



UNIVERSITY OF GOTHENBURG
SCHOOL OF BUSINESS, ECONOMICS AND LAW

Imagining the Commune

Democratic confederalist approaches
to law and conflict resolution

Author: Miran Kakaee

Supervisor: Max Lyles

Examiner: Merima Bruncevic

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University of Gothenburg, School of Business, Economics and Law

“If I don’t burn
if you don’t burn
if we don’t burn

how will the light
vanquish the darkness?”

- Nazım Hikmet, 1930.

Table of contents

Abstract.....	6
Preface.....	7
Pêşgotin.....	8
پیشگی.....	9
مقدمة.....	10
List of abbreviations.....	11
1. Introduction.....	12
1.1 Background.....	12
1.2 Purpose.....	14
1.3 Research questions and delimitations.....	15
1.4 Methodological reflections.....	15
1.5 Terminology.....	17
1.6 Outline.....	18
2. Theoretical and conceptual framework.....	19
2.1 Legal pluralism.....	19
2.2 Written law and customary law.....	20
2.3 The juridification of social relations.....	22
2.4 Technical regulations and the abolishment of legal regulations.....	24
2.5 The hurtfulness of law.....	26
2.6 Concluding thoughts.....	30
3. Democratic confederalism and law in North and East Syria.....	32
3.1 Kürdistan devriminin yolu.....	32
3.2 La commune (des communes).....	34
3.3 The revolution within a revolution.....	36
3.4 The first phase: the council system of North and East Syria.....	38
3.5 The second phase: Democratic Autonomous Administrations (DAAs).....	41
3.5.1 <i>Law under the social contract of 2014</i>	42
3.6 The third phase: the Autonomous Administration of North and East Syria (AANES).....	43
3.6.1 <i>Law under the social contract of 2016</i>	44
3.7 Analysis and discussion.....	44

4. The justice system of North and East Syria	49
4.1 A dual system.....	49
4.2 Reconciliation committees.....	50
4.2.1 <i>Structure and organization</i>	50
4.2.2 <i>Procedure</i>	52
4.2.3 <i>The case of the el-Berkehan and el-Tay tribes</i>	54
4.2.4 <i>Some numbers</i>	56
4.2.5 <i>Analysis and discussion</i>	58
4.3 Court system	62
4.3.1 <i>Structure and organization</i>	62
4.3.2 <i>Procedure</i>	64
4.3.3 <i>Analysis and discussion</i>	66
5. Final reflections and further research	71
List of references	74
Legislation	74
Books	74
Book chapters.....	76
Journal articles	77
Newspaper articles.....	79
Online resources	83
Interviews.....	84
Figures.....	84

Abstract

In the midst of an ongoing civil war, the people of North and East Syria have been building society based on the ideas of direct-democratic and decentralized self-administration. Differently put, they have embraced the principles and ideas of democratic confederalism, which is the political ideology developed by PKK founder Abdullah Öcalan. Security forces, schools, hospitals, local councils, reconciliation committees, courts, and many other institutions have been set up by the local self-administrations in North and East Syria. In doing so, the people have managed to create an oasis of relative peace and stability in an otherwise hostile environment.

This thesis seeks to determine the characteristics of law and conflict resolution systems in North and East Syria, and assess to what extent they have been influenced by the ideological development of the PKK. For this purpose, Marxist, anarchist and legal pluralist understandings of law and justice are used. The scope of study is limited to the social contracts of North and East Syria, its various legislative and decision-making bodies, as well as the courts and reconciliation committees. The conclusion of this thesis is that law and conflict resolution mechanisms in North and East Syria are characterized by legal pluralist understandings of law as well as restorative justice approaches to justice. It is established that the legal system of North and East Syria can be described as a strong legal pluralist system of law containing some elements of weak legal pluralism. Policy-making bodies such as local councils, as well as the reconciliation committees, are primarily organized, self-administered and democratically controlled on the local level. The reconciliation committees and their processes are particularly consensus-oriented, whereas the People's Courts are more oriented towards retributive justice. It has been shown that these institutions of law and conflict resolution have been influenced by the political ideology of democratic confederalism, which advocates decentralized decision-making processes within self-administered communities.

Preface

I would like to thank Max Lyles for supervising me in writing this thesis and for sharing your thoughts on the subject. I would also like to express my sincerest gratitude to my father, partner, friends and colleagues who have supported me by sharing your thoughts and ideas as well as proof reading and translating parts of this thesis: Fahmi Kakaee, Jasmine Dzagojeva, Nina Noshzad Pirooz, Violetta Altamirano Ponce, Sara Altino and Kristina Hultegård.

I am particularly grateful for my comrades in Rojavakommittéerna and the work that has been carried out during this fall: the weekly protests, the blockades and especially the countless meetings. You have all been a great source of energy, and a driving force in writing this thesis. In addition, I would like to sincerely thank Thomas McClure and Robin Fleming from the Rojava Information Center who, despite the ongoing invasion in North and East Syria, have helped me in gathering the necessary material for this thesis.

My deepest gratitude and respect go towards the revolutionary people of North and East Syria. To the youth and the elderly who are defending their homes against the invading Turkish army and its proxy forces. To the mothers who refuse to bow down to fascism. To the children who sow seeds of hope and purpose in the hearts of the people. To the immortal martyrs who have paid the ultimate price in the struggle for liberation. You have all shown us the true meaning of humanity and the possibility of another world. Never lose sight of utopia on the horizon.

Gothenburg, November 2019.

Pêşgotin

Ez sipasîya Max Lyles dikim ji bona ku di nivîsîna vê nameyê de rê nîşanî min da û bi fikirên xwe yê li ser vî babetî alîkarîya min kir. Herweha ez ji dil sipasîya bavê xwe, hevala xwe, heval û hevpişeyên xwe dikim, yê ku bi riya hizir û fikirên xwe piştgirîya min kirin, yê ku nameya min sererast kirin û yê ku hin beşên nameyê wergerandin: Fehmî Kakeyî, Jasmine Dzagoyeva, Nina Noshzad Pirooz, Violetta Altamirano Ponce, Sara Altino û Kristina Hultegård.

Ez bi taybetî sipasdarê hevrêyên xwe yê Komîteyên Rojava (Rojavakommiteerna) û xebata wan ya vê payîzê me: protestoyên heftane, blokad û civînên bêhejmar. Hûn hemû serkanîya enerjî û heweseka mezin bûn, ji bo vê nivîsarê. Herweha dixwazim ji (Rojava Information Center) sipasîya Thomas McClure û Robin Flemig bikim, tevî ku di dema berdewamîya dagîrkirina Bakurêrojhilata Sûriyê de alîkarîya min kirin ku ez ji bo vê nivîsara xwe materyala pêwîst bidim ser hev.

Ji kêrahîya dilê xwe rêz û sipasîyên xwe pêşkêşî gelên Bakurêrojhilata Sûriyê dikim. Bo ciwan û temenmezinên ku li dijî leşkerê tirkî û hêzên wekalet yê wan, malên xwe diparêzin. Bo dayîkên ku li hember faşîzmê li ber xwe didin. Bo zarokên ku di dilên gelan de tovê hêvî û bawerîyê diçînin. Bo şehîdên nemir yê ku di xebata azadîyê de bihayê herî bilind dane. We hemûyan wateya rasteqîn ya mirovbûnê nîşanî me da. We îmkana hebûna dinyayeka din nîşanî me da. Çavên xwe ji utopyaya li asoyan nedin paş.

Göteborg, çirîya paşîn, 2019.

مقدمة

أود أن أتقدّم بالشكر إلى ماكس لايلس لإشرافه على كتابة هذه الرسالة ولمساهمته بأفكاره عن الموضوع. كما أود أن أعرب عن خالص إمتناني لوالدي وصديقتي وأصدقائي وزملائي الذين دعموني من خلال المشاركة بأفكارهم، بالإضافة إلى قيامهم بتدقيق أجزاء من المقالة وترجمتها، وأخص بالذكر: فهمي كاكائي، ياسمين دزأغويثا ، نينا نوشزاد بيروز، فيوليتا ألتاميرانو بونس، سارا ألتينو وكريستينا هولتيغورد.

إنني ممتن بشكل خاص لرفاقي في لجان روجافا للعمل الذي تمّ القيام به هذا الخريف: الاحتجاجات الأسبوعية والحصار وخاصة الاجتماعات التي لا تعد ولا تحصى. لقد كنتم جميعاً مصدراً كبيراً للطاقة و حافزاً في كتابة هذه الرسالة. بالإضافة إلى ذلك، أود أن أتقدّم بالشكر إلى توماس مكلور وروبن فليمنغ من مركز معلومات روجافا، فعلى الرغم من الغزو المستمر لشمال شرق سوريا، لم يتوانا عن مساعدتي في جمع المواد اللازمة لهذه الرسالة.

خالص إمتناني وإحترامي للشعوب النائرة في شمال شرق سوريا. للشباب والمسنين الذين يدافعون عن بيوتهم ضد الجيش التركي الغازي والقوات التابعة لها. للأمهات اللواتي يرفضن الاستسلام للفاشية. للأطفال الذين يزرعون بذور الأمل والعزيمة في قلوب الناس. للشهداء الخالدين الذين دفعوا أرواحهم ثمناً للنضال من أجل الحرية. لقد أثبتت لنا جميعاً المغزى الحقيقي لما يعنيه أن تكون إنساناً. كما أثبتت لنا إمكانية بناء عالم آخر. لا تتوقفوا أبداً عن النظر إلى اليوتوبيا في الأفق.

غوتنبرغ، نوفمبر 2019

List of abbreviations

AANES	Autonomous Administration of North and East Syria
DAA	Democratic Autonomous Administration
DFNS	Democratic Federation of North Syria
IS	Islamic State
KCK	Koma Civakên Kurdistan
MGRK	Meclîsa Gel a Rojavayê Kurdistanê or the People's Council of Western Kurdistan
PKK	Partiya Karkerên Kurdistanê or the Kurdistan Workers' Party
PYD	Partiya Yekîtiya Demokrat or the Democratic Union Party
RIC	Rojava Information Center
SDC	Syrian Democratic Council
SDF	Syrian Democratic Forces
THKO	Türkiye Halk Kurtulus Ordusu
THKP-C	Türkiye Halk Kurtulus Parti-Cephesi
YPG	Yekîneyên Parastina Gel
YPJ	Yekîneyên Parastina Jin

1. Introduction

1.1 Background

Almost nine years have passed since the first revolts erupted in the Arab world, marking the beginning of the so-called Arab Spring.¹ The protests, which began in Tunisia as a response to an oppressive regime and low standard of living, finally reached Syria in the beginning of 2011.² By mid-July, the country was engulfed in a full-blown civil war, which has been continuing to this day. Although the local population of North and East Syria have had their hands full defending themselves against various reactionary forces, such as the internationally recognized terrorist organization the Islamic State (IS), they have rather successfully been organizing society by adopting the principles of democratic confederalism, which is the political ideology developed by the founder of Partiya Karkerên Kurdistanê (PKK), Abdullah Öcalan. This has involved structuring society based on principles of non-state self-administration.

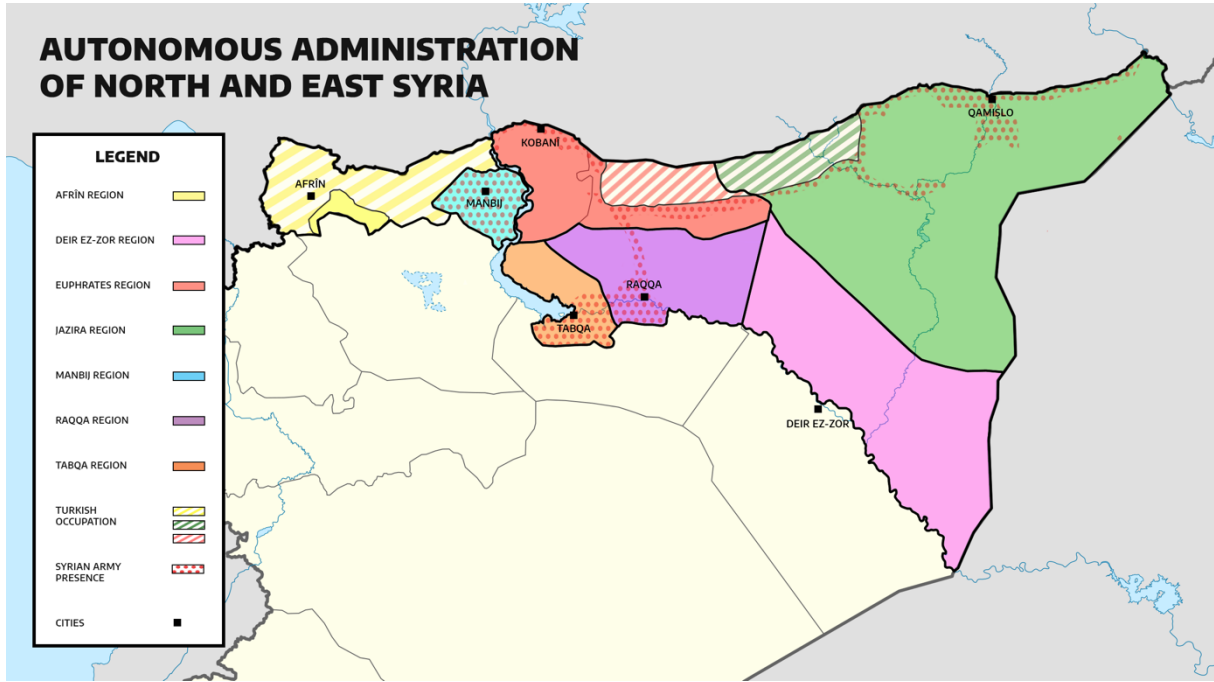


Figure 1. Map of the Autonomous Administration of North and East Syria.

Yekîneyên Parastina Gel (YPG) and Yekîneyên Parastina Jin (YPJ), the Kurdish names for the People’s Protection Units and the Women’s Protection Units, respectively, are the self-organized Kurdish militias which are included in the Syrian Democratic Forces (SDF). These units are

¹ Droz-Vincent, Philippe, "State of Barbary" (Take Two): From the Arab Spring to the Return of Violence in Syria', *Middle East Journal*, vol. 68, no. 1, 2014, p. 33.
² Ibid. and Omri, Mohamed-Salah, 'A Revolution of Dignity and Poetry', *boundary 2*, vol. 39, no. 1, 2012, p. 152.

responsible for protecting North and East Syria from attacks by the Turkish military as well as terrorist organizations such as IS. Asayîş is the Kurdish name for the self-organized and decentralized internal security forces in North and East Syria. Different schools and universities have been opened, such as the co-educational Mesopotamian Social Sciences Academy in Qamişlo, which is the first university in North and East Syria. Legal institutions have been introduced, such as the Peace and Reconciliation Committees (hereafter referred to as reconciliation committees). These consensus-oriented committees are responsible for resolving conflicts and have, to a large degree, replaced the need for a traditional hierarchical court system, which is more common in Western societies. Additionally, in keeping with the political ideology of Öcalan, provisional constitutions, or social contracts, have been enacted in 2014 and 2016 by the Autonomous Administration of North and East Syria (AANES). These social contracts have formalized the already decentralized decision-making processes in the region and consolidated much of the legislative powers of local councils. Many of these changes happening in North and East Syria may well be described as a radical democratization of society and life. This, in turn, is transforming the way people think and conceive of legal concepts such as law and justice.

Henri Lefebvre once pointed out that a theory of a movement has to emerge from the movement, “for it is the movement that has revealed, unleashed and liberated theoretical capacities”.³ In a sense, Lefebvre’s remark illustrates the dialectics of the *lived* and the *conceived*.⁴ From this perspective, it is the actions and social interactions within a movement that help create thoughts and ideas. In a similar manner, thinking, or the conceived, has to continuously recreate and renew action, or the lived. Differently put, if one were to borrow the vocabulary of Ursula K. Le Guin, this resembles the relationship between the non-dream world and the dream world: it is the material conditions of the non-dream world, id est the real world, which enabled the main protagonist George Orr, in *The Lathe of Heaven*, to dream of peace and the end of racism, dreams which later became reality.⁵ Consequently, by having dreamt and changed reality, this new reality has changed the material conditions for dreams to come. Thus, it is only through the lived, or by acting, that it is possible to produce new ideas. Likewise, it is possible only by revolutionary struggle to think revolutionary, and vice versa. Already in the year of 1871, these dialectics of the lived and the conceived, or of

³ Lefebvre, Henri, *The Explosion: Marxism and the French Upheaval*, Monthly Review Press, New York, 1968, p. 103.

⁴ See Lefebvre, Henri, *The Production of Space*, Wiley-Blackwell, Hoboken, 1992, p. 356.

⁵ See Le Guin, Ursula K., *The Lathe of Heaven: A Novel*, Charles Scribner’s Sons, New York, 2008.

reality and dreams, were described by members of the Paris Commune as a “reciprocal penetration of action and idea”.⁶

1.2 Purpose

North and East Syria exists as a physical space containing cities, people, buildings, courts, administrative and military organizations and much more. On the other hand, the region exists as an idea, not yet fully realized. While the idea is operating on a local communal level, in big cities and small villages alike, it is being imagined in an internationalist context where local political forces are able to connect and coordinate their struggles within a confederal model of organizing society. In addition, local inhabitants of North and East Syria, by having lived and acted, have made it abundantly clear that political and revolutionary struggle create new conditions of life, modify social relations and change the way that people think, speak and dream of society and concepts such as family, religion, gender, law, justice, etcetera. Therefore, one could say that North and East Syria exists as an objective reality as well as an ideology, or a dream.

It is from the dialectical position of acting and having acted, or struggling and having struggled, as part of a political movement, that the topic for this thesis has been chosen. Thus, the purpose of writing this thesis is to contribute to the ever-growing body of knowledge surrounding the idea that is the self-administration and region of North and East Syria. It is my ambition that this contribution to the idea can serve to help it act as a lens through which one can observe and understand the world. Additionally, according to Margaret Davies, theorists can:

potentially do what activists have described as ‘being the change’. That is, it is possible to practise theory as if a projected state of affairs was already in existence. Drawing out aspects of the present that appear to provide direction for the future, and intensifying them theoretically, prefigures a world that is commensurable with the present and past, but which perhaps adds additional emphasis to those elements of it worth promoting – sustainability, for instance, rather than exploitation and consumption, relational identity, rather than atomistic individualism.⁷

Thus, if it were possible to freeze time and space, one could say that the purpose of this thesis is to think, to renew ideas and to dream, in this particular moment and for the duration of 84 pages,

⁶ Léo, André, Malon, Benoît, Reclus, Elie and Reclus, Elisée, et al., ‘Programme’ in *La République des Travailleurs*, 10 January 1871.

⁷ Davies, Margaret, *Law Unlimited: Materialism, Pluralism, and Legal Theory*, Routledge, Oxon, 2017, p. 17.

in order to be able to shape and direct conscious actions, and to be able to continue dreaming, as part of a movement as well as within the lawyer profession. The main focus of this thesis will be on the legal system of North and East Syria, however, I hope that this thesis will nonetheless help raise questions as to why certain societies are organized in the manner that they are and to what extent certain structures are subject to change, be it within legal or non-legal areas of society and life. Why have certain institutional changes been introduced and where have the ideas behind these institutional changes come from? These are questions that will be discussed in this thesis, for it is only by studying what is new and what is different that we are able to learn something about society, law, ourselves, and ultimately, what it means to be a human being.

1.3 Research questions and delimitations

In light of the purpose stated above, this thesis seeks to answer the following research questions:

- i. what are the characteristics of law and conflict resolution systems in North and East Syria and
- ii. how have they been influenced by the ideological development of the PKK?

In order for this thesis to fulfill its purpose and answer the questions posed above, some additional sub-questions will need to be addressed and discussed. Therefore, this thesis also seeks to investigate what principles the justice system in North and East Syria is organized around, how laws and political decisions are made and what conflict resolution mechanisms there are. The scope of study is limited to the provisional constitutions, or social contracts, of North and East Syria, its various legislative and decision-making bodies as well as the courts and reconciliation committees. Executive bodies will not be studied due to lack of data as well as the intended scope of this thesis.

1.4 Methodological reflections

When studying law, where ought one to begin? According to Karl Marx, and with reference to the methodology of political economy, it would seem correct to begin with the real and the concrete, *id est* the real preconditions. Thus, in economics, one would begin with the population within a given geographic area, since it is the population which is the entire social act of production. This is, however, incorrect. If one were to leave out the classes of which the population is composed

of, then the object of study would simply be an empty abstraction, according to Marx. In turn, if one were to leave out the elements on which the classes rest upon, id est wage labor, capital, commodity, etcetera (which in turn presuppose exchange, division of labor, etcetera), then classes too would be an empty abstraction. Consequently, if one were to begin with the population, it would simply result in a chaotic *vorstellung*⁸ of the whole and the real.⁹

Instead, one ought to begin with the simplest determinants, such as capital, wage labor, commodity, etcetera. By having done so, one would eventually arrive at the population, however, this time not “as the chaotic conception of a whole, but as a rich totality of many determinations and relations”.¹⁰ According to Evgeny Pashukanis, the observations of Marx are directly applicable to the study of law. Just as it is the ambition of this thesis to say something about society, this too, according to Pashukanis, must “be the conclusion and end result of our deliberations” and not their starting point.¹¹ Thus, by moving from the simplest to the more complex, from law to its concrete manifestations such as the court system, police apparatus, legislative assemblies, etcetera, one is following the scientifically correct method, as Marx phrases it.¹² In keeping with his method, law as one the simplest determinants of society will be studied in this thesis, using legal pluralist theories of law as well as the general theory of law elaborated by Pashukanis in his *The General Theory of Law and Marxism*. In addition, some of Pyotr Kropotkin’s writings on law and punishment will be studied for this purpose. Thus, this thesis will elaborate on, and depart from, a specific definition and understanding of law. When studying concepts such as retributive and restorative justice, relevant scientific papers within the field of criminology will be used, as there seems to be limited literature on the subject within the purely legal field. The above-mentioned literature will serve as the theoretical framework in which concepts such as law, justice and punishment are understood, studied and analyzed in the context of North and East Syria.

In order to be able to answer the research questions of this thesis, the ideological development of the PKK will be studied by examining official PKK documents, Öcalan’s own writings as well as scientific papers and books related to the subject. A wide variety of sources will be used when studying the legal system, id est the real and the concrete, in North and East Syria, such as official legal documents, books and articles written by activists and journalists as well as scientific papers

⁸ The German word *Vorstellung* translates to imagination or idea.

⁹ Marx, Karl, *Grundrisse*, Penguin Books, London, 1993, p. 100.

¹⁰ Ibid.

¹¹ Pashukanis, Evgeny Bronislavovich, *The General Theory of Law & Marxism*, 2nd edition, Transaction Publishers, New Brunswick and London, 2003, p. 66.

¹² Marx, Karl, *Grundrisse*, Penguin Books, London, 1993, pp. 100–101.

and books. Newspaper articles have been collected for the purpose of studying the reconciliation committees and courts in particular. The articles have been retrieved by searching for the words “reconciliation committee” and “people’s court”, as well as their Kurdish names (“komitêya lihevhatin” and “dadgeha gel” respectively), on local newspaper websites. In addition, personal interviews constitute an important part of the material used for this purpose. Researchers and journalists from the Rojava Information Center (RIC) have been interviewed in email and text conversations. Additional interviews have been conducted by the RIC with locals in North and East Syria, which have been retrieved for the purpose of this thesis. A case-study is included in the thesis in order to illustrate the process of the reconciliation committees. The above-mentioned material will subsequently be analyzed by returning to the theoretical and conceptual framework which has been elaborated in the previous.

1.5 Terminology

For the sake of this thesis, the geographic region in which law and conflict resolution mechanisms are studied will be referred to as *North and East Syria*, due to the fact that the Autonomous Administration of North and East Syria (AANES) is the official name for the region.¹³ When referring to the particular coordinating *Autonomous Administration of North and East Syria*, its acronym AANES will be used. Although formally referred to as North and East Syria, it is worth noting that the region is more famously known by the name *Rojava*, which is the Kurdish word for West (referring to Western Kurdistan). In consideration of the political project being a multiethnic one, the name was officially changed to its current one on 6 September 2018.¹⁴ Both the geographic region and the administration of North and East Syria are sometimes referred to as Rojava during interviews and in other sources that have been used for the sake of this thesis.

The term *region* refers to one of seven geographic areas in North and East Syria which constitutes a self-administration unit. Regions are sometimes interchangeably referred to as *cantons*. The self-

¹³ ANF, ‘Rêveberiya Xweser a Bakur û Rojhilatê Sûriyeyê ava bû’, 6 September 2019. Accessed on 22 November 2019: <https://anfkurdi.com/rojawa-sUriye/reveberiya-xweser-a-bakur-u-rojhilate-suriyeye-ava-bu-101924>. See also ANHA, ‘Amina Omar: Autonomous Administration its purpose to serve people, consolidation of administrations’, 7 September 2019. Accessed on 22 November 2019: <http://hawarnews.com/en/haber/amina-omar-autonomous-administration-its-purpose-to-serve-people-consolidation-of-administrations--h3599.html>. See also The Social Contract of the Democratic Federation of Northern Syria, 2016. Accessed on 7 November 2019: <https://internationalistcommune.com/social-contract/>.

¹⁴ Ibid.

administration of each region is interchangeably referred to as a *Democratic Autonomous Administration* (DAA) or *cantonal peoples' assembly*.

1.6 Outline

This thesis is composed of five parts. Departing from anarchist and Marxist thinkers as well as legal pluralist understandings of law, part two will include a theoretical discussion on different conceptions of law and definitions of restorative justice. The purpose of this part is to provide a theoretical and conceptual framework in which the legal system of North and East Syria can be understood, studied and analyzed. In the third part, the ideological development of the PKK, also known as the new paradigm, will be presented by describing the ideological progression of the PKK from a traditional statist Marxist-Leninist ideology towards a more socialist libertarian democratic confederalism, a political ideology which has been particularly inspired by social theorist Murray Bookchin. In addition, the constitutions, or social contracts, as well as legislative and decision-making bodies of North and East Syria, will be studied and analyzed. The purpose of this part is to describe the policy-making institutions and characteristics of law in North and East Syria, as well as to highlight how they have been influenced by the political ideology of the PKK. Next, in the fourth part of this thesis, an account will be given of the justice system in North and East Syria by examining the reconciliation committees and the courts. The purpose of this part is to examine how conflicts are resolved in North and East Syria, and study how these systems and mechanisms of conflict resolution have been organized and influenced by the political ideology of the PKK. Lastly, in the fifth and final part of this thesis, a concluding analysis is included in which the research questions posed above are answered.

2. Theoretical and conceptual framework

2.1 Legal pluralism

This thesis does not adopt a traditional positivist notion of there being only one account of law (id est a monist understanding of law). In addition to being monist, positivist understandings of law are centralist because they are typically concerned with law that is ultimately derived from some central authority such as the state, rather than locating different sources of law in multiple, de-centered, sites.¹⁵ Instead, this thesis will depart from a legal pluralist understanding of law. According to legal pluralists, multiple systems of law can exist within the same geographic space. This claim is based on the actual identification of non-state-based forms of law which exist alongside state law.¹⁶ This broader understanding of law, which is not limited to a state, will likely result in the identification of a plurality of systems of law.¹⁷ According to Brian Tamanaha there are in every society:

a seeming multiplicity of legal orders, from the lowest local level to the most expansive global level. There are village, town or municipal laws of various types; there are state, district or regional laws of various types; there are national, transnational and international laws of various types.¹⁸

In addition to the more familiar bodies of law mentioned above, Tamanaha explains that there are “exotic” forms of law, such as “customary law, indigenous law, religious law or law connected to distinct ethnic or cultural groups within a society”.¹⁹ This plurality of law is nothing new, as he explains that “the mid-to-late medieval period was characterized by a remarkable jumble of different sorts of law and institutions, occupying the same space, sometimes conflicting, sometimes complementary, and typically lacking any overarching hierarchy or organization”.²⁰ It was with the rise of the nation state and the consolidation of law under its authority that plurality receded.²¹ In addition, according to John Griffith, legal pluralism can be established as an “actual state of the empirical world” whereas legal centralism is an illusion:

¹⁵ Davies, Margaret, *Asking the Law Question*, 4th edition, Thomson Reuters, Sydney, 2017, p. 412.

¹⁶ *Ibid.*, p. 410.

¹⁷ *Ibid.*, p. 411.

¹⁸ Tamanaha, Brian, ‘Understanding Legal Pluralism: Past to Present, Local to Global’, *Sydney Law Review*, vol. 30, no. 3, 2008, p. 375.

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 377.

²¹ Davies, Margaret, *Asking the Law Question*, 4th edition, Thomson Reuters, Sydney, 2017, p. 413.

Legal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion. Nevertheless, the ideology of legal centralism has had such a powerful hold on the imagination of lawyers and social scientists that its picture of the legal world has been able successfully to masquerade as fact and has formed the foundation stone of social and legal theory.²²

Thus, according to Griffith, legal pluralism is the “normal situation in human society” in which “law and legal institutions are not all subsumable within one “system” but have their sources in the self-regulatory activities of multifarious social fields present”.²³ Griffith further distinguishes between *weak pluralism* on the one hand and *strong pluralism* on the other. According to Griffith, a pluralistic legal system is weak when “the sovereign (implicitly) commands (or the grundnorm validates, and so on) different bodies of law for different groups in the population”.²⁴ In other words, weak legal pluralism exists where a difference is recognized and managed by a dominant state legal system.²⁵ Strong legal pluralism, on the other hand, refers to a situation in which “not all law is state law, nor administered by a single set of state legal institutions, and in which law is therefore neither systematic nor uniform”.²⁶ In other words, strong legal pluralism means that the plurality of different systems of law cannot be reduced to the singular authority of the state.²⁷

This understanding of law does not, however, necessarily solve the problem of identifying the actual form of law in its conventional sense, simply because it need not to. This is because the legal pluralist understanding of law also views law as a sociological fact, and thus relates the definition of law to the outcome of whether or not the relevant body of law is regulating human behavior, be it with law in the conventional sense or with customary law, religious law, etcetera. In the following, this problem will be addressed by identifying the emergence and existence of law in its conventional sense with capitalist modernity and the use of force, or domination. This conception of law will be contrasted with the existence of non-law, which can be described as self-regulations based on principles of consensus, mutual aid and non-domination.

2.2 Written law and customary law

²² Griffiths, John, ‘What is Legal Pluralism?’, *The Journal of Legal Pluralism and Unofficial Law*, vol. 18, no. 24, 1986, p. 5.

²³ *Ibid.*, p. 39.

²⁴ *Ibid.*, p. 5.

²⁵ Davies, Margaret, *Asking the Law Question*, 4th edition, Thomson Reuters, Sydney, 2017, p. 414.

²⁶ Griffiths, John, ‘What is Legal Pluralism?’, *The Journal of Legal Pluralism and Unofficial Law*, vol. 18, no. 24, 1986, p. 5.

²⁷ Davies, Margaret, *Asking the Law Question*, 4th edition, Thomson Reuters, Sydney, 2017, p. 415.

According to Hanne Petersen, the 20th century assumption about legal culture and law were assumptions about, and understandings of, legal culture and law in Western societies as being national, written texts primarily created through democratic procedures, thus abandoning customary rules and tradition and instead embodying modern values perceived to be universal and based on a modern scientific worldview.²⁸ This has been the prevailing understanding of law in contemporary Western societies. In addition, law can be described as enacted and executed by a sovereign state, which is made possible by the state monopoly on the use of force, be it physical or any other form.

However, already by the end of the 19th century, Kropotkin reacted against this development and progression towards written law, which he described as a product of modern times. According to Kropotkin, mankind had lived without written law for ages and ages, and human relations were simply regulated by “customs, habits and usages, made sacred by the constant repetition, and acquires by each person in childhood, exactly as he learned how to obtain his food by hunting, cattle-rearing, or agriculture”.²⁹

Kropotkin did not, however, necessarily reject law altogether; rather, he rejected the contemporary meaning of written law and recognized its two-fold character, or what he called “the two currents of custom”,³⁰ for if written law was simply state coercion “it would find some difficulty in insuring acceptance and obedience”. According to Kropotkin the origin of law is:

the desire of the ruling class to give permanence to customs imposed by themselves for their own advantage. Its character is the skillful commingling of customs useful to society, customs which have no need of law to insure respect, with other customs useful only to rulers, injurious to the mass of the people, and maintained only by the fear of punishment.³¹

Thus, customs, or regulations of social relations, which are essential to the very being of society and useful to the masses, are mixed with rules that are advantageous to the ruling class: “[d]o not kill”, says the law, and quickly adds “and pay tithes to the priest”.³²

²⁸ Petersen, Hanne, ‘Studying Legal Cultures and Encounters?’, Peter, Wahlgren (ed.) in *Scandinavian Studies in Law*, Stockholm University Law Faculty, Stockholm, 2015, p. 115.

²⁹ Kropotkin, Pyotr, *Law and Authority; An Anarchist Essay*, International Publishing Co., London, 1886, p. 7.

³⁰ *Ibid.*, p. 10.

³¹ *Ibid.*, pp. 10-11.

³² *Ibid.*, p. 10.

Therefore, the anarchist rejection of law can be understood as a rejection of the state, or domination, rather than a rejection of order or customs in society. Kropotkin therefore distinguishes between two forms of law: *written law* and *customary law*.³³ Written law can be understood as coercive and advantageous to the ruling class, “born of violence and superstition” and in the interest of the consumer, while customary law on the other hand is understood as consensual and useful to society.³⁴ The former, although imposed upon the masses as much by “deceit as to the nature of its content as by the imposition of sanction”, is always, no matter what the content, force.³⁵ The latter, which can be described as regulations of social relations, are, according to Kropotkin, based upon the masses “own conceptions of equity, mutual aid, and mutual support”.³⁶ In his writings, this is sometimes also referred to as common law (not to be confused with common law systems such as Anglo-Saxon law).³⁷

2.3 The juridification of social relations

Kropotkin’s theory of law does not, however, address the question of how the regulations of social relations (customary law) have been mixed with rules that are advantageous to the ruling class (written law). In addition, it does not address the issue of identifying the actual form of written law (which technically need not be written). Soviet legal scholar Evgeny Pashukanis provides an answer to both of these questions. Quoting Marx, Pashukanis explains that the ideological nature of a concept does not obliterate the reality and the material nature of the relations which it expresses:³⁸ “they are forms of thought which are socially valid, and therefore objective, for the relations of production belonging to this historically determined mode of social production, i.e. commodity production”.³⁹

Thus, he poses the question of whether law can be conceived of as a social relation in the same sense in which Marx described capital as a social relation.⁴⁰ With reference to Marxist political

³³ Bradney, Anthony, ‘Taking Law Less Seriously – An Anarchist Legal Theory’, *Legal Studies*, vol. 5, no. 2, 1985, p. 139.

³⁴ Kropotkin, Pyotr, *Law and Authority; An Anarchist Essay*, International Publishing Co., London, 1886, pp. 10-11.

³⁵ Bradney, Anthony, ‘Taking Law Less Seriously – An Anarchist Legal Theory’, *Legal Studies*, vol. 5, no. 2, 1985, p. 141.

³⁶ Kropotkin, Pyotr, *Mutual Aid – A Factor in Evolution*, Jonathan-David Jackson, Kingsport, 2018, p. 68.

³⁷ See *ibid.*, pp. 49-69.

³⁸ Pashukanis, Evgeny Bronislavovich, *The General Theory of Law & Marxism*, 2nd edition, Transaction Publishers, New Brunswick and London, 2003, p. 75.

³⁹ Marx, Karl, *Capital, A Critique of Political Economy, Volume I*, Penguin Books, London, 1990, p. 169.

⁴⁰ Pashukanis, Evgeny Bronislavovich, *The General Theory of Law & Marxism*, 2nd edition, Transaction Publishers, New Brunswick and London, 2003, p. 74.

economy, Pashukanis holds that capital is in itself a social relation. However, when production of commodities is observed, we see a gradual transition from labor for a customer to labor for an entrepreneur, thus concluding that the corresponding relations have assumed a capitalist form. Consequently, the social relation that is capital has transferred its own form onto a different social relation, or conversely, the social relation has assumed a capitalist form: “[a]s it is a social relation in itself, it is capable of coloring other social relations to a greater or lesser degree, or of transmitting its form to them”.⁴¹

According to Pashukanis, the concept of law should be understood no differently. Just as capital is a specific social relation, so is law. The social relation is, in turn, also capable of mystifying and transferring its form onto other social relations.⁴² This social relation, whose “inevitable reflex is the legal form”, is located in the relationships between commodity owners, thus corresponding to the logic of the social relations of commodity production.⁴³ Therefore, the prerequisite for the existence of law in its conventional sense is the existence of private property. In relation to inheritance law, Vladimir Lenin had already concluded that it presumed the existence of private property, and the latter can only arise with the existence of exchange, thus demonstrating that the social relation of law corresponds to the logic of commodity production.⁴⁴ Pashukanis’ general theory of law therefore differs when compared to that of Pyotr Stuchka, jurist and first president of the Supreme Court of the Soviet Union, who considered law to be a “system of relationships which answers to the interests of the dominant class and which safeguards that class with organized force”.⁴⁵ As with the case of Kropotkin, Stuchka’s definition does not explain how the regulations of social relations have assumed a legal form. According to Pashukanis, however, law unfolds as a:

specific set of relations which men enter into not by conscious choice, but because the relations of production compel them to do so. Man becomes a legal subject by virtue of the same necessity which transforms the product of nature into a commodity complete with the enigmatic property of value.⁴⁶

⁴¹ Ibid., p. 78.

⁴² Ibid., p. 79.

⁴³ Pashukanis, Evgeny Bronislavovich, *Pashukanis: Selected Writings on Marxism and Law*, Beirne, Piers and Sharlet, Robert (eds.), Academic Press Inc, London, 1980, p. 8.

⁴⁴ Lenin, Vladimir Iljij, ‘What the “Friends of the People” Are and How They Fight the Social Democrats’ in *Lenin Collected Works Volume I*, 4th edition, Progress Publishers, Moscow, 1977, p. 153.

⁴⁵ Pashukanis, Evgeny Bronislavovich, *Pashukanis: Selected Writings on Marxism and Law*, Beirne, Piers and Sharlet, Robert (eds.), Academic Press Inc, London, 1980, p. 61.

⁴⁶ Pashukanis, Evgeny Bronislavovich, *The General Theory of Law & Marxism*, 2nd edition, Transaction Publishers, New Brunswick and London, 2003, p. 68.

The presence of law is thereby to be understood as the presence of bourgeois society. The more we have an advanced capitalist state, the more law will be present in different areas of society and life: “[t]urning to primitive peoples, we do see the seeds of law in them, but the greater part of their relations are regulated extralegally, by religious observances for instance”.⁴⁷ According to historian and political theorist Vladimir Viktorovich Adoratsky, no society needs the idea of law so badly as does the bourgeois society.⁴⁸

2.4 Technical regulations and the abolishment of legal regulations

By having also understood Pashukanis’ general theory of law, we are recognizing the fact that customary law, which are the regulations of social relations, have assumed a legal form and become part of written law. As he explains: “[t]here is no denying that there is a collective life among animals too which is also regulated in one way or another. But it would not occur to us to assert that the relations of bees or ants are regulated by law”.⁴⁹

Using the example of bees in our case, this would mean that the regulated social relations of the bees, or the masses, under certain conditions have assumed a legal (written) form and become written law. To use Kropotkin’s own words, the regulations of social relations is one current of custom, and the process of it assuming legal form is to be understood as the tinting and mystification of social relations by means of written law. At the same time, written law, which is advantageous to the ruling class, has been imposed by the queen bee. This is the second current of custom, whose emergence in the form of written law correlates to the emergence of bourgeois society. The result of all of this, the “commingling” of customary law and written law, is to be understood as a consequence of class struggle between two dialectically opposing classes.

⁴⁷ Ibid., p. 79. According to the above, these bodies of regulations which, according to Pashukanis, are extra-legal, could be considered legal by adopting a legal pluralist understanding of law.

⁴⁸ Adoratsky, Vladimir Viktorovich, *On the State*, Moscow, 1923, p. 41, cited in Pashukanis, Evgeny Bronislavovich, *The General Theory of Law & Marxism*, 2nd edition, Transaction Publishers, New Brunswick and London, 2003, pp. 82-83.

⁴⁹ Pashukanis, Evgeny Bronislavovich, *The General Theory of Law & Marxism*, 2nd edition, Transaction Publishers, New Brunswick and London, 2003, p. 79.

Figure 2 depicts the above described relationship of regulations of social relations assuming legal form. The bottom triangle represents the social relations in society which have not yet assumed legal form. The base of the social relations are the masses from which the regulations of social relations emanate. On the opposite side, we have the triangle facing down which represents force, or domination, imposed on the masses by the ruling class and by means of law. This illustrates how law is capable of tinting, or mystifying, the regulation of social relations to varying degrees, all depending on to what extent either class is successful in the class struggle. However, according to Pashukanis, there are limits:

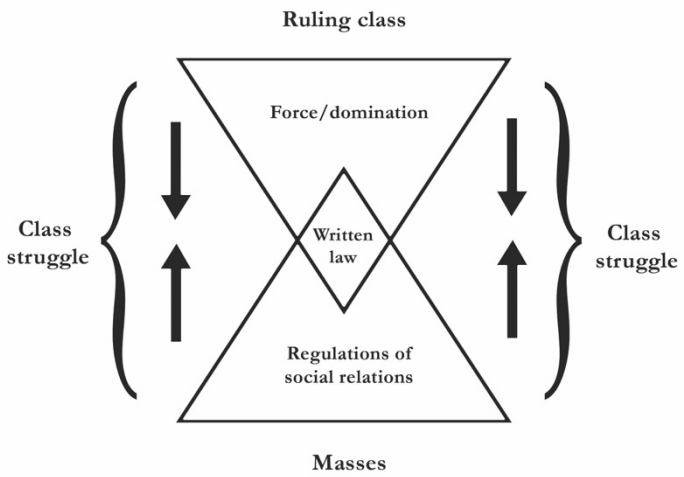


Figure 2. Regulations of social relations assuming legal form.

Finally, even in bourgeois society there are things like the organization of the postal and rail services, of the military, and so on, which cannot be related in their entirety to the sphere of legal regulation unless one views them very superficially and allows oneself to be confused by the outward form of laws, statutes and decrees.⁵⁰

Instead, such institutions are to a large extent organized by *technical regulations*, as opposed to *legal regulations*, or written law. The distinction between technical regulations and legal regulations is illustrated by assigning to the former a railway timetable and to the latter a law concerning the responsibility of the railways to the consignors of freight.⁵¹ It follows from this that in technical regulations a singleness of purpose can be assumed, such as the best possible railway service, whereas legal regulations regulate the relationships between autonomous subjects and conflicting interests, such as the allocation of responsibility for negligence.⁵² Accordingly, technical regulations correspond to what Kropotkin referred to as rules based on the masses own conceptions of mutual aid and support, whereas legal regulations correspond to rules that are born in the interest of the consumers, thus illustrating the commodity rationale of legal regulations.

⁵⁰ Ibid.
⁵¹ Ibid., p. 15.
⁵² Ibid., pp. 15–16.

In recapitulating this part, the following can be said. With the emergence of private property and bourgeois society, legal regulations, or laws as social relations, have been introduced in society. Consequently, law as a social relation has transferred its form onto other regulations of social relations, thus giving them legal form (the process of juridification). These regulations of social relations, whether they have been subject to juridification or not, are, according to Pashukanis and Kropotkin, referred to as technical regulations and/or customary law. Thus, customary law, or technical regulations, are based on consensus and need not be called law. For the sake of this thesis, such regulations will be referred to as technical regulations. It follows from this that there would be no reason to speak of law in a utopian communist society because society would simply regulate itself, or self-administer, using only technical regulations based on a singleness of purpose (which in its most abstract form is mutual benefit by mutual aid)⁵³. Indeed, in his writings, Kropotkin emphasized the “uselessness and hurtfulness of law”.⁵⁴ Law and the regulations of social relations which have assumed legal form, would be abolished and the masses would thus be freed of any coercive force.

2.5 The hurtfulness of law

Eliminating law, or ridding it of its coercive force, would have significant implications for the way we conceive of, and dispense, justice. In Western criminal justice systems, the traditional way of dealing with transgressions, be it petty crimes or the most heinous acts, has been by means of punishment such as incarceration, being forced to pay a fine, and such. Accordingly, an offender, having violated a law or a norm, deserves to be punished (usually by the state). In theory, the punishment must be proportionate to the severity of the transgression for justice to be reestablished. This conception of justice is often referred to as retributive or punitive justice.⁵⁵

According to scholars, there has been an emerging movement during the recent decades in which practitioners and academics have challenged the underlying assumption of existing criminal justice systems that punishment of the offender is sufficient, or even necessary, to restore justice after criminal offenses.⁵⁶ Although this thesis does not seek to establish the origin of the critique of

⁵³ See for example Kropotkin, Pyotr, *Mutual Aid – A Factor in Evolution*, Jonathan-David Jackson, Kingsport, 2018, p. 37.

⁵⁴ Kropotkin, Pyotr, *Law and Authority; An Anarchist Essay*, International Publishing Co., London, 1886, p. 18.

⁵⁵ Walen, Alec, ‘Retributive Justice’ in *The Stanford Encyclopedia of Philosophy*, winter 2016 edition, Zalta, Edward N. (ed.). Accessed on 14 November 2019: <https://plato.stanford.edu/archives/win2016/entries/justice-retributive/>.

⁵⁶ Wenzel, Michael, Okimoto, Tyler, Feather, Norman and Platow, Michael, ‘Retributive and Restorative Justice’, *Law and human behavior*, vol. 32, no. 5, 2007, p. 376.

retributive justice, it is worth noting that Kropotkin, in his *Law and Authority*, elaborated on his critique against using punishment in order to maintain or reestablish justice. According to Kropotkin, abolishing the death penalty would lead to fewer crimes. Although he claims that statistics prove this fact, he does not present any empirical support for his statement. According to studies, however, there seems to be some truth to the claim. In an issue of the *Journal of Criminal Law and Criminology*, the opinions of leading criminology experts on the deterrence effects of the death penalty in the United States of America is studied.⁵⁷ According to the results, most experts (88.2 %) do not believe that the death penalty serves as a deterrent to murder.⁵⁸ In addition, 56 % and 38,7 % of the responding experts believe that there is weak empirical support or no empirical support, respectively, for the deterrence effects of the death penalty. Lastly, 40 % and 34,7 % of the respondents think it is false or are sure it is false that states which have had the death penalty have had lower murder rates than neighboring states which did not have a death penalty, respectively.⁵⁹ Thus, statistics seem to support Kropotkin's claim that the fear of punishment does not stop murderers: "[h]e who kills his neighbor from revenge or misery does not reason much about consequence; and there have been few murderers who were not firmly convinced that they should escape prosecution".⁶⁰

According to Kropotkin, the deterrence effect has been overemphasized at the expense of the effects of prisons upon its brutalized prisoners.⁶¹ It is the deprivation of freedom, as well as prison conditions and their degrading effects upon humanity, which develop "cruel instincts" and "evil passions in mankind", which in turn drive people to do "ill to their fellow".⁶² This somewhat resembles the *brutalization theory*, which in criminology refers to the cause-and-effect relationship between the use of death penalties and the rise of homicide rates.⁶³ Kropotkin stresses that the person who is called a criminal is simply unfortunate and that the remedy should not be to "flog him, to chain him up, or to kill him on the scaffold or in prison, but to relieve him by the most

⁵⁷ Radelet, Michael L., Lacock, Traci L., 'Do Executions Lower Homicide Rates: The Views of Leading Criminologists', *Journal of Criminal Law and Criminology*, vol. 99, no. 2, 2009, pp. 489-508.

⁵⁸ *Ibid.*, p. 501.

⁵⁹ *Ibid.*, pp. 505-506.

⁶⁰ Kropotkin, Pyotr, *Law and Authority; An Anarchist Essay*, International Publishing Co., London, 1886, p. 21.

⁶¹ *Ibid.*, p. 22.

⁶² *Ibid.*, pp. 22-23.

⁶³ See for example Thomson, Ernie, 'Deterrence Versus Brutalization: The Case of Arizona', *Homicide Studies*, vol. 1, no. 2, 1997, pp. 110-128, Cochran, John K., Chamlin, Mitchell B. and Seth, Mark, 'Deterrence or Brutalization? An Impact Assessment of Oklahoma's Return to Capital Punishment', *Criminology*, vol. 32, no. 1, 1994, pp. 107-134 and Bailey, William C., 'Deterrence, Brutalization, and the Death Penalty: Another Examination of Oklahoma's Return to Capital Punishment', *Criminology*, vol. 36, no. 4, 1998, pp. 711-734.

brotherly care, by treatment based on equality, by the usages of life amongst honest men".⁶⁴ Although Kropotkin does not elaborate much on his alternative to retributive justice, his passage about brotherly care, as well as his consensus-oriented approach to law, go well with the alternative of restorative justice.⁶⁵ Restorative justice can be described as giving back what rightly belongs to the parties of a conflict, or as a democratization of conflict resolution. According to sociologist and criminologist Nils Christie, conflicts between individuals have become property in a sense. He claims that conflicts have been taken away from the parties who are directly involved in them and that conflicts ought to be used and become useful to those originally involved in the conflicts.⁶⁶ Although Christie does not explicitly say so, it would seem that the propertization of conflicts has resulted in people becoming alienated from their own conflicts, which have, according to him, either disappeared or become the property of others. There are several reasons behind this development towards a propertization of conflicts, such as the presence of lawyers, or what Christie refers to as professional thieves.⁶⁷ According to him, lawyers are trained to prevent and solve conflicts, and they are socialized into a sub-culture concerning the interpretation of norms and what information can be accepted as legally relevant in each case, thus deciding what ought to be said and what ought not to be said in court. Consequently, conflicts become the property of lawyers because the latter dictate the premises for conflict resolution.⁶⁸ In addition, Christie mentions the structural thieves, id est the segmentations of society along geographic and class-like lines, which lead to a depersonalization of social life:⁶⁹

Individuals are to a smaller extent linked to each other in close social networks where they are confronted with all the significant roles of the significant others. This creates a situation with limited amounts of information with regard to each other. We do know less about other people, and get limited possibilities both for understanding and for prediction of their behaviour. If a conflict is created, we are less able to cope with this situation. Not only are professionals there, able and willing to take the conflict away, but we are also more willing to give it away.⁷⁰

⁶⁴ Kropotkin, Pyotr, *Law and Authority; An Anarchist Essay*, International Publishing Co., London, 1886, p. 23.

⁶⁵ See for example Bazemore, Gordon, 'Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration', *American Behavioral Scientist*, vol. 41, no. 6, 1998, pp. 768-813 and Braithwaite, John, 'Restorative justice: Assessing optimistic and pessimistic accounts', *Crime and justice*, vol. 25, 1999, pp. 1-127.

⁶⁶ Christie, Niels, 'Conflicts as property', *The British Journal of Criminology*, vol. 17, no. 1, 1977, p. 1.

⁶⁷ *Ibid.*, p. 4.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, pp. 5-7.

⁷⁰ *Ibid.*, p. 6.

Criminologist Gordon Bazemore describes restorative justice as a three-dimensional collaborative process. According to him, restorative justice is best understood by analyzing what it might look like for the victim, community and offender, respectively, as coparticipants in the conflict resolution process.⁷¹ In short, and ideally, restorative justice provides an opportunity for both the victim and offender to vent their feelings, present their side of the story and come to an agreement about the hurt the offender has caused, the offender's responsibility and what can be done to reestablish justice.⁷² This can include direct compensation to the victim, or compensation or services to victims of similar offenses or the wider community.⁷³ Although punishment in the retributive justice sense is sometimes part of restorative justice processes, it is, according to criminologist John Braithwaite, not central. Instead, restorative justice focuses on rehabilitating the victim by undoing the hurt as well as healing the offender by rebuilding his or her moral and social self. In doing so, the affected community is also healed, since crime is viewed as a result of a breakdown in social bonds that link individuals and communities.⁷⁴ In other words, committing a crime is an antisocial behavior. Thus, for the affected community, restorative justice promises reduced fear and safer neighborhoods, work for offenders to pay restitution to victims as well as service opportunities that provide skills and allows the offenders to make meaningful contributions to the quality of community life.⁷⁵ In the long run, the goal of restorative justice is to help and train the offender so that they do not need to commit crimes in the future.⁷⁶

Additionally, according to Bazemore, no community or justice system is fully restorative, and adoptions of restorative justice as a systemic philosophy have been rare. In addition, initiatives that might seem new are often modern adaptations of ancient settlement and dispute resolution practices.⁷⁷ This is not a controversial claim considering the wide plethora of research showing how conflict resolution mechanisms which resemble restorative justice processes have been the historically favored alternatives:

⁷¹ Bazemore, Gordon, 'Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration', *American Behavioral Scientist*, vol. 41, no. 6, 1998, p. 771.

⁷² Wenzel, Michael, Okimoto, Tyler, Feather, Norman and Platow, Michael, 'Retributive and Restorative Justice', *Law and human behavior*, vol. 32, no. 5, 2007, p. 376.

⁷³ Ibid.

⁷⁴ See Bazemore, Gordon, 'Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration', *American Behavioral Scientist*, vol. 41, no. 6, 1998, p. 771.

⁷⁵ See *ibid.*

⁷⁶ *Ibid.*, p. 772.

⁷⁷ *Ibid.*

Historically arbitration and mediation were the preferred alternatives. They expressed an ideology of communitarian justice without formal law, an equitable process based on reciprocal access and trust among community members.⁷⁸

Lastly, according to criminologist John Braithwaite, restorative justice is comprised of a list of certain values which “take priority when there is any serious sanction or other infringement of freedom at risk”. These values are, according to Braithwaite, fundamental procedural safeguards and they include:⁷⁹ non-domination, empowerment, honoring legally specific upper limits on sanctions, respectful listening, equal concern for all stakeholders, accountability, appealability and respect for fundamental human rights specified in international agreements⁸⁰.

2.6 Concluding thoughts

In concluding and recapitulating this part of the thesis, there have been some reoccurring words and concepts. Below, these concepts are paired with their opposites, or antonyms, and paralleled with their relating conceptual pairings according to the following:

<i>Force/ domination</i>	↔	<i>Consensus/ non-domination</i>
<i>Authoritarianism</i>	↔	<i>Democracy</i>
<i>Retributive Justice</i>	↔	<i>Restorative Justice</i>
<i>Ruling class</i>	↔	<i>Masses</i>
<i>Capitalism</i>	↔	<i>Communism</i>
<i>Written law</i>	↔	<i>Customary law</i>
<i>Legal regulations</i>	↔	<i>Technical regulations</i>
<i>Weak legal pluralism</i>	↔	<i>Strong legal pluralism</i>
<i>State</i>	↔	<i>Non-state</i>

⁷⁸ Auerbach, Jerold S., *Justice Without Law*, Oxford University Press, Oxford, 1984, p. 4. See also van Ness, Daniel W., ‘New wine and old wineskins: Four challenges of restorative justice’, *Criminal Law Forum*, vol. 4, 1993, pp. 251-276, Zehr Howard, *Changing Lenses: A New Focus for Crime and Justice*, 3rd edition, Herald Press, Harrisonburg, 2003 and Michalowski, Raymond J., *Order, law, and crime: An introduction to criminology*, Random House, New York, 1985.

⁷⁹ Braithwaite, John, ‘Restorative Justice and Therapeutic Jurisprudence’, *Criminal Law Bulletin*, vol. 32, no. 2, 2002, p. 247.

⁸⁰ See *ibid.* The international agreements which Braithwaite refers to include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Second Optional Protocol, the United Nations Declaration on the Elimination of Violence against Women and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Although some of these notions are more abstract than the other, such as democracy when compared to restorative justice, we will come back to these concepts when analyzing law and different institutions in North and East Syria. The concepts can be described as tendencies which institutions in societies such as the courts, police or legislative assemblies are gravitating towards. For example, by studying the court system or conflict resolution mechanisms of a society and concluding that they are more restorative justice- or consensus-oriented than not, this would influence the overall extent of authoritarian or democratic tendencies in society. Additionally, having defined law as a social relation corresponding to the social relation of commodity production, the presence of legal or technical regulations in everyday life and different sectors of society also translates to either the presence or absence of bourgeois society (or capitalism as opposed to communism). In this way, the absence of legal regulations as well as the presence of restorative justice and other consensus-oriented institutions and mechanisms can work as a litmus test for a democratic and communist society.

3. Democratic confederalism and law in North and East Syria

3.1 Kürdistan devriminin yolu

The PKK is described as having emerged against the background of the 1971 military coup in Turkey, which resulted in an intensive crackdown against the revolutionary left and civil society of the country.⁸¹ Therefore, and contrary to popular belief, the PKK does not have its political background in Kurdish politics, rather, the organization has its roots in the Turkish revolutionary left of the early 1970s, which viewed an armed struggle as the only way forward to bring change.⁸² At the time, the main inspirations of what later became the PKK were the political and military organizations such as the Türkiye Halk Kurtulus Ordusu (THKO) and the Türkiye Halk Kurtulus Parti-Cephesi (THKP-C). Indeed, these organizations held the belief that it was only possible through military struggle, guided by a political party, to bring necessary changes to the country. Its militants described themselves as Marxists with the goal of carrying out a revolution.⁸³

According to Öcalan, the organizations of the revolutionary left in Turkey during the 1970s had made the mistake of rushing into direct confrontation with the state while they were still weak. The PKK, he explained, was developed by learning from these mistakes. Accordingly, Öcalan and his sympathizers, who were mostly students based in Ankara, decided to organize themselves thoroughly before entering into any such confrontations.⁸⁴ It was during the mid-1970s in which this loose network of students, who called themselves the Kurdistan Revolutionaries, decided to create an independent organization, having realized that the student and urban environment of Ankara was not suited for further political struggle.⁸⁵ Instead, in 1976, the network decided to

⁸¹ Jongerden, Joost and Akkaya, Ahmet Hamdi, 'Born from the Left: the making of the PKK', Jongerden, Joost and Casier, Marlies (eds.) in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2010, pp. 126f. See also Feroz, Ahmad, *Turkey: The Quest for Identity*, 1st edition, Oneworld Publications, London, 2003, pp. 133f.

⁸² Jongerden, Joost and Akkaya, Ahmet Hamdi, 'Born from the Left: the making of the PKK', Jongerden, Joost and Casier, Marlies (eds.) in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2010, pp. 126f. See also Jongerden, Joost and Akkaya, Ahmet Hamdi, 'The Kurdistan Workers Party and a New Left in Turkey: Analysis of the revolutionary movement in Turkey through the PKK's memorial text on Haki Karer', *European Journal of Turkish Studies*, vol. 14, 2012, para 13. Accessed on 4 November 2019: <https://journals.openedition.org/ejts/4613>.

⁸³ Jongerden, Joost, 'Colonialism, Self-Determination and Independence: The new PKK paradigm', Gunter, Michael (ed.) in *Kurdish Issues: Essays in honor of Robert W. Olson*, Mazda Publishers, Costa Mesa, 2016, p. 107.

⁸⁴ Jongerden, Joost and Akkaya, Ahmet Hamdi, 'Born from the Left: the making of the PKK', Jongerden, Joost and Casier, Marlies (eds.) in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2010, p. 127-128.

⁸⁵ *Ibid.*, p. 129.

establish a center of the movement in Turkish Kurdistan which consisted of more rural environments. Two years later, the network started to develop its armed struggle and party construction.⁸⁶ In its founding manifesto, *Kürdistan Devriminin Yolu*,⁸⁷ it is stated that the PKK is based on scientific socialism as founded by Marx, thus clearly signaling its Marxist ideology.⁸⁸ According to Öcalan himself, the ideas of Lenin and Joseph Stalin influenced the initial ideology of the PKK as far as the national question is concerned.⁸⁹ Accordingly, the goal of the organization was to overthrow the Turkish regime by means of guerilla warfare and to establish a classless and unified Kurdish state.⁹⁰ It is only more than a decade later when the ideology of the PKK began to change – in 1993 Öcalan declared that their aim was to remain a part of Turkey.⁹¹ In 1995, after the party's fifth congress, the PKK explicitly criticized the Soviet Union in its new program for being too dogmatic, chauvinist and centralist.⁹²

Since the capture of Öcalan by Turkish authorities in 1999, he has further elaborated on his understanding of revolution and what he refers to as the Kurdish question. In literature, this has sometimes been described as the start of the ideological shift, or the *new paradigm*, within the PKK.⁹³ After the beginning of the new millennia, the ideological development of the PKK accelerated. Due to the imprisonment of Öcalan, the ideological development of the PKK was mainly established through various defense texts written by Öcalan for the different court cases where he was standing trial. These defense texts have later been published and accepted by the PKK during its congresses as the official party line.⁹⁴ In the first defense texts, Öcalan rejected the claim for an

⁸⁶ Ibid., p. 130.

⁸⁷ The title of the manifesto translates to “the way of Kurdish revolution” (my translation).

⁸⁸ Öcalan, Abdullah, *Kürdistan Devriminin Yolu (Manifesto)*, Agri Verlag, Cologne, 1984, p. 12.

⁸⁹ Yarkin, Gullistan, ‘The Ideological Transformation of the PKK regarding the Political Economy of the Kurdish Region in Turkey’, *Kurdish Issues*, vol. 3, no. 1, 2015, p. 32. For reading on the Soviet position on the national question, see Stalin, Joseph, *Marxism and the National Question*, Createspace Independent Publishing Platform, Scotts Valley, 2015.

⁹⁰ Ibid.

⁹¹ Ibid., p. 33.

⁹² PKK, *Program ve Tüzüğü*, Weşanên Serxwebûn, Cologne, 1995, p. 5.

⁹³ Akkaya, Ahmet Hamdi and Jongerden, Joost, ‘The PKK in the 2000s: continuity through breaks?’, Jongerden, Joost and Casier, Marlies (eds.) in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2010, p. 151. See also Yarkin, Gullistan, ‘The Ideological Transformation of the PKK regarding the Political Economy of the Kurdish Region in Turkey’, *Kurdish Issues*, vol. 3, no. 1, 2015, p. 34, Gerber, Damian and Brincat, Shannon, ‘When Öcalan met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism’, *Geopolitics*, 2018, p. 4, accessed on 4 November 2019: <https://doi.org/10.1080/14650045.2018.1508016> and Jongerden, Joost, ‘Gender equality and radical democracy: Contractions and conflicts in relation to the “new paradigm” within the Kurdistan Workers’ Party (PKK)’, *Anatoli*, 2017, pp. 233-256.

⁹⁴ Akkaya, Ahmet Hamdi and Jongerden, Joost, ‘The PKK in the 2000s: continuity through breaks?’, Jongerden, Joost and Casier, Marlies (eds.) in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2010, p. 151.

independent Kurdish state. Instead, he proposed what he referred to as *democratic confederalism*, within a Turkish state framework.⁹⁵ In addition, his defense texts included criticism against capitalist modernity, industrialization and positivism.⁹⁶

3.2 La commune (des communes)

Öcalan continued to elaborate on the concept of democratic confederalism in his subsequent defense text.⁹⁷ At the same time, he believed that the period of armed conflict had ended and that a political solution inside the existing borders of Turkey must be the aim of the movement.⁹⁸ This position was reaffirmed by the PKK after its ninth congress in 2005. In its new program, the PKK clearly states that the aim of the movement is the realization of a “[c]insiyet özgürlükçü demokratik ekolojik toplum” (which translates to a “gender libertarian democratic ecological society”)⁹⁹, the establishment of democratic communities and the development of democratic confederalism.¹⁰⁰ It also criticized the previous goal of the PKK of seizing state power.¹⁰¹ Therefore, the new program marked the formal ideological shift of the PKK from a statist Marxist-Leninism towards an implementation of Murray Bookchin’s *social ecology*.¹⁰²

According to Öcalan, social theorist Murray Bookchin was the writer which he was most engaged with in prison, and Bookchin’s writings have greatly influenced his thoughts on democratic confederalism.¹⁰³ Bookchin, after reiterating what he described as the four basic tenets of anarchism (id est a confederation of decentralized municipalities, opposition against statism, belief in direct

⁹⁵ Öcalan, Abdullah, *Declaration on the Democratic Solution of the Kurdish Question*, Mesopotamien Verlag, 1999, p. 10.

⁹⁶ Yarkin, Gullistan, ‘The Ideological Transformation of the PKK regarding the Political Economy of the Kurdish Region in Turkey’, *Kurdish Issues*, vol. 3, no. 1, 2015, p. 35.

⁹⁷ Akkaya, Ahmet Hamdi and Jongerden, Joost, ‘The PKK in the 2000s: continuity through breaks?’, Jongerden, Joost and Casier, Marlies (eds.) in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2010, pp. 151f.

⁹⁸ Gerber, Damian and Brincat, Shannon, ‘When Öcalan met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism’, *Geopolitics*, 2018, p. 4, accessed on 4 November 2019: <https://doi.org/10.1080/14650045.2018.1508016>.

⁹⁹ My translation.

¹⁰⁰ PKK, *PKK Yeniden İnşa Bildirgesi*, 20 April 2005. Accessed on 4 November 2019: <http://archive.ph/zFTt4#selection-247.0-247.27>.

¹⁰¹ Yarkin, Gullistan, ‘The Ideological Transformation of the PKK regarding the Political Economy of the Kurdish Region in Turkey’, *Kurdish Issues*, vol. 3, no. 1, 2015, p. 36.

¹⁰² Gerber, Damian and Brincat, Shannon, ‘When Öcalan met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism’, *Geopolitics*, 2018, p. 4, accessed on 4 November 2019: <https://doi.org/10.1080/14650045.2018.1508016>.

¹⁰³ Gerber, Damian and Brincat, Shannon, ‘When Öcalan met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism’, *Geopolitics*, 2018, p. 3, accessed on 4 November 2019: <https://doi.org/10.1080/14650045.2018.1508016>.

democracy and a vision of a libertarian communist society), asked what was to be done with these tenets and how they could be given social form and content. The answer to these questions is the commune of communes, or *communalism*.¹⁰⁴ According to Bookchin, communalism departs distinctly from Marxists notions of a centralized state while also going beyond anarchist notions of autonomous collectives or towns which can “go it on their own” without consideration for society as a whole.¹⁰⁵ According to him, a written constitution as well as regulatory laws would be necessary within what he referred to as a communalist society, in order to avoid a situation that would “yield a mindless anarchy”. This idea of regulatory laws resembles what Pashukanis referred to as technical regulations. Bookchin does not deny that constitutions and laws have been oppressive, however, this should raise the question of their content, not the fact of their existence.¹⁰⁶ Furthermore, communalism is composed of semi-autonomous, direct-democratic municipalities.¹⁰⁷ The municipalities are the policy-making bodies which are responsible for virtually any issue, such as transportation, education, environment, housing, etcetera.¹⁰⁸ These institutions, which are connected within a confederal structure, are administered by popular and revocable delegates and policed by citizens’ militias and army.¹⁰⁹

By creating popular democratic municipalities, vested with the power of improving civic life in their respective communities, the people are establishing a *dual power*, which challenges the authority, legitimacy and policies of existing institutions. In doing so, the state is slowly replaced or eroded.¹¹⁰ It follows from this that democracy, as a notion and practice, stands in direct opposition to the state. Thus, by building communities one is disassembling the state. Differently put, where state begins, democracy, or the commune, ends. In the words of Öcalan, democratic confederalism, which can be described as the adaptation of Bookchin’s communalism according to the particular needs and conditions of the Middle East, promises the “rebirth” of the Kurds.¹¹¹ It is “democracy without a state” and based on grassroots participation:

¹⁰⁴ Bookchin, Murray, *Social Anarchism or Lifestyle Anarchism: An Unbridgeable Chasm*, AK Press, Chico, 1995, p. 44.

¹⁰⁵ Bookchin, Murray, *Free Cities: Communalism and the Left*, Pluto Press, London, 2011, pp. 214-215.

¹⁰⁶ *Ibid.*, p. 215-216.

¹⁰⁷ *Ibid.*, pp. 218-219. See also Gerber, Damian and Brincat, Shannon, ‘When Öcalan met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism’, *Geopolitics*, 2018, p. 9, accessed on 4 November 2019: <https://doi.org/10.1080/14650045.2018.1508016>.

¹⁰⁸ Bookchin, Murray, *Free Cities: Communalism and the Left*, Pluto Press, London, 2011, pp. 219-220.

¹⁰⁹ Damian and Brincat, Shannon, ‘When Öcalan met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism’, *Geopolitics*, 2018, p. 9, accessed on 4 November 2019: <https://doi.org/10.1080/14650045.2018.1508016>.

¹¹⁰ Bookchin, Murray, *Free Cities: Communalism and the Left*, Pluto Press, London, 2011, p. 222.

¹¹¹ Öcalan, Abdullah, *Democratic Nation*, International Initiative, Cologne, 2011, p. 54.

Its decision-making processes lie with the communities. Higher levels only serve the coordination and implementation of the will of the communities that send their delegates to the general assemblies. For limited space of time they are both mouthpiece and executive institutions. However, the basic power of decision rests with the local grass-roots institutions.¹¹²

In 2005, Koma Civakên Kurdistan (KCK) was created with the explicit task of implementing democratic confederalism in Kurdistan. It is specifically involved in:

the establishment of local councils (at village, quarter, and city level), ‘people’s courts’, a committee for civil society organizations that implements projects to activate civil society, and a language and education committee responsible for implementing projects to develop the usage of Kurdish as a written language.¹¹³

Since its creation, the KCK has worked as an umbrella group for all the democratic confederalist parties of Kurdistan.¹¹⁴ In its *Declaration of Democratic Confederalism in Kurdistan*, written by Öcalan and subsequently adopted by Kongra-Gel (the legislative body of the KCK), it is stated that democratic confederalism is a system of the people, without a state and with the women and youth at the forefront of developing democratic organizations.¹¹⁵ In keeping with Bookchin’s proposition of building dual power, the members of the KCK aim to reduce the dominance of state power in Kurdistan by establishing communes, municipal assemblies and other democratic institutions, thus making states more sensitive to democracy.¹¹⁶

3.3 The revolution within a revolution¹¹⁷

One major tenet of the new paradigm of the PKK is its focus on women’s liberation. Although women were present within the party already during its creation, the issue of gender-inequality

¹¹² Öcalan, Abdullah, *Democratic Confederalism*, Transmedia Publishing Ltd., London and Cologne, 2011, p. 33.

¹¹³ Casier, Marlies, Jongerden, Joost and Walker, Nic, ‘Turkey’s Kurdish movement and the AKP’s Kurdish opening: Kurdish Spring or fall?’, Ahmed, Mohammed and Gunter, Michael (eds.), in *The Kurdish Spring: geopolitical changes and the Kurds*, Mazda Publishers, Costa Mesa, 2013 (12), p. 114.

¹¹⁴ These parties include, amongst others, the PYD. See Kaya, Zeynep and Lowe, Robert, ‘The Curious Question of the PYD-PKK relationship’, Stansfield, Gareth and Shareef, Mohammed (eds.), in *The Kurdish Question Revisited*, Hurst, London, 2017, p. 278.

¹¹⁵ Öcalan, Abdullah, *Declaration of Democratic Confederalism in Kurdistan*, KCK, 2005. Accessed on 6 November 2019: http://www.freemedialibrary.com/index.php/Declaration_of_Democratic_Confederalism_in_Kurdistan.

¹¹⁶ PKK, *PKK Yeniden İnşa Bildirgesi*, 20 April 2005. Accessed on 4 November 2019: <http://archive.ph/zFTt4#selection-247.0-247.27> and Yarkin, Gullistan, ‘The Ideological Transformation of the PKK regarding the Political Economy of the Kurdish Region in Turkey’, *Kurdish Issues*, vol. 3, no. 1, 2015, p. 36.

¹¹⁷ In his works, Öcalan referred to the struggle for women’s liberation as the revolution within a revolution. See Öcalan, Abdullah, *Liberating Life: Woman’s Revolution*, International Initiative Edition, Cologne, 2013, p. 59.

started to become a main ideological theme in Öcalan's work during the 1990s in particular.¹¹⁸ Öcalan refers to the turning points in the history of power relationships between the sexes as *sexual ruptures*. According to him, the first sexual rupture occurred after 2000 BC: “[i]n the Sumerian society, although the balance gradually turned against the woman, the two sexes were still more or less equal until the second millennium BC”.¹¹⁹ Up until this point, which Öcalan referred to as the Neolithic era, a “complete communal social order, so called primitive socialism, was created around woman”.¹²⁰ According to Öcalan, this period was characterized by “the cult of the mother-goddess” and reverence for the woman, and during this “matriarchal society” there were no institutionalized hierarchies.¹²¹ After the first sexual rupture, which occurred after the second millennium BC, Öcalan argues that a new culture emerged which developed its superiority over the mother-woman cult.¹²² The key development in the creation of the enslaved woman and the dominant male was, according to Öcalan, the emergence of religion around the idea of a strong man.¹²³ This ultimately led to the birth of patriarchy and the exclusion of women.¹²⁴ Öcalan argues that throughout history, women's enslavement in the Middle East has intensified, and that the enslavement is linked to this sexual rupture.¹²⁵

According to Öcalan, masculinity has in turn generated ruling gender, ruling class and ruling state, and it follows from this that a fundamental principle of socialism is to “kill the dominant male”.¹²⁶ Consequently, he argues that the solutions for all social problems in the Middle East should have the woman's position as their focal point.¹²⁷ He stresses that a separate and distinct organization is essential for women's freedom to be achieved and that democratization of women is decisive for the permanent establishment of democracy and secularism.¹²⁸ In practice, this entails establishing women's institutions within various sectors of society:

¹¹⁸ Jongerden, Joost, ‘Gender equality and radical democracy: Contractions and conflicts in relation to the “new paradigm” within the Kurdistan Workers’ Party (PKK)’, *Anatoli*, 2017, para. 18.

¹¹⁹ Öcalan, Abdullah, *Liberating Life: Woman's Revolution*, International Initiative Edition, Cologne, 2013, p. 18.

¹²⁰ *Ibid.*, p. 14.

¹²¹ *Ibid.*, pp. 13–15.

¹²² *Ibid.*, p. 19.

¹²³ Jongerden, Joost, ‘Gender equality and radical democracy: Contractions and conflicts in relation to the “new paradigm” within the Kurdistan Workers’ Party (PKK)’, *Anatoli*, 2017, para. 20 and Öcalan, Abdullah, *Liberating Life: Woman's Revolution*, International Initiative Edition, Cologne, 2013, p. 20.

¹²⁴ Öcalan, Abdullah, *Liberating Life: Woman's Revolution*, International Initiative Edition, Cologne, 2013, p. 22.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, p. 51.

¹²⁷ *Ibid.*, p. 52.

¹²⁸ *Ibid.*, pp. 53 and 57.

permanent institutions for women need to be established and maintained for perhaps a century. There is a need for Woman's Freedom Parties. It is also vital that ideological, political and economic communes, based on woman's freedom, are formed.¹²⁹

Öcalan further argues that the struggle for women's freedom must be waged through "the establishment of their own political parties, attaining a popular women's movement, building their own non-governmental organizations and structures of democratic politics".¹³⁰ In essence, this is a call for a separate women's organization and movement.

3.4 The first phase: the council system of North and East Syria

Partiya Yekîtiya Demokrat (PYD), or the Democratic Union Party, was established in Syria in 2003 and has been the dominant political force in Kurdish areas of Syria for the last eight years. As a member of the KCK, its objective has been to develop and extend the democratic self-administration system to all of Syria.¹³¹ Because the PYD operates within the KCK umbrella framework, the organization has often been equated with the PKK. The two are, however, organizationally distinct from each other.¹³² In addition, after amendments to the internal code of the PYD in 2015, the legislative authority of the Kongra-Gel was removed, leaving only recognition of Öcalan as the ideological inspiration for the party and at the time governing coalition of North and East Syria (Tevgera Civaka Demokratîk (TEV-DEM)).¹³³

To a beginning, the PYD's implementation of democratic confederalism was limited to isolated local projects which did not "challenge the pre-existing sub-state social structures".¹³⁴ It was only after the outbreak of the Syrian civil war in March 2011 that the PYD gained momentum. The ensuing power vacuum created by the conflict allowed the PYD to gradually assert control of key cities such as Afrîn, Kobanî and Qamişlo, which in turn enabled the creation of administrative organizations and institutions among different sectors of society as well as the formation of the YPG, YPJ and other security forces.¹³⁵ Local councils were set up in most cities of North and East Syria during this time, tasked with distributing food and fuel as well as organizing education and

¹²⁹ Ibid., p. 58.

¹³⁰ Ibid., p. 60.

¹³¹ Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 62.

¹³² Ibid., p. 64.

¹³³ Ibid., p. 62.

¹³⁴ Ibid., p. 90.

¹³⁵ Ibid., pp. 62–64 and 90–91.

self-defense.¹³⁶ Within a couple of months there was a functioning council system set in place.¹³⁷ In August 2011, 300 delegates from North and East Syria established the Meclîsa Gel a Rojavayê Kurdistanê (MGRK), also known as the People's Council of Western Kurdistan. It, in turn, elected an assembly of 33 people called the TEV-DEM. At the time, it was described as the governing body of North and East Syria. TEV-DEM can also be described as the “civilian institution of the government” which “coordinates the communes and council system”.¹³⁸ In theory, each canton¹³⁹ had its own TEV-DEM consisting of eleven members which coordinated the district councils within each canton. This constitutes the top of the council system in North and East Syria.¹⁴⁰ With the help of TEV-DEM, councils for local decision-making and self-administration have been established on the various levels of governance.¹⁴¹

On the base level, the council system is comprised of residential councils, or communes, which form the policy-making grassroots institutions of direct democracy, responsible for meeting the needs of the people on the local residential level.¹⁴² In practice, the work of the communes entails taking political decisions on local infrastructure, economic activities, local justice as well as providing mechanisms for distributing services such as basic supplies, health services, etcetera.¹⁴³ If an issue affects several communes, the discussion and decision-making are transferred upwards in the council system, and so on.¹⁴⁴ Meetings are open to all residents within the commune.¹⁴⁵ Although the size of the communes differ, they usually consist of about 30-200 households in a

¹³⁶ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 104 and Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, pp. 90-91.

¹³⁷ Ibid. See also Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, pp. 90f.

¹³⁸ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 105 and Egret, Eliza and Anderson, Tom, *Struggles for Autonomy in Kurdistan & Corporate Complicity in the Repression of Social Movements in Rojava and Bakur*, Corporate Watch Cooperative Ltd c/o Freedom Press, London, 2016, p. 62. See also Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 96.

¹³⁹ At the time, there existed three self-governing cantons in North and East Syria: Afrîn; Euphrates and Jazira.

¹⁴⁰ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 110.

¹⁴¹ Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 70. Accessed on 6 November 2019: <https://www.tandfonline.com/doi/full/10.1080/17449057.2018.1525166>.

¹⁴² Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 107 and Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, pp. 97 and 143.

¹⁴³ Ibid., p. 100.

¹⁴⁴ Ibid., pp. 143 and 32.

¹⁴⁵ Ibid., p. 143.

residential street.¹⁴⁶ The people residing within a geographic area constituting a commune are represented by a coordinating board which is co-chaired by one man and one woman. In addition, the coordinating board consists of one representative from eight different commissions, or policy areas.¹⁴⁷ The members of the board are subject to recall if they do not meet the wishes of the majority.¹⁴⁸

On the second level, there are neighborhood councils which usually consist of seven to thirty communes. On this level, the local communes are represented by delegates from the communal coordinating board, which make up the plenum of the neighborhood council. The delegates which are sent from the local communes to the neighborhood council are, just as in the case with the coordinating board of the communes, subject to revocable mandate.¹⁴⁹ On the third level, there are district councils which encompass a city and surrounding villages. On the district level, the communes and neighborhoods are represented by their respective delegates from the coordinating boards. With the TEV-DEM at the summit of the council system, there are, in total, four levels of administration and political decision-making within each region. Each level has its own eight commissions, or areas of political activity, in which the council may operate: women, defense, economics, politics, civil society, free society, justice and ideology.¹⁵⁰ For example, it is the justice commissions who organize the reconciliation committees.¹⁵¹ Not all commissions have been set up by the different councils yet, however, the justice and defense commissions are the most common commissions.¹⁵² The women's commissions have a special status among the commissions because they are organized as councils.¹⁵³ They exist on all four levels of the council system in North and East Syria and their members consist of women only. The women's councils focus on women's

¹⁴⁶ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 107.

¹⁴⁷ Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 100.

¹⁴⁸ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 108.

¹⁴⁹ Ibid. and Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 97.

¹⁵⁰ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 108 and Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 100.

¹⁵¹ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 114.

¹⁵² Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 71. Accessed on 6 November 2019: <https://www.tandfonline.com/doi/full/10.1080/17449057.2018.1525166>.

¹⁵³ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 112.

self-governance by addressing local women's issues, and they also work to create women's cooperatives.¹⁵⁴ Thus, the women's councils constitute an alternative to the mixed-gender council system of North and East Syria, since it works as a parallel and autonomous decision-making structure.¹⁵⁵

Lastly, there are people's municipalities, which are the administrative bodies responsible for infrastructure and basic services such as trash removal, wastewater treatment, city planning, traffic flow, etcetera. The people's municipalities have no political representation. Instead, they are democratically controlled by, and accountable to, the different councils on the district, neighborhood and residential level which approve of all major decisions made by the people's municipalities.¹⁵⁶

3.5 The second phase: Democratic Autonomous Administrations (DAAs)

Up until 2014, the council system had been responsible for local governance and solving the majority of issues in North and East Syria. However, in an attempt to gain a seat at the international talking table (the Geneva II Conference on Syria in 2014) the three original cantons declared *democratic autonomy* as a way of sending a signal to the conference participants.¹⁵⁷ The Social Contract of Rojava Cantons in Syria, or the constitution of Rojava (hereafter referred to as the social contract of 2014), was enacted and accepted by the cantons in 2014, and on three separate days each canton issued its own declaration of democratic autonomy (id est its own cantonal constitution).¹⁵⁸ In doing so, the cantons, consisting of their different district councils, also established their own transitional administrations, known as the Democratic Autonomous Administrations (DAAs).¹⁵⁹ According to the social contract of 2014, the administrative centers of each canton were located within the cities of Afrîn (canton of Afrîn), Qamişlo (canton of Jazira) and Kobani (canton of Euphrates).¹⁶⁰ According to article four of the social contract of 2014, each canton had its own legislative assembly, executive council, supreme constitutional court and local councils (id est

¹⁵⁴ Ibid., pp. 88-89 and 112.

¹⁵⁵ Ibid., p. 112.

¹⁵⁶ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 126.

¹⁵⁷ Ibid., p. 131.

¹⁵⁸ See The Social Contract of Rojava Cantons in Syria, 2014. Accessed on 7 November 2019: <https://civiroglu.net/the-constitution-of-the-rojava-cantons/>.

¹⁵⁹ Ibid. See also Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 93.

¹⁶⁰ Art. 3 para. b of the social contract of 2014.

district, neighborhood and residential councils).¹⁶¹ The DAAs may freely elect their representatives and representative bodies, and may pursue their rights insofar as they do not contravene the articles of the social contract.¹⁶² Thus, the DAAs can be described as centralized administrations which run parallelly to the council system.¹⁶³ However, the DAAs are autonomous in relation to each other and founded upon the principle of local self-government. The social contract of 2014 replaces the centralization imposed by the former ruling Ba'ath party and allocates state tasks to the sovereignty of the cantons and the DAAs.¹⁶⁴ However, the DAAs do not deny the legitimacy of the Syrian state – once it is reestablished in North and East Syria, the DAAs and the Syrian state will be part of a dual power structure.¹⁶⁵

3.5.1 Law under the social contract of 2014

In accordance with the social contract of 2014, the legislative assembly of each DAA is elected by the people of each canton and for a period of four years.¹⁶⁶ Its members enjoy immunity in respect of acts and omissions carried out in the function of official duties. According to article 53 of the social contract of 2014, one of the functions of the legislative assemblies is to adopt laws for the common governance of the cantons. The canton premiers, together with the executive council of each DAA, are responsible for the implementation of laws, resolutions and decrees that are issued by the legislative assemblies and judicial institutions.¹⁶⁷ The legislative assemblies are free to approve new law insofar as it “does not contravene the articles of the Charter”.¹⁶⁸ It is the function of the supreme constitutional court of each canton to determine the constitutionality of laws enacted by the cantonal legislative assemblies and decisions taken by the executive councils.¹⁶⁹ Additionally, in cases of conflict between laws passed by the legislative assemblies and the

¹⁶¹ Ibid., art. 4 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 131.

¹⁶² Art. 8 of the social contract of 2014.

¹⁶³ Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 139.

¹⁶⁴ Radpey, Loqman, ‘The Kurdish Self-Rule Constitution in Syria’, *Chinese Journal of International Law*, vol. 14, 2015, p. 837.

¹⁶⁵ Üstündağ, Nazan, ‘Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State’, *South Atlantic Quarterly*, vol. 115, no. 1, 2016, p. 203.

¹⁶⁶ Art. 45 of the social contract of 2014.

¹⁶⁷ Ibid., art. 54.

¹⁶⁸ Ibid., art. 8. See also Radpey, Loqman, ‘The Kurdish Self-Rule Constitution in Syria’, *Chinese Journal of International Law*, vol. 14, 2015, p. 837.

¹⁶⁹ Art. 78(2) of the social contract of 2014.

legislation of the central Syrian government, it is the supreme constitutional courts who, based on the best interest of the autonomous region, rule upon the applicability of either law.¹⁷⁰

3.6 The third phase: the Autonomous Administration of North and East Syria (AANES)

In an attempt to federalize the DAAs and expand the model of democratic autonomy to newly liberated areas in North and East Syria, the Syrian Democratic Council (SDC) was founded in December 2015.¹⁷¹ The SDC is sometimes referred to as the political wing of the SDF.¹⁷² In 2016, representatives from the DAAs, the SDC and recently liberated communities held a meeting in the town of Ramalan in order to establish a democratic federal system.¹⁷³ The constituent assembly prepared a new social contract, the Social Contract of the Democratic Federation of Northern Syria, which was approved in December 2016 (hereafter referred to as the social contract of 2016).¹⁷⁴ According to the social contract of 2016, the already existing three cantons, or the DAAs, are incorporated into the federal system.¹⁷⁵ The council system is also incorporated into the federal system.¹⁷⁶ The people of the Democratic Federation of Northern Syria (DFNS), which was the new official name for the region, are represented by a Democratic Peoples' Conference, which is the highest legislative assembly in North and East Syria. It ensures the right of the people to establish democratic self-administrations and aims at unifying all groups under the democratic federalism of North and East Syria.¹⁷⁷ On 6 September 2018, the SDC adopted the current official name for the region and its coordinating administration: the Autonomous Administration of North and East Syria (AANES).¹⁷⁸

¹⁷⁰ Ibid., art. 89.

¹⁷¹ Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 128 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 134.

¹⁷² Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 71.

¹⁷³ Ibid., p. 125 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 134.

¹⁷⁴ The Social Contract of the Democratic Federation of Northern Syria, 2016. Accessed on 7 November 2019: <https://internationalistcommune.com/social-contract/>.

¹⁷⁵ Arts. 53-56 of the social contract of 2016 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 134.

¹⁷⁶ Arts. 47-52 of the social contract of 2016.

¹⁷⁷ Art. 57 of the social contract of 2016.

¹⁷⁸ ANF, 'Rêveberiya Xweser a Bakur û Rojhilatê Sûriyeyê ava bû', 6 September 2019. Accessed on 22 November 2019: <https://anfkurdi.com/rojawa-sUriye/reveberiya-xweser-a-bakur-u-rojhilate-suriyeye-ava-bu-101924>. See also ANHA, 'Amina Omar: Autonomous Administration its purpose to serve people, consolidation of administrations', 7 September 2019. Accessed on 22 November 2019: <http://hawarnews.com/en/haber/amina-omar-autonomous-administration-its-purpose-to-serve-people-consolidation-of-administrations--h3599.html>.

3.6.1 Law under the social contract of 2016

According to the social contract of 2016, the tasks of the Democratic Peoples' Conference is, amongst others, to shape general policies and decide “the strategic goals in all areas of society life”.¹⁷⁹ In addition, its function is to legislate on all laws “related to the Democratic Federalism of Northern Syria”.¹⁸⁰ On the second highest level, there are cantonal peoples' assemblies for each canton, or region. According to article 53 of the social contract of 2016, the regions are the self-administration units which can consist of one or more than one district. Its functions are, amongst others, to enshrine and legislate on rules within the region. Thus, it can be said that the new social contract incorporates the old system of the interim DAAs, which still have their legislative powers, albeit under a new name. The council system is also incorporated into the new federal system according to the social contract of 2016.¹⁸¹ Accordingly, the councils formulate policies and “organize society by enabling direct democracy”.¹⁸² In addition, according to the first paragraph of article 51 of the social contract of 2016, the district councils are the legislative systems of each district, elected by free voting of the people. Thus, the policy-making powers of the district councils are formalized as legislative powers under the new social contract.

3.7 Analysis and discussion

According to the above, there are at least three formally recognized levels of legislative institutions in North and East Syria – the federal Democratic Peoples' Conference, the cantonal peoples' assemblies and the various district councils within in each region. The legislative powers of these institutions are not limited to policy areas per se, rather, they are limited with reference to the geographic area in which they operate, and the extent of which its decisions have implications for wider areas.¹⁸³ According to article 51 of the social contract of 2016, the various district councils shape policies for the entire district and take necessary decisions.¹⁸⁴ As for the cantonal peoples' assemblies, these too legislate and shape general policies regarding social, economic, internal

¹⁷⁹ Ibid., art. 59(3) and Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 125.

¹⁸⁰ Art. 59(6) of the social contract of 2016.

¹⁸¹ Ibid., arts. 48-51.

¹⁸² Ibid., art. 49.

¹⁸³ See also Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 100.

¹⁸⁴ Art. 51(2) of the social contract of 2016.

security, educational health and cultural fields within the region.¹⁸⁵ The federal Democratic Peoples' Conference shapes "general policy" and legislates on laws "related to the Democratic Federalism of Northern Syria". It ensures the right of the peoples and groups to establish democratic self-administrations and its aim is to unify all groups under the democratic federalism of North and East Syria by their own free will.¹⁸⁶ Separate from these institutions, there exists a social contract council which ensures that the laws issued by the Democratic Peoples' Conference, the cantonal peoples' assemblies, and the district councils, as well as the decisions issued by the lower neighborhood and communal councils, are not conflicting.¹⁸⁷ Therefore, the policy-making decisions of the lower councils are, in a sense, elevated to the status of law. Additionally, although the policy-making decisions of the lower councils are not explicitly and formally recognized as law in the social contract of 2016, by taking a legal pluralist standpoint, which conceives of law as the social fact of a given geographic area, the policy-making institutions and their decisions can be equated with law with reference to their de facto governance within the relevant area.¹⁸⁸ According to the social contract of 2016, the various councils are responsible for "protecting society, ensuring its continuity" as well as securing "the realization of its goals in the political, social, cultural and economic fields".¹⁸⁹ The various local councils can be described as having taken over state functions, as a result of the collapse of the Syrian state in North and East Syria after the outbreak of the civil war.¹⁹⁰

Clearly then, there exists what can be described as a plurality of legal systems. These systems of law exist on various levels of governance and within various geographic areas, such as the residential or neighborhood areas coexisting within the district, the district areas coexisting within the regions, the regional areas coexisting within the federation, and the federation which coexists with the Syrian state. When there is a conflict between the social contract and Syrian state law, the social contract takes precedence.¹⁹¹ In addition, although the various legal systems have been incorporated into the new social contract and are, in a sense, subsumed under the federal system, the autonomy and legislative powers of each region or institution do not originate from a central

¹⁸⁵ Ibid., arts. 55(1) and 55(6).

¹⁸⁶ Ibid., art. 57.

¹⁸⁷ Ibid., art. 66.

¹⁸⁸ See '3.4 The first phase: the council system of North and East Syria' in the above.

¹⁸⁹ See art. 49 of the social contract of 2016.

¹⁹⁰ See Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 70. Accessed on 6 November 2019: <https://www.tandfonline.com/doi/full/10.1080/17449057.2018.1525166>.

¹⁹¹ Finn, Katherine, 'Rojava is an unexpected oasis of progress in Syria', in *Law Society*, 24 November 2018. Accessed on 7 November 2019: <https://www.lawsociety.ie/gazette/legal-analysis/rojava-an-oasis-of-progress-in-syria/>.

state authority. The various councils are the democratic base of the federal system. Each region is autonomous and may freely choose to join or leave the federal system.¹⁹² Additionally, according to TEV-DEM-representatives, the relationship between the councils and the cantonal peoples' assemblies is not conceived of in terms of representation, rather, in terms of self-defense. Thus, the communes are, in theory and in practice, the means by which "localities maintain their autonomy against the regional governments, unmake the latter's claims to stateness, and eventually appropriate their functions, proving them redundant".¹⁹³

This multilayered system of self-governance is a clear effect of the implementation of democratic confederalism which springs from Öcalan's twofold critique of the traditional state.¹⁹⁴ Firstly, his state-critique problematizes the administrative state and its consequential creation of bureaucracy as a dominant class, as opposed to the people, or the masses. By adopting democratic confederalism and creating an alternative system of local self-administration, the idea is to eliminate this dominant class.¹⁹⁵ This idea has, to a certain extent, been realized by the creation of local councils and the dissolution of Syrian state power, which allocates decision-making and legislative powers to new institutions of local self-administration. Öcalan's second critique of the state concerns the nation-state form and its ultimate objective of homogenizing the population through assimilation into a dominant identity, thus erasing diversity and difference.¹⁹⁶ Öcalan addresses this problem by emphasizing the right of cultural, ethnic, gender and religious groups to organize themselves and give expression to their interests and identity as a major tenet of democratic confederalism:¹⁹⁷

It provides a framework, within which inter alia minorities, religious communities, cultural groups, gender-specific groups and other societal groups can organize autonomously. [...] Democratic

¹⁹² Arts. 47 and 57 of the social contract of 2016. See also *ibid.*, art. 59(13).

¹⁹³ Üstündağ, Nazan, 'Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State', *South Atlantic Quarterly*, vol. 115, no. 1, 2016, p. 203.

¹⁹⁴ See Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 67. Accessed on 6 November 2019: <https://www.tandfonline.com/doi/full/10.1080/17449057.2018.1525166>.

¹⁹⁵ Öcalan, Abdullah, *War and Peace in Kurdistan, Perspectives for a political solution of the Kurdish question*, 2nd edition, International Initiative, Cologne, 2009, p. 32.

¹⁹⁶ See Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 67. Accessed on 6 November 2019: <https://www.tandfonline.com/doi/full/10.1080/17449057.2018.1525166>. See Öcalan, Abdullah, *War and Peace in Kurdistan, Perspectives for a political solution of the Kurdish question*, 2nd edition, International Initiative, Cologne, 2009, pp. 19-21.

¹⁹⁷ See Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 67.

confederalism prefers flat hierarchies so as to further decision finding and decision making at the level of the communities.¹⁹⁸

This goal of pluralism, in the sense of identity, has been realized through the creation of local councils which have allocated decision-making powers to diverse groups within society, instead of the dominant identity. Additionally, TEV-DEM has firmly framed itself as promoting pluralism, through its inclusion of various political parties, professional and societal organizations and local council representatives.¹⁹⁹

In reality, however, the model of governance in North and East Syria can be described as a mixture of the decentralized council system, the central DAAs as well as the federal system which combines and incorporates these elements of central and decentralized elements of governance, while at the same time introducing its own system.²⁰⁰ The systems of governance are overlapping, and it is not clear where local law stops and state law begins. According to journalist Wladimir van Wilgenburg, the administrations of North and East Syria (id est the cantonal peoples' assemblies and the AANES) hold "state-like powers", due to the fact that they control the economy and security of the region, as well as enact laws which they consider binding to all residents within the territory they control – laws which they also enforce.²⁰¹ For example, in 2015, the DAA of the Jazira region adopted a property law which ruled that "vehicles, real estate, land and cash assets belonging to Syrians who have fled the territory" under the control of the DAAs could be lawfully appropriated by the administration.²⁰² In comparison, there are no mechanisms or institutions which enforce policy-making decisions coming from the residential and neighborhoods councils in the same sense in which a legal regulation is enforced by the administration's state-like institutions.²⁰³ This, however, should be understood as a consequence of the nature of residential and neighborhood administrations, since there is no need for executive institutions in societies which are more or less wholly democratic and self-governing. In addition, a singleness of purpose (mutual benefit by

¹⁹⁸ Öcalan, Abdullah, *War and Peace in Kurdistan, Perspectives for a political solution of the Kurdish question*, 2nd edition, International Initiative, Cologne, 2009, p. 32.

¹⁹⁹ See Jongerden, Joost, 'Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria', *Ethnopolitics*, vol. 18, no. 1, 2019, p. 70. Accessed on 6 November 2019: <https://www.tandfonline.com/doi/full/10.1080/17449057.2018.1525166>.

²⁰⁰ See also Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 139.

²⁰¹ Ibid., p. 215.

²⁰² Kurdwatch, 'Al-Qamishli: PYD takes possession of refugee's property', 30 September 2015. Accessed on 7 November 2019: <https://kurdwatch.ezks.org/?e3605>. See also Allsopp, Harriet and van Wilgenburg, Wladimir, *The Kurds of Northern Syria: Governance, Diversity and Conflicts*, I.B. Tauris, 2019, p. 108.

²⁰³ According to art. 52 of the new social contract of 2016, each district council has its own executive institution.

mutual aid) can be identified in the decision-making processes of the local councils due to their democratic structure as well as their responsibility of meeting the needs of the local people and its wide-ranging mandate in doing so. Accordingly, the regulations coming from the residential and neighborhood councils could be classified as technical regulations based on consensus and followed voluntarily, whereas regulations coming from the Democratic Peoples' Conference and cantonal peoples' assemblies (the DAAs) are, to a larger extent, legal regulations which can be enforced upon people.

Thus, the legal system of North and East Syria, at the time of writing, consists of both tendencies of weak and strong legal pluralism, which in turn correlates to the presence of decentralized and central administration within the region. In addition, tendencies towards legal regulations seem to increase as one moves upwards in the governance system. Accordingly, the social reality of North and East Syria cannot be said to completely correspond to the system which is depicted by the social contract of 2016 or envisaged by Öcalan (likely because of the ongoing civil war and security situation in Syria). Due to the lack of statistics and material it is not possible to conclude the size of the gap between the two. Nonetheless, according to the social contract of 2016, the communes and councils are “the essential basic organization form of direct democracy” which “represent the people, discuss and decide its affairs and formulate policies” and the legal system builds from this organization of bottom-up institutions²⁰⁴. Therefore, the legal system of North and East Syria can be described as governed by technical regulations to a large extent, as well as a strong legal pluralist system which contains elements of weak legal pluralism. This is because the legislative powers of local councils emanate from the basis of the district area which is its people, capable of making their own decision regarding their own area.

²⁰⁴ Arts. 48-49 of the social contract of 2016.

4. The justice system of North and East Syria

4.1 A dual system

The principles of the justice system in North and East Syria are established in the social contract of 2016. According to the first paragraph of article 68 in the social contract of 2016, social justice is considered the basis of organization and self-protection of society. Furtherly, social justice is dependent on solving social problems related to justice in the communes, the neighborhoods and districts.²⁰⁵ Actions which harm social life or the environment are considered crimes. Whenever crimes are committed the victims shall have the opportunity to defend their rights. Crimes and other social problems are to be solved by means of dialogue, negotiation and mutual consent. Society shall have the right to assess the damage, criticize and give suggestions to solutions and participate in decision-making.²⁰⁶ Punishment, if it is used, must aim at rehabilitating people who are found guilty of crimes, force them to substitute for damage and develop awareness. The goal is to “correctly include them in social life”.²⁰⁷

In relation to problems related to peoples, groups and different social segments, they have the right to form justice mechanisms and develop special solution methods according to their own needs insofar as they do not contradict the social contract of 2016 or basic human rights. Regarding issues related to the general interests and security of all peoples and groups, they are settled in justice systems which represent the whole society.²⁰⁸ This marks the separation between a local justice system on the one hand and a more federal one on the other hand. The two systems are explained in an interview with Xelid Ehme, member of the reconciliation committee in Dêrîk:

When any violation of human rights take place, the case is redirected to the Justice Court. For example, killings or grand larceny... cases that need an individual to be protected, along with deeper interrogation and investigation. On the other hand, when inhabitants turn to the Justice Court to solve their social conflicts, they are redirected to the reconciliation committee of their commune.²⁰⁹

²⁰⁵ Ibid., art. 68(1).

²⁰⁶ Ibid., art. 68(1-2).

²⁰⁷ Ibid., art. 68(3).

²⁰⁸ Ibid., art. 68(4-5).

²⁰⁹ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019.

Thus, the justice system in North and East Syria can be further described as comprised of a reconciliation system and a court system. In addition, there exists a parallel women's reconciliation system which deals with women-related issues, such as cases of patriarchal violence.²¹⁰ These systems are primarily not separated in terms of levels, but the severity of the case - severe criminal cases are directly referred to the formal court system. However, as will be shown later, it is possible for either side of a conflict to appeal a case to the courts, thus leaving the reconciliation system and bringing the case to the court system.²¹¹

4.2 Reconciliation committees

According to the social contract of 2016, the aim of the reconciliation committees is to solve conflicts and disputes and achieve peace and social concord. They are self-organized institutions in all of North and East Syria and may be created on all levels in which they are needed – from the communal to the regional level.²¹² Although formalized in the social contract of 2016, the existence of the reconciliation committees predates the social contract and even the outbreak of the Syrian civil war. During the 1990s, the first reconciliation committees were created by Kurdish activists in Syrian cities. Despite the fact that the Ba'ath regime considered them a threat to the monopolistic justice system of Syria, it has managed to run parallelly to the existing system since then, albeit to a limited degree. It was only after the beginning of the Syrian civil war in 2011 that they were established in larger numbers by the justice commissions of the various district councils.²¹³

4.2.1 Structure and organization

Reconciliation committees exist as an alternative to the more traditional court system because of the inability or unwillingness of the latter to resolve conflicts.²¹⁴ They are established on the

²¹⁰ Art. 68(6) of the social contract of 2016 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 182.

²¹¹ Üstündağ, Nazan, 'Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State', *South Atlantic Quarterly*, vol. 115, no. 1, 2016, p. 207. See also Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 87.

²¹² Art 69(1) of the social contract of 2016.

²¹³ Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 86 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, pp. 178-179.

²¹⁴ ANF, 'Alternative to the Courts: Reconciliation Committees', 13 June 2018. Accessed on 8 November 2019: <https://anfenglishmobile.com/rojava-northern-syria/alternative-to-the-courts-reconciliation-committees-27413>.

residential, neighborhood and district level and constitute the basis of the justice system in North and East Syria.²¹⁵ In addition, there are higher levels which carry out tasks of coordination as well as facilitating and supervising the work of the grassroots area committees. These levels are: province, region, and federation. On the federal level, there is the Justice Council of North and East Syria which coordinates the work among all the regions of the federation (id est Jazira, Euphrates, Afrîn, Raqqa, Tabqa, Manbij and Deir ez-Zor). The members of the Justice Council should be elected in general elections; however, elections have not taken place yet due to the worsened security situation in North and East Syria. For this reason, according to Ehme of the Dêrîk reconciliation committee, it is “an interim structure and its corpus is still temporary”.²¹⁶

The members of the reconciliation committees on the three base levels are typically elected by the residential, neighborhood and district councils and consist of respected elders, members from the different councils and legal professionals in some cases.²¹⁷ A reconciliation committee usually consist of five to nine people with a gender quota of 40 percent.²¹⁸ In addition to the system of reconciliation committees, there exists a parallel structure comprised of women’s reconciliation committees. According to the social contract of 2016, special “feminine organizations and equal representation of women” are the basis of the justice system. These women’s committees are responsible for resolving women-related issues, such as cases of patriarchal violence, and the members of the committees are all women.²¹⁹

According to Ehme, the reconciliation committee of Dêrîk consisted of nine members at the time of the interview (id est in April 2019). Two of its members (one woman and one man) were elected into the committee by the local council of Dêrîk. The rest, three women and four men, were elected by the reconciliation committees on the residential level. Every second year there are elections to

²¹⁵ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women’s Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 178.

²¹⁶ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019.

²¹⁷ Üstündağ, Nazan, ‘Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State’, *South Atlantic Quarterly*, vol. 115, no. 1, 2016, p. 207. See also Duman, Yasin, ‘Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria’, *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 86 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women’s Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 182.

²¹⁸ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women’s Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 182.

²¹⁹ Art. 68(6) of the social contract of 2016 and Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women’s Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 182.

renew the members of all the committees, and each member can serve for two terms only. In November 2019, new members were elected for the reconciliation committees.²²⁰

4.2.2 Procedure

Although the procedures of the reconciliation committees have not been written down, there are guiding rules and principles which have been transmitted verbally to some extent.²²¹ Whenever a conflict arises, such as cases of criminality or social injustice, the reconciliation committees usually invite both parties for a discussion.²²² House visits are made and witnesses are brought in.²²³ According to Ehme, the responsibilities of the reconciliation committees are to:

mediate in personal or civilian conflicts between two or more parties. In order to reach an agreement respected by all those concerned the committee members need to hear all the sides in a conflict and facilitate to find a solution. Instead of imposing a given measure, they propose a solution. When the solution is accepted, it is normally written and signed by all parties to the conflict.²²⁴

In an interview, Aytan Dayika Medya, member of the reconciliation committee of Serê Kaniyê, describes the work of their reconciliation committee:

We started work at the start of this revolution, back in 2012, 2013. We worked a lot from the very beginning. This committee doesn't only do the work of reconciliation - we carried out defense work, security work, we protected our people and our town. Whoever did not see eye-to-eye in our community, we brought together. We want to build up a spirit of brotherhood and peace between us. When there is a problem, we take both sides into account - not only big cases like this one, but more normal cases as well. For example, if there is a disagreement over building a house, over

²²⁰ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019.

²²¹ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 182 and Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 86.

²²² Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, pp. 178-182 and Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 86.

²²³ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 180.

²²⁴ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019.

money... because the reconciliation committees are one important step in the justice system of Rojava.²²⁵

Thus, the aim is not to condemn either side of a conflict, but to achieve reconciliation between conflicting parties through consensus.²²⁶ This can only be done by listening to, and understanding, the parties' complaints, demands and needs.²²⁷ If a crime has been committed against another person, the accused is made to understand the damage and injustice that they have caused, through a process of dialogue, rather than punishing them.²²⁸ The reconciliation committees are not able to sentence a person to prison, nor can they impose any other punishments.²²⁹

After having listened to both sides of a conflict the reconciliation committee proposes a reconciliatory solution in which the interests of both sides are preserved.²³⁰ If the parties are not satisfied with the proposed solution, the reconciliation committee makes a reanalysis of the case and congregates privately to make a second proposal.²³¹ In some cases, religion plays an important role in seeking forgiveness and reaching reconciliation. In addition, there are cases when compensation is paid to the affected party.²³² Khalid Ibrahim, another member of the reconciliation committee in Dêrîk, recalls a successful case which was brought before the committee:

Mahmood used to sell yogurt from his village to Ahmed. But Ahmed hadn't paid him for six months. Finally, Mahmood brought the case to his commune's reconciliation committee. A committee member listened to both sides, understanding both the reasons why the shop owner didn't pay and the economic needs of Mahmood's family. She facilitated an agreement between the two. They agreed to reduce the debt, and agreed that Mahmood's family would have the right to

²²⁵ Interview with Aytan Dayika Medya, member of the reconciliation committee in Serê Kaniyê. Conducted by the RIC in 2019. Received on 17 September 2019.

²²⁶ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 180.

²²⁷ Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 86.

²²⁸ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, pp. 179f. See also Ross, Carne, 'Power to the people: a Syrian experiment in democracy', in *Financial Times*, 23 October 2015. Accessed on 8 November 2019: <https://www.ft.com/content/50102294-77fd-11e5-a95a-27d368e1ddf7>.

²²⁹ Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 88.

²³⁰ Ibid., p. 87.

²³¹ Ibid., p. 88.

²³² Ibid.

acquire other goods from the shop freely to satisfy its needs. They both signed a contract. With time, the relationship between Mahmood's family and Ahmed became close again.²³³

If a case is not solved on the residential level, the members of the reconciliation committee write a report and send the case to the next level, which is the neighborhood committee. If it is not solved there either, the committee members of the reconciliation committee on the neighborhood level write a report and send the case to the reconciliation committee on the district level, which is the highest level of reconciliation.²³⁴ Generally, however, conflicts are solved on the residential level.²³⁵ According to statistics from the Mesopotamia Law School in Qamişlo, 90 percent of cases which were brought before the reconciliation committees had been resolved as of 2016.²³⁶ According to Yasin Duman, debt liability, buying and selling property, inheritance cases and domestic violence are some of the most common cases brought before the reconciliation committees.²³⁷ The reconciliation committees also solve inter-ethnic or inter-religious conflicts, as will be illustrated below.²³⁸

4.2.3 The case of the el-Berkhan and el-Tay tribes

In the following, a case which was brought to the attention of the reconciliation committee of Serê Kaniyê will be presented in order to illustrate the proceedings of the reconciliation committees. The interviews were conducted by the RIC in North and East Syria. It concerns two families from the same city: the Kurdish el-Berkhan tribe and the Arabic el-Tay tribe. In 1973, a child from the el-Berkhan tribe pushed a child from the el-Tay tribe into a river, which resulted in the child drowning. The el-Tay tribe decided to seek revenge and killed a member of the el-Berkhan tribe.

²³³ Shilton, Dor, 'In the Heart of Syria's Darkness, a Democratic, Egalitarian and Feminist Society Emerges', in *Haaretz*, 9 June 2019. Accessed on 8 November 2019: <https://www.haaretz.com/middle-east-news/.premium.MAGAZINE-amid-syria-s-darkness-a-democratic-egalitarian-and-feminist-society-emerges-1.7339983>.

²³⁴ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrik. Conducted by the RIC on 27 April 2019. Received on 17 September 2019. See also Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 87 and Üstündağ, Nazan, 'Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State', *South Atlantic Quarterly*, vol. 115, no. 1, 2016, pp. 206-207.

²³⁵ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrik. Conducted by the RIC on 27 April 2019. Received on 17 September 2019. See also Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, pp. 87f.

²³⁶ Üstündağ, Nazan, 'Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State', *South Atlantic Quarterly*, vol. 115, no. 1, 2016, p. 207.

²³⁷ Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 87.

²³⁸ See also *ibid.*

The blood feud continued since then and all previous attempts of mediation between the tribes had proven to be fruitless. According to the families, the conflict was a source of sensitivity which had created a distance between the two. The reconciliation committee of Serê Kaniyê took notice of the sensitivities and asked one of its members, who is also a member of one of the families, why there was “bad blood” between the families. After having spoken to this person, the reconciliation committee, according to its member Medya, approached the families in an attempt to unite the two:

We, as the reconciliation committee of the city of Serê Kaniyê, don't just sit on our chairs, behind our desks, waiting for someone to come to us. No! We go out among our people, among our communes, we ask them, "what problems do you have?", what disagreements they have. Because our name is this, "the reconciliation committee" (in Kurdish - Komitêya Lihevhatin - literally, “the committee of bringing-together”).²³⁹

Indeed, according to Sheikho Meymo, headman of the Kurdish tribe, the reconciliation committee came to visit the families and asked them why there were problems between the two. According to Sheikho Meymo, the reconciliation was a step by step process which had lasted for two years, and the reconciliation committee came and went for house visits multiple times.²⁴⁰ After having taken both sides into account and proposing a reconciliatory solution, the reconciliation committee created a formal agreement which was signed by the two families:

Yes, we brought these two families together, and we created a formal agreement with them. We confirmed that they do not have any more protests within yourselves, or something left between them. That tomorrow, they can shake one another's hands, and approach one another with clean hearts. As the reconciliation committee, we want that they are able to come together with clean hearts, without rancor. Without conditions, in a spirit of love and peace. So we came together today, and signed this agreement, with representatives of both families. Each family said that they don't have any further problems, that there are no further conditions they wish to impose, that they want to live together in brotherhood, that this problem is lifted from them, the violence of a child against another - now it's enough.²⁴¹

²³⁹ Interview with Aytan Dayika Medya, member of the reconciliation committee in Serê Kaniyê. Conducted by the RIC in 2019. Received on 17 September 2019.

²⁴⁰ Interview with Sheikho Meymo, headman of the el-Berkhan tribe. Conducted by the RIC in 2019. Received on 17 September 2019.

²⁴¹ Interview with Aytan Dayika Medya, member of the reconciliation committee in Serê Kaniyê. Conducted by the RIC in 2019. Received on 17 September 2019.

In the words of Ahmed Issa al-Jelo, headman of the Arabic tribe, the “unpleasantness will be replaced with pleasantness and peace”. He described the two tribes as old families who are now one, “friends”, “children of the same city” and “brothers”.²⁴² According to Medya, no one is invited to the negotiating table without reconciliation. She claims that it is clear that natural justice and love is emerging among people as a consequence of reconciliation. According to her, “formal law alone is not always right” as it “cannot cover everything”. She elaborates and explains that they are not “content with the law alone”, and that they do not want the people to end up in a situation which angers them. Instead, the aim is to create peace and brotherhood among the people.²⁴³

4.2.4 Some numbers

In the following, some additional cases and numbers will be presented from the various reconciliation committees in North and East Syria. Unfortunately, there does not exist any systematic survey or data of the work of the reconciliation committees.²⁴⁴ The cases presented below illustrate some of the work of the reconciliation committees in North and East Syria and could serve as a small indicator of their case resolution rate as well as the most common types of cases brought before the committees.

There are reports of other blood feuds similar to the one described above, some lasting over several decades, which have been peacefully resolved by the reconciliation committees in North and East Syria. In Xizêne, Kobani, a 27-year-old blood feud, which had caused a total of eight murders, ended in 2018 after the reconciliation committee of Kobani, along with some members of TEV-DEM and the DAA of the Euphrates region, intervened.²⁴⁵ In the village of Qeremox, Kobani, a blood feud erupted in 2006 between two families. The reconciliation committee of Kobani, along with some “influential people” from a neighboring town, successfully reconciled the two families after a two-year long process of finding a solution to their problems.²⁴⁶ In the city of Kobani, a schoolboy had killed another child who went to the same school. By intervening at an early stage, the reconciliation committee of the city, together with TEV-DEM and the DAA, managed to

²⁴² Interview with Ahmed Issa al-Jelo, headman of the el-Tay tribe. Conducted by the RIC in 2019. Received on 17 September 2019.

²⁴³ Interview with Aytan Dayika Medya, member of the reconciliation committee in Serê Kaniyê. Conducted by the RIC in 2019. Received on 17 September 2019.

²⁴⁴ Any systematic surveys or data have not been found for the purpose of this thesis. This was also concluded in an email conversation with researcher Thomas McClure from the RIC on 17 September 2019.

²⁴⁵ ANF, ‘Alternative to the Courts: Reconciliation Committees’, 13 June 2018. Accessed on 8 November 2019: <https://anfenglishmobile.com/rojawa-northern-syria/alternative-to-the-courts-reconciliation-committees-27413>.

²⁴⁶ Ibid.

prevent any further escalation of the conflict by meeting the families affected and reconciling the two.²⁴⁷ In 2017, a four year long blood feud, which had resulted in the killing of two sons from one family, ended after the case was brought to the reconciliation committee of Girê Spî, which resolved the blood feud between the families.²⁴⁸

As for the reconciliation committee of the Afrîn region, it was reported by local journalists in April 2019 that a total of 1047 cases had been referred to the committee of Shehba. This number includes 404 cases which were related to women's issues. Around 1000 of the cases had been resolved by the committee whereas around 16 cases were under follow-up. According to the report only "a few" cases had been referred to the court system.²⁴⁹ In July 2018, a reconciliation committee was formed in the al-Shadadi district of al-Hasakeh in the Jazira region. According to reports, it had resolved 500 out of 800 referred cases during a period of two months without having to send the cases to the court system. These cases mostly revolved around land, property, inheritance and vengeance issues.²⁵⁰ In December 2015, it was reported that the reconciliation committee in Girê Spî, which was formed in August the same year, had resolved 250 cases. It is reported that these cases revolved around family, tribal, land, money and vengeance issues.²⁵¹ The reconciliation committee in Serê Kaniyê, which was established by TEV-DEM in September 2012, had resolved 1977 cases as of May 2015.²⁵² In Koçerat, Dêrik, the reconciliation committee, which was established with the help of TEV-DEM, had resolved more than 300 cases as of January 2015. Most cases revolved around family, property and land issues. According to the committee, 21 cases had been referred to the court system.²⁵³

Regarding the women's reconciliation committees in North and East Syria, it is reported that the committee of Rimele, Raqqa, had resolved around 300 appeals by women during a 1,5-year-period.

²⁴⁷ Ibid.

²⁴⁸ ANHA, 'Reconciliation Commission resolves a 4-year vendetta case', 11 December 2017. Accessed on 11 November 2019: <https://en.hawarnews.org/reconciliation-commission-resolves-a-4-year-vendetta-case/>.

²⁴⁹ ANHA, 'Reconciliation Committee solved 1,000 cases in Afrin in 1 year', 20 April 2019. Accessed on 11 November: <https://www.hawarnews.com/en/haber/reconciliation-committee-solved-1000-cases-in-afrin-in-1-year-h8444.html>.

²⁵⁰ ANHA, "'Al- Shadadi Reconciliation Committee" means to resolve outstanding issues', 11 September 2018. Accessed on 11 November 2019: <https://www.hawarnews.com/en/haber/al-shadadi-reconciliation-committee-means-to-resolve-outstanding-issues-h3685.html>.

²⁵¹ ANHA, 'Reconciliation Committee replaces courts in Girê Spî', 18 December 2015. Accessed on 11 November 2019: <https://en.hawarnews.org/reconciliation-committee-replaces-courts-in-gire-spi/>.

²⁵² ANHA, 'Reconciliation committee solves 1977 cases in Serêkaniyê', 8 May 2015. Accessed on 11 November 2019: <https://en.hawarnews.org/reconciliation-committee-solves-1977-cases-in-serekaniye/>.

²⁵³ ANHA, '300 cases resolved by Reconciliation Committee in Koçerat', 23 January 2015. Accessed on 11 November 2019: <https://en.hawarnews.org/300-cases-resolved-by-reconciliation-committee-in-kocerat/>.

These cases were mostly related to “divorces and children”.²⁵⁴ In al-Basira, Deir ez-Zor, the women’s reconciliation committee, which was established in May 2018, had resolved 675 out of 700 referred cases as of March 2019.²⁵⁵ In Salihye, al-Hasakeh, nine cases out of 25 were resolved by the women’s reconciliation committee during a one-month-period. Ten cases were still being processed by the committee and the remaining six cases had been referred to the court system.²⁵⁶ In Tabqa, the local women’s reconciliation committee had solved around 600 cases which were related to family issues such as divorce, as of October 2017.²⁵⁷ Finally, it was reported in September 2018 that in Girkê Legê, 114 cases had been referred to the women’s reconciliation committee since the beginning of the year. Most of these cases revolved around marital and divorce issues.²⁵⁸

4.2.5 Analysis and discussion

Upon examination of the system of reconciliation committees in North and East Syria, various distinguishing elements seem to emerge. Firstly, it is clear that the reconciliation committees are consensus-oriented in the sense that solutions cannot be imposed upon either party to the conflict. Instead, solutions are proposed to the parties who can then choose to either accept or reject them. This eliminates any element of retributive or punitive justice which presupposes force. Instead, the solutions which are put forward by the reconciliation committees are oriented towards restorative elements of justice such as voluntary compensation or education. By engaging both parties in discussions and reaching solutions through consensus, the conflicts have been given back to their rightful owners – the parties directly involved. This has been made possible for several reasons, such as the elimination of threat of punishment (which enables discussions), as well as the absence of lawyers, who are consequently not able to steal the conflicts. Furthermore, legal regulations can be described as stealing conflicts in the same sense as lawyers do, by imposing what is legal and non-legal and thus what ought to be imposed and when. Thus, the absence of legal regulations, or

²⁵⁴ ANF, ‘Women solve all their issues in their own assemblies’, 3 June 2019. Accessed on 11 November 2019: <https://anfenglishmobile.com/women/women-solve-all-their-issues-in-their-own-assemblies-35370>.

²⁵⁵ ANF, ‘Women of Deir ez-Zor organize’, 13 March 2019. Accessed on 11 November 2019: <https://anfenglishmobile.com/women/women-of-deir-ez-zor-organize-33571>.

²⁵⁶ ANHA, ‘Center of Education and Science for Women settles 9 cases’, 28 August 2015. Accessed on 11 November 2019: <https://en.hawarnews.org/center-of-education-and-science-for-women-settles-9-cases/>.

²⁵⁷ ANHA, ‘Women Council’s Reconciliation Committee in al-Tabqa protected 600 families from disintegration’, 14 October 2017. Accessed on 11 November 2019: <https://en.hawarnews.org/women-councils-reconciliation-committee-in-al-tabqa-protected-600-families-from-disintegration/>.

²⁵⁸ ANHA, ‘Reconciliation committee in Girkê Legê is interested in social issues away from judicial decisions’, 5 September 2018. Accessed on 11 November 2019: <https://www.hawarnews.com/en/haber/reconciliation-committee-in-girk-leg-is-interested-in-social-issues-away-from-judicial-decisions-h3553.html>.

what Medya refers to as formal law, further transfers the ownership of the conflict from the lawyers to the parties involved. All in all, the absence of lawyers and legal regulations decreases the amount of specialization within the proceedings, which in turn decreases the amount of professionalization of conflict resolution processes. According to Christie, professionalization occurs when the “specialists get sufficient power to claim that they have acquired special gifts, mostly through education, gifts so powerful that it is obvious that they can only be handled by the certified craftsman”.²⁵⁹ Therefore, the absence of lawyers and legal regulations within the proceedings of the reconciliation committees contributes to the deprofessionalization of conflicts. By turning to the reconciliation committees instead of using legal regulations and lawyers, or taking matters to court, the committees are ensuring that the conflict is not stolen from the parties who are directly involved in it and who are able to reach a satisfactory solution with the help of the committees.

Because the reconciliation committees are consensus-oriented and aimed towards resolving conflicts, legal regulations which impose a given and enforceable solution simply serve no purpose, as they are “not always right” and “cannot cover everything”.²⁶⁰ Instead, there seem to exist non-written technical regulations, or guiding rules, which regulate the proceedings of the reconciliation committees. However, they are not binding, and the reconciliation committees are free to decide how to take on a specific case depending on the certain circumstances:

As a woman, when you go to visit people, they have to listen. According to our culture, it's something very serious to refuse a cup of tea to a woman. Many times, there was a problem and we women went first, and asked to enter the house. Of course, they could not say no. Then we were welcomed inside, and there came the opportunity to discuss.²⁶¹

In these guiding rules, principles and norms which organize the work of the reconciliation committees, a singleness of purpose can be identified, which is the survival and stability of societies in North and East Syria. In more abstract terms, it is mutual benefit by mutual aid:

²⁵⁹ Christie, Niels, ‘Conflicts as property’, *The British Journal of Criminology*, vol. 17, no. 1, 1977, p. 11.

²⁶⁰ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrik. Conducted by the RIC on 27 April 2019. Received on 17 September 2019.

²⁶¹ Interview with Aytan Dayika Medya, member of the reconciliation committee in Serê Kaniyê. Conducted by the RIC in 2019. Received on 17 September 2019.

We (the reconciliation committee) saw this (the conflict), and saw that as an act of humanity, for our people, if we could unite these two families, we could give support to our people to tackle the difficulties we face in our city - and to all of the people of Syria.²⁶²

Because 'civil war' among ourselves is heavier than war coming from external enemies. That's the truth. We must put right what's happening inside to put right what's coming from outside. There's an Arabic saying: 'when our people are not together, have fallen apart, and look at one another without love - how can we achieve unity against our enemies?' How can we achieve unity against those people who want to seize our cities?²⁶³

Therefore, reconciliation is a means to an end, id est social peace and building strong communities. This is also illustrated by the social contract of 2016 which states that social justice is considered the basis of organization and self-protection of society.²⁶⁴ In addition, Medya clearly explains that it is necessary for the people of North and East Syria to move beyond their internal problems, and that they must “stand united against those people who want to come and rule over us”.²⁶⁵ To this day, Syria is in a state of civil war, and where there is social unrest there is a greater vulnerability to external threats and an increased risk of internal violence. Legal regulations and traditional courts are not primarily concerned with problem-solving and reconciliation. Their primary concern is reaching a legal solution rather than a social solution. Additionally, the responsibilities of the courts end with their rulings, whereas the reconciliation committees do follow-up work and seek, for example, to end patriarchal violence as a phenomenon with the help of civil society organizations such as Kongreya Star²⁶⁶, Mala Jinê (Women’s House) and Asayîşa Jinê (Women’s Security Forces).²⁶⁷

Another factor which transfer the ownership of the conflict to the parties involved is the non-mobility of locals and the weaker segmentation of societies along geographic or class-like lines when compared to Western societies. Syria, and the Northern and Eastern regions of Syria in particular, has not underwent industrialization and urbanization to the same extent as countries in

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Art. 68(1) of the social contract of 2016.

²⁶⁵ Interview with Aytan Dayika Medya, member of the reconciliation committee in Serê Kaniyê. Conducted by the RIC in 2019. Received on 17 September 2019.

²⁶⁶ Kongreya Star is an umbrella organization which was founded in 2005. It consists of different women’s organizations in North and East Syria.

²⁶⁷ Duman, Yasin, ‘Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria’, *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 87.

Western Europe.²⁶⁸ Many people live in rural areas and smaller cities where the social lives of individuals are more intertwined, as opposed to the depersonalized social lives of Western societies which Christie identifies.²⁶⁹ In North and East Syria, individuals are to a larger extent linked to each other in close social networks. In addition, because the reconciliation committees are organized on the residential, neighborhood and district level, the parties involved in a conflict are often for example family members, relatives, neighbors or former friends. This enables reconciliation as opposed to a situation where the parties involved in a conflict are strangers, which according to Christie limits the amount of information we know about the opposing party, thus creating limited possibilities for both understanding and predicting their behavior.²⁷⁰

Additionally, after having studied the case of the el-Berkhan and the el-Tay tribes, it is clear that the proceedings of the reconciliation committees are particularly orientated towards elements of non-domination, empowerment and respectful listening, in accordance with the criteria of Braithwaite. They are non-dominating in the sense that all who are affected by a specific case and wish to attend a proceeding have a say in the matter. Not only are stakeholders able to attend proceedings, they are actively sought out by the reconciliation committees in order to facilitate the hearing of both sides of a conflict and enable fruitful discussions. The reconciliation committees meet with parties and witnesses several times in different locations, such as in their homes, which also enables the respectful hearing of both parties.²⁷¹ As for the criterion of empowerment, there are several elements which guarantee the empowerment of victims. Whenever cases of domestic violence occur, the reconciliation committees ask for the specific contribution and input of women's organizations such as Kongreya Star. These organizations are responsible for supporting victims of domestic violence by offering protection and accommodation in Mala Parastine Jinê, which roughly translates to Women's Protection Houses.²⁷² These mechanisms can be described as empowering the victim while also negating elements of domination within proceedings. The victim is further empowered by being able to reject any proposed solutions from the committee, if

²⁶⁸ Instead, it has been subject of what can be described as a centralization of agriculture. See Internationalist Commune of Rojava, *Make Rojava Green Again*, Dog Section Press, London, 2019, pp. 65ff and p. 81.

²⁶⁹ Christie, Niels, 'Conflicts as property', *The British Journal of Criminology*, vol. 17, no. 1, 1977, p. 6.

²⁷⁰ Ibid.

²⁷¹ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 183.

²⁷² Duman, Yasin, 'Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria', *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 86.

the victim is not satisfied, and taking the matter to the court system where decisions can be enforced.²⁷³

All in all, the reconciliation committees of North and East Syria can be described as systematically restorative or restorative-oriented. As will be shown in the following, however, there are mechanisms which enable for parties of a conflict to take matters to courts where there are greater tendencies towards retributive justice. Elements of restorative justice are, however, prominent even within the court system.

4.3 Court system

According to the above, conflicts which involve more serious crimes, id est “violations of human rights”, such as killings or grand larceny, are directly referred to the court system.²⁷⁴ In addition, cases which are not solved within the system of reconciliation committees can be referred to the court system. Ehme of the reconciliation committee in Dêrîk explains that after a case has been referred to the highest level of reconciliation committees, which is the district level, and it has still not been resolved, it is possible to write a report and send the case to the court system of the relevant area in order to reach an enforceable decision there.²⁷⁵ It is the parties involved in the conflict who decide if they want to pursue a legal case in the courts. The case will be referred to the courts even if only one of the sides decides to pursue the matter within the court system.²⁷⁶

4.3.1 Structure and organization

According to the above, the justice system in North and East Syria can be described as a dual system consisting of reconciliation committees on the one side and a court system on the other side. In addition to this, according to Robin Fleming from the RIC, there are two separate kinds of courts in North and East Syria. One is a civil court, the Dadgeha Gel (People’s Court), and the

²⁷³ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019.

²⁷⁴ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019. See also Üstündağ, Nazan, ‘Self-Defense as a Revolutionary Practice in Rojava, or How to Unmake the State’, *South Atlantic Quarterly*, vol. 115, no. 1, 2016, p. 207.

²⁷⁵ Interview with Xelid Ehme, member of the reconciliation committee of in Dêrîk. Conducted by the RIC on 27 April 2019. Received on 17 September 2019. See also Duman, Yasin, ‘Peacebuilding in a Conflict Setting: Peace and Reconciliation Committees in De Facto Rojava Autonomy in Syria’, *Journal of Peacebuilding & Development*, vol. 12, no. 1, 2017, p. 87.

²⁷⁶ Ibid.

other is the Dadgeha Parastina Gel (People's Protection Court).²⁷⁷ The People's Court solve serious cases which are directly referred to the court system, as well as cases which have not been resolved within the system of reconciliation committees. According to Fleming, the People's Protection Courts are reserved for cases of terrorism and they mainly try captured IS-members. However, they only try domestic IS-members, which means that foreign IS-members are not tried anywhere in North and East Syria at the time of writing.²⁷⁸

The People's Court exist on the district level, whereas the People's Protection Courts exist on the regional level.²⁷⁹ While it is possible to bring a case to an appeals court from both the People's Court and the People's Protection Court, it is not clear how many appeals courts (Dadgeha Istinaf) there are at the time of writing.²⁸⁰ As of 2016, there were four appeals courts in North and East Syria: two in the Jazira region, one in Kobani and one in Afrîn.²⁸¹ The People's Courts have been set up by the justice commission in each district, and the judges who sit in the courts are nominated by a justice commission or anyone who lives within the relevant jurisdiction. It is the justice commissions who advise on nominations, and the number of people elected for each People's Court differs depending on the district.²⁸² Members of court need not have a juridical background, however, in order to sit in the appeals courts, one must be a jurist.²⁸³

²⁷⁷ Conversation with researcher Robin Fleming from the RIC on WhatsApp. Conducted on 3 October 2019.

²⁷⁸ Ibid. See also Hesên, Ferhat, McClure, Thomas, Steinhardt, Nina, *Bringing ISIS to justice, Towards and international tribunal in North East Syria*, Rojava Information Center, North and East Syria, 2019, p. 12 and Sarya, Bêritan, 'Divê çeteyên DAÎŞ'ê li dadgeha navneteweyî bèn darizandin', in *ANF*, 12 April 2019. Accessed on 11 November 2019: <https://anfkurdi.com/rojawa-sUriye/dive-ceteyen-daIS-e-li-dadgeha-navneteweyi-ben-darizandin-112107>. See also Sly, Liz, 'Captured ISIS fighters get short sentences and art therapy in Syria', in *Washington Post*, 14 August 2019. Accessed on 11 November 2019: <https://www.washingtonpost.com/world/2019/08/14/captured-isis-fighters-get-short-sentences-art-therapy-syria/>.

²⁷⁹ Conversation with researcher Robin Fleming from the RIC on WhatsApp. Conducted on 3 October 2019. See also Little, Mathew, 'Democratic Revolution in Rojava', in *Trise*, 27 August 2018. Accessed on 11 November 2019: <http://trise.org/2018/08/27/democratic-revolution-in-rojava/>. See also Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 180.

²⁸⁰ Hesên, Ferhat, McClure, Thomas, Steinhardt, Nina, *Bringing ISIS to justice, Towards and international tribunal in North East Syria*, Rojava Information Center, North and East Syria, 2019, p. 12. See also Arraf, Jane, 'Revenge Is For The Weak: Kurdish Courts In Northeastern Syria Take On ISIS Cases', in *NPR*, 29 May 2019. Accessed on 11 November 2019: <https://www.npr.org/2019/05/29/727511632/revenge-is-for-the-weak-kurdish-courts-in-northeastern-syria-take-on-isis-cases>.

²⁸¹ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 180.

²⁸² Ibid. and ANHA, 'Dadgeha Gel di meh û nîvekê de 26 doz çareser kirine', 6 July 2015. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gel-di-meh-u-niveke-de-26-doz-careser-kirine/>. See also ANHA, 'Dadgeha Gel a Tirbespiyê 2500 dozên welatiyan çareser kirin', 30 January 2015. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gel-a-tirbespiye-2500-dozen-welatiyan-careser-kirin/>.

²⁸³ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 180.

In the city of Tel Tamir, there is a People's Court on the district level which is open daily from eight am to three am. It was reported in July 2015 that the court consisted of nine people which represented each constituency within the district. Out of these nine people it was reported that two worked "in the court, three in the prosecution, three in the court panel and one as decision-maker". Four of these nine people were women.²⁸⁴ The People's Court in the city of Tirbespiyê was reported to consist of eleven people as of January 2015, four of whom were women. It was a mixed group of Kurds, Arabs and Syrians. According to the interviewee, who was the city prosecutor at the time, most members of the People's Court in Tel Tamir were lawyers and all had relevant experience in the field of law.²⁸⁵

4.3.2 Procedure

It is not entirely clear what laws govern the work of the People's Courts. For example, in April 2015, before the social contract of 2016 was enacted, the legislative assembly of the Jazira region held a meeting where they discussed and approved a new law which regulates the work of the People's Court as well as mechanisms for opening cases and complaints. The legislation had been presented by the regional Justice Council and is limited to the work of the People's Courts within the Jazira region. In another report from 2015, a prosecutor in Tirbespiyê explains that in addition to the legislation that is enacted by the DAAs, the People's Court of the city also apply ancient social traditions when resolving cases.²⁸⁶ In December 2017, however, it was reported that the work of the People's Court (which is on the district level) was based on a number of laws which had been issued on the district level by the legislative council in the city of Girê Spî.²⁸⁷

As has been indicated in the sections above, the courts are able to sentence people to prison. The death penalty has been abolished and the maximum penalty of life time in prison is set to 20 years.²⁸⁸

²⁸⁴ ANHA, 'Dadgeha Gel di meh û nîvekê de 26 doz çareser kirine', 6 July 2015. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gel-di-meh-u-niveke-de-26-doz-careser-kirine/>.

²⁸⁵ ANHA, 'Dadgeha Gel a Tirbespiyê 2500 dozên welatîyan çareser kirin', 30 January 2015. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gel-a-tirbespiye-2500-dozen-welatîyan-careser-kirin/>.

²⁸⁶ Ibid.

²⁸⁷ ANHA, 'Prosecution, Investigation Committee in Ain Issa Consolidation of Social Justice', 22 December 2017. Accessed on 11 November 2019: <https://en.hawarnews.org/prosecution-investigation-committee-in-ain-issa-consolidation-of-social-justice/>.

²⁸⁸ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 182, Hesen, Ferhat, McClure, Thomas, Steinhardt, Nina, *Bringing ISIS to justice, Towards and international tribunal in North East Syria*, Rojava Information Center, North and East Syria, 2019, p. 12 and Arraf, Jane, "Revenge Is For The Weak': Kurdish Courts In Northeastern Syria Take On ISIS Cases", in NPR,

Arrest warrants are issued by the People's Court and sent to the Asayîş who are responsible for the execution of the judgement.²⁸⁹ Prisons have been reconceived as educational institutions with the ambition to transform them into rehabilitative centers.²⁹⁰ According to officials, the goal is to rehabilitate and reintegrate many of the captured IS-members, and according to reports, former fighters who have not been found guilty of any major crimes receive "light sentences".²⁹¹ Apart from prison, people who have been found guilty of a crime can be sentenced to work in cooperatives or public services, rehabilitative education, social isolation or boycott if a party has a shop.²⁹² According to a member of a justice commission, offering adequate prison conditions is of special concern.²⁹³ According to reports, the justice system in North and East Syria is aspiring to international human rights standards.²⁹⁴ In the prison of Qamişlo, prisoners are able to attend art classes, visit a dentist and a barber. It is also reported that prisoners can choose to educate themselves on the works of Öcalan, which are available in the prison classroom. Some of those who embrace the ideology of democratic confederalism are given jobs within the SDF or the autonomous administrations when they are released from prison.²⁹⁵

It is also reported that members of civil society and the reconciliation committees work towards the release of prisoners. In Shehba, Afrîn, 71 prisoners were released in December 2017 as a result of the work of local opinion leaders, the local reconciliation committee and the Afrîn Asayîş. During a press conference, an official described the prisoners as "deceived children of the

29 May 2019. Accessed on 11 November 2019: <https://www.npr.org/2019/05/29/727511632/revenge-is-for-the-weak-kurdish-courts-in-northeastern-syria-take-on-isis-cases>. See also Sly, Liz, 'Captured ISIS fighters get short sentences and art therapy in Syria', in *Washington Post*, 14 August 2019. Accessed on 11 November 2019: <https://www.washingtonpost.com/world/2019/08/14/captured-isis-fighters-get-short-sentences-art-therapy-syria/>.

²⁸⁹ ANHA, 'Dadgeha Kobanê çalak dibe', 15 April 2015. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-kobane-calak-dibe/>.

²⁹⁰ Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, pp. 182-183.

²⁹¹ Sly, Liz, 'Captured ISIS fighters get short sentences and art therapy in Syria', in *Washington Post*, 14 August 2019. Accessed on 11 November 2019: <https://www.washingtonpost.com/world/2019/08/14/captured-isis-fighters-get-short-sentences-art-therapy-syria/>. Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, pp. 182ff.

²⁹² Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, pp. 182.

²⁹³ *Ibid.*, p. 183.

²⁹⁴ Hesén, Ferhat, McClure, Thomas, Steinhardt, Nina, *Bringing ISIS to justice, Towards and international tribunal in North East Syria*, Rojava Information Center, North and East Syria, 2019, p. 38 and Arraf, Jane, 'Revenge Is For The Weak': Kurdish Courts In Northeastern Syria Take On ISIS Cases', in *NPR*, 29 May 2019. Accessed on 11 November 2019: <https://www.npr.org/2019/05/29/727511632/revenge-is-for-the-weak-kurdish-courts-in-northeastern-syria-take-on-isis-cases>.

²⁹⁵ Sly, Liz, 'Captured ISIS fighters get short sentences and art therapy in Syria', in *Washington Post*, 14 August 2019. Accessed on 11 November 2019: <https://www.washingtonpost.com/world/2019/08/14/captured-isis-fighters-get-short-sentences-art-therapy-syria/>.

region”.²⁹⁶ In Tabqa, seven individuals who had been found guilty of aiding and abetting crimes committed by IS, were released from prison in March 2019 as a result of arbitration from clan sheiks and local opinion leaders. According to a member from the Tabqa reconciliation committee and clan member Abdullah Mudehi, the released prisoners were considered to be “worthy of the decision”.²⁹⁷ In Girkê Legê, five individuals who had been found guilty of different charges were released from prison in May 2016 as a result of an amnesty decision made by the People’s Court in the city.²⁹⁸ In Qamişlo, the People’s Court released four individuals from prison in December 2016. They were described as having apologized for their crimes.²⁹⁹

Unfortunately, there are no systematic surveys or data of the work of the People’s Courts either. However, it can be noted that the People’s Court in Tîrbespiyê, Jazira, had resolved around 2500 out of 3200 referred cases as of January 2015.³⁰⁰

4.3.3 Analysis and discussion

Upon examination of the court system, one might question the separation between the reconciliation committees and the court system. Although more severe cases, such as killings, are said to be referred to the court system, it is still not entirely clear what constitutes a more severe case. For example, it was reported in May 2017 that the People’s Court in Afrîn had tried a former Asayîş member for killing a young man from the town of Tîl el-Deman. He was sentenced to life imprisonment (id est 20 years in prison).³⁰¹ One could simply say that murder cases are referred to the court system because they are too severe to be resolved by the reconciliation committees. In essence, this is a paternalistic argument. On the other hand, as has been presented above, there are various reports which show that the reconciliation committees resolve cases of blood feuds and revenge killings. These feuds sometimes involve more than one killing and can last for several decades. Thus, although there is a separation of competence between the reconciliation committees

²⁹⁶ ANF, ‘71 prisoners released in Shehba’, 26 December 2017. Accessed on 11 November 2019: <https://anfenglishmobile.com/rojava-syria/71-prisoners-released-in-shehba-23857>.

²⁹⁷ ANF, ‘7 arrestees released in Tabqa’, 5 March 2019. Accessed on 11 November 2019: <https://anfenglishmobile.com/rojava-syria/7-arrestees-released-in-tabqa-33376>.

²⁹⁸ ANHA, ‘Dadgeha Gel 5 girtû serbest berda’, 3 May 2016. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gel-5-girti-serb/>.

²⁹⁹ ANHA, ‘Dadgeha Giştû 4 girtû berda’, 25 December 2016. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gisti-4-kesen-ku-hewldidan-tevleheviyen-cebikin-berda/>.

³⁰⁰ ANHA, ‘Dadgeha Gel a Tîrbespiyê 2500 dozên welatîyan çareser kirin’, 30 January 2015. Accessed on 11 November 2019: <https://hawarnews.org/ku/dadgeha-gel-a-tîrbespiye-2500-dozen-welatîyan-careser-kirin/>.

³⁰¹ ANHA, ‘Kujer ji aliyê dadgeha gel ve hate darizandin’, 14 May 2017. Accessed on 11 November 2019: <https://hawarnews.org/ku/kujer-ji-aliye-dadgeha-gel-ve-hate-darizandin/>.

and the court system, it is not entirely clear what case characteristics are the determinant factors in assessing whether a case is referred to a reconciliation committee or a People's Court.

The split between the People's Court and the People's Protection Courts is also of interest. Due to the lack of data, it is not possible to say why the administrations of North and East Syria have chosen to separate the two. It is not unlikely, however, that the reason for this is to allocate necessary resources and competence to terror cases that are deemed to be more severe and of a bigger security concern than the civil cases which are usually resolved in the People's Court. In other words, the split is motivated by security concerns, which would explain the names for the two different types of courts. Dadgeha Gel translates to the People's Court, which indicates that the Court exists for the people in order to resolve the people's conflicts, whereas the Dadgeha Parastina Gel translates to the People's Protection Court, which indicates that the court exists for the people in order to protect them from whatever people or cases that are tried there.

As for the People's Courts, it is worth noting that they primarily exist on the district level, which is due to the fact that they are established by the justice commission within each district council. This is a logical outcome of the model of administration that is implemented in North and East Syria, which focuses on decentralized self-administration. Both the district council and the members of the People's Court are subject to election by the people living in the district, which means that the people sitting in the People's Courts are democratically controlled to a relatively large degree.

With regards to the legislation that is applied in the courts, it must first be pointed out that more data needs to be collected in order to be able to establish what law is de facto applied in the court system, be it, for example, federal, regional, district, or customary law. As has been indicated by the reports mentioned above, several sources of law have been used within the court system, such as legislation enacted by the original three DAAs (when the old social contract was still valid) as well as ancient traditions. However, according to the most recent report, which dates back to December 2017, the People's Court in Girê Spî applied laws which had been enacted by the legislative assembly within its district. This report came after the social contract of 2016 had been enacted. Applying district law in courts is the inevitable outcome of formally recognizing the decision-making powers of the district councils in the new social contract as law. It also seems to be most systematically coherent alternative, considering the fact that the People's Court are primarily established on the district level by the district justice commissions. Applying the

legislation of any higher level of administration in the district courts, such as regional legislation, would stand in stark contrast with the political model of North and East Syria which aspires to, and is built on, the idea of decentralized self-administration and autonomy. It follows from this that regional legislation should be applied in regional courts such as appeals courts or the People's Protection Court, however, it is not clear whether or not this is the case.

From a legal pluralist point of view, this means that there are separate sources of law which respectively regulate the work of the courts within each district or region. This leads to a situation where, for example, the procedure of the People's Court in Girê Spî differs from the procedure of the People's Court in Kobanî. At first sight, this system might seem disorganized and incoherent. At the same time, however, it has a stronger democratic base due to the fact that the legislation is enacted by a political administration which is on the same level as the court and is elected by the people living in the relevant area. On the other hand, it is important to emphasize that the courts, unlike the reconciliation committees, apply law. Furthermore, although members of court need not have a juridical background, it is reported that several members of the People's Court are trained professionals, and in order to be a member of the appeals court, one must be a jurist. The combination of law being applied by lawyers means that the courts are professionalized to a much higher degree than the reconciliation committees. This leads to a proprietization of conflicts and an increased risk of lawyers stealing the conflicts from the parties that are directly involved in them. Since 2014, the People's Courts have been criticized for being small groups of members who are making decisions about the people on trial, instead of engaging a broader social population. According to their critics, the People's Courts were starting to resemble courts in "existing hierarchical justice systems".³⁰²

The fact that the courts are applying law inevitably implies domination, or force, as opposed to consensus, because a legal solution is imposed upon the person on trial. This enables the use of punishment, which is the key difference between the People's Courts and the reconciliation committees – the latter are based on consensus and unable to sentence a person to prison, whereas the first deliver enforceable verdicts. Despite this fact, it is clear from the above that there exists an outspoken aspiration to rehabilitate, rather than to punish, individuals who have been found guilty of committing crimes. Several women from various women's organizations have expressed

³⁰² Knapp, Michael, Flach, Anja and Ayboğa, Ercan, *Revolution in Rojava – Democratic Autonomy and Women's Liberation in Syrian Kurdistan*, Pluto Press, London, 2016, p. 183.

a wish to “move away from prison and other non-restorative forms of punishment”.³⁰³ Therefore, although the court system revolves around retributive justice, there are several elements of restorative justice, such as providing convicted persons with therapy, education or sentencing them to work in cooperatives or public services. As for the reported cases of social isolations and boycotts, these sanctions cannot be described as restorative or reconciliatory measures due to the fact that they do not aim towards the rehabilitation of the person. At the same time, however, they are not wholly retributive or punitive in the conventional sense because locals are simply choosing not to interact with a specific person.

Due to the lack of data, it is difficult to compare the procedures of the People’s Courts with the Braithwaite criteria. In relation to accountability, one could say that the people who are put on trial are held accountable for their crimes by the imposition of punishment. This, however, is only the case insofar as the parties that are directly involved in a given situation are not feeling alienated from the court process. As for appealability, it has been reported that a person who has been found guilty of committing a crime has the possibility to refer the case to an appeals court, although it is not clear how many appeals courts there are. As for the respect for fundamental human rights, it is difficult to assess to what extent this criterion is fulfilled. According to AANES official and lawyer Lokman Ibrahim, however, many international human rights organizations have visited the prisons in North and East Syria and affirmed that the treatment of suspects and prisoners are in accordance with human rights standards.³⁰⁴

Finally, it is important to point out that one should not attempt to classify a justice system or a procedure as this or that based on the extent to which it fulfills a certain criterion. An institution, such as the court, is never entirely dominating or non-dominating (or consensus-oriented), which means that the presence of either retributive justice or restorative justice elements are not to be understood as contradictions within a uniform system. Rather, they are tendencies which the court system gravitates towards to certain degrees. If there are mechanisms which enable the use of punishment, and if these mechanisms are being used by the court, then the court system will of course gravitate towards retributive justice, just as it will gravitate towards restorative justice if there

³⁰³ Magpie, Jo, ‘Regaining hope in Rojava’, in *openDemocracy*, 6 June 2016. Accessed on 11 November 2019: <https://www.opendemocracy.net/en/north-africa-west-asia/regaining-hope-in-rojava/>.

³⁰⁴ Sarya, Bêrîtan, “Divê çeteyên DAÎŞ’ê li dadgeha navneteweyî bên darizandin”, in *ANF*, 12 April 2019. Accessed on 11 November 2019: <https://anfkurdi.com/rojawa-sUriye/dive-ceteyen-daIS-e-li-dadgeha-navneteweyi-ben-darizandin-112107>.

exist mechanisms which are being used for rehabilitation and imposing more lenient punishments. This duality also applies to the reconciliation committees or any other institution of law.

5. Final reflections and further research

In concluding this thesis, some final observations and points ought to be made. As has been pointed out in the previous, the legislative system in North and East Syria can be described as a strong legal pluralist system with different sources of law and a strong democratic base. These laws are enacted by different self-administrative institutions which are differentiated by the level and region in which they operate, moving from the commune on the residential level to the Democratic Peoples' Conference on the federal level. Although the social contract of 2016 formalizes legislative powers on the district, regional and federal levels of governance, it does not preclude the fact that North and East Syria can be describe as a strong legal pluralist society. This is due to the fact that the legislative powers of, for example, a district council do not trickle down from any federal institution, rather, they emanate from the basis of the district area which is its people, capable of making their own decisions regarding their own area. Thus, legislation made by higher levels of administration are to a large extent not imposed upon people living in different regions, districts, and so on, in North and East Syria. Instead, the people of North and East Syria enact their own legislation based on their own conviction of what is needed in their respective communities. This was already the fact before the old social contract of 2014 was enacted, and the institutions for this type of self-administration have continuously been put into place since the outbreak of the Syrian civil war in 2011.

The influences of the legislative system in North and East Syria are clear. The system can be described as democratic confederalism in practice, which builds on a confederation of decentralized and local institutions of self-administration. It is therefore an attempt to organize society without a state. The influences are also illustrated by the fact that there exists a parallel women's council system, which adheres Öcalan's call for a separate women's organization and movement. All of this directly impacts what law in North and East Syria is. Although officially formalized and recognized in the new social contract of North and East Syria as law in the more traditional sense, it is clear that law, or whatever one would choose to call it, primarily is the de facto decision-making power within each local council, and most importantly, it is the already existing and regulated collective life amongst people, which is always under constant development.

As for the reconciliation committees, these can be described as consensus-oriented institutions based on restorative justice. Not only are they democratic due to their focus on consensus, but also due to the fact that the people who live in the area in which a reconciliation committee works are able to elect its members by voting. In addition, these institutions are characterized by the absence

of state, law and lawyers. Although the courts, on the other hand, are characterized by a presence of law and lawyers, they are similar to the reconciliation committees in the sense that the people living in an area in which a court works are able to elect its members by voting. On the other hand, the courts are able to issue enforceable verdicts, such as sentencing people on trial to prison. This marks a key difference between the reconciliation committees and the courts, despite the fact that there are elements of restorative justice within the court system. The combination of lawyers sentencing people to prison by applying law may lead to people feeling alienated by the courts, as has been reported, despite the fact that legislation is enacted on the local level. This is likely due to the fact that the environment of the courts, by applying laws and having jurists as members of courts, is much more professionalized than that of the reconciliation committees. This is an issue that needs to be continuously addressed by the local administrations in North and East Syria. If not, the courts are at a risk of losing their legitimacy.

Both the reconciliation committees and the courts are characterized by decentralization and their autonomous relationship between each other. They have been established by local councils through their respective justice commissions all the way from the residential to the district level. Thus, the organization and procedure of each reconciliation committee or court is determined on the local level. This is in line with the principle of decentralized self-administration which has been advocated by Öcalan. The institutions for resolving social issues and criminality have been established on the local level in order to resolve local issues. In this sense, the state has been rendered irrelevant. When interviewing Sheikho Meymo, he explicitly said that “[a]fter the start of this revolution, the reconciliation committee was established, to achieve peace according to the ideas of Abdullah Öcalan”.³⁰⁵ Additionally, the question of a separate women’s organization and movement is addressed by the parallel women’s reconciliation committees. At the time, there does not seem to exist a similar women’s alternative within the court system, although there is close cooperation with women’s organizations such as Kongreya Star.

In conclusion, this thesis has established that law and conflict resolution mechanisms in North and East Syria are, to a large extent, characterized by legal pluralist understandings of law and restorative justice approaches to justice. Policy-making bodies such as residential councils, as well as the reconciliation committees, are primarily organized, self-administered and democratically controlled on the local level. The reconciliation committees and their processes are particularly consensus-

³⁰⁵ Interview with Sheikho Meymo, headman of the el-Berkhan tribe. Conducted by the RIC in 2019. Received on 17 September 2019.

oriented. It has been shown that these institutions of law and conflict resolution have been influenced by the political ideology of democratic confederalism, which involves decentralized decision-making processes within self-administered communities. When writing this thesis, however, it has become clear that further research is necessary. This particularly involves systematic surveys and research which examine the amount and type of cases referred to the reconciliation committees and courts, as well as the case resolution rate of the committees. In addition, more research needs to be conducted in order to fully determine what laws or regulations are being applied by the court, as well as how the procedures between the courts, and their possibilities of enforcing decisions, may differ. More importantly, research needs to be conducted which examines the amount and type of legislation that is being enacted on each administrative level, in order to assess the degree of self-administration, autonomy and legal plurality. Notwithstanding the above, North and East Syria serves as an important reminder of how one can organize society beyond the state, and this thesis has demonstrated what the implications may be for ideas of law and conflict resolution.

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