equity in issues relating to access to job opportunities, hours of work, wages, vacations and insurance (Posusney, 1997, p. 59; The Egyptian Constitution, 1956). These provisions were later translated into the 1959 Unified Labour Code (Law 91), which reduced probationary periods from six to three months, cut working hours to eight hours per day and doubled the differential for shift work. The new Code also included further measures extending health insurance coverage to all industries, and allocated more paid vacations and higher sickness and severance pay. This was followed by ministerial decrees that set a seven-hour cap per day for twenty-six dangerous and unhealthy occupations (Posusney, 1997, p. 59). Despite such significant changes in legislation, statistics demonstrate that there was only a slight decrease in the working week, and many workers needed to resort to the courts for wrongful or illegal dismissal to be rehired. From 1953 to 1961, not a single illegally dismissed worker was rehired (Posusney, 1997, p. 60).

With all these legal constraints to both the improvement of the conditions of work, and to labour action, the state was also able to create a corporatist state-based trade union system led by a corrupt

4 For an excellent discussion on corporate governance, self-regulation, corporate social responsibility and transnational labour law, see Zumbansen (2006a, p. 261). For particular reference to labour rights as part of corporate social responsibility agendas, see Zumbansen (2006a, p. 278), citing Cragg (2000, pp. 205, 208).

5 During Nasser's participation in the famous Bandung Conference of 1955, he was noticeably disconcerted by the workers' protection system in Egypt when he met with his comrades from the non-alignment movement. In an attempt to match the Egyptian labour regime with that of Tito's Yugoslavia, Nasser immediately initiated the creation of an informal organisation that was to function as an ad hoc confederation until a fully-fledged one was established. Since Nasser came to power, he had been making promises for better labour legislation. It was only in September 1955 that new social insurance legislation was passed. The new legislation required employers to contribute to workers' pensions and disability plans. There was nothing groundbreaking about the law, since most private sector companies operated under the same scheme (Posusney, 1997, pp. 60, 61).

6 On the implications of invoking the 'right to work' in Egypt versus in North America, see the discussion below on The National Right to Work Committee (NRTWC). See also the minimum wage case heard before the Egyptian Administrative Court discussed below: *Nagy Rashed et al. v. President of the Republic et al.* 2010.

and undemocratic labour bureaucracy. Historically, trade unions in the Middle East region emerged in the context of European colonialism. Typically, this meant that class-consciousness often overlapped with national identity. Not surprisingly, with decolonisation, unions were effortlessly integrated into a declared socialist, nationalist government (Bayat, 2000). Under Nasser's leadership, unions took a corporatist form (Bayat, 2000, pp. 7, 8).⁷ After struggles among the different forces, a confederation was created in 1957, which initially took the name of the Egyptian Workers' Federation. It was a single hierarchically defined trade union confederation that was to remain under the aegis of the state (El Shafie, 1995; Posusney, 1997, pp. 60, 63).

In 1961, the confederation changed its name to the Egyptian Trade Union Federation (ETUF), or *Al-Ittihad Al-'Amm Li-Niqabbat 'Ummal Misr*, to be the single union representative in the country (Posusney, 1997, pp. 67, 69, 70, 71, 72).⁸ This signalled a shift in the traditional role of unions from worker representation to a state guarantor mandated to increase workers' efficiency and to push forward the 'wheels of production'. These inclinations further materialised in the 1962 National Charter (a constitution-like document), which called on unions to:

'become the leading vanguard in social and economic development. Labour organizations can exercise their responsibilities through serious contributions to intellectual and scientific efficiency and thus increase productivity among labour. Unions can fulfil their obligations by safeguarding labour's rights and interests and by raising the workmen's material and cultural standards.' (Posusney, 1997, p. 73)

Reducing the role of unions to merely increasing efficiency and productivity was paradigmatic of the state system enforced by Nasser. This was a time when labour law was championed and undermined at the same time. For example, the 'Socialist Decrees', which gave several protections to workers, were offset by a deep interference in union structure. The then new labour law of 1964 maintained the right of the government, through the Ministry of Labour, to interfere in union affairs by requiring permission for the federation to hold their annual meetings, and by giving the ministry the right to dictate membership requirements for executive committees of the local federations. The law also authorised the officials of the Arab Socialist Union (ASU)⁹ to prevent certain individuals from holding union office by denying them ASU membership (Owen, 1992, pp. 134, 176). This trend of state control of unions was certainly extended and developed during the Sadat years.

7 This was generally the system in countries with a 'populist past', such as Algeria, Egypt, Iraq and Syria. However, this was also the case in Yemen and Kuwait. As for the Gulf states, migrant labour is the primary concern. Tight surveillance did not prevent occasional outbreaks of labour protest, most notably the Palestinian workers' strike in the Saudi oil sector in the 1980s, and later the Egyptian workers' riots against discrimination in Kuwait in 1999. Jordan, Lebanon, Morocco and Turkey have relatively pluralist unions that are independent from the state or ruling parties (Bayat, 2000).

8 1961 was the year Nasser proclaimed the 'Socialist Decrees', which aimed at extending the role of the state in the economy, including nationalisations and more protections for workers. For labour law, the decade of the socialist decrees meant limiting the working week in industrial plants to forty-two hours, six days of seven hours per day (Law 133 of 1961, which was later amended in 1962 after some workers saw a decline in their real wages after accounting for overtime). Additionally, there was a new compulsory social insurance scheme, which raised the employer's contribution from 7 to 17 per cent of salary. Law 262 of 1962 doubled the minimum wage from 12.5 to 25 piasters per day. Law 114 of 1961 regulated worker representation on the management board and Law 111 of 1961 provided for public-sector workers' profit-sharing. This was all capped by a blanket guarantee that such standards would be enforced in the private sector. Further protections were enacted in the public sector by Ministerial Decree No. 96 of 1961, which made it more difficult to fire workers because the decrees required the consultation of a tripartite committee of union representatives, the Ministry of Labour and management (Posusney, 1997).

9 Nasser founded the ASU in 1961 as the country's only political party. It was eventually dissolved under Sadat in 1978.

Mohammad Anwar El-Sadat, like Nasser, wanted to co-opt the workers, especially after his rising unpopularity in the wake of the Open Door Policy or *Infitah* (Baker, 1981, p. 378).¹⁰ The radical break in the state's policy in the decades following the 1974 Open Door Policy and the removal of any 1960s socialist imprints in the constitutional and labour legal system played a certain role in the rise of labour agitation. As a result of the *Infitah*, workers staged large protests without organisation support from the official union or leftist politicians (Beinin and Vairel, 2011). In 1975, commuting workers to Helwan from Cairo occupied the Bab al-Luq railway station and others occupied the plant (Gershoni, Erdem and Woköck, 2002, p. 122). In Shubra al-Khayma, textile workers declared a solidarity strike and occupied a number of mills. Workers had explicitly political demands, in addition to their economic demands. They demanded the resignation of the prime minister (Gershoni *et al.*, 2002, p. 122). Collective labour actions continued through the 1970s, through a delicate balance between workers' sense of agency and the existing structures of the state's union bureaucracy.

The intrusive role of International Financial Institutions (IFIs) eventually led to the bread riots in 1977, infamously dismissed by Sadat as *Intifadat al-Haramiyya* – the 'Thieves' Uprising'. Sadat still needed the approval of the labour leadership, at least symbolically, to temper the agitation of rank-and-file union members. When Sadat travelled to Israel to sign the peace accords in 1979, he invited leaders from the ETUF to accompany him in this politically dubious step (Posusney, 1997, p. 111). The Arab–Israeli conflict has always played a role in mass mobilisation, including workers' mobilisation. Therefore, if Sadat was to embark on a clearly unpopular political decision–peace with Israel–he needed the support of the working class, or at least needed to co-opt the workers by implicating the ETUF leaders.

Unions continued to be controlled by the state, which increasingly aggravated the conditions of employment. When Mubarak succeeded Sadat, he initially made no attempt to put 'his people' in the ETUF leadership. However, this completely changed as he embraced a new economic policy in collaboration with the directional efforts of IFIs (Gershoni *et al.*, 2002, p. 124). In 1981, Egypt ratified the International Covenant on Economic Social and Cultural Rights (ICESCR 1976, Article 8(d)). The *Tagammu'* Party used this ratification to argue that this effectively legalised the right to strike, and sent complaints to the International Labour Organisation (ILO) and other human rights agencies on the outstanding prohibition on collective strikes (Posusney, 1997, p. 117). Despite being a self-proclaimed leftist party, *Tagammu'* has increasingly become unpopular in workers' and leftist circles because of its ambivalent relationship with the regime. Nevertheless, its attempt to alleviate the bans on collective action by using the language of individual human rights and appealing to international human rights institutions was relatively successful. In the wake of the 1986 train drivers' strike case, *Tagammu'* Party lawyers argued that international human rights agreements could override domestic legislation that effectively banned strikes. The court upheld the defence and dismissed all charges against the workers implicated in the strike (Posusney, 1997, p. 122). The court also ruled that the right to strike was constitutionally protected (Beinin, 2010, pp. 192, 193).

The decade of the 1990s saw massive privatisations mandated by the IFIs economic reform packages. The withdrawal of the state from the economy made the industrial workforce seek greater union protection (Posusney, 1997, p. 209). The ETUF leaders lobbied for important amendments to the 'public enterprise law' or Law 203, which was intended to privatise the public sector. Despite the privatisation efforts, the International Monetary Fund (IMF) and the World Bank made it clear that such efforts were insufficient, reprimanding the government for enacting job security regulations that were protected by Law 203. Consequently, in 1991, the government created a committee to draft a new labour law to replace Law 317 of 1981 as well as additional

¹⁰ In 1974, President Sadat declared his new economic plan, called the 'Open-Door Policy'. This policy aimed at the liberalisation of the economy and its full transition to a free-market economy (Baker 1981, p. 378).

regulations that were only binding on public-sector firms. The discrete committee comprised representatives from the ETUF, businessmen's associations, the Ministry of Labour, and a selection of domestic lawyers (Posusney, 1997, pp. 214–215). By October 1993, ETUF participation was disclosed. The committee agreed on the following three options to be given to the workers: early retirement – at the age of fifty-one for men and forty-five for women – with full pension benefits; or a generous severance payment to workers between the ages of thirty-seven and the minimum for retirement; or a retraining of workers between eighteen and thirty-six years of age (Posusney, 1997, p. 229).

The proposed new labour law drafted by the committee was intended to facilitate layoffs in the public sector and newly privatised firms, accompanied by a blanket reduction to worker social benefits in the public sector. The new legislation, however, was to legalise collective strike action for the first time in Egypt's post-1952 history (Pratt, 1998, p. 31; Posusney, 1997, p. 238). The legalisation of strikes came only in exchange for the removal of job security provisions (Assad, 2002, p. 6). In an interview with Nadeem Mansour, the Executive Director of the Cairo-based Egyptian Centre for Economic and Social Rights (ECESR), he explained that 'the right to strike is extremely theoretical' (Mansour, 2011). A strike needed the approval of a two-thirds majority of the ETUF to authorise a strike by the General Unions. The ETUF never exercised this right except one time in 2010, involving a foreign investor leaving the country after stepping over workers' rights. Even this rather obnoxious intervention by the ETUF was quickly retracted (Mansour, 2011). The right to strike is outlined in detail in the Trade Union Law of 1976 (which is currently being considered for amendments). As Cairo-based labour rights activist and journalist Jano Charbel insists, Egypt has ratified ILO Conventions 87 and 98 despite the fact that the domestic Trade Union Law is in clear contradiction with their provisions (Charbel, 2011).

The employment contract, under the new law, can be either permanent or with a specified duration. Nevertheless, it noticeably widens the scope of workers' infractions that would sanction a breach of contract from the side of the employer. More generally, the law has effectively taken away the job security provision from the labour code, by allowing for multiple renewals of a temporary contract. Law 317 of 1981 had specified that once a temporary contract was renewed, the worker would immediately be hired permanently (Posusney, 1995, p. 53). By changing this provision, the new law provides little incentive for the employer to change the contract of new workers to a permanent contract. Furthermore, the draft law increased employer discretion to individually dismiss workers, which was previously handled by a tripartite committee with different representatives from the management, unions and the Ministry of Labour. Under the draft law, workers were able to appeal dismissals but provisions for extension of salary during the period of the appeal were repealed in the new draft law. Therefore, it was unlikely that workers would actually pursue the appeal track since they needed to have financial security during arbitration (Pratt, 1998, p. 31; Posusney, 1997, p. 238). The nature of the employment contract was to become quite fluid with the adoption of the draft law. For example, Article 203 enables the employer to force the resignation of workers by lowering the contractual wage or requiring the completion of different jobs, under the pretext of 'economic reasons'. The lobby of business organisations was instrumental in inserting this provision in the final draft, which seriously dilutes the employment contract and job security assurances. In practice, many private-sector factories were already following this new legislation by using only temporary contracts, and more significantly forcing workers to sign blank contracts or undated resignation letters in return for a short-term source of wages (Assaad, 2002, pp. 6, 9).¹¹ This custom has traditionally attracted more workers to the public

¹¹ Statistics show that only a small fraction of private-sector workers has a legal contract of employment. This fraction was 28.6 per cent in 1988, declining to 24.4 per cent in 1998. The fraction was higher among female workers in 1988; however, it declined at a faster rate, implying the rapid delegalisation of female labour.

sector. However, the draft law gave employers more leeway in hiring and firing, a step aimed at tempering labour opposition to privatisation (Pratt, 1998, p. 31; Posusney, 1997, p. 239).

The law, on the other hand, provided other material protections to the workers. Article 2 maintains that all workers should receive a minimum of 7 per cent annual raise, removing a real currency cap on the value of the raise. Article 4 provides further guarantees for the maintenance of wages earned by current employees, where only new hires will be affected. Notably, this provision clearly targets workers' unity and strikes at the very core of labour organising for collective bargaining. Moreover, Article 4 seems to contradict Article 203, which sanctions a reduction in the contractual wage. As for the long-awaited legalisation of strikes, the draft law required that two-thirds of the federation's leadership endorse a walkout at individual plants, which effectively denies democratic decision-making power to the locals, where workers had been most successful. The locals (approximately 1,900–2,000 local committees) are the only institutional level where workers are permitted to elect its members (Charbel, 2011). The idea behind this provision was to have a formally clean law that sanctions collective strikes, while making strike action extremely difficult. This is especially the case since strikes are still prohibited while employment contracts are still in effect, during mediation and arbitration and certainly in the vital services sector. Logistically, union leaders were required to give both the employers and the government fifteen days of written notice, accompanied by a reasoned justification, before going on strike (Posusney, 1997, p. 240). The regime was able to manage union leaders' dissatisfaction by institutionalising cronyism in the union system.

In 1995, there was an amendment to the trade union law, which extended the term in office of top union officials to five years and provided for such officials to maintain their union position even after retirement. This was accompanied by other provisions that made it more difficult for opposition members to climb up the ladder in the union hierarchy. Therefore, the union leadership has consistently adopted political positions favourable to the regime in power throughout the 1990s (Paczynska, 2006, p. 56). Nonetheless, union leaders continued to lobby against the economic reforms and other workers' grievances. That being said, ETUF president Sayyid Rashid publicly endorsed the privatisation process, which left many workers vulnerable to layoffs and other corporate policies. While the draft labour law was being stalled in parliament from 1993 to 2003, approximately half of the labour force worked with no contracts or social security coverage. This period also saw a decline in real wages in all sectors of the economy, which was further exacerbated by the economic downturn following the events of September 11, 2001 (Paczynska, 2006, p. 56).

During the ten years of stalling, the division between the government, the unions and business organisations further widened, notwithstanding the overarching commonality that animated each of the three groups – personal interests and consolidation of the business class and labour bureaucracy. The government attempted to improve matters in 1996 after deadlock at the negotiation table by proposing an increase in workers' compensation in cases of dismissal. The unionists, however, continued to contest the overall structural framework of unemployment insurance. Technically, workers were entitled to six weeks of compensation after dismissal, but practically they were always caught up in a bureaucracy that made the six weeks' compensation effectively non-existent (Paczynska, 2006, p. 61).

The stalemate reached its peak in 2000 when not only industrial workers but also the public at large expressed their opposition to privatisation and its effects on job security and labour conditions (Paczynska, 2006, p. 62; Beinin, 2009, pp. 77, 78).¹² By the year 2003, 10 per cent of spinning, 40 per

¹² Opposition to privatisation started much earlier, most notably in 1993 when labour activists opposing the ETUF leadership and its positions on economic policies formed the National Committee to Combat Privatization, and the Centre for Trade Union Services became increasingly active in disseminating information to the workers on the nature of legal regulations to be adopted by the government. In 1994,

cent of weaving, 60 per cent of knitting and 70 per cent of garment enterprises were privately owned. This marked a significant transformation in the Egyptian textile industry, which accounted for approximately a quarter of manufacturing employment in the country.¹³ These percentages have been hiked up since the 2004 Cabinet's commitment to privatisation (Beinin, 2009, pp. 74, 75),¹⁴ which led to a significant drop in the level of social benefits and health insurance entitlements. While the law required the private sector to provide the same benefits as provided by the public sector, private firms were able to evade these requirements by bribing inspectors and producing primarily for the local market, where there are lower standards of documentation than for the export market (Beinin, 2009, p. 76). Finally, after a decade of lobbying between the different stakeholders, the Unified Labour Code was adopted by parliament in 2003.

The history of the labour code shows the entrenchment of the state structures in labour affairs. Notwithstanding these deep structures, workers were able to develop local knowledge of organising, using different tactics and forms of resistance. In what follows, I identify the different tactics used by the labour movement in the years leading up to the 25 January revolution. More specifically, I study how they adopted illegal practices, while using the law defensively to push forward the goals of their movement.

III The tactics: illegality and defensive legality

Throughout the 1990s, the labour movement had been largely engaging in unorganised, impromptu action. However, since the appointment of the neoliberal and technocratic cabinet in 2004, the labour movement became an organised front to represent workers' demands through various public manifestations that tactfully combined legal and extra-legal tactics. These localised public manifestations are now providing a solid ground for a new labour legislative system in a post-Mubarak era. The revolution in Egypt, like all broad-based political movements, has its origins in particular struggles in particular places and times (Harvey, 2000, p. 241, 1995).¹⁵ The labour

there was a stand-off between the workers and the management in the textile plant in Kafr al-Dawwar. Similar instances of labour unrest continued in 1998 and in 1999 there was an unprecedented wave of labour protests. It is estimated (by the Land Centre for Human Rights) that in 1998 alone there were around 80 labour protests, reaching 267 in 2004. Similarly, the workers of the Egyptian – Spanish Asbestos Company (Ora Misr) in Tenth of Ramadan City, which manufactured building materials using asbestos for over twenty years even after it was banned in the United States and Europe, suffered the medical repercussions from 1997 to 2004. During this period, 18 of the 120 workers remaining on the job suffered from asbestosis, which prompted CTUWS to file a complaint to the ILO in June 2004. Under pressure from the 'ILO, other Egyptian NGOs and French trade unions', the government eventually fined the company in September 2004, and ordered the closure of the factory and payment of workers' compensation. Ahmed Luqma, owner of Ora Misr, fired all the remaining workers without compensation, which led to a workers' encampment outside the gates of the closed factory for over nine months. In July 2005 some workers resorted to occupying the ETUF to anchor the organisation's support as an alleged representative of workers' rights. Another protracted struggle at the ESCO Spinning Company in Qalyub resulted from overwhelming fears of privatisation. The dispute lasted for four months and, after an open-ended hunger strike, there was a partial victory for the workers. The result was 'seasonal contracts' which guaranteed the enforcement of the 2003 Unified Labour Law, E£10,000 per worker in lieu of an early retirement package, and back pay for three months. This strike certainly 'set the tone' for other collective actions in the public sector (Beinin, 2009, pp. 77, 78).

- 13 From the nationalisations of the 1960s until the end of the 1990s, the textile industry was largely dominated by the public sector.
- 14 Gamal Mubarak's entourage, who found their home in the new Cabinet, promoted a second wave of privatisation, and adopted measures to encourage foreign direct investment, such as slashing the tariffs on textile machinery and spare parts to zero. This was further consolidated by the conclusion of the trade agreement with Israel and the United States that created the Qualifying Industrial Zones (QIZ) (Beinin, 2009).
- 15 Here, Harvey (1995) highlights the resilience of the theory of 'militant particularism', first developed by Raymond Williams.

movement and its uses of the law embody this particularity. Nevertheless, in a revolutionary situation, as in the one witnessed in Egypt, labour law was one of the many avenues through which the workers were able to challenge the structures of the state's law and institutions, and ultimately enabled labour action. It was a situation where the demand for equality by the working class was an agitation tactic to provoke and organise the workers against both the employers and the state using their own juridical assertions, without any illusions of the transformative potential of the law in and of itself.

The particularity of many of the struggles fought by the labour movement in Egypt provided an impetus, among other spontaneous social movements, for qualitatively wider and universal struggles, culminating in Tahrir in January 2011 and beyond. As Joel Beinin argues, the strikes that took place during the eighteen days of Tahrir paralysed the economy, and were likely instrumental in the military chiefs' decision to ask Mubarak to step down (Beinin, 2011, p. 194). In the following section, I outline the two tactics used by the labour movement – recourse to the legal system and the courts, and extra-legal political action – to push forward particular, yet ultimately universal, struggles. First, the labour movement was able to strategically use illegal tactics, most notably through the wildcat strikes and other labour action, as exemplified in the Mahalla workers' uprising. In fact most strikes since the 1950s were illegal strikes since they were not authorised by the official ETUF (Beinin, 2012, p. 92). Another significant achievement by the workers was the creation of the first *illegal* independent trade union in 2009 that broke from the bureaucracy and corruption of the state's union. Second, the labour movement was also able to utilise the less than perfect labour legal system by challenging the national minimum wage through the courts.

IV Labour law from outside the law

4.1 The Mahalla uprising

After the enactment of the Unified Labour Code, labour protests had been rising since 2004, forming what labour scholar Joel Beinin calls 'the largest social movement that Egypt has witnessed in over half a century' (before the 25 January revolution) (Solidarity Centre, 2010). By 2006, 222 strikes were recorded, a number which reached an astounding 614 in 2007. These were all orchestrated outside the official union's system. In other words, they were illegal strikes. The scope of collective action starting in 2007 expanded from an almost exclusive focus on the textile and clothing industry into other industries, such as building materials, transportation, food-processing, baking, sanitation, and oil (particularly in Suez). This movement gradually encompassed white-collar employees (Solidarity Centre, 2010).

The most significant collective action in the 2000s was the Misr Spinning and Weaving Company strike in Al-Mahalla Al-Kubra (the Mahalla strike) in 2006, which created an unprecedented momentum in the labour movement. The company employs a quarter of public-sector workers in the Egyptian textile industry (El-Mahdi, 2010, p. 4). While there had been significant collective actions in 1967, 1977 and 1989 in the iron and steel industry, in weaving and spinning in 1995, and on the railways in 1986, the Mahalla strike in December 2006 marked an 'organized, sustained, self-conscious' movement that presented a material threat to the state (El-Mahdi, 2010, pp. 7, 8). The strikers appeared to have initially adopted a 'moral economy' approach to their demands (Thompson, 1971, pp. 79, 126),¹⁶ but that was swiftly transformed into a normative

16 The idea of a moral economy was envisioned and described in E. P. Thompson's (1971) eponymous work, 'The Moral Economy of the English Crowd'. Thompson's concept of the 'moral economy' refers to the perceived consistency of a traditional system of social norms and obligations, which allocates the proper economic functions to the different parties within the community. In Thompson's understanding, the moral economy infringed upon eighteenth-century government and thought in Britain, subverting its balance on

political struggle that was universalised to the socio-economic predicaments of Egyptian society (El-Mahdi, 2010, p. 8).

The main advocate of a moral economy understanding of the Egyptian labour movement has been Marsha Posusney. She argues that if workers in Egypt have in fact been experiencing a rising class-consciousness, as Marxist commentators have argued, then they would have a more systemic approach to labour and politics in Egypt, including sending solidarity pickets to other workers' strikes (El-Mahdi, 2011, p. 393). However, after the Mahalla strike of 2006, workers were in fact challenging the private sector, showing solidarity across plants, and calling for a systemic transformation of the employer–labour relationship. The Mahalla strike triggered a wave of labour action across different cities and industries, from Mahalla to Kafr al-Dawwar to Shibin al-Kum, and from spinning and weaving to cement and public transportation. Additionally, workers expressed solidarity with other strikers in different sectors through one-hour work stoppages at their workplaces (El-Mahdi, 2011, p. 393).¹⁷

Originally, the Mahalla workers went on strike after they did not receive the two months bonus promised by former Prime Minister Nazif. After a week of filing complaints and organising small protests, 24,000 workers started the strike. Thousands of female workers walked out of their workstations in the Mahalla plant, and started moving to the male section of the plant chanting, 'Where are the men? The women are here!' (Duboc, 2013, p. 29; Beinín, 2009, p. 81).¹⁸ In the following three days, approximately 10,000 workers occupied the factory, and set up a strike committee to manage the strike. After four days of occupation, government officials offered a 45-day bonus, which exceeded twice the amount the workers usually receive. By March 2007, workers' action went beyond 'moral economy' demands; 5,000 workers officially resigned from the textile workers' trade union, which is a subsidiary general union of the ETUF. Another strike took place in September 2007, not only to implement the initial agreement reached in 2006, but also to demand the resignation of their managers and trade union officials. Their demands also included that the National Council for Wages raise the national minimum wage. The strike ended with a victory for the workers after six days of collective action. They received an additional 70 days' bonus pay (increased later to 130 days) and the resignation of the entire board of directors at the company's general annual meeting in November 2007 (El-Mahdi, 2010, p. 15). Workers' collective action targeted the national legislation of the minimum wage, and the nepotism of the private- and public-sector managers. The Mahalla strike marked a significant moment in the crafting of a new national working-class movement that aimed to dismantle the basic economic structure chosen by Nazif's cabinet. The strike also triggered other protests and strikes in Kafr Al-Dawwar, Shibin Al-Kum and others (El-Mahdi, 2010, pp. 15, 16, 17, 18).¹⁹ The September 2007 strike leaders

occasion. The story, so it goes, is that the rise of social protests emanated from a common association with a moral economy seeking public welfare in times of dearth. Other than 'chilling the blood of the rich with their theatrical effect', social protests have sought to fight against the disruption of that moral economy. The increasing perversity of free trade inevitably led to its breakdown. This is more so the case in the age of neoliberalism, where the moral economy has absolutely no credence other than among utopians, or alternatively by the alleged social contract between employer and worker through the contemporary, and rather organic, system of corporate governance.

17 Workers in Kafr al-Dawwar initiated a one-hour work stoppage in solidarity with the Mahalla workers.

18 Approximately 35 per cent of all textile-clothing workers are female. Women are generally concentrated in the ready-to-wear garment industry, which tends to pay lower wages. For a discussion of the gender politics of labour actions in the Egyptian textile industry, see Duboc (2013).

19 One of the eight leaders of the Mahalla strike, who was arrested for two days during the course of the labour action in 2006, said: 'We want a change in the structure and hierarchy of the union system in this country ... I want the whole government to resign ... I want the Mubarak regime to come to an end. Politics and workers' rights are inseparable.' As El-Mahdi further argues, '[a]gainst moral economy arguments, the workers demands were not "resortive" in nature, nor did they follow the "stability-disruption-protest"

‘explicitly framed their struggle as a political contest with national implications ... Sayyid Habib announced “We are challenging the regime”’ (Beinin, 2009, p. 84).

The strike wave of the 2000s was a powerful expression of larger resistance against state oppression that occurred outside the legalism of the union structure. While social movements such as *Kifaya* (the Enough Movement) have certainly captured the urban public space for demonstrations and rallies, the workers’ movement has been engaging in material large-scale collective actions for many years. With the growing crackdown on civil and political rights, liberal democratic movements came to be associated with progressive politics, which was quite convenient for a government that feared a strong working class. This also explains the suspicious underreporting of workers’ actions throughout the 2000s. The second Palestinian Intifada was clearly a strong instigator of the workers’ movement in Egypt, but the defeat of Islamic militancy of the 1990s had already paved the way for autonomous labour organisations to emerge (Soliman and Daniel, 2011). At the same time, the anti-war solidarity created the political space for liberal democratic forces to gain prominence in the Egyptian opposition movement, since leftist forces started building alliances with liberal and Islamist groups.

The Mahalla uprising, and the subsequent labour action before, during and after the uprising, mark a significant moment in the development of the legal structures and the expanding repertoire of localised labour knowledge base, particularly the institutional mechanisms that are capable of realising the workers’ movement’s demands. This labour knowledge later provided the basis for the first independent trade union, which eventually led to a draft law on the creation of independent trade unions after the fall of Mubarak. Similarly, the struggle to change the national minimum wage through an Administrative Court decision was part of a larger demand that also came from the heart of the labour movement, starting from Mahalla and beyond.

4.2 An illegal independent trade union

In December 2007, approximately 55,000 real-estate tax collectors organised a strike as part of their struggle for wage parity. The strike resulted in the creation of the first independent *illegal* trade union since 1957, in April 2009 (Law No. 35, 1976).²⁰ According to the trade union law No. 35 of 1976,²¹ all worker representation should be through the centralised system of the ETUF (International Labour Conference 2010, p. 27). However, workers defied the trade union law for the first time since its adoption and created an independent trade union, prompting other industries to follow suit. They had initially won their struggle for wage parity with workers employed by the Ministry of Finance, after which they were able to mobilise and embark upon one of the most significant steps in Egyptian union history (International Labour Conference, 2010, p. 79; Mohammadein, 2011).²²

pattern seeking to reinstate “patron-client relationships”. Rather, they sketched a pattern of escalation (protests did not stop even when workers achieved their initial economic demands) seeking anti-corporatist relationships (resignation from the state union, sacking officials, and establishing an independent union) and changing the nature of their demands to being more systemic (anti-Mubarak slogans and a national minimum wage) (El-Mahdi, 2010).

20 See also Al-Jazeera (1995), Trade Union Law No. 12. Labour lawyer and activist in Revolutionary Socialists, Haitham Mohamedein noted that the crux of the matter now lies in the fact that the Supreme Council of the Armed Forces (SCAF) shelved the new trade union law even after its approval by the Minister of Manpower and by the Essam Sharaf Cabinet. The new law would allow the creation of independent trade unions for the first time since the 1950s. So far, the EFITU members have been stripped of their worker status to run in the parliamentary elections. There is a 50 per cent quota for workers and peasants in parliament. However, workers who claim to be members of the EFITU were barred from running in the November/December 2011 parliamentary elections (Gaber, 2011).

21 A new draft Trade Union Law was shelved by the Supreme Council of the Armed Forces.

22 On 31 January 2011, a few days after the start of the 25 January uprising, four independent trade unions announced the creation of the Egyptian Federation of Independent Trade Unions (EFITU) in Tahrir Square.

The creation of the first independent trade union represented a qualitative development that did not spontaneously arise, but arose out of numerous collective actions that built the strength of the labour movement. During the government-controlled Egyptian Trade Union Federation's 2006–2011 election cycle, there were 1,809 shop-floor committees, with general ETUF membership reaching 3,815,895 of the 15 million waged workers in Egypt. The previous ETUF board had counted twenty-one National Democratic Party (NDP)²³ members among its twenty-two members (Mohammadein, 2011). In response to such government infiltration, the workers created new organisational structures through autonomous workers' associations, such as the Textile Workers' League, spearheaded by the leaders of the Mahalla strikes. Other organisational structures devised by the workers included strike committees, such as the Higher Committee of the Property Tax Collectors' Strike, which eventually became a *de facto* independent trade union (Alexander, 2008). As a result of the real-estate tax collectors' struggle, the Ministry of Finance conceded to the demands of the real-estate tax collectors and raised their salaries by 325 per cent (El-Hamalawy, 2008). In the month following the ousting of Mubarak, there was already a proposal for a new trade union law, which was based on the recommendations of the independent Centre for Trade Union and Workers' Services (CTUWS). Such recommendations, according to the CTUWS, were consistent with ILO conventions, which Egypt had already ratified for almost five decades (Charbel, 2012). These developments came on the heels of the Egyptian Council of Ministers, which proposed a decree (Decree No. 34) that criminalised strikes and sit-ins under the auspices of the constitutional declaration of 30 March 2011, adopted after the referendum of 19 March 2011 (Nassar, 2011).²⁴

Notably, the collective resignation of the real-estate tax collectors from the General Union and the creation of local committees on the level of governorates created a precedent for using collective action to challenge the structures of the legal system. Surprisingly, this significant precedent was made by not only a non-industrial sector of workers, but these workers were spread across the governorates in different places. More importantly, this step laid the groundwork for the creation of the Egyptian Federation of Independent Trade Unions (EFITU), formed after the 30 January declaration of four independent trade unions: the Real-Estate Tax Collectors Union (established 2009), the Teachers' Union, the Health Technologists Syndicate, and the Pensioners Federation (Charbel, 2011). This new federation of unions created the momentum for the drafting of a new trade union law to replace the 1976 one. It is still certainly a new source of contestation among the different parties, be it representatives from the General Union, new unionists, government forces or business lobbyists (Charbel, 2011).

V Defensive legality

5.1 The living wage

At a time of disillusionment about the prospects of political action in Egypt, Nagy Rashed, a worker and a union activist, approached the Egyptian Centre for Economic and Social Rights, and its lead counsel and former Presidential Candidate Khaled Ali filed a case against the President of the Republic, the Prime Minister, and the Minister of Planning, before the Administrative Court in 2009. In an interview with the Centre's Executive Director Nadeem Mansour, he explained that they took the case because it represented a unified national demand that promised to have

The EFITU initially included the unions of real-estate taxes, health technicians, pensioners and teachers. (Mohammadein, 2011).

23 The NDP is the now dissolved party of the cronies of the Mubarak regime.

24 See Decree No. 34/2011. See also Nassar (2011, p. 3).

material consequences on society at large (Mansour, 2011). There had been a national initiative directed against the National Council for Wages to change the legal minimum wage of E£36 (Egyptian pounds; approximately US\$6) per month,²⁵ which has not been amended since the 1980s. On behalf of Nagy Rashed and other workers, the Centre filed the case before the Administrative Court, which has no authority to determine a specific monetary value for the minimum wage but can decide whether the minimum wage should be set or amended. Article 34 of the labour code stipulates that ‘a national council for wages²⁶ shall be established under the chairmanship of the Minister of Planning, to be concerned with setting the minimum wage at the national level, subject to the *cost of living*, and by providing the methods and measures guaranteeing the realization of *balance between wages and prices*’ (emphasis added) (Labour Law No. 12 2003, Article 34). The Court invoked this Article, along with other constitutional provisions, to present a long polemic on the socialist ideology at the time of the adoption of the Egyptian constitution. It argued that the constitution was adopted while the country was under a socialist system, and notwithstanding the removal of the provision that proclaimed Egypt a socialist republic with the 2005 constitutional amendments (orchestrated by the Mubarak regime), the social and economic infrastructure is built on a set of fundamental principles that were not discarded by the mere abandoning of socialism. These fundamental principles are primarily represented in the values of social justice and the balance between property ownership and work (*Nagy Rashed et al., v. President of the Republic et al., 2010*).²⁷ The court continued to argue that, just as the constitution guaranteed the right to property and protected it under the law, it also represented it only as unutilised capital (Article 32 of the constitution), and put it under the guardianship of the people, as per Article 29 of the constitution. Private property, according to the constitution, is to serve a social purpose that eventually attends to the entire national economy without interfering with the public good (Article 32) (*Nagy Rashed et al. v. President of the Republic et al., 2010*). According to the Court, this all culminates in the symbolic and material significance of the right to work protected under the constitution and secured by the state (Article 12).²⁸ From this right, the value and virtue of work is represented and is further protected by the role of the state in ensuring the equality of income redistribution, increasing the standard of living, eradicating unemployment, increasing job opportunities, tying wages to production and ensuring a national minimum wage and *maximum wage* to equalise wages (Article 23). Even the issue of linking wages with production, which is further explained in Article 37 of the labour code, is regulated. This wage should still not fall behind the national average (*Nagy Rashed*

25 This was, however, practically set at E£99 (approximately US\$16.5) per month.

26 This national council for wages is to comprise: ‘(1) Members on the strength of their positions or experiences; (2) Members representing the employers’ [sic] organizations, to be elected by these organizations; (3) Members representing the General Federation of Egyptian Trade Unions, to be elected by the Federation.’ The NCW is also responsible for ensuring a minimum of 7 per cent annual raise (art. 34, Labour Law No. 12 Egypt, 2003, online: <<http://www.egypt.gov.eg/english/laws/labour/default.aspx>> (last accessed 10 July 2012)).

27 *Case Concerning Nagy Rashad, Mohamed Al-Ashqar, Karima El-Hefnawy, Fatma Ramadan Abou-el-Ma'aty, Mohamed Shalaby, Yasser Hasasah Against the President of the Republic, the Prime Minister, and the Minister of Planning*, Administrative Court of Egypt, the First Riding, 30/3/2010 (translation is mine).

28 Interestingly, the ‘right to work’ provision in the US is a pseudonym for anti-union certification legislation. The National Right to Work Committee (NRTWC), for example, lobbies states to enact right-to-work legislation in an effort to limit what they call ‘forced unionization’ (online: <<http://www.nrtwc.org/about-2/>> (last accessed 10 July 2012)). The case in Egypt is markedly different. The right to work often goes hand in hand with the state’s responsibility to provide job opportunities and ensure a decent standard of living. See the minimum wage case heard before the Egyptian Administrative Court (discussed below). It is important to note, however, that the right to work could be and had been manipulated to a certain degree under Nasser, albeit indirectly. See discussion on the 1962 National Charter in Hanna and Gardener (1969, pp. 345–348).

et al., v. President of the Republic et al., 2010).²⁹ While the Court could have simply cited Article 34 of the labour code, which mandates the National Council for Wages (NCW) to set the minimum wage, it chose to take a more politically and socially contextual approach. The Court noted the history of socialism in Egypt almost with an air of nostalgia, arguing that while socialism is officially outside the books, its principles are implanted all over the Constitution. While Article 34 of the labour code would have done the trick, the Court decided to go through this entire reasoning based on Egypt's history of socialism, manifesting the complicated relationship between the law and the social. Despite the gradual elimination of the social welfare provisions from the legal system, legal interpretation was able to salvage the vestiges of the constitutional regime of a degenerated welfare state.

The Court eventually decided in 2010 that the set minimum wage did not reflect the cost of living and should be amended. The NCW set the new minimum wage at E£400 (approximately US\$67) following the Court's decision. There remains, however, the problem of application, and more importantly the fact that the E£400 minimum wage cannot sustain a family in Egypt. The Centre has invited a number of economists to calculate a living wage, and they recommended E£1200 (approximately US\$200) per month (Mansour, 2011). Although this can barely be considered a victory, it has created the space for a political intervention initiated from within the workers' movement by targeting the national living wage. It also gave the Court the opportunity to expand on workers' rights and on the open and indeterminate nature of law within the larger constitutional and social framework.

When this Court decision is contextualised within the historical trajectory of the country's social and material conditions, it reveals the play of legal machinations and the role of law as a site of power and struggle at the same time. The development of the labour legal regime in Egypt, as has been shown, was manifested by the co-optation of workers through the creation of a labour aristocracy. However, the rank-and-file members of the labour movement created parallel governance structures that were able to capture and occupy public institutions, including the judicial sphere.

VI The Egyptian workers' movement and labour law theory

It is difficult for some legal theorists to think outside the law – not only in a formalist sense, but even in a sociological sense. For example, some legal scholars have taken the more 'reflexive' approach to law and to labour law more specifically (Arthurs, 2011, p. 16).³⁰ The reflexive approach to law was largely developed by Gunther Teubner in his 1988 book *Autopoietic Law: A New Approach to Law and Society*. According to this view, the legal system 'is seen as a dynamic cyclical reproduction of legal elements embedded in hypercyclical relations of legal structures and processes' (Teubner, 1988, pp. 1, 2). Law, according to the autopoietic approach, has a self-referential character; it is formed by the reproduction of its internal creations and it 'is nothing but an "endless dance of internal correlations in a closed network of interacting elements"' (Teubner, 1988, p. 28).³¹ The legal system is, therefore, 'operationally closed', a closure that is not to be confused with legal formalism. The autopoietic idea is that the closure of the legal system establishes its autonomy, which essentially leads to its openness towards societal and political circumstances. Legal acts are

29 The Court used various others international instruments, specifically ILO Convention No. 26 and art. 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (ILO Convention No. 26; the ICESCR, art. 7).

30 Arthurs argues that a reflexive approach to labour law effectively means that 'labour law is neither non-law nor a mutant form of law, but law incarnate, an experiment in social ordering that reveals the true nature of the legal system in general'.

31 Teubner (1988, p. 2), citing Maturana (1982, p. 28).

the communicative events that transform legal structures, creating the circularity between legal acts and legal norms, which replaces the 'extra-legal foundations of law' (Teubner, 1988, pp. 3, 4). In other words, labour law can internally regulate itself and derive resolutions to labour disputes (Rogowski, 2009, p. 574).

The autopoietic approach, however, fails to address the significance of preserving the autonomy of democratic values whilst fully accepting, albeit reluctantly, the social externalities, such as political action, most significantly labour strikes (Klare, 2011, p. 523). The idea that the answer to labour legal problems can be found in labour law itself misses the extent to which labour legal successes were a result of actions that took place outside the courts and the legislative system. Law cannot be envisaged as an autonomous social system co-existing, albeit independently, with other social systems, such as politics, economy and religion (Zumbansen, 2006b, p. 455), as if such categories can be neatly separated. On the contrary, it is socially produced; law should be approached 'not as a kingdom unto itself, not as a set of rules and concepts, not as the province of lawyers alone, but as a mirror of society' (Chase, 1997, pp. 29, 29 footnote 42). The case of Egypt demonstrates that not only are progressive changes in the legal system rooted in strikes, occupations, protests and blockades, but that law can be comfortably shelved when not needed. Therefore, labour law should be used tactically and defensively (Knox, 2009, p. 433).

Egyptian workers defensively used the law to protect their movement from neoliberal policies adopted in the 1990s on to the years leading up to the 25 January revolution. The illegality of the creation of independent trade unions did not contradict the legalism of seeking to raise the national minimum wage through the court system, or the legal defence of striking workers arrested in a wildcat strike. Their approach to labour law is rooted in strikes, occupations, protests and blockades. Nonetheless, Egyptian labour law still remains a site of struggle; existing labour legislation effectively outlaws different forms of collective bargaining, but the labour legal regime is slowly adopting principles of collective bargaining that were previously barred from the discussion.

VII Conclusion

Throughout the past decade, the labour movement had to renegotiate the working class into the language of progressive politics. Traditional opposition groups or civil society groups never completely captured the demands of the working class. Since the 25 January revolution, a number of new political parties formed on that basis and started calling for electoral reform, free and fair elections, civil and political rights, constitutionalism, the rule of law and a more vibrant civil society. The absolute lack of basic liberal democratic values throughout Egypt's republican life made such principles very attractive to the middle class of Egyptian society.³² While being unmistakably essential, these principles also speak to the business community that preaches 'ethical business' as the new rhetorical device of the market economy, arguing that Mubarak's nepotism and corruption interfered with and disrupted the 'laissez-faireness' of the economy. This falsely depicts the problem in Egypt as a problem of market inefficiencies arising from the entrenched cronyism and corruption, and not from market fundamentalism. Despite the successes

32 The Freedom and Justice Party (FJP) (Muslim Brotherhood) won the majority of seats (49 per cent) in the first parliamentary elections after the revolution. The *Al-Nur* Party (Salafi) came second after the FJP (20 per cent). The only liberal bloc that made significant gains was the 'Egyptian Bloc' (which is businessman Naguib Sawiris's party); the bloc received 10 per cent of the seats. The *Al-Wafd* Party got 7 per cent, while the 'Revolution Continues' bloc got only 4 per cent of the seats (Jadaliyya, 'Egyptian Elections: Preliminary Results', *Jadaliyya*, December, online: <http://www.jadaliyya.com/pages/index/3331/egyptian-elections-preliminary-results_updated> (last accessed 10 July 2012)).

of the revolution, the new governments formed after Mubarak maintained the same strategy without any systemic transformation in employer–labour relations.

On the other side, workers continued to resist through different actions, showing that change has to happen from below. Labour law, and law more generally, has to be approached as a tactic of agitation and the juridical space as an organising ground. Through the diversity of legal and illegal tactics, workers' agency takes full form (Mitchel, 2002, chapter I). Workers were able to use the legal system to challenge the national minimum wage. At the same time they operated outside that legal space – illegally – forming their own organic bodies that challenged the legal structures. This approach to law and legality urges us to reconsider the idea that the problems of labour law can be only resolved from within the law. The case of the Egyptian workers' movement shows that what happens illegally is equally, if not more, effective than what happens within the contours of the law. The diversity of legal–illegal tactics adopted by the labour movement has transformed the status and political leverage of the working class, and will continue to do so, until 'labour [comes] before the law' (Fudge and Tucker, 2004, pp. 1, 2).³³

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