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Robin F.C. Schmahl, ZMO / FU Berlin (HISDEMAB Project)

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Deliberation in the Name of the People? Assessing the Role of the Diwan of Cairo, 1798-1801

Robin F.C. Schmahl
ZMO / FU Berlin (HISDEMAB Project)
robin.schmahl@zmo.de

Abstract
Over the last two decades, deliberative theory has moved from its incipient stage to a reflective phase, addressing the discipline's hitherto unaddressed conceptual weaknesses. Although the field has to offer promising methodological outlooks, its focus was traditionally set on post-WWII democratic polities situated in the global North. Building on alternative approaches, this article intends to move deliberative theory away from its oftentimes Eurocentric perspective to analyze the role of institutionalized deliberation in a non-European historical context. As a case study, I focus on the Diwan of Cairo operating under French colonial rule in 1798-1801. While historical works on Napoleon Bonaparte's so-called expedition into Egypt oftentimes allude to the Diwan, no proper institutional study of it has been put forward yet. Utilizing two Arabic manuscripts of the Diwan's minutes held in the Bibliothèque Nationale de France (Mss. Arabe 2455 and 7272) as well as the chronicles of al-Ǧabartī, the paper intends to offer a first step for this endeavor. It will follow a tripartite structure adopting an analysis of the Diwan along three political dimensions: politics, policy, and polity. Ultimately, my research aims to show new ways for the application of deliberative theory within historical analyses of non-European societies and non-democratic state structures.

Keywords
Deliberative theory / Egypt / French Expedition / deliberation / Diwan of Cairo

1 - Introduction

In early October 1798, Napoleon Bonaparte instructed Gaspard Monge and Claude Louis Berthollet, two chairmen of the newly instituted Institut d'Égypte and the prospective French *commissaires* of the General Diwan in Cairo, to supervise the assembly's deliberations and take note of any proposed consultations so that the Général en Chef would "know what has to be done for the good of the people".[1] In his letter, he famously declared that the main ambition for Diwan's convocation was to "accustom the notables

1 «[…] savoir ce qu'il faut faire pour le bonheur du people […]» (Bonaparte 1860:32).

of Egypt to the ideas of assembly and government".[2]

Although the Diwan had several institutional predecessors in Egypt's Ottoman system of governance, it would become one of the most prominent reforms introduced by the French in 1798-1801. Even though the Diwan experienced several episodes of institutional change depending on the current political situation and military successes of the French army, it consistently stood out as a cornerstone of the French efforts to engage with the local population in a non-violent fashion.

While studies of the Expedition oftentimes allude to the Diwan, it has never been scrutinized from an institutionalist standpoint. A consistent methodological approach for exploring the Diwan's inner operations and power dynamics is still missing. This working paper is a first step towards such an endeavor.

Even though the Diwan had a limited influence on French policy-making in 1798-1801, it was conceived as a consultative body operating in a deliberative way. Hence, it appears reasonable for any novel methodological approach for analyzing the Diwan to turn to deliberative theory. Despite being primarily developed for other – i.e. European or Western, contexts – the inner discussions within this subdiscipline of political theory pushed the field more and more to explore institutions outside the European context.

The present study will try to showcase how an analysis of the deliberation taking place within the Cairo Diwan can contribute to deliberative theory today. For this purpose, I will first sketch out how my approach fits into the ongoing debate within research and whether deliberative theory offers a pertinent theoretical framework for such an endeavor. In a second step, I will briefly allude to an episode of deliberation recorded in the minutes of the Cairo Diwan and show possible points of analysis for scholars of deliberative theory. This paper aims to explore how histories of non-democratic polities offer worthwhile possibilities for the application of deliberative theory and how these approaches might conduce to a reflection of Western-centric methodologies in the field.

From a methodological viewpoint, the present paper constitutes an effort in theory testing as opposed to theory building. As such, it will trace the efforts undertaken within deliberative theory to develop a coherent approach to deliberation as an operative research category and to what degree this is suitable for an innovative analysis of the Cairo Diwan representing a case study beyond the contexts in which deliberative theory is usually applied to. The paper will rely on tracing the deliberative process documented in two manuscripts of the Diwan's minutes and an eyewitness account by one of its members, the 18th-century chronicler al-Ǧabartī, along three different political dimensions (politics, policy, polity). These findings will then be embedded into current

2 «Le but de la convocation du divan général, Citoyens, est un essai pour accoutumer les notables d'Égypte à des idées d'assemblée et de gouvernement.» (Bonaparte 1860:32).

debates within deliberative theory.

2 - Deliberation in the Diwan? A contested methodology

Over the last few decades, deliberative theory has established itself as a subdiscipline within the humanities and social sciences. While it has produced a plethora of eminent studies in political science, economics, and history (Curato *et al.* 2017), it is still facing a number of conceptual challenges that are highly relevant to its theoretical and methodological coherence. Chambers has argued that in light of the internal discussions deliberative theory has moved from its incipient phase mostly focused on theoretical delineations to a «working theory stage» characterized by an influx of empirical research on deliberation in economic, judicial, and political contexts (Chambers 2003:307). Now, the field has entered a third phase that tries to reconcile some methodological incoherencies originating from deliberative theory's development over the last years (Bächtiger *et al.* 2010).

Arguably, Habermasian notions are most prevalent in idealist conceptions of deliberation. Following Habermas' work, modes of communication have to fulfill an extensive catalogue of discursive criteria in order to constitute true deliberation (Habermas 1996; Oquendo 2002; Olson 2011). Although the Habermasian conception, with its well-defined categorical understanding of deliberation, is a reasonable approach for normative and highly theoretical endeavors, it proves to be almost unattainable in real-life situations. Taking such an idealist conception out of the realms of theory usually results in the disillusioning realization that Habermasian true deliberation does rarely, if ever, take place under the oftentimes chaotic conditions within real-life discursive formations.

Therefore, social scientists focusing on deliberation have often opted for more minimalist conceptions of the term that allow for empirically grounded studies. For instance, Austen-Smith and Feddersen adopt a minimalist conception merely stating that «a group of people who talk prior to making a collective choice *deliberate*» (Austen-Smith & Feddersen 2008: 191). However, with such an approach, new issues arise. In the 70s, Sartori warned about the effects of what he coined «concept stretching» in accumulative theory building[3] (Sartori 1970). As scholars try to broaden the scope of their respective disciplines, they risk inflating the meaning of key terminology. Consequently, analytical categories might lose their explanatory power. Based on Sartori's work, Steiner has made this case with regard to deliberation (Steiner 2008). To avoid Sartori's concept stretching, idealist understandings of deliberation should be constructed as Weberian ideal-types in social science that, though constituting an (inter-) subjective factor, serve

3 Most recently, a similar phenomenon has been described in social psychology, though under the term of «concept creep» (Haslam & McGrath 2020; Haslam *et al.* 2021).

for categorizing and ultimately understanding real-world phenomena (Lindbekk 1992; Weber 2017). In other words, a Habermasian conception of true deliberation can serve as the theoretical backdrop for more empirically driven endeavors as a minimalist definition is not applied to capture true deliberation per se, but merely *degrees* thereof in the real world (Steiner 2008).

Using different idealist conceptions of deliberation as a Weberian ideal-type opens the possibility for theory testing not merely according to internal (e.g. conceptual coherence and consistency) but also external criteria, i.e. the theory's capability to «represent, summarize, or capture something outside the theory» (List & Valentini 2016:16). For instance, if we were to analyze the degrees of deliberation within an Ottoman municipal council in the 18th century, it appears worthwhile to consider an idealist conception stemming from the Ottoman Islamic tradition instead of relying exclusively on Habermasian categories of deliberation. Being open to ideal-types grounded in other traditions would render the application of deliberative theory more suitable for analyzing institutions of non-European contexts and moving beyond already existing categories of analysis.

Most recently, scholars have started to put deliberative theory's general Eurocentric focus into question (Kapoor 2002; Sass & Dryzek 2014). As the vast majority of studies have examined deliberation in contexts originating from post WWII societies in the West and global North, the field has opened its analysis to understanding deliberation in African, Middle Eastern, and East Asian contexts. Here, the idea is not merely to apply established methodology of deliberative theory in geographically different contexts but also to problematize its current outlook on at least two deeper conceptual levels.

First, a deeper reflection of the euro-centric preconceptions that underlie the field's terminology could follow in the future (Bailey 2014). A direct example of such a reflective process could be the problematization of the term "deliberation" as carrying no linguistic equivalent in non-European societies that fully captures the depth of the term. Other linguistic contexts must rely on translating it with a variety of words that range from terms such as conversation, consultation, or speech – each carrying its own backlog of related conceptions and contexts that cannot be found within the European tradition of political theory. Here, to take up the example of the Ottoman municipal council again, an analysis could rely on a notion like *šūrà* that includes a variety of deliberative practices and institutions of consultation (Ayalon 1999:73-78). Similar to deliberation in Europe, *šūrà* has become a concept that is now widely discussed in Islamic contexts concerned with pre-democratic forms of political conduct (Demichelis 2015), democratic education (Davids & Waghid 2019:91-98), or democratic theory (Tønnessen 2009). As we will see, even the members of the Diwan made use of this notion to conceptualize their deliberation within the colonial administration of 1798-

1801. Reliance on notions such as *šūrà* for an analysis of deliberation in 18th century Egypt does also appear feasible considering the long tradition of juridical and political councils in Cairo ranging back throughout Ottoman and Mamluk history, as well as the emergence of deliberative merchant forums in the first half of the 19th century (Ghazale 2012; Rapoport 2012; Baldwin 2017).

Secondly, given the field's traditional situatedness in democratic theory, deliberative analyses are mostly concerned with social, cultural, or economic phenomena within institutions of democratic polities. In parallel, historical analyses, such as Habermas' seminal study *Strukturwandel der Öffentlichkeit*, are predominantly concerned with examining how certain historical trends led to the development of (Western) democracies today (Habermas 2018). However, such a perspective neglects the manifold roles deliberation carries in semi-democratic, perhaps even authoritarian contexts. Authors like Wedeen and Lynch have repeatedly pointed out this issue and formulated alternative approaches for applying deliberative theory in non-democratic contexts, e.g. Yemen or Iraq (Wedeen 2004; 2007; Lynch 2003; 2006). Similarly, several scholars have tried to adapt notions of deliberative theory such as the Habermasian conception of the public sphere for assessing deliberation in Arab contexts (Shami 2009; Abbott 2016). Many of these approaches stem from a focus on deliberative processes during or in the wake of the Arab Spring (Kraidy 2017; Maboudi 2020) or the facilitation of public deliberation through contemporary mass media (Badran 2013; Abdelmoudia 2015) and digitalized forms of communication (Salvatore 2013; Riegart 2015). Here, however, an exploration of deliberation within pre- or early modern historical contexts as well as colonial institutions is still missing – an approach that this paper intends to formulate.

Habermas' general outlook on historical trends in Europe might be feasible for an analysis of Ottoman Egypt, albeit with some adaptions. He describes how in the 18th century a bourgeois public sphere that was closely tied to the rise of capitalism and predicated on commodity exchange was able to emerge (Habermas 2018:122-148). He famously attested how this public sphere would express itself in salon culture with its small discussion groups enabling various forms of politically relevant deliberation that eventually led to mass media discourses in the 19th century. Social historians of 18th-century Egypt have noted similar developments that might play a role in our assessment of deliberation in the Diwan. André Raymond (1974), and especially Peter Gran (1998) after him, have documented the emergence of capitalist economic and societal structures in 18th-century Ottoman Egypt. Ghazale (1995) has shown how these structures influenced the guild system setting up a semi-stringent state-economy dichotomy with the guilds being mostly independent from the state in questions of organization and internal discursive formations. Furthermore, this dichotomy would later be enforced through various reforms that stripped many of the local merchants from their politically influential functions, giving rise to state-enforced merchant tribunals privileging

foreign traders (Ghazale 2012). Most importantly, in her study of 18th century Egyptian cultural history, Nelly Hanna (2003) noted how the spread of books and general literacy among a bourgeois middle class was not merely due to the importance of classical institutions of learning but also due to the ever-increasing growth of trade and business. The practice of *maǧālis*, or small assemblies among the middle class to discuss matters of culture and politics, coincided with these trends in education and literacy. Especially this development shows striking similarities to the salon culture discussed by Habermas (Hanna 2003:156). Given that the Diwan under the French would later be dominated almost exclusively by people embedded in these practices suggests the applicability of deliberative theory to an analysis of this institution. Furthermore, this implies that the claim of European exclusivity to deliberation in general but also as a modern innovation brought by the French to Egypt is questionable.

Although deliberative theory is closely connected to democracy studies, its application does not imply the notion that Bonaparte's rule in Egypt, or Europe for that matter (Coller 2010:29-31), was democratic or an act of sincere democratization according to today's standards. Far from that, it has been shown repeatedly that Bonapartism challenged core tenets of democratic conduct, such as popular sovereignty, whilst upholding republican symbolism (Grab 2010). In addition, the notion of modernity-export, i.e. Bonaparte and the French sowing the seed for what would later become the so-called Modern Middle East, has been challenged extensively for two decades now (Gran 1998; Marsot 1999; Conermann 2002; Ze'evi 2004; al-Shalaq 2005). Following this line of thought, the present article does not argue in any way that Bonaparte's rule was truly democratic, nor would such a dubious assessment be necessary for my argumentation here. The application of deliberative theory for an analysis of the Diwan does merely challenge the counter-intuitive – and frankly non-sensical – assumption that deliberation as a tangible concept for political theory does not play a role in structures of governance within non-European and non-democratic contexts. As we will see, deliberation played an important role for the operations of the Diwan within the French colonial, i.e. non-democratic, administration of Egypt in 1798-1801. As such, this article provides a reflection on how to adapt core tenets of deliberative theory outside a conventual western, democratic case-study, situating it among the works cited above dealing with authoritarian contexts and the Arab world through the perspective of deliberative theory.

However, some historians of 1798-1801 characterized the activities of the Diwan primarily as acts of defiance or, at best, staged debates coerced by the threat of violence. The episode of al-Šarqāwī, the Diwan's president, theatrically refusing to wear a tricolored cloth and cockade is enigmatic of such a perspective and a commonplace in many historical studies of the Expedition (Cole 2007:149-150; Coller 2010: 32). Even though some of the jurists taking part in the Diwan were engaged in anti-French resistance struggles (Ramadan 1986:109-156), a perspective that ignores the administrative role

of the Diwan and the deliberative practices testified by numerous archival sources appears to be over-simplistic. Especially conservative and Islamist thinkers have tried to argue along these lines neglecting the different modes of engagement and cooperation between Egyptian society and the French administration. Kishk for instance sought to stress the role of the azharite muftis in anti-French resistance struggles claiming that the first Cairo revolt was a «100 percent national» uprising (Kishk 1990:276). However, he thereby neglects the complicated political situation involving a multifaceted array of actors in 1798 Cairo. Writing from an Islamist perspective, Kishk insinuates that the ulema boycotted the Diwan set up by the French. Yet, this view not only ignores the notable paper trail left by the muftis' engagement with the institution but also the fact that its most eminent members, al-Sharqawī and al-Bakri – both being of the highest rank among the Cairene ulema – tried to appease the revolutionaries on behalf of the French administration. After being met with gunfire on their way to al-Azhar, the two shaykhs had to retreat to the French camp in fear of being attacked by the rebellious crowd. This episode showcases the complicated entanglement of the ulema with the French administration as well as their willingness to cooperate through the Diwan. Furthermore, it is evident from our source material that the Diwan came to an end due to Bonaparte himself and not a boycott by the jurists, since the *Général en Chef* suppressed the institution against the will of the muftis after the uprising (Schmahl forthcoming).

In this regard, Afifi and Raymond (2003) have contributed most to our understanding of this institutional aspect by editing two manuscripts of the Diwan's minutes and offering a very short though valuable introduction to the Diwan's activities. The present paper intends to build on this approach to propose a study based on historical, i.e. archival, work as well as an institutionalist analysis grounded in deliberative theory.

As such, and to properly differentiate deliberation from a common talk (Mansbridge 1999; Kim & Kim 2008), we can conceptualize the workings of the Diwan as *institutionalized* deliberation. A similar demarcation can be found in Habermas' *Strukturwandel der Öffentlichkeit*, where he differentiates between informal and formal opinions with the institutionalization of their respective areas of communication serving as the dividing line (Habermas 2018:352-356). Accordingly, the deliberations taking place within the Diwan fall into the category of formal opinions as opposed to, for instance, a discussion taking place in one of the cultural *mağālis* described by Hanna (2003). Authors like Warren have shown the importance of institutionalization for deliberative processes, while empirical studies testify how not merely individual participants affect deliberation, but also how the institutional context in which deliberation takes place affects the deliberative process itself (Cohen 2002; Warren 2007; Goodin 2008). Here, a study of the Diwan contributes to our understanding of how different institutional contexts affect deliberation.

The following case study is a short exploration of how these points of reflection

might be put into practice. By focusing on the Cairo Diwan, I intend to show how deliberative theory can benefit from broadening its scope beyond predominantly democratic and Eurocentric outlooks by offering a brief analysis of a deliberative institution in the colonial context of the French Expedition. Following the simple definition of an institution as «stable, valued, recurring patterns of behavior that persist beyond the tenure of individual leaders» (Huntington 2006:12; Fukuyama 2014:6), I will structure this study according to a three-dimensional institutionalist approach based on polity, politics, and policy (Palonen 2003; Leca 2012) to assess institutionalized forms of deliberation within the Diwan. The limited scope of this article does not allow for an exhaustive account of all three dimensions but rather necessitates a focus on what aspects appear to have had a direct influence on the deliberation taking place within the Diwan.

3 - Assessing the role of the Diwan of Cairo

Bonaparte initially intended to base his governance in Egypt on a system of different *diwans* with its centralized venue of deliberation in Cairo culminating in what the French themselves called an Egyptian Estates General in October 1798 (Schmahl forthcoming). Although Bonaparte's initial aspirations for the Diwan came to a sudden halt with the first Cairo revolt in late October, it would function more or less continuously until the end of the Expedition in varying institutional constellations. Between 1798-1801 it carried a variety of roles including the assessment of possible municipal and provincial reforms, communicating financial demands and orders of the French to the local population, or offering a venue for processing petitions.[4] All in all, it served as the core of Bonaparte's Islamic policy – an ambitious endeavor to win the hearts and minds of Egyptians, in particular the Muslim population, for his project in Egypt (Cherfils 1914; Roux 1925; Tageldin 2011:33-65). It therefore also constituted an institution for cultivating legitimacy for the French by, for instance, lavishly organizing festivities of the Islamic calendar, writing public letters to the Sharif of Mecca, and occupying a central role in the Islamic judicial system.

The Diwan in its different forms has produced a considerable amount of archival traces whereas sources are most abundant for its latest phase of existence starting in November 1800 until July 1801. This period of the Expedition under the Generalship of Jacques-François "'Abdallah" de Menou (1750-1810) was characterized by several administerial reforms within the financial and judicial sector that purported the establishment of a sustainable form of governance (Rousseau 1900). Although the Expedition would eventually end with the last evacuation of French troops in July 1801, during the reorganization of the Diwan in November 1800, Menou had the ambition to utilize this

4 The most important accounts of the Diwan's role during 1798-1801 can be found in Laurens's (1989) and Raymond's (1998) studies of the Expedition.

institution as one cornerstone of a permanent French administration in Egypt (Raymond 1998:227-270).

His Diwan, as an institutional successor to the Diwan under Bonaparte and even the Ottoman Diwan, took over a number of different roles (Lafi 2011:192–205). In addition to its position within the French Islamic policy, it also functioned as a court of cassation while performing its newly defined role as chief administerial council overseeing the whole of the Islamic judicial system in Egypt (Urban 2014). The Diwan's minutes were presumably collected to form the basis of an Arabic journal called *al-tanbīh* printed by the *Imprimerie Nationale* in Cairo similar to the French *Courier de l'Egypte* (al-Bustānī 1954). Apparently, this project was never fully realized, though parts of the Diwan's minutes have survived until today within two Arabic manuscripts[5] held in the Bibliothèque Nationale de France (Afifi & Raymond 2003). The ambitious enterprise of creating an Arabic journal is indicative of one important non-administerial role of the Diwan, often overlooked in research. The French Islamic policy under Menou moved beyond being a mere means of legitimizing French rule by projecting a certain continuity of the Ottoman Islamic system. The institution was also exceedingly used for the spread of propaganda and even false information to prevent another uprising in Cairo. For instance, with British and Ottoman forces making serious military gains in June 1801, the Diwan was informed that the French had allegedly conquered vast parts of the British Isles and were winning the war in Europe.[6]

It is important to understand this aspect of the Diwan and how it shaped the deliberation taking place. Utilizing the institution for propagandistic purposes inevitably resulted in it negotiating conceptions of legitimacy, right rulership, good political conduct, and mediation, as well as the relationship between rulers and their subjects. These notions were a frequent topic of deliberation and oftentimes discussed subliminally during sessions on more concrete administerial matters. Hence, analyzing this deliberative subtext is central to assessing the politics-dimension of the institution.

3.1 - Polity-dimension

The polity-dimension describes formal aspects of the Diwan's operations. It constitutes how, when, and where deliberation took place. Luckily, our source material offers ample information about these facets of the institution's functioning. The Diwan under Menou had its inaugural session on November 3, 1800, and was supposed to assemble regularly with 10 sessions per month. The chronicler al-Ǧabartī,

5 Ms. Arabe 2455 and Ms. Arabe 7272.

6 Ms. Arabe 2455, folia 15-17.

who was himself a member of the Diwan, informs us through his eyewitness accounts of the institution that a session would usually last «for about three hours before noon up to the call for the evening prayer or even a little beyond – all according to need» (al-Ǧabartī 1994, vol. III:138). Its nine members were exclusively recruited from the ulema and most of all had already served in the Diwan under Bonaparte. They assembled in the refurbished women's compartment of a former Mamluk palace in ʿĀbiḍīn. In addition to its nine permanent members, the Diwan also employed translators, scribes, guardsmen, a minute taker, and a *qāḍī*. Although the assembly elected a president and a secretary from among its permanent members, the most powerful position was held by a French *commissaire* [*wakīl*] who reported to the *Général en Chef* on its activities. The *commissaire*, Jean-Baptiste Joseph Fourier (1768-1830), was not merely the representative of the French administration within the council but he also actively oversaw its deliberation, by setting its agenda and passing orders to the assembly. He was also in charge of organizing the institution's archives carrying the title of chief judicial administrator or overseer of sharia politics [*nāẓir ʿalà siyāsat al-aḥkām al-šarʿiyya*].[7]

Matters to discuss were brought forward mostly by the *commissaire*, but sometimes also by the members themselves. In addition, the Diwan's deliberation was held publicly and allowed for others to attend a session while actively engaging through voicing specific needs or forwarding a petition. After deliberation on a given matter, the outcome would usually be written down and passed as a note to administrators relevant to the issue at hand. Sometimes, the Diwan would also select a responsible person among the members to be tasked with executing what the institution has deliberated upon. Other than the moderating interventions by the *commissaire*, most of the Diwan's deliberations did not seem to follow a specific protocol that would stipulate the speaking order or timeslots for interventions. Indeed, sessions were also frequently interrupted by members of the audience intervening in the deliberative process. For selecting personnel including the Diwan's president and secretaries, the institution resorted to voting by secret ballot. In case of selecting qāḍīs for the judicial system, candidates had to be proposed by the *Qāḍī l-Quḍāt* in advance.

All these aspects indicate high degrees of institutionalization and with that notions of institutionalized authority that are characteristic of Habermas' (2018:353) notion of formal opinions. It's reasonable to assume that the strict institutional structure was put in place to endow the Diwan's authority with legitimacy gained from its procedural features – a common aspect of deliberative practices seeking legitimacy independent of the contents of deliberation (Peter 2013:1264). Given Bonaparte's and Menou's Islamic policy, questions of legitimacy and authority of the colonial administration seemed to be at the heart of the Diwan's function. The *commissaire*'s Arabic title as overseer of

7 Ms. Arabe 7272, fol. 120.

sharia politics also points to this characteristic. During the early modern Ottoman caliphate, the legalistic distinction between *siyāsa* as worldly politics and sharia as religious law was more and more softened to grant the emerging bureaucratic structure of the Ottoman state supreme authority (Meshal 2014:41-68). Hence, it is not surprising that the deliberation of the jurists in the Diwan was characterized as *siyāsat al-aḥkām al-sharʿiyya* whereas the novel post of *nāẓir* was instituted with a French representative of the *Général en Chef* overseeing this structure.

3.2 - Policy-dimension

The policy-dimension describes all contentual aspects of the institution's deliberation. It constitutes the actual reasons, content, and outcomes of the deliberation. As the institution dealt with a variety of issues, its policies concerned, for instance, the fate of Mamluk exiles, the functioning of the Islamic judicial system, questions concerning regulations of sharia law, financial demands and taxes, civil unrest in Cairo and the provinces, organization of guilds, conflicts between groups and individuals, or urban infrastructure, among many others. For the purposes of this study, I will focus on one example that also offers an apt subject for exploring the politics dimension in the following section.

During the Diwan's sixteenth session in December 1800,[8] a group of merchants visited the assembly with a request concerning a financial demand that had been imposed by the French administration on crafts and trades in the City.[9] Their petition was presented to the assembly by al-Šarqāwī (1737-1812), the Diwan's president.[10] It revolved around the proposition to levy the imposed tax per head. Since the trades-community's representatives were not able to extract the necessary funds themselves, they pleaded for repartition instead of imposing the tax on the community as a whole. This petition led to a heated discussion between the *commissaire*, the Diwan's members, the petitioners, as well as the audience present during the session.

While the members were sympathetic to the petitioners' proposal, the *commissaire* was highly skeptical and pointed out possible organizational obstacles to a poll tax. The assembly discussed whether women and children should be included as relevant for levying the tax, but also who would be deemed financially able enough for taxation. At this point, the *commissaire* asked the audience to give their opinion, and someone cried out that previous taxation did already cost him all of his financial resources. The

8 Ms. Arabe 7272, folia 105-113.

9 al-Ǧabartī dubbed this imposition the «million tax». For his account on this tax and the discussion surrounding it, see (al-Ǧabartī 1994, vol. III:139–141).

10 al-Šarqāwī was also rector of al-Azhar and the most eminent mufti in Cairo at that time. On al-Šarqāwī, see Delanoue 1982:94–97; al-Ǧabartī 1994, vol. IV:159–163.

Diwan's secretary al-Mahdī (1737-1815)[11] interceded to point out the overall high financial burden put on the population and pleaded for the annulation or at least reduction of this specific tax. After Fourier insisted that an annulation was not possible, both the merchants and some members pleaded to have old Cairo and Būlāq added to the City of Cairo and thereby also included for levying the tax. Though yet again, the *commissaire* responded that this was not possible. Since both Būlāq and old Cairo were distinct districts, they had to be taxed independently. After some back and forth, a compromise was reached. Upon suggestion by the *commissaire*, the merchants and al-Mahdī should meet with him after the session to draft a petition to the *Général en Chef* calling for reducing the tax or at least levying it per head. al-Ǧabartī informs us that the issue was resolved with the institution of a commission assessing the income and wealth of Cairo's inhabitants, excluding women and children, *faqihs*, servants, and the poor for taxation (al-Ǧabartī 1994, vol. III:141).

This policy example demonstrates that the Diwan's activities were neither acts of outright defiance to the colonial administration nor instances of coerced debate under the direct threat of violence. It was possible for its members, and even the public, to address issues that touched upon the authority of the colonial administration. In a next step, these issues would then be discussed through meaningful deliberation between the petitioners, the Diwan's members, and the *commissaire* as a representative of the administration. Those deliberations were meaningful in the sense that they resulted in tangible results leading to actual policy decisions or reform of previous policies with an impact on the daily life of the population. While the colonial administration and the *commissaire* undoubtedly held pre-eminent positions within this process, the contents of deliberation were not dictated exclusively by the higher echelons of the colonial hierarchy. Although the general structure of governance was of course characterized by an uneven distribution of power with the *Général en Chef* ultimately holding autocratic authority, the activities of the Diwan also show how compromise reached through deliberation was a way of engaging with the political system not much unlike in other deliberative and even democratic contexts (Weinstock 2017; O'Flynn & Setälä 2022). Furthermore, while this instance seems to follow a core tenet of deliberative theory stating that the successful implementation of action is preceded by communicative action based on a competition of arguments between interlocutors (Habermas 1990:160; Martínez-Bascuñán 2016:202-204), it breaks with another wide-spread conviction that this communicative action must occur between equal citizens (Cohen 1991:345).

3.3 - Politics-dimension

The politics-dimension describes procedural aspects of the Diwan. It is concerned

11 On al-Mahdī, see (al-Ahnaf 1999).

with questions of who debated with whom, why, in what fashion, and how interventions were justified. The discussion described above poses an apt object of analysis in this regard, since it is replete with political notions of how the French administration, the Diwan, as well as the local population were envisioned to engage with one another. As such, it offers an insight into how deliberation was structured within the specific hierarchical context of the Expedition.

First of all, the episode described above shows how deliberation did not primarily take place as a discussion between the permanent members of the Diwan. Instead, the ulema were principally in agreement with one another on the proposal brought forward by the petitioners. Rather, the actual debate took place between the members and the *commissaire* as a representative of the French administration. The deliberative frontlines, so to speak, remained intact even when confronted with an intervention from the audience. As the *commissaire* enticed someone from the public to voice his opinion *against* the petitioners' proposal for levying the tax per head, the members were quick to build on his opinion for their deliberative purposes, and called for the annulment of the tax altogether.

Confronted with the assembly as a coherent block voicing its opposition to the tax, Fourier turned the discussion into a reminder of the imposed limits and boundaries of the Diwan's deliberation:

> […] and the *Commissaire* said: the result of this talk is that the subjects [*raʿiya*] came for consultation [*mušāwara*] about the repartition [of the tax], but the *ʿulamāʾ* want to push back [*mudāfaʿa*] and [its] remission. But he who wants its remission must have the power to oppose, while he who cannot do so, has to be content with what the *Général en Chef* has imposed. And if he insists on pushing back he suppresses [*rafʿ*] the *dīwān*, and we will not accept any intercession. […] and the eminent al-Fayyūmī said: what is asked is mercy [*raḥma*] and not remission, so if with this the *Général en Chef* was to take advantage of it, it would accrue to him because of the appeal [*duʿāʾ*] of the people to him. The *Commissaire* said: This talk feels like something else, and that is the reduction [of the tax] and not its repartition […] and I know that in this is discomfort for the minds [*fī-hi ṯaqla ʿalà al-nufūs*], but opposition [*muṣādama*] to it is not possible (Ms. Arabe 7272, fol. 109).[12]

Fourier reminded the Diwan that repeated open opposition to the will of the *Gé-*

12 This is my own translation of the passage. Unfortunately, until today there is no complete translation of the Diwan's minutes. A partial French translation of the text, which is mostly a summary of the minute's contents, can be found in Afifi's and Raymond's (2003) commentary.

néral en Chef constitutes a red line and will not be tolerated. He goes as far as warning the members that their deliberation might even result in suppressing the institution altogether. As such, they are forced to reformulate their intentions within the imposed deliberative boundaries.

Here, they characterize the Diwan's interventions as merely constituting negotiation (*mufāwaḍa*) and consultation (*mušāwara*).[13] Upon the Diwan's repeated pushbacks, the discussion moves on to the topic of the right way to intercede on behalf of the people. The members invoke Menou's original ambition for the Diwan as a venue for the "anxious" to appeal for aid (*istiġāṭa / iġāṭat al-malhūf*).[14] The *commissaire*, however, insists that proper intermediation does not purport an intervention on every possible occasion, but rather to intercede cautiously only after an issue has been closely examined, for "it is upon the intermediary to mediate according to reasoning" (*ʿalà al-waṣāʾiṭ anna yatawasaṭū bi l-ʿaql*).[15] Lastly, the member)s justify their intervention by stressing that during the generalship of Kléber (1753-1800, the *Général en Chef* himself would come to the ulema to consult (*yatašāwara*) on what the law (*šarʿ*) states with regard to this issue since he did institute his Diwan for his counsel (*naṣḥ*). As such, there should be time allotted for a meeting between the Diwan and Menou himself, so as not to put the *commissaire* in the difficult position to receive reproach from both sides.[16]
At this point, Fourier seems to give in to the arguments of the members. Finally, a compromise is reached stating that, together with the help of the *commissaire*, the Diwan and the merchants can draft a petition directly to Menou. Indeed, the minutes contain a summary of this draft showing that its contents were directly shaped by the discussion during the session. For instance, the document explicitly stresses that the merchants have no other way for raising the issue with Menou than through the Diwan. It seems that this passage was included so as not to draw any reproach unto the *commissaire* and the Diwan for opposing the tax. In addition, the documents stress that the people rejoice in the institution as it poses a venue for the "anxious" to receive aid (*istiġāṭat al-malhūf*).[17]

This episode shows how the specific political context of the Diwan shaped the deliberation taking place. Operating in an institutional framework that is characterized by a highly uneven distribution of authority, the deliberative process had to adapt to the given realities of power. At the risk of being shut down altogether, the Diwan had to refor-

13 «*Fa-qīla la-hu laysa ḏalika ʿalà sabīl al-muʿāraḍa inna-mā huwa ʿalà sabīl al-mufāwaḍa wa-l-mušāwara* […]» (Ms. Arabe 7272, folia 107-108).

14 Ms. Arabe 7272, fol. 110.

15 Ms. Arabe 7272, fol. 110.

16 Ms. Arabe 7272, fol. 110.

17 Ms. Arabe 7272, folia 112-113.

mulate its deliberative interventions so as not to infringe upon the boundaries imposed on it from outside. For this purpose, the members alluded to the practice of consultation or *mušāwara*, itself a concept with a long tradition in Islamic political philosophy (Lewis 1981). On a conceptual level *mušāwara* as a derivative of *šūrà* designates a form of political consultation that traces its roots to the Qurʾān and consultative practices during the reign of the Rashidun. Over time, several institutions offering consultation within an Islamic context have adopted this notion to conceptualize their political function (Findley 2012). Arabic and Ottoman commentators on European political structures in the 19th century have often described Western parliamentarianism or any of its institutions to their respective audiences with an allusion to either *šūrà* or *mušāwara* (Ayalon 1987:110-126). Therefore, over the course of the 20th-century *šūrà* has oftentimes been presented as an Islamic approach to democracy (Shavit 2010; Soage 2014).

On an institutional level, the term was more closely connected to the growing importance of consultation practiced by the Ottoman Empire during the 18th century. At this time, Ottoman authorities or the Sultan himself resorted more and more to consultative cooperation with imperial as well as provincial notables on any given matters of pressing importance for the state. In his work on cooperative and collective aspects of rule in the 18th and 19th century Ottoman Empire, Yaycioglu (2016:114) concedes that the principles of political deliberation, as well as consultation on grounds of *šūrà*, were not applied coherently across the whole of Ottoman realms missing an Empire wide consultative institution in the 18th century. However, his work testifies how these principles were applied vividly on a regional level (Yaycioglu 2016:65-155). As such, the reign of Selim III was characterized by the institution of the *Mejlis-i Meshveret*, a grand consultative assembly of notables and an institutional driver for Selim's reform projects, as well as a plethora of smaller permanent councils that played a vital role within the Empire's regular administration (Shaw 1971:71-85). Since these practices grew ever more important during the second half of the 18th century, it is reasonable to assume that the Diwan's evocation of *mušāwara* for the purpose of justifying their deliberation also alluded to the institutional framework under the reign of Selim III. For the Diwan to be able to operate within the restrictive context posed by the Expedition in Egypt, deliberation was not merely justified *qua* being a collective decision-making process but had to assume additional legitimizing mechanisms drawn from outside the French colonial administration. However, it is questionable whether the Diwan's deliberation was deemed legitimate among the wider population in Cairo. While Bonaparte and later Menou opted to institute the Diwan as a means of gaining legitimacy through deliberation, given the events of the first Cairo revolt it seems unlikely that Bonaparte's deliberative project was approved of by most strata of Egyptian society (Schmahl forthcoming).

Indeed, this poses a theoretical question. As shown by the example discussed above, the deliberative practices put in place by the French show instances of politically

meaningful deliberation that successfully produced policies via compromise. But as the Diwan was in a constant struggle for legitimating its activities both vis-à-vis the colonial administration as well as the local population, characterizing its communicative action as a form of proto-democratic deliberation à la Habermas seems unfeasible. As such, it might be more reasonable to conceptualize these practices as a subcategory of what has been dubbed "authoritarian deliberation" in deliberative theory. This term has been introduced predominantly by scholars working on authoritarian China to assess deliberation that develops governance and constructs authority but is not captured by idealized notions of democratic practice (He 2014; He & Warren 2017). In the case of the Diwan and the context of the French expedition, we can detect a similar deficiency when it comes to assessing the role of deliberation. While the deliberative process produced feasible political and administrative policies, the Diwan was unable to oppose the colonial authority and develop its own notion of legitimacy independent from the French administration.

6 - Conclusion

This case study aimed to show how an analysis of deliberation in non-democratic contexts can be situated within the central debates of deliberative theory. With a minimalist conception of deliberation that fits for more empirically driven endeavors, we are able to describe and assess the processes taking place in the Diwan of Cairo. However, the proposed Weberian ideal-type of the current deliberative analysis might yet again pose a theoretical problem. If we were to simply accept a Habermasian conception, we would come to the counter-intuitive result, that it is not deliberation that we encounter in this institution. Given the French administration forcibly imposing limits on the deliberative process, it appears that the degree of true deliberation is at a minimum, if present at all.

On the other hand, simply understanding the Diwan's discussions as common talk or a fully enforced way of communication also appears to be misguided. Rather, the deliberative processes in the Diwan were not only institutionalized but also had specific political and administerial purposes differentiating it from an everyday talk. In addition, this example shows that it was possible to engage in meaningful discussions and, to a limited degree, pronounce resistance to the imposition of the *Général en Chef* in a deliberative manner. Even more so, the discussions clearly had a positive outcome in the formulation of the petition to Menou and ultimately in the establishment of a commission tasked with levying the tax per head. All of these characteristics point to the conclusion that there was indeed some form of deliberation that took place within the Diwan.

A more idealist-conception that is based on modern notions of democratic theory is clearly anachronistic and not apt for assessing the processes taking place within the

Diwan. To ensure the appropriate application of deliberative theory in such a context, we should adopt a conception based on how deliberation is ideally conceived within the sources. In our example, a possible substitute could be the practice of *šūrà* and its connected notion of *mušāwara* that is repeatedly alluded to when legitimizing the Diwan's interventions within its minutes. Furthermore, the purpose of the Diwan's deliberation points to the fact that its institutionalized discursive practices can be conceptualized as a form of authoritarian deliberation characterized by the boundaries within the hierarchy of French colonial rule in Egypt.

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