Last week, my gaze fell on a sight that I still cannot forget. As I left the club at midnight, I saw two small children in a dark corner. They had cleared a small piece of ground, were leaning on each other and were sleeping as if in embrace. These two miseries, whose home was the street, did not have what God has granted others: a comfortable bed and furniture. They had only their arms to rest on. As the two boys slept, people passed by, as if not noticing them. And those who live lives of pleasantry and comfort in their palaces sleep soundly, unaware that such miseries exist.

The Just should also be Strong
Sanhûrî, Diary, 1920 and 1944, respectively

1. The Transition to ‘Contractual Justice’

The Old Egyptian Civil Codes, both the Mixed and the ‘Ahlî, disfavored judicial or legislative interference in the freedom of contracts and the use of the concept of ‘justice’ as a substitute for written legal rules; as explained above, this reflected their origins as replications, with certain amendments, of the Napoleonic Code Civil of 1804. In this respect, the codes reflected the laissez-faire approach of individualistic philosophy as embodied in the Code Civil, which regards economic and contractual liberty as the natural right of the citizen. In these individualistic codes, which might even be characterized as capitalist and bourgeois in character, the idea that there are limits to the contractual freedom of an individual seem alien, since they tend to sanctify personal autonomy and contractual freedom. In addition, these codes established that the

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1 Diary, 23 February 1920, pp. 45–46; 21 October 1944, p. 249.
3 On the Rulings of the Egyptian Courts, regarding the Sanctity of Contracts according the Old Codes see: Al-Wasî, volume 1, p. 713.
ownership of possessions is ‘absolute’ (muṭlaq).

In this chapter, we will argue that the New Code abandoned the individualistic approach, following in the steps of French and Continental law in the early twentieth century and opining that the laissez-faire approach was not appropriate for Egyptian society, since it encouraged the growing social and economic polarization, arbitrariness, social apathy and exploitation of the weak, inflaming these woes and potentially bringing Egyptian society to the brink of calamity. In place of the individualistic and capitalist approach, which Sanhūrī considered wanton selfishness (anāmiyya), and even ‘the unruliness of the strong,’ the legal pendulum now swings toward a paternalistic and altruistic approach to contract law, one that places the interests of society and the general good at the center, even at the expenses of individual interests, intervening in the contractual freedom of the individual. Not only were the interests of the individual now subservient to the common good, but these interests were now perceived in a different manner. In the long term, it was argued, it was in the individual’s interests if the legal system intervened in what was once considered his exclusive contractual or property right; he might be required to give some ground, but he would benefit from a healthier and more stable society. If the party to the contract or the owner of the property right failed to understand this, the court would impose the general good (and the social solidarity this was supposed to bring), according to the principle that a person may be coerced not to act selfishly toward his fellow.

The contractual transformation realized by the New Code was therefore manifested in the new perception of contract law. In place of the old approach, which argued that the function of contract law was merely to ensure the formal propriety of the process, the new approach gave contract law an altruistic and moral function, by virtue of which the law could also intervene in the content of the contractual

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4 Majmūʿat Qawānīn al-Mahākim al-ʿAhlīyya wa al-Sharʿīyya, article 11.
5 Al-Wasṭī, volume 1, p. 435.
6 Al-Wasṭī, volume 8, pp. 546–547, 494, 557.