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**THE CONTRACTUAL STATE:  
REFLECTIONS ON ORIENTALISM AND DESPOTISM\***

*Patricia Springborg*

**I**

**Introduction**

That long tradition of mythologizing the *polis*, otherwise known as 'the classical republican tradition', has two great achievements to its credit. The first is to claim for the great landed monarchies of Europe the heritage of the city-republics of classical Greece as their very own. The second is the distancing of Western regimes from those of the East, by 'orientalizing' them and stereotyping them as monarchical or 'despotic' and 'other'.<sup>1</sup> This latter achievement is all the greater for the fact that recent scholarship in Assyriology, and even some classical scholars, now acknowledge that *polis* society was found in Mesopotamia long before Greece,

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<sup>1</sup> The classical republican tradition has its advocates and its critics but none, to my knowledge, connects it to the phenomenon of oriental despotism. Theorists of classical republicanism include: Caroline Robbins, *The Eighteenth Century Commonwealthman* (Cambridge, Mass., 1961); Z. Fink, *The Classical Republicans: An Essay in the Recovery of a Pattern of Thought in Seventeenth Century England* (Evanston, Ill., 1945); J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975); and Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1979), Vol. 1, *The Renaissance*, Vol. 2, *The Reformation*. Critics of what has been termed 'republican revisionism' include Isaac Kramnick, 'Republican Revisionism Revisited', *American Historical Review*, Vol. 87 (1982), pp. 629-64; and contributions to the symposium on 'Civic Republicanism and its Critics', in *Political Theory*, Vol. 14, no. 3 (1986), especially H.N. Hirsch, 'The Threnody of Liberalism, Constitutional Liberty and the Renewal of Community', pp. 423-49, and Don Herzog, 'Some Questions for Republicans', pp. 473-93.

The phenomenon of oriental despotism has been subject to deconstruction in an excellent and growing literature, but not in connection with classical republicanism. Nor has the interface between the ancient Middle East and the classical *polis*, the subject of this essay, received much treatment. See for instance, Edward Said, *Orientalism* (London, 1978); Bryan S. Turner, *Marx and the End of Orientalism* (London,

creating traditions from which the classical *polis* may well have derived.<sup>2</sup> The net result of 'classical republicanism' is thus an extraordinary historical inversion, which renders monarchical regimes 'essentially' democratic and Eastern regimes 'essentially' despotic. How it has been achieved is a vast subject, to be broached here mainly in one aspect, what might be termed 'the myth of the contractual state'. We refer by this to the tendency of modern 'progressive' thought — which in fact has a long history — to describe the liberation of individuals and institutions in terms of contractual relations between free and equal citizens.

The claim made by Max Weber and his predecessors that rationalizing activity along these lines is peculiarly Western has been falsified in two ways.<sup>3</sup> The first by modern historical research, which has shown ancient, and specifically oriental, society to have been supremely contractual; and second, by the fact that social relations of the Western world are far less the product of this ancient contractual tradition than they are of indigenous common law based on immunities from royal power. The tradition of private law, by virtue of which the relation between citizens was defined contractually as between free and equal individuals, belonged to the mercantile republican tradition which characterized the Mesopotamian and Greek *poleis* as trading cities. Its legacy is to be found more in the peculiarly merchant law

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1978); Bryan S. Turner, 'Islam, Capitalism and Weber's Theses', *British Journal of Sociology*, Vol. 25 (1974), pp. 230–43; Anouar Abdel-Malek, *Civilization and Social Theory* (London, 1981); Anouar Abdel-Malek, *Social Dialectics* (London, 1981); Aziz al-Azmeh, *Ibn Khaldun in Modern Scholarship: a Study in Orientalism* (London, 1981); Hichem Djait, *L'Europe et L'Islam* (Paris, 1978); Abdullah Laroui, *The Crisis of the Arab Intellectual: Traditionalism or Historicism* (Berkeley, 1976); Abdullah Laroui, *L'Idéologie Arabe Contemporaine* (Paris, 1982); and the fascinating work by Alain Grosrichard, *Structure du Sérail: La Fiction du Despotisme Asiatique dans l'Occident Classique* (Paris, 1979) which, except for analysis of Aristotle (pp. 12–25), treats the classical connection much less than the title would suggest.

<sup>2</sup> Studies of Mycenaean and Minoan civilization work the frontier between ancient Mesopotamian and Graeco-Roman *poleis*. Cyrus Gordon has argued that Minoan Linear A, the predecessor of the more celebrated Linear B script — which was happily found to be Greek — is in fact a Semitic language, probably close to the Akkadian tongue of the Epic of Gilgamesh and the Hammurabi Code: Cyrus H. Gordon, 'Minoan Linear A', *Journal of Near Eastern Studies*, Vol. 17 (1958), pp. 245–55. Students of the ancient Etruscans have turned up cylinder seals and cuneiform texts, one going so far as to maintain that the Etruscans were stranded Babylonians: see Jacques Heurgnon, *The Rise of Rome* (Berkeley, 1950), pp. 234–5. Christopher Dawson's sweeping claim (*The Dynamics of World History* (London, 1957), p. 152) that 'the city state [*polis*] owes its existence to the marriage of the oriental sacred city with the Indo-European warrior tribe', may yet be vindicated. On parallels between the Homeric poems and earlier Middle Eastern literature, too close to be coincidental, see Cyrus H. Gordon, 'Homer and the Bible: the Origin and Character of East Mediterranean Literature', *Hebrew Union College Annual*, Vol. 26 (1953), pp. 43–108, which treats succinctly the Epic of Gilgamesh, its Biblical and Greek successors, as literatures of ethnic integration in newly emergent states; G.K. Gresseth, 'The Gilgamesh Epic and Homer', *Classical Journal*, Vol. 71 (1975), pp. 1–18; and on Eastern forerunners of the tales of Herakles, Burr C. Brundage, 'Herakles the Levantine: A Comprehensive View', *Journal of Near Eastern Studies*, Vol. 17, no. 4 (1958), pp. 225–36.

<sup>3</sup> Max Weber prefaces his great study of the professionalization of work and 'the calling' as rationalizing activity, with an essay, as confident as it is inaccurate, on Western Europe's unique claim to cultural phenomena of 'universal significance'. He makes at least twelve errors of fact in his claim for the superior inventiveness of Western as opposed to Eastern learning in the fields of mathematics, science, art, architecture, music, law and public administration. See his Preface to *The Protestant Ethic and the Spirit of Capitalism* (New York, 1958), pp. 13–16.

of Levantine and Islamic societies, and only incidentally in European legal traditions; to the extent, that is, that Roman Law displaced local customary law; and to the limited extent to which Roman Law transmitted republican, as opposed to imperial, concepts and practices.<sup>4</sup>

Dramatic archaeological and epigraphic discoveries of the last one and a half centuries have revealed a great volume of clay tablets, papyri and medieval documents for the oriental world, Sumerian, Babylonian, Assyrian, Pharaonic and Hittite, from the third millennium BC to the Islamic empire of the twelfth century AD, which took the precise form of contracts in various shapes and forms.<sup>5</sup> Not only

<sup>4</sup> Writers on Islam frequently emphasize the degree to which Islamic law and institutions bear the stamp of their founder, product of a sophisticated merchant city, and the merchant class to which he belonged, and which played such a formative role in its development. See M.A. Cook, 'Economic Developments', in *The Legacy of Islam*, ed. Joseph Schacht (Oxford, 2nd edn., 1974), pp. 226–7, and Maxime Rodinson, *Islam and Capitalism* (London, 1974). Shelomo Goitein, discussing the propensity of Jewish citizens to seek legal redress in Islamic courts in matters of inheritance and for contracts, attributes this to the commercial orientation of Islamic law, compared with Judaic law, which was the law of an agricultural people:

The Muslim and Jewish laws of inheritance differed not only with respect to females as sole heirs, but in many other points as well. This contrast owed to their entirely different origins. Israelite law, like the Roman and Germanic, grew in a peasants' society, which is eager to hold an estate together in an agricultural unit large enough to sustain a family. For this reason, laws of inheritance give the first born preferential treatment, a trait unknown to Muslim law. On the other hand, the ancient Arabs were Bedouins and merchants, whose possessions were flocks, goods and cash, which, unlike land, lent themselves easily to division. Moreover, an inheritance was regarded as a kind of spoil in the distribution of which numerous members of a clan participated. Thus Muslim law granted many persons excluded by Jewish law a share in the succession. It was natural that in such cases Jews tried to take advantage of the privileges offered to them by the law of Islam. (S. Goitein, *A Mediterranean Society: The Jewish Communities of The Islamic World as Portrayed in the Documents of the Cairo Geniza* (4 vols., Berkeley, 1967–83), Vol. 2, *The Community*, pp. 398–9.)

In the diaspora the Jews had, perforce, become traders and merchants, positions that their law did not always easily accommodate. Christians, however, as heirs to Judaic law, were initially recruited from the *chora*, the countryside, and not the *polis*, or city. These factors taken together account for the contrast between Judeo-Christian and Graeco-Roman attitudes to questions of wealth and poverty, nowhere more succinctly conveyed than in Chapter IV of Luke's Gospel — G.E.M. de Ste. Croix, *The Class Struggle in the Ancient Greek World* (London, 1981), pp. 425–33. Roman Law as incorporated into European codes, represented certain features of the common law of the Republic, but an even greater legacy of Christian imperial practices, see note 64, below.

<sup>5</sup> These include the great library of King Ashurbanipal of Nineveh — see J.B. Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament* (Princeton, 1950); the Tell el Amarna tablets, documenting diplomatic and commercial correspondence between the Pharaoh and satellite city-states in Palestine, Syria and the Hittite kingdoms — see S.A.B. Mercer, *The Tell el Amarna Tablets* (2 vols., Toronto, 1939); the Hammurabi Code, discovered by Scheil, inscribed on a stele of black basalt at Susa, and now confirmed from other sources and given a definitive legal commentary by G.R. Driver and J.C. Miles *The Babylonian Laws* (2 vols., Oxford, 1952–5). Innumerable variations on the common law of Mesopotamia have now been documented, from the Ur-Nammu code of around 2050 BC to the Assyrian laws some six hundred years later — on the latter see G.R. Driver and J.C. Miles, *The Assyrian Laws* (Oxford, 1935). It is significant that the earliest papyrus extant should be the record of a contract from Aswan in Upper Egypt. On the innumerable legal and non-literary texts for the Hellenistic period in Egypt see the Oxyrhynchus Papyri, in over thirty volumes, and the small selection by Arthur S. Hunt and C.C. Edgar, *Non-Literary Papyri* (2 vols., London, 1932–4).

were systems of private law based on the contract, but the corporate nature of the city, as a collectivity of citizens *vis-à-vis* the king, was for most of this period also contractually construed. Indeed, far from it being the case that there is an integral link between capitalism and a society based on contract, as nineteenth-century scholars including Maine and Marx supposed, modern oriental scholars, from their rich source of documents, can argue the opposite case. Ancient society was explicitly contractual.

Geophysical conditions dictated this in centres of civilization based on the long-distance trade. The Akkadian empires of Sargon and Naramsin in third millennium Mesopotamia were already based on the caravan trade, due to the lack in the Fertile Crescent of metals and even basic building materials such as stone and wood.<sup>6</sup> The great codifications of the common law of the area, the laws of Bililama of c.2250 BC; the laws of Lipit Ishtar, King of Isin of c.2217–7 BC; the laws of Eshnunna, c.2000 BC; the Hammurabi Code, c.1850 BC; the Assyrian Laws, c.1400 BC, all grew out of the need to establish laws of contract and exchange that were uniform throughout the trading area. The origins of the *commenda* contract, that peculiar form of partnership otherwise known as the limited joint venture, which grants the agent freedom from liability in the case of capital loss, and to which Weber credits the rise of Venice in the twelfth century, are attributed to early caravan procedures as ‘a peculiarly suitable instrument for long-distance trade’.<sup>7</sup> Early examples of the *commenda* in the Near East date, in fact, to the Babylonian *tapputum* contract and its successors, the Jewish *isqa*, and the Byzantine *chreokoinonia*. But the fullest legal treatment given the *commenda*, as ‘an institution indigenous to the Arabian peninsula which developed in the context of the pre-Islamic Arabian caravan trade’, is not surprisingly in Islamic Law, where it features in the earliest legal compendia (c.800) in the form of ‘The Book of Partnership’ in Shaybani’s

<sup>6</sup> Rostovtzeff, the great scholar of Hellenism and the Roman Empire, argues this in his book, *Caravan Cities* (Oxford, 1932), pp. 8–9. Speaking of the caravan trade as generating the legal code and the contract, he points out:

The third dynasty of Ur, which followed Sargon’s imperialistic aim, had already created a code of this type, probably intended for the use of the whole empire, whilst as early as in the year 3000 BC there existed thousands of contracts and agreements in the most ancient legal language we know — Sumerian. The legal essence of, and formulation used in, these contracts and agreements, which are evident to all who study such documents, remained almost unchanged from the days of Sargon to the time when Greek and, later, Roman law penetrated the Near East.

<sup>7</sup> On the significance of the *commenda* contract for the rise of Venice, see Max Weber, ‘The City’, *Economy and Society* (New York, 1968), Vol. 3, ch. 16. On the caravan trade and contracts M.T. Larsen, *Old Assyrian Caravan Procedures* (Istanbul, 1967); and for the Islamic period and its background in the pre-Islamic caravan trade, Abraham Udovitch, *Partnership and Profit in Medieval Islam* (Princeton, 1960), pp. 170–3.

encyclopaedic work; and, in Sarakhsi's thirty-volume legal compendium of the mid eleventh century, as the 'Book of *Commenda*'.<sup>8</sup>

Because Jewish, Islamic and Christian laws, and their ancient Babylonian, Assyrian and Hittite antecedents, proscribed the charging of interest on capital among members of their respective communities — interest could be charged to non-coreligionists — all business dealings tended to take the form of contractually defined partnerships, where labour was exchanged for capital, and where capital could thus be kept in constant circulation to generate profits. Such commercial arrangements had the happy result of producing a society of small businessmen where no-one need view himself as an employee — a condition too easily confused with that of a slave in what were, uniformly, slave-owning societies.<sup>9</sup>

For structural reasons, therefore, these societies were not organized primarily along the lines of the owners and non-owners of the means of production and did not give rise to societies so organized. This is perhaps the only kernel of truth contained in the Marxist category of the Asiatic mode of production, which differentiates ancient and oriental, from modern European, capitalism. The pre-eminently contractual relations of ancient and oriental society were not incompatible with strong status hierarchies, as we will show, but they are not typified by the simplification of class relations along the bourgeois–proletarian polarity. To consider slaves as equivalent to proletarians is to obscure the important differences between these economies and those of Europe, medieval and modern, based on a

<sup>8</sup> Udovitch, *Partnership and Profit*, pp. 171–2. On the significance of the caravan trade for the rhythm of daily life up to and including the Islamic period, see Goitein, *A Mediterranean Society*, Vol. 1, *Economic Foundations*, pp. 276–7:

Of particular importance were the caravans connecting the Muslim West: Morocco, Algeria, Tunisia, and Libya, with Egypt and other countries of the Muslim East. These caravans had a special name, *mawsim*, literally: fixed date, season, because they used to set out at more or less fixed times. The same word designated in the countries of the Indian Ocean the seasonal winds and has entered the English language in the form *monsoon* with this meaning.

<sup>9</sup> It has been wisely observed that the attitudes to manual labour reflected in Aristotle's *Politics* I.5, and III.5, as hardly distinguishable from the activity of a slave as a human tool, were widely subscribed to in oriental societies well into the Islamic middle ages: see Goitein, *A Mediterranean Society*, Vol. 1, *Economic Foundations*, p. 77. But it has been suggested by none other than Herodotus himself that the Greek attitude to labour was a legacy of oriental culture. Herodotus, discussing the seven social classes of Egypt 'named after their occupations: priests, warriors, cowherds, swineherds, tradesmen, interpreters and pilots', notes that the warriors, drawn from different districts, 'are forbidden to follow any trade or craft, and have an exclusively military training'. He goes on to speculate:

I could not say for certain whether the Greeks got their ideas about trade, like so much else, from Egypt or not; the feeling is common enough, and I have observed that Thracians, Scythians, Persians, Lydians — indeed almost all foreigners — reckon craftsmen and their descendants as lower in the social scale than people who have no connexion with manual work: only the latter, and especially those who are trained for war, do they count among the 'nobility'. All the Greeks have adopted this attitude, especially the Spartans; the feeling against handicraft is least strong in Corinth. (Herodotus, *Histories*, II, 166, ed. A.R. Burns (Harmondsworth, 1972), pp. 195–6).

very different historical heritage.<sup>10</sup> To insist that the bourgeois–proletarian relation describes not status hierarchies, but rather differentiates between the owners and non-owners of the means of production, and thus is applicable to all societies, is to miss the point. Firstly, the practice of putting capital to work in partnerships in which partners variously contributed labour, premises or capital according to their means, thereby avoiding the prohibitions against lending capital at interest while using capital to generate profits, tended to blur the lines between owners and non-owners. Since all property, including real estate, was owned in the form of shares, often in small denominations, there were very few who did not own something in the way of a capital asset. Secondly, and more importantly, ownership or non-ownership of the means of production is only one source of status hierarchies, and perhaps only peculiarly significant in capitalist societies.<sup>11</sup>

It is a paradox of Hellenistic society, for instance, that it enjoyed a level of prosperity that could only be supported by considerable commercial enterprise, even though notables, the socially dominant class, affected to disdain monetary matters. The *bios politikos* of the notables was such that privileges were cumulative, wealth,

<sup>10</sup> For the role of slavery in the ancient economy, see especially the works of Moses I. Finley, *The Ancient Economy* (Berkeley, 1973); *Ancient Slavery and Modern Ideology* (London, 1980); and 'The Slave Trade in Antiquity: The Black Sea and the Danubian Regions', in his *Economy and Society in Ancient Greece* (London, 1981). See also Joseph Vogt, *Ancient Slavery and the Ideal of Man* (Oxford, 1974); and on the role of slavery in modern society: Eugene D. Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World* (Baton Rouge, La., 1979).

<sup>11</sup> From third millennium documents we have status categories that include priests, elders, notables, merchants, scribes, judges, doctors, teachers, managers, commoners, workers, slaves and so on. Goitein in *A Mediterranean Society*, Vol. 1, *Economic Foundations*, p. 76, notes of Islamic society at its height, as reflected in the Geniza documents, that the complexity of business arrangements, the geographical mobility, levels of literacy, the differentiation of tastes, range of consumer goods, refinements of etiquette, and the confessional differentiation of the communities defied categorization along a bourgeois–proletarian axis:

The urban society consisted of many different layers. The gross division into an affluent bourgeoisie and the common people mostly doing manual work does not do justice to the many grades and shades in the texture of the society, which we are able to observe in the Geniza records. The tone of a letter, often even the formulation of a document, immediately indicates to which classes the persons concerned belonged and by how many rungs in the social ladder they were separated (when they were not members of the same group). Still this differentiation, marked as it was, had very little in common with the watertight compartments dividing the contemporaneous world of feudalism, but was more akin to that prevailing in our own modern society, where the division into classes is a matter of fact and etiquette, not of laws and institutions.

For a thoughtful analysis of processes of civilization as creating and maintaining social distance, see Norbert Elias, *The Civilizing Process*: Vol. 1, *The History of Manners*; Vol. 2, *Power and Civility* (English edn., Oxford, 1982). For a much older and brilliant treatment of social distance and social hierarchy in ancient Egypt, see Jules Baillet, *Le Régime Pharaonique dans ses Rapports avec l'Évolution de la Morale en Égypte* (2 vols., Paris, 1912, 1913). For a study of the relation between monarchy, hierarchy and social distance, see Patricia Springborg, *The Chain of Beneficence: Monarchy and the Welfare State in the Ancient World* (Cairo, 1986), unpublished MS.

status and power going together.<sup>12</sup> But in this respect it is modern society that is the exception, the economic specialization of the *bourgeois* producing the first possessing class which does not rule. Capital is ubiquitous, but it is different when practised by professionals, than by notables who were busy with other things. Although they achieved remarkable economic advances, notables maximized their profits largely to pursue social goals. Notables did not become magistrates and benefactors to pursue their common interests in production but to maintain their social distance. The notables had no need to govern the cities in order to defend their economic interests: the city was, after all, not the state, but merely an autonomous commune, the space in which social distance was exercised. Wealth was the necessary, but not the sufficient, condition of social prestige, the notable being the symptomatic social category of the ancient *polis* as he was of Hellenistic and Islamic society.

A preponderance of the evidence from ancient and medieval Iraq, Persia, Syria and Egypt over a long period and under successive empires, Babylonian, Assyrian, Achaemenid, Parthian, Sasanian, Hellenistic, Roman, Byzantine, Umayyad, Abbasid, Fatimid, Mamluk and Ottoman, suggests that these were societies based on a loose federation of autocephalous communities enjoying a fair degree of autonomy, within which unusually democratic conditions prevailed, and between which conditions of religious toleration and economic co-operation were typical. Far from being the victims of oriental despotism, the average citizens in these communities enjoyed a degree of legal and economic freedom, personal and corporate rights and immunities, which compares favourably with those of the citizen in the modern 'democratic' state. It is fair to claim that the contours of the classical *polis* are far more faithfully reflected in the cities of the medieval and modern oriental world than in the structures and institutions of the Northern European nation states, so widely assumed to be its legitimate heir.

## II

### The Classical Republican Tradition

The development and propagation of the theory of oriental despotism — and of the concept of the Asiatic mode of production, its child — are now the subject of serious academic enquiry by both Middle Eastern and Western scholars.<sup>13</sup> Here we speculate

<sup>12</sup> On 'beneficence' as a *modus vivendi* of the ancient world and the role of the notable crucial to it, see Paul Veyne, *Le Pain et le Cirque: Sociologie historique d'un pluralisme politique* (Paris, 1976), pp. 117, 128, 163, 316–17, to whom I am indebted for this account.

<sup>13</sup> See note 1, above. Perry Anderson's encyclopaedic *Lineages of the Absolutist State*, and the important essay on 'The Asiatic Mode of Production' appended to it (London, 1974), recommend the banishment of that category and 'oriental despotism', its forerunner. But Anderson's account of the Turkish sultanate is still written within the tradition of scholarship that sees oriental monarchies as despotic and fundamentally incomparable to Western political systems. Bryan Turner, in *Weber and Islam: A Critical Study* (London, 1974), provides a rather opaque critique of Weber, his position on Marxism and orientalism, and his own critique of the 'mosaic' theory of oriental society, arising less from a careful reading of the phenomena than from the principles of current Marxist theory. Turner's more recent article

that 'orientalism' rose as a foil for theories of classical republicanism. The European élites of medieval and early modern Europe, educated on an exotic literature under the aegis of the Church, Catholic and Roman, truly believed themselves to be members of a timeless and eternal civilization, whose spatial boundaries were set only by the barbarians at the gate. Theories of oriental despotism exhibit two phases, which parallel those of classical republicanism as a phenomenon. The first, or literally 'classical', phase coincides with the period in which the *polis* was indeed extant, whether in Hellenic or Hellenistic form. The second, or early modern phase, by far the more vigorous and unequivocal, dates to the period of the rise of the European nation state, where classical republicanism survived as an ideological construct. We will begin at the beginning.

The classical writers made their own contribution to the myth of 'oriental despotism', but the theory in its early modern form can only be extracted from their works on a very selective reading indeed. On balance, as we shall see, their works reflect rather accurately the realities of ancient and oriental society, allowing for certain ideological biases which are quite transparent. The rivalry between Greece and Persia, for instance, was legendary, and Aristotle remarks on the natural slavishness of Asiatics, who 'tolerate master-like (*despotik*) rule without resentment', in the *Politics*, 1285a20–25. At the same time, Aristotle was perhaps the first to characterize absolute kingship as patrimonial rule — that category made so famous by Max Weber to describe an extension of the household into the public realm.<sup>14</sup> But he does not characterize Persian rule this way, noting that non-Greek rule in general is typically not in the form of absolute monarchy because it involves rule of law, whereas absolute monarchy does not.<sup>15</sup> Plato, like Aristotle, had considerable admiration for the Persian monarchy, which he did not consider to be patrimonial either, but rather the judicious admixture of principles of democracy to monarchy. Plato, in the *Laws*, 693–4, had assessed the rule of Cyrus quite favourably as maintaining 'the due balance between slavery and freedom', giving 'a share of freedom to [his] subjects and advanc[ing] them to a position of equality'. By permitting participation by the 'wise' — and here, one suspects, Plato is using the term as a class description to refer to the *agathoi*, or notables — Cyrus ensured that 'all their affairs made progress, owing to their freedom, friendliness and mutual exchange of reason'.<sup>16</sup> Plato, like Aristotle, given a candidate of sufficient stature, found monarchy the preferred political form. His 'benevolent dictator' of the *Laws* bears striking resemblances to the great Mesopotamian kings, Ur-Nammu, Lipit Ishtar, Hammurabi and Ashurbanipal, famous for their codifications of the common

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on orientalism and 'civil society' deals with an important subject in an interesting way, but is difficult to reconcile with his earlier rejection of the 'mosaic' theory of society — it fits much better with the findings of this writer, however. See Bryan S. Turner, 'Orientalism and the Problem of Civil Society in Islam', in *Orientalism, Islam and Islamists*, ed. Asaf Hussain *et al.* (Brattleboro, Vermont, 1984), pp. 23–42.

<sup>14</sup> Aristotle, *Politics*, 1285b20–34. See also the long section on patrimonial rule in Max Weber's *Economy and Society*, Vol. 3, chs. 12 and 13 (New York, 1968), pp. 1006–1110.

<sup>15</sup> Aristotle, *Politics*, 1310b31–9.

<sup>16</sup> Plato, *Laws*, III, 693–4, trans. R.G. Bury, Loeb edn. (London, 1926), pp. 224–5.

law of the region that they promulgated in their names, accompanied by the customary coda of curses and dire threats to ensure compliance.<sup>17</sup>

Plato, in the *Laws*, made the first case that we know of for 'the mixed constitution' — that favoured political form that became the badge of republicanism — as a purported balance of monarchical aristocratic and democratic principles.<sup>18</sup> Interestingly enough, the 'mixed' form had already been foreshadowed in Herodotus's famous account of the debate of the Persian notables on the virtues and excesses of the three pure types of regime: monarchy, aristocracy and democracy. We should not be surprised, perhaps, to learn that a long tradition of classical scholarship, not yet dead, standardly interprets this passage as transporting to Persia a debate that really took place in Athens; a commentator in one of the most popular current editions arguing that this particular piece of social transposition is the best evidence we have on Herodotus 'to pillory him as a liar'!<sup>19</sup>

Polybius, of the Scipionic tradition, and Machiavelli, Renaissance transmitter of classical republicanism, understood republicanism to be an urban, entrepreneurial phenomenon; and the 'mixed constitution' they advocated was not incompatible with a strong *imperium*. It is often forgotten that in the long period before the resuscitation of Aristotle in the thirteenth century, Plato ruled. Fostered by the Neoplatonists of Alexandria, the Seleucid kingdoms and Byzantium, Plato's theory of just rule better fitted the exigencies of the Eastern monarchies than those of Aristotle — despite the latter's famous connection to the Macedonian monarchy. Neoplatonism, which infused Italian Renaissance thought, came to Italy due to the good offices of the Eastern patriarchate, which sponsored the great conference at Ferrara, and then Florence, of 1438–9, at which Gemistus Pletho of Constantinople lectured on Neoplatonism, and which Marsilio Ficino and Cosimo de Medici perhaps attended.<sup>20</sup> The much discussed gap between Machiavelli's regime of the *Prince* and the republic of the *Discourses* closes when the monarchical element is restored to the republican

<sup>17</sup> See note 5, above. In their introduction to *The Babylonian Laws*, Driver and Miles comment amusingly on the role of curses to ensure compliance from a clearly independent-minded people.

<sup>18</sup> On 'the mixed constitution', see the definitive work by Kurt von Fritz, *The Theory of the Mixed Constitution in Antiquity* (New York, 1954).

<sup>19</sup> Herodotus, *Histories*, III, 79. I quote from the note of A.R. Burns to this section of the Penguin edition (Hammondsworth, 1972), p. 238: 'The speeches that follow, totally Greek in tone — and interesting, as the earliest extant of the many Greek arguments on forms of government — are obviously fantastic. Herodotus' contemporary critics were right, and if we wish to pillory him as a liar, this is the strongest ground'. (Plutarch's old charge that Herodotus was 'the father of lies' because he credited the orientals with too much that was Greek.) It is true that Burns, grudgingly, concedes to Herodotus: 'If we wish to believe in his honesty, we must suppose that he had the substance of the speeches from someone whom he trusted. But it is not totally impossible that the Persians, who were not far in time from tribal life, may have considered abolishing the despotic monarchy as they had seen it under Cambyses.'

<sup>20</sup> See the excerpt from Gemistus Pletho in Ernest Barker's anthology, and accompanying prefaces, in *Social and Political Thought in Byzantium* (Oxford, 1957). Among more recent works on the effort of the Eastern patriarchate to enlist the support of the Western Church against the Turk by impressing them with their philosophical credentials, see Joseph Gill, *The Council of Florence* (Cambridge, 1959), and the now numerous works on Byzantium and the classical tradition.

mix. Neoplatonism, as much a part of Machiavelli's milieu as his acknowledged Roman sources, reflected the reality of the Hellenistic *poleis* of the East that had kept it alive. Whether ancient city-republican or new royal foundations, these combined typically democratic institutions of the *polis* with imperial protection, embracing 'ruler cults' the more enthusiastically, the more physically remote the *imperium* tended to be.<sup>21</sup>

The image of the king as a shepherd tending his flock, an archetype to which the Hellenistic emperor was supposed to conform, is familiar from Plato's *Republic*, *Laws* and *Statesman*. It is a tradition certainly predating and surviving the classical authors, the image of king as shepherd present, for instance, in fragments of a treatise 'On Law and Justice', by Archetas of Tarentum, the Pythagorean to whom both Plato and Aristotle express their debt for certain aspects of the concept of justice. The Pythagorean-Platonic tradition, to which so many Hellenistic political writings, lost to us because of Attic literary purges, belong, and which we know migrated to the East with the Neoplatonists of the Alexandrian school, may well have come initially from the East. Babylonian traditions of the king as saviour (*soter*) and benefactor (*euergetes*) have their parallel in the mellifluous titulary of the pharaoh, and were embellished by Persian and Egyptian images of the king as 'hedged by a luminous solar divinity'.<sup>22</sup> Xenophon explicitly connected Plato's imagery of the king as good shepherd to Persian traditions, in the *Cyropaedia*, v, i, 4–5. Aristotle invokes the Persian image of the king as 'king-bee', and later Pythagorean fragments show a

<sup>21</sup> On the typically democratic constitutions of the Eastern cities in the Hellenistic period, despite the enthusiastic adoption of ruler cults honouring remote emperors, see William Scott Ferguson, 'Legalized Absolutism en Route from Greece to Rome', *American Historical Review*, Vol. 18 (1912), pp. 29–47; A.H.M. Jones, *The Cities of the Eastern Roman Provinces* (Oxford, 1937), and *The Greek City from Alexander to Justinian* (Oxford, 1940); W.W. Tarn, *Hellenistic Civilizations* (London, 3rd edn., 1952), and the magisterial work, *Le Pain et le Cirque*, by Paul Veyne, who has theorized the function of ruler cults in the following way: kings are never taken for gods; 'empirical individuals and supernatural beings are seen in different horizons' (p. 589) — Veyne insists on the irreducibility of the sacred realm. The divinization of emperors was more like the canonization of saints; what was being glorified was an archetype, to which the living individual may or may not have corresponded. Moreover, the divinization of distant emperors was an act of international relations by supplicating subjects petitioning the 'divine' king for his indulgence; thus the divinity of the emperor was maintained for political reasons under the Christian emperors, with all its accoutrements: an imperial priesthood, festivals and fêtes as expressions of imperial beneficence, and supplicating subjects who 'adored' his divinity (Veyne, pp. 570–5, 580–90, 731–2, 749). On the Hellenistic divinization of kings, the magnificent essays of Arthur Darby Nock are of enduring value, especially, 'Notes on Ruler Cult I–IV' (1928), '*Sunnaos Theos*' (1930), 'The Emperor's Divine Comes' (1947), '*Soter and Euergetes*' (1951), and 'Deification and Julian' (1957), now collected in Arthur Darby Nock, *Essays on Religion and the Ancient World* (2 vols., Oxford, 1972).

<sup>22</sup> Erwin R. Goodenough, 'The Political Philosophy of Hellenistic Kingship', *Yale Classical Studies*, Vol. 1 (1928), p. 78. See also the comprehensive work by Louis Delatte on the Pythagorean fragments, *Les Traités de la Royauté d'Echphante, Diotogène et Stihénidas* (Liège/Paris, 1942); Arthur Darby Nock on '*Soter and Euergetes*'; and on the titulary of the pharaoh see the superb essays by Lanny Bell: 'Luxor Temple and the Cult of the Royal *Ka*', *Journal of Near Eastern Studies*, Vol. 44, no. 4 (1985), pp. 251–94, and 'Aspects of the Cult of the Deified Tutankhamun', *Mélanges Gamal Eddin Mokhtar* (Cairo, 1985), pp. 31–61, as well as the earlier seminal article of Harold Nelson, 'The Identity of Amon-Re of United-with-Eternity', *Journal of Near Eastern Studies*, Vol. 1, no. 2 (1942), pp. 127–55.

Platonic-Stoic-Persian eclectic mix. Thus the concept of the king as *nomos-logos-soter* — epithets later applied to a personalized Christian God — constituted the peculiarly Pythagorean contribution to theories of kingship. Probably taken from the East, and strongly echoed in Plato and Aristotle — Plato's philosopher king bears an uncanny likeness to the official ideology of the pharaoh<sup>23</sup> — this tradition of kingship represented official Hellenistic theory up to the Christian impact of the fourth century AD.

So far from theories of kingship being necessarily absolutist, or trade marks of despotism, the Pythagorean tradition put emphasis on the king as Animate Law. Reminiscences of Plato and Aristotle on the Persian monarchy are to be found in fragments of the Pythagorean Ecphantus, where it is argued that a king is only such 'in so far as he has a sacred and a divine mentality', demonstrated by the injunction that he 'clearly be just' and have good community relations; for 'community consists in equality . . . in the distribution of equality justice plays the most important part, yet community (*koinonia*) has its share'.<sup>24</sup> Thus community and equality belonged to justice by which the Hellenistic king was bound. In the same way, recent scholars have argued that divine kingship put the onus on the pharaoh to demonstrate his credentials by his justice and imitation of the gods, to whose model he was required to conform.<sup>25</sup> Plutarch, the late Platonist, had maintained in his 'Discourse to an Unlearned Prince' that constitutional rule could not diminish the royal *logos*, since that *logos* is constituted by 'the Law that is animate in him'.<sup>26</sup> Attributions of divinity were almost universally a double-edged sword for kings, constraining them in a mimetic role difficult to execute, but impossible to abrogate. The rights of the community as putting a brake on royal authority, expressed in the Ecphantus fragment on the dignity of a king, are a widely recognized feature of Hellenistic kingship, known as allowing great regional autonomy under the imperial mantle.<sup>27</sup> The tradition to which Plato's *Laws*, as well as the numerous codifications of common law promulgated by famous Mesopotamian kings, belongs, reconciles royal authority with communal autonomy on *nomos-logos* assumptions. Recent

<sup>23</sup> On the likenesses between Plato's concept of the philosopher king and the official ideology of the pharaoh, see Goodenough, 'The Political Philosophy of Hellenistic Kingship', pp. 74 ff.; on the role of sun imagery, and Nock's remarks on the same, 'The Emperor's Divine Comes', pp. 114–15. For parallels in notions of Justice, the pharaoh's divine *ka*, Plato's concept of '*daimon*' and the Roman Emperor's *genius*, see Springborg, *The Chain of Beneficence*, esp. Ch. 5, 'Gemination', and Ch. 10, 'Pharaoh and Emperor'.

<sup>24</sup> Goodenough, 'The Political Philosophy of Hellenistic Kingship', p. 86.

<sup>25</sup> See Baillet, *Le Régime Pharaonique*; Georges Posener, 'De la Divinité du Pharaon', *Cahiers de la Société Asiatique*, Vol. 11 (1960); and Erik Hornung, *Conceptions of God in Ancient Egypt. The One and the Many* (London, 1983), trans. John Baines.

<sup>26</sup> Plutarch, *Moralia*, v, 11 ff., cited in Goodenough, 'The Political Philosophy of Hellenistic Kingship', p. 95.

<sup>27</sup> Thus Goodenough comments, *ibid.*, p. 69:

Nothing bound the Syrians, Aramaeans, Phoenicians, and Palestinians together except the person of the king at Antioch. He was the animate constitution, and the only constitution which brought any harmony or cohesiveness into his heterogeneous realm.

works of historical analysis focusing on the autocephalous confessional communities constituting the ancient empires of Iran and Iraq confirm that theory was moderately well translated into practice, and that a strong *imperium* was not incompatible with regional autonomy,<sup>28</sup> for reasons that we shall now discuss.

### III

#### The Contractual State

The contractual nature of ancient oriental society was dictated, as we have suggested, by rather obvious geophysical factors. In addition to their dependence on the long-distance trade, the absence of rapid communications systems—for even regular mail and caravan services were not rapid—required the imperial powers of the Babylonian and Assyrian kingdoms, the Sasanians and the Seleucids, the Abbasids and the Fatimids, to rely on decentralized systems of public administration, their empires constituted by a string of city-republics loosely confederated under the king. Leaders of local municipal religious communities were counted upon to bring with them their loyal subjects into the imperial fold. Nor was communal autonomy only a negative reflection of the limitations of technology and development. In a positive sense, the function of government was construed as providing justice, peace and security to already constituted communities with an economic and social life of their own.

Because there was no firm economic division between city and countryside in the Near Eastern world, rural lands being controlled from the city if not contained within its walls, the concept of a city, *madina*, was ‘not geographical but jurisdictional’. ‘The *madina* was not a “city” but any place with political (and usually religious) jurisdictional supremacy’, and this is how ‘cities’ were distinguished from towns and villages, often of considerable size.<sup>29</sup> The functions of the city were peace, justice and security first and foremost, and revenue-raising only as its political functions necessitated it.<sup>30</sup> Economic intervention, recognized to be unpalatable in these highly

<sup>28</sup> See especially Michael G. Morony, *Iraq after the Muslim Conquest* (Princeton, 1984), for the Islamic period; the works of Jones, *Cities of the Eastern Roman Provinces* and *The Greek City from Alexander to Justinian*, and of M. Rostovtzeff, *The Social and Economic History of the Hellenistic World* (3 vols., Oxford, 1953), and *The Social and Economic History of the Roman Empire* (2 vols., Oxford, 2nd edn., 1957), for the Hellenistic period.

<sup>29</sup> Ira M. Lapidus, ‘Muslim cities and Islamic Societies’, in *Middle Eastern Cities: A Symposium on Ancient, Islamic and Contemporary Middle Eastern Urbanism*, ed. Ira Lapidus (Berkeley, 1969), pp. 70–1.

<sup>30</sup> Goitein, in the discussion of urbanism at the Berkeley symposium, notes the philological connection between ‘the city’ and ‘justice’ in Arabic:

What after all is a city? *Madina* is an Aramaic word and *din* means justice. *Madina* means first of all a place where justice is administered, where the government or its important representatives have their seats, and where there is security—a larger amount of security than elsewhere. Villagers came on Friday to the city in order to attend the market and to see the government.

(in *Middle Eastern Cities*, ed. Lapidus, p. 74)

entrepreneurial, exchange-based societies, and never considered to be the proper business of the state under normal conditions, was thus limited to periodic revenue-raising by the *imperium*. At the municipal level the institution of the liturgy, by virtue of which notables undertook public works at their own expense, as payment for the right to rule, an institution which, as we will see, probably began life in the ancient Middle East, lived on there long after the demise of the classical world — where it is most famous — to take care of most of the costs of city government.<sup>31</sup>

But to describe oriental societies in these terms is once again to attribute to them negative powers — in the old orientalist tradition — as deficient in the typical functions of the modern state. In fact the texture and ethos of ancient and oriental societies can only be understood from a different set of categories from those which we use to describe societies subject to the modern state and its relentless penetration. Analysis in terms of the executive, judicial and legislative functions of government, interest articulation and aggregation of the governed, presupposes a system of centralized power which contrasts markedly with the decentralized, semi-federal systems of Mesopotamia, the Levant, and the city-republican leagues of classical Greece.

Because the state, vested in the *imperium*, was not, as it was subsequently to become, co-extensive with society at large, the immediate overarching unit of communal life was the city (*polis*). Describing, as it has since antiquity, the boundaries of the good life, the city as an archetectonic unity lends itself to analysis in terms of the subcategories of neighbourhood, fraternity, religious community and state, as Ira Lapidus in his fine essay on 'Muslim Cities and Islamic Societies' suggests for a later period.<sup>32</sup> Michael Morony, in his study of the continuities between the civilization of late antiquity and Islamic social forms in Iraq, shows how the organization of the Persian Sasanian Empire, centred in Iraq, combined a vertical hierarchical organization at the centre with the separation of powers at the local level. Equity was the bond that held the Empire together and the state was referred to in official theory as a 'guarded garden', providing security, justice and economic prosperity to its subjects, in what is known as 'the circle of power'.<sup>33</sup>

<sup>31</sup> On the significance of the liturgy as underpinning the ancient economy and defining its ruling ('liturgical') class, and on the solidarity of the 300 most powerful families constituting that class, see especially, John K. Davies, *Wealth and the Power of Wealth in Classical Athens* (New York, 1981); on the *modus* of this class, the social and political ramifications of *évergétisme*, as based on the liturgy, see Paul Veyne, *Le Pain et le Cirque*. On the Islamic equivalent to the liturgy, the *waqf*, or endowment, see entries in *The Encyclopaedia of Islam* (4 vols., Leiden, 1st and 2nd edns, 1908–34). On the Egyptian 'pious foundation', as probable precursor of the Hellenistic benefice and the Islamic *waqf*, see Barry Kemp 'Old Kingdom, Middle Kingdom and Second Intermediate Period c.2686–1552 BC', in *Ancient Egypt: A Social History* ed. Brian Trigger *et al.* (Cambridge, 1983), pp. 83–7.

<sup>32</sup> *Middle Eastern Cities*, ed. Lapidus, pp. 49–51.

<sup>33</sup> Morony defines 'the circle of power' (*Iraq after the Muslim Conquest*, pp. 28–9) as:

an interlocking circular balance of military force, economic prosperity and justice . . . neatly summarized by the famous aphorism ascribed (among others) to the third century Sasanian ruler Ardashir I: 'There is no ruler without men, no men without wealth, no wealth without prosperity, and no prosperity without justice and good administration.'

There are signal exceptions to the decentralized, participatory, entrepreneurial and locally oriented city-republics of the ancient and oriental world, and this is worth pointing out. Unlike a number of recent scholars, we do not wish to claim for the modern nation state the discovery of state power as such. Some go so far as to suggest that because the term 'state' was not coined until the sixteenth century, the concept itself was unknown.<sup>34</sup> In their efforts to distinguish between the city-republics of antiquity and the pervasive and centralized modern state, these thinkers over-generalize. Certainly pharaonic Egypt enjoyed a palpable sense of state power, corresponding to real bureaucratic control. Rome, which it may be argued turned from Republic to Empire under the impact of Egypt, and whose political structure differs more from that of classical Greece than is commonly recognized, established highly articulated institutions of state power. To term these absolutisms, however, is not to tell us very much.<sup>35</sup>

Leaving the cases of Egypt and Rome aside, the relationship between ancient oriental communities and the classical *polis* is a complex one. Like the Greek *polis* the city-republics of Mesopotamia, Syria and Palestine displayed a considerable range of internal differentiation and, in various periods of their history, were more or less democratic, oligarchic or monarchic in their tendencies. Certain structural features and institutional similarities suggest a kinship between early Mesopotamian and later Greek *poleis* that is more than accidental.

The documentary evidence for some third to first millennium Mesopotamian cities is remarkably extensive. These include Babylon; Nineveh — the last capital of

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The religious non-conformity and autonomy of the non-Magian groups, who had been officially outlawed by Justinian, but were accommodated by the Sasanians, foreshadowed the tolerant treatment by Muslims, in compliance with the maxims of 'the circle of power', of non-Muslim groups—Jews, Christians, pagans, Gnostics and the Aramaean, Persian and immigrant Arab ethnic communities — which constituted the Empire. The Muslim governors of Iraq (*emirs*) combined in turn military, religious and fiscal powers, after the model of the Sasanian monarchs (Morony, pp. 4 ff., 32). Ziyad, the famous governor of Basra, drew on the official Sasanian theory of equity to refer to the reciprocal exchange between rulers and ruled of justice for obedience, using the image of 'the *imam* and his flock', invoked by the Sasanians, but of much more ancient lineage we know, and receiving powerful current employment in Iran.

<sup>34</sup> J.H. Hexter, in 'The Predatory Vision: Niccolo Machiavelli, *Il Principe*, and *lo stato*', in his *The Vision of Politics on the Eve of the Reformation* (New York, 1973), pp. 150–78, maintains that the term 'state' was first introduced by Machiavelli to refer to 'command over men'. I owe this observation to Paul Rahe, 'The Primacy of Politics in Classical Greece', *American Historical Review*, Vol. 89, no. 2 (1984), to whose argument it is central, and who goes on to assert (p. 268), that Locke was the first to distinguish between the state and society. Quentin Skinner, in his excellent two-volume work, *The Foundations of Modern Political Thought*, argues for a distinction between the 'city-republics' of antiquity and the modern 'state', also maintaining that the latter concept was not introduced until the sixteenth century. But if one substitutes for the word 'state', the word 'kingdom', and its appropriate equivalents in old Egyptian, the Mesopotamian languages, Greek and Latin, then the notion of the self-conscious exercise of state power is very clearly present in some ancient societies, if not so much in city-republics, for reasons that we discuss.

<sup>35</sup> On ancient Egypt as a highly articulated state, foreshadowing legitimating concepts of the modern welfare state — among them the satisfaction of needs and provision of peace and justice to all — and on the Roman Empire as successor to these institutions of state power and legitimations, see Springborg, *The Chain of Beneficence*.

Assyria; Assur — the empire's holy city; Uruk, the biblical Erech; and, one of the most recently excavated, Sippar, northernmost of the Babylonian cities, sited on the verge of the Anatolian steppe and an important centre of trade between Babylon and its northern neighbours. These were cities of considerable size and economic and social development. The largest, Babylon, in the middle of the first millennium BC covered some 2,500 acres; Nineveh, 1,850 acres; Uruk, 1,100 acres; comparing favourably to Athens which, in its heyday in the time of Themistocles, was a city covering some 550 acres. For some indication of the size of these sprawling Mesopotamian cities, we have Herodotus's famous account of Babylon, a city which around 450 BC lay 'in a wide plain, a vast city in the form of a square with sides nearly 14 miles long and a circuit of some 56 miles'.<sup>36</sup> Even Aristotle said of Babylon that it was the size 'of a nation rather than of a city', telling the joke that 'when Babylon was captured a considerable part of the city was not aware of it three days later'.<sup>37</sup>

In terms of physical organization the Mesopotamian cities, like the *polis*, contained an inner-city or citadel, an outer-city or suburb, and a harbour section, where foreign merchants transacted their business. The assumption of the old school of orientalists that Mesopotamian city-states were 'totalitarian theocracies' had grown out of a focus on religious documents and those dealing with temple land and personnel exclusively, the overwhelming body of documents preserved for some third millennium sites being of this nature. But a careful study of these documents, particularly for the city of Lagash, begun by the Soviet scholar Diakonoff in the 1950s, to which more recent finds have contributed, has produced the revised view that these cities were 'relatively free and that private property was the rule rather than the exception'.<sup>38</sup> The picture that we now have of city-states such as Lagash includes the long known temple complexes and land, to which are added nobles' estates comprising thousands of acres, and those of commoners, organized in 'patriarchal clans and town communities', not less. The temple lands, maintained for the upkeep of the temple and its scores of administrators, were inalienable. The nobles' lands, which frequently accrued from debt-ridden peasant farmers in a pattern familiar from classical antiquity, were worked by clients or dependents in

<sup>36</sup> Herodotus, *Histories*, I, 181 (1972 edn.), pp. 113 ff. The figures on the size of Mesopotamian *poleis* come from A.L. Oppenheim, 'Mesopotamia — Land of Many Cities', in *Middle Eastern Cities*, ed. Lapidus, p. 5. Charles Issawi, in his essay in the same volume, 'Economic Change and Urbanization in the Middle East', pp. 102–5, gives figures for these cities in the Islamic period, which indicate their great size.

<sup>37</sup> Aristotle, *Politics*, 1276a25–35, Loeb edn, (London, 1932), trans. H. Rackman, p. 183.

<sup>38</sup> Samuel N. Kramer, *The Sumerians* (Chicago, 1963), pp. 75–7. So far was the Sumerian monarchy from constituting a 'totalitarian theocracy' in the fourth millennium, in fact, that 'kingship originally was a temporary office: a king was chosen as leader when war threatened and ceased to exercise authority once the emergency was over'. But gradually in the third millennium, as war became endemic between the city-states, 'the office of king had become permanent, so had his army and the manning and maintenance of the city wall': Thorikild Jacobsen, *The Treasures of Darkness: A History of Mesopotamian Religion* (New Haven, 1976), p. 78. See I.M. Diakonoff, 'Main Features of the Economy in the Monarchies of Ancient West Asia', Third International Conference of Economic History, Munich, 1956.

huge holdings of hundreds of acres. The land of the free commoners, estimated at around half the population, was vested in patriarchal families and could be bought and sold by chosen representatives of the family community, in transactions witnessed by other family members, as documents from Lagash of around 2400 BC record.

Corresponding to this classic division of property, we find a division of political power that is even more surprisingly conventional. The nobility on their landed estates controlled the upper house of the assembly, while the free peasants constituted the lower. The extraordinary Urukagina reform document from Lagash of around 2350 BC, the document in which 'we find the word "freedom" used for the first time in man's recorded history', concerns the redress of administrative abuses on the part of the 'ubiquitous and obnoxious bureaucracy' of the temple, as well as the rapacious tax collectors of the palace.<sup>39</sup> It also records the freeing of those imprisoned for debt-bondage, in terms reminiscent of Solon's *seisachtheia* almost a thousand years later, the institution of private property leading to schedules of rights and provisions for protection that anticipated later legal developments more generally. Thus the Ur-Nammu law code of around 2050 BC, which precedes the famous Akkadian Hammurabi Code by some 300 years, established the rights of orphans, widows and the small landholder to ensure that they did not fall prey to the powerful and 'grabbers' of property. It regulated market exchange by introducing standard weights and measures and instituted a schedule of fines for legal offences in terms similar to the Hittite and Akkadian codes, already a great advance over tribal traditions of justice measured in terms of an 'eye for an eye' and a 'tooth for a tooth'. Court records for the same period record litigation regarding 'marriage contracts, divorces, inheritance, slaves, hiring of boats, claims of all sorts, pledges and such miscellaneous items as pre-trial investigations, subpoenas, theft, damage to property, and malfeasance in office'.<sup>40</sup>

The urban entrepreneurial character of Mesopotamian society is under-scored by the degree to which agriculture was undertaken as a commercial venture by town dwellers of means. Sippar, the most extensively documented city of the old Babylonian period of the dynasty of Hammurabi, 1894–1595, to the extent of some sixteen hundred clay tablets in fact, was organized along classical lines. It comprised an inner city, consisting of the palace and temple complexes plus citizens' dwellings; and an outer city, or suburb, which included fields, date groves, temple, municipal and private lands; the merchants maintaining their social distance at the port — the pattern for all the great river cities, including Babylon, for which we have

<sup>39</sup> Kramer, *The Sumerians*, p. 79, to whom I am indebted for the account preceding of the division of political and economic power.

<sup>40</sup> *Ibid.*, pp. 84–5. On other evidence for the contractual nature of the ancient oriental *poleis*, see Patricia Springborg, 'Politics, Primordialism and Orientalism: Marx, Aristotle and the Myth of the *Gemeinschaft*', *American Political Science Review*, Vol. 80, no. 1 (1986), pp. 185–211. And on the classical *polis* as exchange-based, with contractual social relations and concepts of justice, Patricia Springborg, 'Aristotle and the Problem of Needs', *History of Political Thought*, Vol. 5, no. 3 (1984), pp. 393–424.

Herodotus's famous description.<sup>41</sup> The walled green belt around the fortified inner city was cultivated for barley, but by investors and not smallholders, who rented fields on a large scale, either separately, or in syndicates which then hired contractors and managers to oversee the highly mechanized cultivation and harvest. Sippar's location situated it well to supply Babylon's markets, and the importance of barley to its economy is demonstrated by the fact that the grain was stored in a public granary controlled jointly by royal and civic officials. Deliveries and consignments were recorded according to a widespread Mesopotamian method of book-keeping used by temple and palace bureaucrats. The level at which municipal powers were already articulated may be gauged from the fact that a representative of the city, its highest official — the 'overseer of the merchants' — jointly witnessed all important commercial documents, alongside a palace representative, the 'foreman of the assembly'.<sup>42</sup>

It is ironic that Max Weber, in his influential work 'The City', should have considered the development of corporate municipal life, as a barometer of civilization, to have been peculiar to Medieval Europe.<sup>43</sup> Recent scholarship has shown a considerable degree of corporate autonomy on the part of Mesopotamian cities *vis-à-vis* the royal authority, at a time at which the Germanic and Celtic tribes were still in the bush, so to speak. At the same time, the relatively decentralized nature of Medieval Islamic cities, like those of the Roman, Hellenistic and Byzantine empires, may be explained differently. In these cities, the remote *imperium* competed with religious confession, familial and clan organizations constituted for religious-political purposes, trade and craft corporations, cultic organizations, brotherhoods and religious orders for a sphere of social power. Far from the development of relative autonomy being the exclusive domain of the *Burgertum*, as it was in the Northern European cities of the Middle Ages, the municipality was more in the nature of a confederation of autocephalous communities, with well articulated rights and immunities at all levels of social interaction. The much bemoaned 'unincorporated' nature of later Middle Eastern cities is an index of their high level of internal differentiation and specialization, and not of any 'underdevelopment' compared with the more 'civilized' West.<sup>44</sup> The relatively autonomous corporate and

<sup>41</sup> Herodotus, *Histories*, I, 181 (1972 edn.), pp. 113 ff. For Sippar, see Oppenheim, 'Mesopotamia — Land of Many Cities', 3–16, and Rivkah Harris, *Ancient Sippar* (Istanbul, 1975).

<sup>42</sup> Oppenheim, 'Mesopotamia — Land of Many Cities', pp. 5–10.

<sup>43</sup> Weber, 'The City', pp. 1227–8, 1230–33.

<sup>44</sup> On the debate whether or not Middle Eastern societies lack corporate institutions, which takes as its reference point the Weberian thesis, see Lapidus, 'Muslim Cities and Islamic Societies', and Ira Lapidus, *Muslim Cities in the Later Middle Ages* (Cambridge, Mass., 1967); S.M. Stern, 'The Constitution of the Islamic City', in *The Islamic City*, ed. A.H. Hourani and S.M. Stern (Oxford, 1970); and the various works of Claude Cahen, especially 'Mouvements populaire et autonomisme urbain dans l'Asie musulmane du moyen âge', *Arabica*, Vol. 5, no. 3 (1958), pp. 225–50; Vol. 6, no. 1 (1959), pp. 25–56; and Vol. 6, no. 3 (1959), pp. 223–65; also 'Y a-t-il eu des corporations professionnelles dans le monde musulman classique?', in *The Islamic City*, ed. Hourani and Stern. For the modern period see Clement Henry Moore, 'Authoritarian Politics in Unincorporated Society', presented to the Annual Meeting of the American Political Science Association, 1972; and 'The Consolidation and Dissipation of Power in Unincorporated Society: Egypt and Tunisia', unpublished manuscript.

cultic groups, which constituted the Islamic city, had their parallel, moreover, in the kinship and village networks, the clubs and brotherhoods of the Greek *polis*; the very constituencies which made participatory democracy possible.

The corporate structure of the Mesopotamian *poleis*, the roster of magistracies and of legal and financial institutions, anticipate to a significant degree the institutions of classical Greece. Citizenship in Mesopotamian cities, like that of Athens, depended on the twin criteria of birth to free parents and ownership of municipal land. Citizenship brought with it rights and duties: economic, social, legal and religious privileges, but the duties of taxation and military service. Corporate action on the part of the city succeeded in some cases in reducing these personal liabilities, which ran counter to its economic interests. Thus citizens of Nippur, in central Babylon, were officially exempted around 1900 BC from corvée duties to the king of Isin. The cities of Nippur, Babylon and Sippar claimed divine protection of their municipal rights, placing a religious symbol at the city gate to proclaim their special legal status. A mark of the self-consciousness of their freedom is registered by the citizens of Babylon in a letter to King Ashurbannipal, in which they proclaim that 'even a dog becomes free and privileged when he enters their city'<sup>45</sup>

Distribution of power in the city is documented in innumerable tablets of contract which were customarily witnessed by municipal and royal officials, priests, professionals, family and neighbours, enumerated according to rank. Public administration in Sippar, for instance, fell into two classes. Local government was administered by royal appointees. But at the level of municipal administration of the city (*alum*), or city-and-aldermen (*alum u sicutum*) as a corporate entity, placed its executive power in the hands of one official: the 'overseer of the merchants' (*akil tamkare*). He is reminiscent in name and function of the *wakil tujar* of Islamic times, who served variously as representative of foreign merchants—like the consul in the Italian cities of the Levant—superintendent of the port, tax-farmer of customs and other excises; and as a notary, his warehouse or agency house (*dar al wakala*) served as a neutral meeting ground for the transaction of business, and even as a bourse.<sup>46</sup>

The relationship between the city as a corporate entity (*alum u sicutum*), or city-and-aldermen, and the overseer of the merchants (*akil tamkare*) of Babylonian times, is not completely known. The designation for the community, *alum u sicutum*, seems to refer in Sippar to all free males within the city who met and acted as a body for certain purposes. Throughout the period that the documents record (c. 1894–1595 BC) the overseers were all natives of Sippar, drawn from an oligarchic élite. We know that they were elected for one year only and it seems likely that they were, according

<sup>45</sup> Oppenheim, 'Mesopotamia — Land of Many Cities', p. 7, to whom I am indebted for the account of Mesopotamian corporate municipal institutions that follows.

<sup>46</sup> Goitein, *A Mediterranean Society*, Vol. 1, *Economic Foundations*, pp. 186–92. Both the *wakil* and his house (*dar al wakala*) had semi-official standing. Merchants would form there a 'circle', or '*halqa*' for auctioning and a document of 1141 AD, recorded by Goitein (p. 189), claims that 'offers for the conclusion of a partnership were binding only when they were made in a "*dar wakala*" where a notary was always present to give commercial contracts such as partnerships and *commendas* their appropriate legal form'.

to established Babylonian practice, elected by lot, but from a very circumscribed list of eligible candidates. The lot, later characterized by the Greeks of the classical period as the most democratic of electoral procedures, since it took choice entirely out of human hands on the supposition that all candidates were in principle equal, had been used in Southern Mesopotamia in the Old Babylonian period to decide the order of inheritance of brothers to the paternal estate. In Assyria it was used to elect the eponymous official (*limmu*), elected annually and after whom the year was named.<sup>47</sup>

One of the most interesting aspects of the election by lot of the chief municipal officer in Sippar, designated 'overseer of the merchants', is the possibility that the brevity of his term — for one year only — may have been due to his performing the equivalent of the liturgy. As 'mayor', the *akil* received the revenue from royal land, but in return he had to guarantee to the king the payment of taxes levied on the city — the privilege of office and its accompanying financial liability was thus shifted annually to spread the burden among the class of notables. The liturgy, by which costly public works were levied on wealthy citizens in exchange for social prestige and public honours, lay at the very foundation of the economic systems of the ancient world and has received brilliant amplification by Paul Veyne under the concept of *évergétisme*.<sup>48</sup> Here again the similarity of function — and even an etymological kinship in the terms *akil*, *wakil* — for 'overseer of the merchants' in Mesopotamia in the Old Babylonian period, and Egypt under the Fatimids and Ayyubids, would seem to refer to a continuity of social forms with all the relevant social, economic and religious underpinnings.

It is true that even if the classic municipal institutions of the *polis* — assembly (*ecclesia*), council of elders (*gerousia* or *areopagus*), and the magistracies — can be shown to have had their ancestry in the second and third millennium *poleis* of Mesopotamia, they did not pass on their legacy to the Islamic cities as such. The general decline of municipal institutions in the late Roman Empire, a product of the imperial bureaucracy and its omnivorous appetite for taxes, had its repercussions in the Islamic. While Roman emperors of the later period tried to arrest this decline and revive the cities, if only to curb the central bureaucracy while improving the tax base, political office carried with it such financial liability that few candidates were willing

<sup>47</sup> Oppenheim, 'Mesopotamia — Land of Many Cities', pp. 9–10. Oppenheim has to say of the system of election by lot among notables (p. 10): 'power was wielded not on the basis of personal status (based on charisma, wealth, genealogy), but in rotation among peers, who enjoyed what the Greeks called "*isonomia*".' *Isonomia*, we know had an elastic sense in classical Greece, being used in the famous song about the tyrannicides, Harmodius and Hipparchus, to describe the outcome of their action as nobles who established an oligarchy: 'they made Athens *isonomous*'. Like all political terms, *isonomia* was relative, but the aspiration to equality, if only equality among peers, was consistently intimated by what was referred to by Herodotus as 'the fairest name of all' (Herodotus, *Histories*, III, 84 (1972 edn.), p. 239). On the concept of *isonomia*, or 'equality before the law' in antiquity, see Gregory Vlastos, 'Isonomia', *American Journal of Philology*, Vol. 74, no. 4 (1953), pp. 337–66; J.A.O. Larsen, 'The Judgement of Antiquity on Democracy', *Classical Philology*, Vol. 49, no. 1 (1954), pp. 1–14; and Victor Ehrenberg, 'Origins of Democracy', *Historia*, Vol. 1, no. 4 (1950), pp. 515–48.

<sup>48</sup> Veyne, *Le Pain et le Cirque*. See also note 31, above.

to man the municipal magistracies. Thus the *curia*, that 'class of leading citizens represented on the council, was degraded into a group whose main function was to serve as hostages for the taxes imposed on the city, obliged to make good any deficit from their own pockets'.<sup>49</sup> The situation in Ptolemaic Egypt was particularly noteworthy. There the principal municipal office of *gymnasiarch*, at first voluntary and held for a year, became, as more functions and public works were attached to it, and as the Graeco-Egyptian ruling class became increasingly impoverished, a liturgy that fewer and fewer were willing to fill, so that eventually children were named to the office on the assumption that their parents would pay!

So ended a system of autonomous municipal government that had lasted some three millennia. It was only in Europe, when city life revived from the eleventh century on, that governmental institutions of the classical period, magistracies, assembly and courts, were deliberately recreated. This restoration of institutions of the past, achieved only over centuries, may perhaps be explained by the fact that feudalism had seen the interruption of European urban life to a degree not experienced in the East. Indeed northern European cities had been virtually extinguished, although 'from the very beginning urban life in the western Roman provinces north of the Alps' had been 'much weaker than in the eastern provinces'.<sup>50</sup> Thus the western provinces enjoyed the hiatus that made a new start, and the restoration of institutions lost, possible. In the East developments followed the trajectory of the late Empire.

#### IV

##### Theories of Oriental Despotism

It is not a coincidence that the second, and most vigorous, phase in the articulation of theories of oriental despotism, should have accompanied the rise of the early modern European nation state. In its efforts to upgrade aristocratic advisory councils, and to expand the scope of legal immunities granted commoners by the Crown, the emerging European *Burgertum* consciously imitated the rhetoric of classical republicanism to promote its cause: greater participation, more representative institutions. Despotism was the dire threat, the smear term, invoked against those monarchies that did not comply. 'Oriental despotism' was merely a stronger version of the curse, directed at European kings primarily, but invoking fears of the dreaded Turk and more distant oriental 'tyrannies' by implication.

Thus Montesquieu, whom Wittfogel credits with the invention of the theory of oriental despotism, introduces the concept to describe the degeneration of the Roman

<sup>49</sup> Stern, 'The Constitution of the Islamic City', p. 27. See also Jones, *The Greek City from Alexander to Justinian*, pp. 84-6.

<sup>50</sup> Stern, 'The Constitution of the Islamic City', p. 32.

Republic.<sup>51</sup> Asiatic despotism, as he uses the term in his *Considerations on the Causes of the Greatness of the Romans and their Decline*, Chapter 9, refers explicitly to the failure of rule of law in an overgrown Republic, expanded by military conquest, and inability of the magistracy to curb growing extremes of wealth and poverty, luxury and power. It refers indirectly, of course, to social conditions in France under absolute monarchy. These were not conditions which described the great Mesopotamian kingdoms, famous for their legal codifications and forms of assembly. Nor did they obtain in the Egyptian and Persian monarchies, founded on *nomos-logos* theories of the just ruler, about which Montesquieu would have known from the classical writers.<sup>52</sup>

The *Persian Letters*, we know also, were a vehicle for Montesquieu's critique, not of Persian monarchy, but of contemporary French absolutism. Although there are passing remarks about 'petty Asian princes' — in Letters CII and CIII — their 'tyrannical government' and 'absolute power' — in Letter CIII — the Persian interlocutors, Usbek and Rica are presented as civilized citizens of the world, homesick for Persia. Montesquieu's notion of the scope of Asiatic despotism is very vague — he exempts, for instance, former Greek colonies in Asia Minor and the 'republic of Carthage', colony of the Assyrian empire, in Letter CXXXI.<sup>53</sup> One suspects, in fact, that the concept serves as a foil for his programme of rule of law for France *tout court*. It is certainly true that under the impact of European colonialism, which destroyed the old social order and the indigenous class of notables and *ulama*, social relations in oriental cities came eventually to resemble the *anomie* and lack of community that Montesquieu describes. But all that lay in the future.<sup>54</sup> In Montesquieu's day the only absolutisms of note were those of the small monarchies of northern Europe.

<sup>51</sup> But in the concord of Asiatic despotism — that is, of all government that is not moderate — there is always real dissension. The worker, the soldier, the lawyer, the magistrate, the noble are joined only in as much as some oppress the others without resistance. And if we see any union there, it is not citizens who are united but dead bodies buried one next to the other.

(Montesquieu, *Considerations on the Causes of the Greatness of the Romans and their Decline*, Ch. IX (1734, 1968 edn., Ithaca), p. 94).

<sup>52</sup> I refer especially to the works of Xenophon, Herodotus, Isocrates, Diodorus, Polybius and Plutarch.

<sup>53</sup> Montesquieu, *The Persian Letters* (1721, 1968 edn., New York), pp. 172–221. Louis Althusser, in his excellent essay 'Montesquieu and History', in the collection *Politics and History: Montesquieu, Rousseau, Hegel and Marx* (London, 1972), makes the case for oriental despotism as an ideological construct against which Montesquieu's preferred form of monarchy tempered by aristocracy is projected. But Althusser offers no positive analysis of oriental society that would show the construct to be false. Alain Grosrichard, in his fine study, *Structure du Sérail: La Fiction du Despotisme Asiatique dans l'Occident Classique*, analyses the fantasies of oriental society that underlay Montesquieu's notion.

<sup>54</sup> This is the thesis of Hannah Batatu, the great scholar of modern Iraq, who in *The Old Social Classes and the Revolutionary Movements of Iraq* (Princeton, 1978), argues that British colonialism in Iraq so destroyed the old social order that the revolutionary party and the authoritarian state logically stepped into the void. It may very well be more generally true, in which case it is not the inherently unincorporated nature of Middle Eastern societies that accounts, as it is so complacently argued, for the high incidence of one party states in the region today, but the experience of Western colonialism. Since this thesis fits a

With Montesquieu, we can observe, the series of historical inversions mentioned at the outset had already taken place. Eastern regimes, even if only for rhetorical purposes, were now despotisms; and classical republicanism, familiar to us as an urban, entrepreneurial, expansionist, participatory and syncretic phenomenon, was suddenly transported to agrarian, hierarchical, feudal and Christian Europe. This transformation is a fascinating phenomenon and a story in itself. The Stoics, much revered by Montesquieu, Rousseau, Adam Ferguson and other eighteenth-century European commentators on the classical republic and its decline, had their part to play.<sup>55</sup> For Rousseau, Montesquieu and the early modern classical republicans believed themselves to be in the tradition of Polybius, Cicero, Seneca, the great republicans of Rome — and even Aristotle.

But Aristotle's conception of man as *zoon politikon* meant, if nothing else, that man was by nature an urban creature or *polis* dweller, political relations being founded on the contractual relations of mutually dependent, contiguously existing city dwellers, whose good life depended on the division of labour and trade.<sup>56</sup> Just the things that Rousseau rejected. What Harrington, Rousseau, Montesquieu and Jefferson, the long line of classical republicans in the northern European early modern tradition, overlooked was that the classical republicanism transmitted to them through the Stoic writers, Cicero, Seneca, Cato and others, represented precisely a rejection of classical forms, and particularly the city, on the part of a wealthy oligarchic élite who had witnessed, and participated in, the large scale corruption of the Roman Republic. So the yearning for the simple life, the 'life according to nature', 'the man of few needs', rejection of material in favour of spiritual goods, bespoke the lamentations of rich men renowned for their large estates, mansions, fish ponds and endless retinues of servants and hangers-on, of

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wider pattern of third world historical development, it is very plausible. The enormous hiatus that exists between eighteenth-century and twentieth-century Middle Eastern societies is the subject of some of the most interesting contemporary historical research — see Gabriel Baer, *Studies in the Social History of Modern Egypt* (Chicago, 1960), and Jacques Berque, *Egypt, Imperialism and Revolution* (London, 1972), for example.

<sup>55</sup> On the influence of the Stoics on Rousseau, see especially the work of Jean Morel, 'Recherches sur les sources du *Discours de l'Inégalité*', *Annales de la Société Jean-Jacques Rousseau*, Vol. 5 (1909), pp. 119–98; Georges Pire, 'De l'influence de Sénèque sur les théories pédagogiques de J.-J. Rousseau', *Annales de la Société Jean-Jacques Rousseau*, Vol. 33, pp. 57–92; and Peter Jimack, 'La Genèse et la Rédaction de *L'Émile* de J.-J. Rousseau', *Studies in Voltaire and the Eighteenth Century*, Vol. 13, pp. 289–350. See also Chapter 3, 'Rousseau on Natural and Artificial Needs' and Chapter 2, 'Needs in Hellenistic and Enlightenment Materialism', in Patricia Springborg, *The Problem of Human Needs and the Critique of Civilization* (London, 1981), for the role of Stoicism more generally in theories of social corruption of the early modern period.

<sup>56</sup> See Patricia Springborg, 'Marx, Democracy and the Ancient Polis', *Critical Philosophy*, Vol. 1, no. 1 (1984), pp. 47–66; 'Karl Marx on Democracy, Participation, Voting and Equality', *Political Theory*, Vol. 12, no. 4 (1984), pp. 537–56; 'Aristotle and the Problem of Needs', pp. 393–424; and 'Politics, Primordialism and Orientalism', pp. 185–211, for an elaboration of this thesis on Aristotle and its ramifications for Marx. It was this conception of the exchange-based republic which the eighteenth-century political economists revived as the authentic form of classical republic.

whom they had tired, but which they were not, however, prepared to relinquish. (Seneca was famous for his gold-fish ponds, the ultimate status symbol of the rich man.) The Stoics also contributed to the theory of Hellenistic kingship with their ideal of the 'wise man', and the Asiatic Stoics had written innumerable treatises on kingship that were lost in the Attic purges.<sup>57</sup>

What Rousseau failed to realize, just as the Stoics failed to realize it, was that this renunciation of urban, entrepreneurial, contractually defined and mutually dependent existence meant, when it received its historical specification, not greater rights and freedom for the individual, but his/her total exclusion from economic and attendant political power. The rural, decentralized feudal societies that emerged with the break up of the Roman Empire in the West, were societies in which a noble cast ruled and the rest were indentured serfs. The development of the pre-modern nation state improved on this only theoretically; by assimilating indigenous aristocratic and clan councils to the representative assemblies of the ancient world; or, yet more ephemerally, by admitting individuals to the momentary power of authorizing an absolute sovereign — I have Rousseau in mind in the former case, Hobbes in the latter.

Just as corporation theory in Roman Law found an application in definitions of the sovereign power of the absolute monarchs of Europe that completely violated its purpose of providing legal protection to subordinate and autonomous forms of association; so social contract theory found a specification in accounts of the transition from ancient society to the pre-modern nation state, where real conditions for contract did not obtain at all.<sup>58</sup> In other words, social contract became a way to express the transition from a society of relatively equal rights, to one in which the relations between citizen and monarch were radically unequal.

The fact that the concept of contract was an efficacious vehicle for such a transition reflects the shift in meaning of the concept from the ancient classical, to the Judeo-Christian, tradition.<sup>59</sup> For the ancients — and this includes ancient Greece and

<sup>57</sup> For the lost Stoic treatises on kingship, and reconstructions from fragments, see Margare E. Reesor, *The Political Theory of the Old and Middle Stoa* (New York, 1951). For the purge of Hellenistic treatises in Asian Greek — i.e. the great bulk of those from the Eastern provinces — that coincided with the Attic revival of the second century BC on, see E.A. Barber, 'Alexandrian Literature', pp. 31–78, in *The Hellenistic Age*, ed. J.B. Bury *et al.* (Cambridge, 1923).

<sup>58</sup> See Otto von Gierke's excellent study, *Das Deutsche Genossenschaftsrecht*, trans. as *Political Theories of the Middle Ages* (Cambridge, 1900), and *Natural Law and the Theory of Society 1500–1800* (Cambridge, 1934). Gierke describes the processes by which forms of subordinate association and local communities (*collegia* and *universitates*) gradually lost their legal privileges, and all entities intervening between the individual and the state were eliminated. The social contract theories of Hobbes, Locke, Rousseau and Bodin played an important role in these processes, by asserting that 'the sovereign State was directly based on the conclusion of a contract between individuals'. The logical outcome was a theory of social relations that treated all intervening forms of legal association and local community as 'merely a preliminary stage of the civic community, and treated the civic community as a perfect realization of the idea of State' (*Natural Law and the Theory of Society*, pp. 62–3).

<sup>59</sup> On the biblical tradition underlying Hobbes's theory of contract and obligation, see Patricia Springborg, 'Leviathan, Christian Commonwealth Incorporated', *Political Studies*, Vol. 24, no. 2 (1976), pp. 171–83. Even the revolutionary democrats of the English civil war tended to conceive of contract as covenant, as one observes, for instance, in the Putney Debates.

Rome, as well as the Middle East, because of the mutually inextricable tangle of institutions shared by them due to continuous contact, periods of occupation, co-option of religious and cultic practices and so on — contract meant more or less what contract means to us today: a legally binding agreement contracted between equals, serving as the basis for transactions of all types, oaths, promises, initiation procedures, ratification of citizenship, and so on.

In post-Reformation Europe, however, the contract came to mean something entirely different. It became assimilated to the Biblical Covenant, as the form in which the faithful voluntarily submitted to the commandments of God, for which the archetype was God's covenant with Moses. Thus, contract or covenant became the rubric under which all forms of unequal association in this fundamentally hierarchical society fell: notably, relations between husband and wife, father and children, the Godly Prince and the Church. The most definitive specification of the theory of social contract and covenant is found in Hobbes, for whom even relations between parents and children is one of (unequal) contract. But Locke's concept of tacit consent, as adequate to establish conditions for contractual obligation, is hardly less asymmetrical in the distribution of power that it assumes between the contracting parties.<sup>60</sup>

Rousseau had a yearning to re-establish the participatory citizenship of the heyday of classical antiquity, but he could not escape the social contract net, substituting for the absolute monarch the sovereign General Will, as the governing power which the shift from civil society to the state established by way of contract. Rousseau's difficulties arose from an antipathy to urban society and its evils — undoubtedly a Stoic legacy and perhaps a product of his experience as a protégée of the salons! — that caused him to reject competition for honour, the bonds of mutual dependence created by the division of labour, and subsequent commercial, legal and entrepreneurial transactions, as somehow corrupt *sui generis*. An extreme view, to which Plato and Aristotle certainly did not subscribe — but then the brakes on economic expansionism that Plato in the *Laws*, and Aristotle in the *Politics*, tried to apply, have been consistently read in the medieval and modern periods as approbation of a society based on subsistence agriculture. This was the legacy that the ruralization of Aristotle had wrought. In the tradition of classical republicanism — which was neither classical nor republicanism — that had developed with the re-emergence of society from the feudal slumber and the veneration of classical political traditions from the Renaissance on, Rousseau's political ideal, like that of Harrington, Montesquieu and Jefferson, was the agrarian society of small landholders, whose

<sup>60</sup> On various aspects of the seventeenth-century 'unequal contract' better termed 'covenant', see David Gauthier, 'The Social Contract as Ideology', *Philosophy and Public Affairs*, Vol. 6, no. 2 (1977), pp. 130–64; Carole Pateman, 'The Shame of the Marriage Contract', in *Women's Views of the Political World of Men* ed. Judith Hicks Stiehm (New York, 1984); and Carole Pateman, 'The Fraternal Social Contract: Some Observations on Patriarchal Civil Society', presented to the Annual Conference of the American Political Science Association, 1984. On Locke on tacit consent, see Carole Pateman, *The Problem of Political Obligation* (Chichester, 1979).

republicanism consisted in their right to bear arms in a citizen army and to contribute morally to the General Will through participation in a legislative assembly.<sup>61</sup>

In this way classical republicanism so-called had accommodated itself to the realities of feudal society and its successor, absolute monarchy. There is little historical basis for the claims of these theorists that northern Europe had acceded to the mantle of power inherited from classical antiquity. Rather, northern Europe went from one form of decentralized, rural, feudal existence to another, while the urban, entrepreneurial societies of the Mediterranean basin remained as they had been for millennia, political, highly participatory and commercially active. That they did not, in the early modern period, continue to wear the badge of democracy — something of a misnomer — in the form of legislative assembly, courts and classical magistracies, should not blind us to the fact that other forms of association and other channels of participation were present in these societies, in which social relations and the division of labour were highly articulated, as we shall see.

A later, and not less remarkable, chapter in the history of classical republican theory is ushered in by the political economists and *laissez-faire* theorists of the European Enlightenment. One may speculate, in fact, that the whole ideology of 'free enterprise', that peculiar achievement of the Scottish political economists, represented a reappraisal of the 'commercial republic' of antiquity, and a reassessment of its urban entrepreneurial character, so long obscured in the rustic, feudal version produced by medieval European Aristotelianism. The political economists were for the most part professors of moral philosophy, well acquainted with the classics. One, in the case of Adam Ferguson, had even written a treatise on the decline of Rome. The 'commercial republic' that Adam Smith, Hume, Addison, Defoe and others idealized, created 'community' through the clubs and forms of voluntary association based on personal independence that a free trade community, founded on the cut and thrust of economic exchange gave rise to. Smith in *The Theory of Moral Sentiments*, saw in 'societies', 'associations', 'companies', 'clubs' and neighbourhoods, voluntary forms of association that, like commerce itself, liberated men from dependence and hierarchy associated with the old feudal order.<sup>62</sup> Of course the vital municipal life of Edinburgh, as one of the few civilized cities outside London, depended on the autonomy these forms created.

<sup>61</sup> For Rousseau's views on the hazards of civilized — that is to say, urban — life as 'fastening the knots of society by personal interest', putting men 'in mutual dependence, giving them reciprocal needs and common interests', engendering competition, dissembling, pride and betrayal, see the famous preface to *Narcissus* of 1753, *Oeuvres Complètes*, Pleiade edn. (Paris, 1964), Vol. 2, p. 968; and the 'Discourse On the Origins of Inequality', (*OC*, Vol. 3). For his views on agrarian republicanism combined with popular participation, see *The Social Contract* (*OC*, Vol. 3).

<sup>62</sup> Adam Ferguson's work on the classical republic bears the title, *The History of the Progress and Termination of the Roman Republic*. On the 'commercial republic' of the Scottish Enlightenment philosophers, see the essays in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, ed. Istvan Hont and Michael Ignatieff (Cambridge, 1983), especially those by J.G.A. Pocock and Michael Ignatieff, and Nicholas Phillipson's piece 'Adam Smith as Civic Moraliser', from which I quote (pp. 188–9).

The 'four-stages' theory of civilization developed by these Scottish Enlightenment theorists inadvertently perpetuated notions of Asiatic despotism. For these four stages in the development of the capitalist mode of production — and the attendant state superstructures which they traced, and which laid the basis for Marx's own conceptualization — were described as phases in the development of *European* civilization. The notion of an Asiatic mode of production, postulating a peculiarly dominant state in oriental societies where geophysical conditions required massive public works such as irrigation for the survival of the city, had been a commonplace since Hegel. Montesquieu and early proponents of oriental despotism were subsequently reread more literally, the reference to European absolute monarchies being long forgotten.

The nineteenth century had its own contribution to make to the 'myth of the contractual state' and its corollary, the 'orientalization' of the East. One of the most ubiquitous and pervasive concepts to describe the transition from 'traditional', and therefore Eastern, society, to modern, and therefore Westernized, society, is the 'status to contract' formula. Deep background macro-historical schemas often include a hidden agenda for the analysis of the present. The 'status to contract' thesis is one. Made in different forms by comparative theorists of the nineteenth century who set the canon for the social sciences in the twentieth — by Maine, Morgan, Tönnies and Weber — it remains the linchpin of theories of development and underdevelopment today.<sup>63</sup> Briefly, it claims that status hierarchies were constitutive of ancient and traditional — including oriental — society; the pursuit of honour and prestige being set above more 'productive' goals; the life chances of individuals within them being constrained by affective and affinal ties, as opposed to individual achievement. Modern society, by contrast, has according to the theory seen the destruction of these confining and limiting corporate entities, the freeing of individuals for achievement, advancement on the basis of merit, and the redefinition of social relations in legal and contractual, rather than traditional and status, terms. What is thought to be so modern about 'contractual' relations is that they are said to be between free and equal individuals, sanctioned by law, but otherwise unconstrained. Contractual relations put conditions on the rights of individuals, but for limited purposes and in a rational and specific way, thus comparing favourably, it is believed, with the informal and unrestricted limits imposed on individuals by traditional forms of association and status hierarchies.

The 'status to contract' thesis is perhaps the least fortunate of modern macro-historical formulae, falling prey, as it has, to falsification by the historical record. Just as significantly, a number of current theorists have pointed to the

<sup>63</sup> The transition from the state of nature to 'civil society' was described by Lewis Henry Morgan in *Ancient Society* (Chicago, 1877), as the transition from *societas* to *civitas*; by Henry Sumner Maine in *The Ancient Law* (London, 1861), as from *status* to *contractus*; and by Ferdinand Tönnies as the transition from *Gemeinschaft* to *Gesellschaft*, in the work of that title (Leipzig, 1887). Max Weber differentiates societies in a more complex series of categories: primordialism, patrimonialism, to capitalism, while still subscribing to the view that Western society is somehow privileged. See Weber, *Economy and Society*, Vol. 3.

empirical untruth of the pretence to a society based on 'free and equal individuals', which the thesis claims for modern Westernized society. It has been our purpose here to show that the legal definition of relations between citizens in contractual terms does not belong to the Western historical tradition to anything like the extent that it belongs to that of the East.<sup>64</sup> It remains to show how that tradition survived in the Islamic world, even after the demise of classical republican institutions, in corporate forms of association and mechanisms of representation. A tradition which brought women, that most excluded class in the West, into the civic fold.

<sup>64</sup> On the myth of the Western state as based on a contract between free and equal citizens, see the works of Pateman and Gauthier, note 60, above. On the rights of women, or rather the lack thereof, in classical Greece, see J.P. Gould, 'Law, Custom, and Myth: Aspects of the Social Position of Women in Classical Athens', *Journal of Hellenic Studies*, Vol. 100 (1980), pp. 38–59; David M. Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh, 1979), and his interesting piece establishing not only that women could not represent themselves in court, but that their names could not even be named: 'The Women Least Mentioned: Etiquette and Women's Names', *Classical Quarterly*, new ser., Vol. 27 (1977), pp. 323–30.

On Roman Law as reflecting the level of contractual relations between citizens, compare the claims of Perry Anderson in *Passages from Antiquity to Feudalism* (London, 1974), with those of the Roman scholar, Paul Veyne, in *Le Pain et le Cirque*. Anderson, pp. 65–6, proclaims the emergence of Roman Law 'in all its unity and singularity' as a 'superstructural development without precedent in the Ancient world'. He notes that its development coincided with the 'Roman conquest of the Mediterranean in the last two centuries of the Republic and the massive expansion of the senatorial economy', but without recognizing that the richly articulated private law that he describes had been anticipated in Eastern codes, of whose content his account could well serve as a description: 'concerned with regulation of informal relationships of contract and exchange between private citizens . . . economic transactions — purchase, sale, hire, lease, inheritance, security — and their familial concomitants — matrimonial or testamentary'. Anderson claims further that 'no prior legal system had ever known the notion of an unqualified private property: ownership in Greece, Persia or Egypt had always been "relative", in other words conditional on superior or collateral rights of other authorities and parties, or obligations to them. It was Roman jurisprudence that for the first time emancipated private property ownership from any extrinsic qualifications or restraints, by developing the novel distinction between mere "possession" — factual control of goods, and "property" — full legal title to them' (pp. 65–7). But the urban entrepreneurial societies of Mesopotamia and the Levant were based on a private property as unqualified as that of Rome, which was qualified by virtue of being 'quiritary', or tied to citizenship and, as Anderson admits (p. 66) if 'absolute', yet not universal. Even in Pharaonic Egypt, where state ownership was much more extensive, the nuclear family, as the basic social unit, owned property in the form of a private house, chattels, tools, furniture and a tomb, whether the family was upper or working class, the children enjoying full rights of inheritance (Baillet, *Le Régime Pharaonique*, Vol. 2, pp. 605–7). No more than Rome was the first to disengage 'the pure colour of "property" from the economic spectrum of . . . indeterminate possession', was Greece the first to separate 'the absolute pole of "liberty" from the political continuum of relative . . . rights' (Anderson, pp. 66–7) — as we know from the Urukagina reform document from third millennium Mesopotamia! Anderson's extraordinary assertions are sparingly documented compared with the rich documentation provided by Veyne. Anderson's emphasis on the unity of Roman law and its 'development of a general legal theory . . . wholly new in Antiquity' (p. 66), is denied by Veyne (pp. 597–603, 744–5) who argues precisely the opposite. Roman law comprises a collection of rights without concepts, it 'multiplies distinctions and rules, but has a congenital incapacity to posit a principle or construct a concept. The fragments of the jurisconsults, in the *Digest*, . . . are presented as a succession of particular cases, discussed one by one, without any general rule; it is like reading the detail of the rules of agreement for participles in a French grammar book: all the details are there, all the exceptions, but no principle!' (Veyne, note 135, p. 745). It was the very haphazard nature of Roman law that was its great strength, Veyne maintains. Its legislators and jurisconsults were all amateurs — Anderson's claim that it was 'the creation . . . of specialized and aristocratic jurists who remained outside the process of litigation itself, furnishing opinions to the judiciary

In the twentieth century Oriental Despotism received its definitive treatment with the work of that title by Karl Wittfogel.<sup>65</sup> It is unnecessary to rehearse here the arguments advanced by Wittfogel on the despotic nature of hydraulic, or irrigation, societies and the rebuttal that they have received from recent scholars. Suffice to mention that the work of Butzer on the interface between ecology and society in ancient Egypt, regarded as Wittfogel's best case, has revealed a self-draining river valley in which quite decentralized and local irrigation systems were possible, defying the proposition that a highly centralized state-sponsored system was mandatory.<sup>66</sup> Egyptologists now believe, indeed, that early town development in Egypt paralleled the growth of city-republics in Mesopotamia, up to the unification of the two kingdoms of Upper and Lower Egypt. It is argued that this market-based, communally autonomous type of society persisted into the Old Kingdom, in Lower Egypt, at Ma'adi.<sup>67</sup>

The quality of Wittfogel's scholarship is revealed by the way in which he treats the evidence for Mesopotamia, included by him in the hydraulic model. He notes, for instance, that 'Sumerian legends speak of elders and assembly-like gatherings, which the legendary king, Gilgamesh, consulted before making decisions'. But, he asks, 'What do these tales mean? Boas has convincingly argued that myths contain fictitious as well as realistic features and that realistic elements may be exaggerated or transformed into their opposites.' On the basis of this marvellous methodological weapon he concludes that 'there may well have been proto-Sumerian assemblies similar to the warrior assemblies of the Aryan conquest republics in northeast India. . . . But whatever the institutional quality of these legendary assemblies may have been, no such gatherings dominated the Sumerian city states when they emerged in the light of recorded history'.<sup>68</sup> He concedes that 'with regard to Babylon the situation is otherwise. Babylonian inscriptions refer to assemblies, to elders, and — in the same context — to merchants'. And he asks, 'Could it be that the growth of Babylonian trade also increased the power of its representatives, the big merchants?' He notes of second millennium Assyrian merchant settlements that 'although lacking political unity [they] comprised a number of territorial governments' enjoying

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. . . on questions of legal principle rather than matters of fact' (p. 66), to the contrary. By improvising solutions to concrete problems, they created a public law, extending the privileges of civil (private) law to fictitious moral persons — and this the Greeks, and even more modern systems of customary law, achieved only much later (Veyne, pp. 601–2). Anderson claims, however, that 'it was not public or criminal law, but civil law governing suits between disputing parties over property, that formed the peculiar province of its [Roman law's] remarkable advance' (p. 66).

<sup>65</sup> Karl A. Wittfogel, *Oriental Despotism* (New Haven, 1957).

<sup>66</sup> Karl W. Butzer, *Early Hydraulic Society in Egypt* (Chicago, 1976).

<sup>67</sup> Manfred Bietak, 'Urban Archeology and the "Town Problem"', in *Egyptology and the Social Sciences*, ed. Kent R. Weeks (Cairo, 1979); B.G. Trigger, 'The Rise of Egyptian Civilization', in Trigger *et al.*, *Ancient Egypt: A Social History* (Cambridge, 1983); and Michael A. Hoffman, *Egypt Before the Pharaohs. The Prehistoric Foundations of Egyptian Civilization* (New York, 1979), on the entrepreneurial Levantine community at Ma'adi.

<sup>68</sup> Wittfogel, *Oriental Despotism*, pp. 267 ff.

'greater autonomy' than the merchants of Sumer or Babylonia.<sup>69</sup> Wittfogel illustrates the degree of local autonomy enjoyed by these municipalities by referring to their power to control trade, while pointing out that 'in the end it was Assur', significantly the royal city, 'that decided legal cases and had the power to impose taxes'. He notes further that the Assyrian trade colonies 'dealt with their judicial matters in a "general assembly of all colonists"', the *karum*; and this body also settled other communal problems'. In deeming these systems, in which the separation of powers and the rule of law were already well established, 'absolutisms', Wittfogel judges second millennium Mesopotamian civilization by criteria for legitimate government that did not apply in Western Europe until the eighteenth or nineteenth centuries AD!<sup>70</sup>

## V

### The Case of the Islamic State

We have speculated that the high degree of continuous contact between the Graeco-Roman and Islamic civilizations on so many fronts meant that the historical tendencies of the late Roman Empire, and of Hellenism in general, were played out in the Islamic period. Witness the centralized bureaucratic administration, the highly 'urban, industrial and commercial life', both 'direct legacies of the preceding period',<sup>71</sup> as well as Neoplatonist, Pythagorean and Aristotelian legacies in Islamic philosophy.<sup>72</sup> Hellenistic theories of kingship found a new role in legitimizing the

<sup>69</sup> *Ibid.*, pp. 268–9.

<sup>70</sup> Thus Wittfogel concludes on the nature of Mesopotamian society (pp. 268–9):

Babylonian absolutism, like that of Sumer, was rooted in a compact agromanageial economy; and private property probably played a secondary role in agriculture as well as in commerce. In any case, no serious institutional analyst claims that the assemblies, and through them the merchants, controlled the Babylonian government. The king and his men dominated the administration, the army and the fiscal system. The king was also the lawgiver. Furthermore, he and his functionaries were strategically situated in the judiciary. At the king's service "judges of the king" ruled according to the "legal practice of the king". But the royal judges, who frequently combined administrative, military and legal activities, relied for the settlement of local issues heavily on local assemblies. These bodies dealt primarily with legal matters. Operating under the king's control, they constituted a kind of "civil jury".

<sup>71</sup> Stern, 'The Constitution of the Islamic City', p. 32.

<sup>72</sup> Richard Walzer, the renowned scholar of the classical legacy in Islam, writes in his essay, 'On the Legacy of the Classics in the Islamic World': 'Islamic philosophy is Greek philosophy, but it is not Greek philosophy studied for scholarly reasons nor for the satisfaction of scholarly curiosity. It is meant primarily to serve the needs of the new religion of Islam' (Richard Walzer, *Greek into Arabic* (Oxford, 1962), p. 35). In his essay in the same collection, 'Platonism in Islamic Philosophy' he observes (p. 236):

It is not generally realized how closely Islamic philosophy is linked up with Greek thought, and hence we are inclined to underrate its importance for people concerned with the continuity of the ancient legacy in different civilizations . . . The influence of Greek philosophy, medicine, etc., is much more widely spread in the medieval Islamic world than in the corresponding periods of Western Christian civilization. The number of Greek works which became known in Arabic translations before the year A.D. 1000 is immense and surpasses in a very impressive way the amount of Greek books known at that time in Latin. To recall only one well-known example: Cassiodorus (about 529) recommended

function of the Islamic governor, the Turkish *mamluks*, once the Abbasid caliphate disintegrated, taking over the mantle of monarchy and its bureaucratic attenuations. The Mamluk system of government bore a strong resemblance to the Roman governorships of the eastern provinces, which had reimported to Rome the trappings of Eastern potentates that Emperors had been quick to adopt.<sup>73</sup> But here we are speaking of central government, which the Islamic cities learned to live with, just as their predecessors had learned to live with the imperial bureaucracy which, after a brief period in which the 'hierarchic titles and positions' were suppressed or abandoned, was resumed by the Islamic governors.<sup>74</sup> The mutual dependence of city and central government, nevertheless allowed sufficient leeway for leaders of the various quarters and communities of the urban population to gain considerable power. The lack of unifying national institutions, seen to mark the divide between Western and oriental cities,<sup>75</sup> may be read, alternatively, as evidence for the strength of the autocephalous communities and their institutions that constituted the oriental city as a diverse, complex and cosmopolitan phenomenon, compared with the much smaller and more homogeneous European cities of the time. The peace and stability that the central government afforded local Islamic municipalities, created a suitable climate for commercial and cultural activities that were pursued with vigour.

Thus, 'the social and political capacities of the smaller communities' were complemented by 'a large territorial empire'.<sup>76</sup> But correspondingly, in the Muslim city the state was only one element among others. As a public space constituted of

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in his *Institutiones*, one book by Galen for study. The Arabs knew, about A.D. 900, 129 medical and philosophical works by Galen, and evidence that most of them were not only known but studied is not lacking. With the notable exception of the *Politics* and some works of minor importance all Aristotle's lecture courses were known to them, often in more than one translation. Moreover, a number of Greek philosophical and scientific works still read in the Eastern world before 1000 and lost during the later decline of Byzantium are nowadays preserved in Arabic translations only. Hence it is no exaggeration to say that, with the exception of the Greek papyri and occasional discoveries of new inscriptions and of some medieval Latin and Syrian and Armenian versions of lost works, the Arabic versions — which are still very incompletely known — constitute our only hope of increasing our present knowledge of Greek literature.

<sup>73</sup> The final chapter of Rostovtzeff's great work on *The Social and Economic History of the Roman Empire* (Ch. XII, Vol. 1, pp. 502–27, and notes, Vol. 2) entitled 'The Oriental Despotism', refers to the cult of the Roman Emperor, to which, along with its bureaucratic apparatuses, Rostovtzeff attributes the destruction of municipal autonomy. It was this erosion of the power of the city that brought about the gradual slide from an economy in which the countryside was controlled from the cities (ancient), to an economy in which the great landowners took up residence in the countryside (feudal), that marks the disintegration of the Roman Empire. Rostovtzeff believed that the emperor cult of the Romans was based on the Sasanian model — and he is joined by J.B. Bury, editor of *The Hellenistic Age: Aspects of Hellenistic Civilization* (London, 1923) and Fergus Millar, *The Emperor in the Roman World* (London, 1977); but recent studies (Morony, *Iraq after the Muslim Conquest*) suggest that the Sasanian empire, like its Islamic successors, thrived because it permitted local autonomy.

<sup>74</sup> Morony, *Iraq after the Muslim Conquest*, p. 71.

<sup>75</sup> Weber, 'The City', pp. 1227–33.

<sup>76</sup> Lapidus, 'Muslim Cities and Islamic Societies', pp. 49–51, to whom I am indebted for the account that follows.

'socially homogeneous quarters . . . created by a coalescence of villagers, by the settlement of different tribes, or by the founding of new ethnic or governmental districts', the city was little more than an aggregate of these quarters, based as they were on 'the clientele of important political or religious leaders, religious sects, Muslim and non-Muslim ethnic minorities and specialized crafts'. As in the case of third millennium Mesopotamian cities, 'even such tiny minorities as foreign merchants might have their own quarter, in the form of a *funduq* or caravansary set aside for their residence and business'. Such a pattern remained true for the great cities, such as ninth- and tenth-century Baghdad and Istanbul, cities in excess of a million people, for: 'however cosmopolitan' these cities may have been, 'neighbourhood communities seem everywhere to have been the keystone of Muslim urban life'.

Very few institutions cut across quarters of neighbourhoods, officially recognized as 'administrative units headed by a *shayk* who was appointed by the city governor to assist in taxation, maintain order, enforce police ordinances, and represent the quarter on city-wide political or ceremonial occasions'. Institutions which did succeed in bridging neighbourhood divisions included, significantly, 'various fraternal organizations — Sufi brotherhoods, youth clubs and criminal gangs', reminiscent of the tribes, phratries and *hetaireiai* — the thuggish political clubs of Athens.<sup>77</sup> There are oriental scholars predisposed to see continuities between the *polis* and the Islamic city, most important among which are village and kinship networks, source of the intense localism and factionalism of the Islamic city, mirroring as it does the clan and tribal forms of classical antiquity and their incorporation into the network of communal vehicles of power that made up the *polis*.<sup>78</sup> These continuities of social form are paralleled by other economic and structural continuities between the *polis* and the Islamic city, as we shall see. A full institutional account, too detailed to document here in full, may now be given of the localism, decentralized and 'free enterprise' ethos of the Islamic city in terms of the structures and roles associated with *évergétisme* or beneficence, known to us from the ancient world. They include the role of the notable, benefices, the *waqf*, certain privileges of merchants and tax farmers, municipal corporations, guilds, *shadd*, *sinf*,

<sup>77</sup> On the *hetaireiai* see George M. Calhoun, *Athenian Clubs in Politics and Litigation* (New York, 1913). On the tribes, clans and phratries and other cultic and 'fraternal' societies, see William Scott Ferguson, 'The Athenian Phratries', *Classical Philology*, Vol. 5, no. 3 (1910), pp. 257–84; W.S. Ferguson, 'The Salaminioi of Heptaphylai and Sounion', *Hesperia*, Vol. 7 (1938), pp. 1–74; W.S. Ferguson, 'The Attic Orgeones', *Harvard Theological Review*, Vol. 37, no. 2 (1944), pp. 61–140; Arthur Darby Nock, 'The Cult of Heroes', *Harvard Theological Review*, Vol. 37, no. 2 (1944), pp. 141–73; Dennis Roussel, *Tribu et cité: études sur les groupes sociaux dans les cités Grecques aux époques archaïque et classique* (Paris, 1976).

<sup>78</sup> See von Grunebaum on the continuities between the Islamic city and the *polis*, in his 'Discussions' at the Berkeley symposium, *Middle Eastern Cities*, ed. Lapidus, pp. 22, 47, 78, 107, 190. On clan and tribal forms as constituting political networks in modern Middle Eastern Cities, see Fuad Khuri, 'A Profile of Family Associations in Two Suburbs of Beirut', in Jean G. Péristiány, *Mediterranean Family Structures* (Cambridge, 1976); Emrys Lloyd Peters, 'Aspects of Affinity in a Lebanese Maronite Village', in the same volume; and Fuad Khuri, *Tribe and State in Bahrain* (Chicago, 1980).

and *futuwa* — fraternities, confessional, cultic, clan and occupational organizations of a specifically Islamic type.<sup>79</sup>

Among institutions of social power in the Muslim city, the state, as represented by the central government, was only one, and not by any means hegemonic. It was the municipality, or the quarter, that the notable honoured with public buildings and benefices. Shelomo Goitein in his analysis of the Islamic city, revealed to us from the tenth- to thirteenth-century documents of the Cairo Geniza, has remarked on the low profile of the state as registered by its spatial presence.<sup>80</sup> Except for the mint and the exchange (*qaysariyya*, an Arabic word derived from Caesar), the police station, the prison and a few offices dispensing licences, the vast bulk of public buildings — sugar factories, flour mills, oil presses, abattoirs, granaries, bourses, small textile factories, markets, shops and bath houses — belonged to the municipality or were in private hands; while synagogues, churches, mosques, schools, convents, universities, law courts, hospices and considerable land and real estate holdings were the property of the various confessional communities that administered them.<sup>81</sup>

The autonomy of the autocephalous communities of the Islamic world rested on two categories of indigenous leadership: the notable and the *ulama*, both closely connected by virtue of class and familial affiliations. The *ulama*, a religious élite with close ties to the upper bourgeoisie, controlled the mosques, religious schools and law schools, through the *awqaf*, or system of benefices. The notables, leaders of the great bourgeois families, ran the large commercial enterprises which provided the fiscal basis of the city and central governments. 'Both groups shared an interest in a stable, prosperous and cultivated urban life' and together they 'provided an urban leadership: their wealth, piety, culture and ancient names [giving] them social prestige and patronage of quarters, ethnic or religious groups, crafts, or the city as a whole.'<sup>82</sup> Once again, the picture is not so very different from that painted by Veyne of city life, its social and economic institutions under the Hellenistic and Roman empires. For the institutions of classical republicanism — the magistracies, the bicameral assembly and the judges — representing the state as such, comprised but one network of social power in the cities. The other systems that complemented and tied into the state, or imperial, institutions, were patron-client networks based on

<sup>79</sup> See the relevant articles in the *Encyclopaedia of Islam* (4 vols., Leiden, 1st, 2nd and 3rd edns, 1908–34, 1960, and 1979 ff.).

<sup>80</sup> Goitein, *A Mediterranean Society*, Vol. 1, *Economic Foundations*, p. 194.

<sup>81</sup> Shelomo Goitein, 'Cairo: An Islamic City', in *Middle Eastern Cities*, ed. Lapidus, pp. 90 ff. On the administration of the Jewish community, its property and income, see Goitein, *A Mediterranean Society*, Vol. 2, *The Community*.

<sup>82</sup> Albert Hourani, 'The Islamic City in the Light of Recent Research', in *The Islamic City*, ed. Hourani and Stern, p. 18.

family, class, confession and locality.<sup>83</sup> As on-going forms of association and activity they had a life of their own, whereas the political system as such was a collection of empty offices awaiting incumbents.

The question whether or not Middle Eastern societies lack corporate institutions, which takes as its reference point the Weberian thesis, has excited much debate. Adams, in his summary of the renowned Berkeley symposium on Middle Eastern cities points out that while 'a number of suggestive bits of evidence point to the corporate, semi-autonomous character of Babylonian cities' — which 'weakens if not undermines the old Weberian antithesis between Western and Oriental cities' — we are told that 'nothing of the kind was characteristic of Islamic urbanism'.<sup>84</sup> Adams speculates that the dichotomy may have to do with the kind of documents being used, Babylonian evidence taking the form of 'contracts, letters, laws and administrative records bearing "directly on the economy of the upper middle class, while officials, the military and the royal court are mentioned only incidentally" '. By contrast, he notes, 'the largely religious, political, and genealogical accounts of the classical age of Islam', seem to ignore the pre-Islamic corporate, autonomous urban features, which the Babylonian documents stress.

Since Goitein completed his extraordinary analysis of the Geniza archive and its rich store of legal and commercial material, which renders the social history of the Jewish communities of the Islamic world one of the best-documented peoples of the past, a different picture has come to light. Taking the community to be representative of the Islamic society in which it thrives, as Goitein does, we can only conclude from documents covering the commercial and cultural activities both within the community, outside them and interconfessionally, that the degree of communal autonomy and vigour was remarkable by any standards.

The related debate, whether craft organizations of the Islamic world were sufficiently incorporated to constitute guilds, Goitein treats with characteristic sagacity.<sup>85</sup> 'One looks in vain', he says, 'for an Arabic equivalent of the term "guild"'. There was no such word because there was no such institution . . . The classical

<sup>83</sup> The tradition of analysing institutions of Rome, and more recently Greece, in these terms, dates back to the nineteenth century, the use of prosopographic techniques, which it involves, being made famous in the twentieth century by Ronald Syme (*The Roman Revolution*, London, 1939) and others. See Matthias Gelzer, *The Roman Nobility* (Oxford, English edn., 1975); Ernst Badian, *Roman Imperialism in the Late Republic* (Oxford, 1968), for Roman clientelism. For Greek clientelism and clubbishness, see W.R. Connor, *The New Politicians of Fifth-Century Athens* (Princeton, 1971); Felix Bourriot, *Recherches sur la nature du Genos: étude d'histoire sociale Athenienne — périodes archaïque et classique* (Lille, 1976); and S.C. Humphreys, 'Public and Private Interests in Classical Athens', *The Classical Journal*, Vol. 73, no. 2 (1977), pp. 97–104, as examples.

<sup>84</sup> Robert McC. Adams, 'Conclusion', in *Middle Eastern Cities*, ed. Lapidus, p. 190.

<sup>85</sup> Goitein, 'Cairo: An Islamic City', p. 94. Contributors to the long-standing debate over the nature of Islamic 'guilds', include Bernard Lewis, 'The Islamic Guilds', *Economic History Review*, Vol. 8 (1937), pp. 20–37; Louis Massignon, entry in *Encyclopaedia of Islam* (Leiden, 1st edn., 1908–34); Stern, 'The Constitution of the Islamic City'; and Cahen, 'Y a-t-il eu des corporations professionnelles dans le monde musulman classique?', in the same volume.

Islamic city was a free enterprise society, the very opposite of a community organized in rigid guilds and tight professional corporations.' The absence of guilds as such must be interpreted carefully, as Goitein points out. As modern scholars of Roman corporations have observed, the state gradually legitimized them only in order to control them.<sup>86</sup> But the classical Islamic state had its own way of supervising the quality of artisan's work without the necessity of guilds, the community itself, religious or state authorities and the notables, working to protect local industries from outside competition. Nor did the absence of guilds reflect economic underdevelopment. 'While scanning the Geniza documents for the arts and crafts mentioned in them, the modern observer is impressed by the great number of occupations and by the high degree of specialization and division of labour apparent in them', Goitein points out. 'The terms for about 265 manual occupations have been identified thus far, as against 90 types of person engaged in commerce and banking and approximately the same number of professionals, officials, religious functionaries, and educators.' Goitein compares this total of some four hundred and fifty professions 'with the 150 or so professional corporations traced in ancient Rome by J.T. Walzing in his monumental *Corporations professionnelles* on the one hand, and the 278 *corporations de métiers* listed by André Raymond for Cairo in 1801, on the other'.<sup>87</sup>

Nor were forms of community power and representation lacking. The historical demise of the classical structure of offices, under the pressure of imperial bureaucracy in the late classical period, had contributed, along with other factors, to the development of indigenous Islamic forms of communal activity: the mosque or civic centre, *masjiid*, and the *majlis*, or assembly, which drew on pre-Islamic forms of association. The Islamic tribal council or *majlis*, had taken on all the aspects of the Sasanian 'royal audience' for the registering of complaints by commoners.<sup>88</sup> We find its direct counterpart in the weekly public audiences by Saudi kings today, and several authors have noted the similarity of function between the mosque and the *ecclesia* or *agora* of antiquity. The institution of public assembly in the classical *polis* had always had a strong spatial dimension. The ancient Greek term for the assembly of warriors, the *agora*, came to give its name to the assembly-ground or forum of the classical period, the assembly of all free, arms-bearing males being then designated the *ecclesia*. Plato believed that no city should be so large that all its citizens could not be gathered together in the town square. And the Muslim conquerors, with a strong sense of spatial presence in turn, 'planted themselves in the complex of *agora*, central avenue and temple or church which stood at the heart of the Greek city: the

<sup>86</sup> See P.W. Duff, *Personality in Roman Law* (Cambridge, 1938); and the important 'Review of P.W. Duff *"Personality in Roman Law"*', by David Daube, *Journal of Roman Studies*, Vol. 33 (1943), pp. 86-93, and Vol. 34 (1944), pp. 125-35.

<sup>87</sup> Goitein, *A Mediterranean Society*, Vol. 1, *Economic Foundations* (Berkeley, 1967), p. 99.

<sup>88</sup> Morony, in *Iraq after the Muslim Conquest*, pp. 83-5, who also argues that the co-option of the *majlis* from the tribal quarters and its annexation to the governor's (*emir's*) residence 'as a forum to obtain justice, also eased the Islamic adoption of the Sasanian appellate court for the redress of grievances, which had originally served as a judicial check on the excesses of government officials'.

mosque replaced or stood near the church or temple, the central bazaars and what went with them took over the avenue and *agora*.<sup>89</sup>

Islam maintained the ethos and function of classical and pre-Islamic forms of assembly in the early period. As a non-clerical religion it at first recognized as rightful places of worship the three most-holy sanctuaries of Mecca, Medina and Jerusalem, and those places of assembly (*masajid*) where the faithful gathered for prayer.<sup>90</sup> Indeed the Prophet ruled out temples and churches — as the mosque was to become — as too reminiscent of the established religions, Christianity and Judaism, and unsuited to the needs of his tribal and Godly warriors. Morony, in his fine study of the continuities from classical antiquity in the early Islamic period, sees the *masjid* as a Sasanian legacy: the clustering of government buildings and market place, and the *emirate*, as a system of rule which encompassed sacred and secular powers, being 'expressed architecturally by the proximity of the *masjid* to the governor's (*amir*'s) residence'.<sup>91</sup>

Despite the martial fervour and centralizing tendencies of early Islam, the communities of the great cities retained their democratic spirit and spontaneous gregariousness, reflected in the various forms of association and assembly that Goitein describes. It is in this sense that Ernest Barker, discussing the nature of social life in Byzantium, characterized it as that of *zoon ekklesiastikon*, enjoying a federal, rather than a centralized, tradition with a democratic and congregational, rather than a clerical, church. The intense grass roots spirit of participation and interaction, expressed in the form of friendships, associations, partnerships and free commonwealths (*koinopoliteia*) enjoying the rule of equality, marked the special genius of the Greeks, Barker maintained, against all the trends of modern scholarship.<sup>92</sup> Oleg Grabar, the renowned scholar of Islamic architecture, uses

<sup>89</sup> Hourani, 'The Islamic City in the Light of Recent Research', p. 22. The archetypal expression of this process is the Umayyad Mosque of Damascus, built within the precincts of a Roman temple, whose colonnades still stand, and housing within its enclosed space a small Christian oratory where the relics of John the Baptist rest.

<sup>90</sup> See the essay by Oleg Grabar, 'The Architecture of the Middle Eastern City', in *Middle Eastern Cities*, ed. Lapidus, pp. 27–8, to whom I am indebted for the following account of the Mosque as a space for the community to assemble that gradually became a building and an institution.

<sup>91</sup> Early Islam took over the Sasanian place of public assembly for religious purposes in the form that the *masjid* was used at Medina in the time of Muhammad, Morony, *Iraq after the Muslim Conquest*, argues, p. 74. This tendency was reinforced by the reforms of Ziyad ibn Abihi, the renowned Emir of Basra, whose rule was inaugurated in AD 665, and whose centralizing policy involved suppressing neighbourhood tribal assemblies (*masajid*) and meeting places (*majlis*) in favour of a central congregational *masjid* and the palace of the governor. Morony concludes, p. 432:

The *masjid* tended to replace the tribal *majlis* as the center of group life. The tribal and congregational *masjids* of the garrison cities were places of worship, political assembly and debate, commerce, judgement and education. Originally they were not sanctified buildings in the same sense that pagan temples, Magian fire-temples or Christian churches were, but were more like Jewish synagogues.

<sup>92</sup> Ernest Barker, *Social and Political Thought in Byzantium* (Oxford, 1957), pp. 35, 40–1, 114, 177, 182–3.

terminology for forms of assembly of the Graeco-Roman world to describe the 'Muslim "civic center"' or *masjid*, which in the new cities created by the conquerors, Basra of AD 635, Kufa of 639, Fustat of 641–2, consisted of 'a sort of forum, open from all sides and directions' — here the Egyptian *masjid* was an exception — 'somewhere in the center of the city', and serving 'all the functions which affected the *jama'a*, the community, from prayer, to military recruitment, to collection of taxes'.<sup>93</sup>

By a process that is not exactly clear to us 'the *masjid* was transformed from a space into a building', even so preserving the features of the original open air forum in its hypostyle construction and 'the relation between open and closed spaces of the Mosque'. Grabar speculates that this development was a reflection of internal pressures from Christian and Jewish converts to Islam to provide a functional equivalent of the church and synagogue. More importantly, it represented the articulation and differentiation of the community and its needs, as well as the exigencies of state power. The second half of the eighth century AD saw the development of the classical mosque throughout the Islamic world, typified by the mosque of Ibn Tulun and the Azhar in Cairo. What architectural creations on this scale represented, over and above the spiritual needs of the faithful and their spontaneous forms of assembly, was the power of princes and governors (*emirs*), who annexed the mosque to gubernatorial palaces as an expression of their patronage and munificence (*évergétisme*). Nevertheless, these magnificent expressions of the liturgical functions of municipal authorities came to serve spiritual and social needs of the faithful, as centres of communal life for the various quarters in which they were located.<sup>94</sup>

Gradually, from the twelfth century on, smaller mosques proliferated, which were no longer referred to simply as *masjid*, but as *masjid al jami*, and then simply as *jami*, community, as mosques are still termed today. These smaller religious establishments were not only *masjid*, but hitherto unknown forms, the *madrassa*, or school, *ribats* and monasteries of different sorts. The development and differentiation of the community called for the provision of spaces for private withdrawal, while communal devotion in the large mosque continued. Mausoleums for holy men and women, private oratories for smaller social entities — family, quarter and profession — and the withdrawal from communal life of those who entered the monastic orders, provided the opportunity for a yet wider array of expressions of munificence.<sup>95</sup>

These developments are open to different interpretations: either as outgrowths of the community and its needs, or as impositions from above; symptoms of community development, or decline. Ira Lapidus has argued that, unlike the growth of the 'single mosques of the classical period', which 'implied a unified society', 'the multiplication of religious institutions did not necessarily imply an intensification of the very small scale community ties of quarters or fraternities'. He sees them rather

<sup>93</sup> Grabar, 'The Architecture of the Middle Eastern City', pp. 33–4.

<sup>94</sup> *Ibid.*, pp. 35–6.

<sup>95</sup> *Ibid.*, p. 38.

as symbolizing 'the growth of resources, prestige and power in the large religious communities which stood outside of small quarters and groups'.<sup>96</sup> Von Grunebaum makes a different argument, maintaining that after the twelfth century Muslim civilization was characterized not so much by the differentiation of the community, or its '*morcellement*' under the pressures of patronage, as by the dominance of the clergy which could provide no effective substitute for the cultural ideal (*adab*) or intellectual ethos, which had bound together courtly circles, ruling circles and intellectual circles in the classical period.<sup>97</sup>

The phenomenon of cultural decline, which this development may have heralded, is sufficiently complex for these processes, and others, to be at work simultaneously. However, the possibility that the proliferation of great religious buildings was a form of 'conspicuous consumption, investments on the part of princes, Mamluks, merchants and others, intended to impress people or tie down funds with certain families or groups',<sup>98</sup> is not in itself a symptom of decline but a typical expression of *évergétisme*, a fundamental economic and social mechanism of the ancient and oriental worlds.

## VI

### Women and Contract in the Middle East

The classical *polis* is renowned for its exclusion of women from the public domain, from civil rights, and from the world of business and commerce. Secluded in the *oikos*, or household, in segregated quarters and passed from the control of one master (*kyrios*)—her father—to another—her husband—the woman of the *polis* enjoyed none of the rights to political participation, representation in the courts, or financial dealing enjoyed by men.<sup>99</sup> One of the most remarkable features of the *poleis* of Mesopotamia, and to some extent the cities of the Islamic middle ages, was the freedom they afforded women. The recently excavated site of Ebla, a middle third millennium kingdom of some 260,000 souls, ruled by a king (*malik*), council of elders (*abbu*), and some 11,700 bureaucrats, has yielded some 20,000 cuneiform tablets—13,000 of which represent the ledgers, daybooks and inventories of the

<sup>96</sup> Ira Lapidus, 'Discussion', in *Middle Eastern Cities*, ed. Lapidus, p. 43.

<sup>97</sup> Von Grunebaum, 'Discussion', in *Middle Eastern Cities*, ed. Lapidus, p. 43.

<sup>98</sup> Lapidus, 'Discussion', p. 45.

<sup>99</sup> See Sarah B. Pomeroy on women in classical Greece, in *Goddesses, Whores, Wives and Slaves* (New York, 1975); W.K. Lacey, *The Family in Classical Greece* (London, 1968); Marilyn B. Arthur, 'Early Greece: The Origins of the Western Attitude Toward Women', *Arethusa*, Vol. 6, no. 1 (1973), pp. 7–58; Arlene W. Saxonhouse, 'Men, Women, War and Politics: Family and Polis in Aristophanes and Euripides', *Political Theory*, Vol. 8, no. 1 (1980), pp. 65–81; Susan Moller Okin, 'Philosopher Queens and Private Wives: Plato on Women and the Family', *Philosophy and Public Affairs*, Vol. 6 (1977), pp. 345–69. On the seclusion of women, see J.P. Gould, 'Law, Custom, and Myth: Aspects of the Social Position of Women in Classical Athens', *Journal of Hellenic Studies*, Vol. 100 (1980), pp. 38–59; on women and marriage the important piece by H.J. Wolff, 'Marriage, Law and Family Organization', *Traditio*, Vol. 2 (1944), pp. 43–95.

bureaucrats. From these legal documents we learn that women could 'own land or other property in their own right . . . sell or bequeath as they wished, take legal action independently of, and even against, their husband, train as a doctor or scribe'.<sup>100</sup>

The Assyrian laws of Assur, that particular set of elaborations on, and amendments to, the common law of Babylonia, promulgated around 1400 BC, are exclusively concerned with the rights of, and crimes against, women, and specifically married women. They deal with types of marriage contract, married women's property, dowry, the position of widows, divorcees, women debtors *vis-à-vis* creditors, inheritance, disherison, and so on.<sup>101</sup> Among the more interesting documents concerning women for roughly the same period are the some five hundred texts excavated from Sippar, which concern the *naditu* women, or women of the cloister, for whose business dealings provision was made in the Hammurabi Code.<sup>102</sup>

As women who entered the cloister at an early age, the women derived their name from the root *nadu*, 'to lie fallow', and if not always celibate — an important text concerns the adoption by her brother of the illegitimate child of a *naditu* — could not marry.<sup>103</sup> Living in a walled cloister compound that might enclose some one hundred dwellings, owned privately, the *naditus* engaged in large-scale commercial transactions that women who lived in the houses of their fathers or husbands could not possibly have undertaken. As women, their position in the law denied them inheritance rights as such. Their dowry constituted an inheritance *inter vivos*, so to speak, and in cases where a *naditu* was not provided with a dowry, she had a share in the family estate at her father's death, but enjoyed only the usufruct. On her own death the *naditu*'s property reverted to her brothers. Section 178 of the Hammurabi Code states, in fact, that 'a *naditu* who has been given a gift by her parents consisting of real estate', but has not been given the right to 'give [it for management] wherever she pleases', is obliged to allow her brothers to manage it and support her. 'Only if they do not fulfill their obligations may she give her property to any tenant of her own choosing . . . but she may not sell it or pay her debts with it'. Section 179 of the Code concerns the *naditu* who is 'given the right by her father to give the property to whomever she pleases to manage it for her'. And section 180 'discusses the case of a *naditu* who has not received a gift from her father before his death and . . . is to receive "a share like a son" from the paternal estate'.<sup>104</sup>

<sup>100</sup> Chaim Bermant and Michael Weitzman, *Ebla* (London, 1979), pp. 153–5. See also Paolo Matthiae, *Ebla: An Empire Rediscovered* (London, 1980).

<sup>101</sup> Driver and Miles, *The Assyrian Laws* (Oxford, 1935). Under the rights of women they include veiling, a jealously protected right of upper-class women which, when assumed by slaves or concubines, incurs the dreadful punishment of pitch poured over the head (pp. 130–1).

<sup>102</sup> Rivkah Harris, 'The *naditu* Laws of the Code of Hammurabi in Praxis', *Orientalia*, Vol. 30 (1961), pp. 163–9.

<sup>103</sup> Rivkah Harris, 'The Organization and Administration of the Cloister in Ancient Babylonia', *Journal of the Economic and Social History of the Orient*, Vol. 6 (1963), p. 121.

<sup>104</sup> Harris, 'The *naditu* Laws of the Code of Hammurabi', p. 164.

Working around these restrictions, the *nadius*, daughters of judges, scribes, big merchants, high officials and, in two cases, kings, played a significant role in the economic life of their communities, as lessors of their considerable real-estate holdings and as creditors, lending out money and commodities. Although bearing distinctive names received as noviciates, such as 'My Angel', 'Desire of her God', 'Our Lady', in keeping with their status as priestesses, this did not stand in the way of their worldly interests, the great bulk of the documents preserved dealing with the *nadius*' commercial and financial transactions.<sup>105</sup>

For the Islamic period too, Jewish women of the Geniza documents, like their Moslem and Christian contemporaries, spent a great deal of their time disposing of their dowries and the real estate and moveable property that comprised them. Given fantastic Arabic names by their mothers — Hebrew names are rarely encountered in this Arabic speaking community — such as 'Female Ruler', 'Mistress of the Turbans', 'Mistress of the Clerks', 'She Who Rules Over Everyone', 'Mistress of Baghdad', 'Mistress of the Muslim West', 'Mistress of Byzantium', and even 'King' of those cities, along with 'Fame', 'Victory', 'Leadership', 'Overcoming', 'General', these daughters carried in their names the aspirations of the mothers who named them.<sup>106</sup> In the highly commercial society of the Geniza, in which most assets were conceived of as forms of capital — to the extent that even the family home was owned in the form of shares, a large apartment house containing several nuclear families being jointly owned in quite small denominations — 'women as providers or receivers of loans are frequently encountered'.<sup>107</sup> The wife was 'mistress of her household' in a true sense, 'since the house, like all other possessions of the husband, was, as stated in the marriage contract, mortgaged to his obligations toward her'.<sup>108</sup> Goitein concludes: 'A woman invested mainly in real estate, she lent money, concluded partnerships, also sold and bought textiles, jewelry and other items included in a bridal outfit, but she was not in the mainstream of the economy — the large scale production and exchange of goods.'<sup>109</sup> Nor, some 1000 years later, is she yet!

Patricia Springborg

UNIVERSITY OF SYDNEY

<sup>105</sup> See also Rivkah Harris, 'Biographical Notes on the *nadiu* Women of Sippar', *Journal of Cuneiform Studies*, Vol. 16, no. 1 (1962), pp. 1–12.

<sup>106</sup> Goitein, *A Mediterranean Society*, Vol. 3, *The Family* (Berkeley, 1978), pp. 314–19.

<sup>107</sup> *Ibid.*, p. 330.

<sup>108</sup> *Ibid.*, p. 326.

<sup>109</sup> *Ibid.*, p. 332.