

American University in Cairo

AUC Knowledge Fountain

Theses and Dissertations

Student Research

Spring 1-23-2020

The politics and poetics of memory: law and temporality in contemporary Egypt

Mayy El Sheikh

The American University in Cairo

Follow this and additional works at: <https://fount.aucegypt.edu/etds>



Part of the [Political Science Commons](#)

Recommended Citation

APA Citation

El Sheikh, M. (2020). *The politics and poetics of memory: law and temporality in contemporary Egypt* [Master's Thesis, the American University in Cairo]. AUC Knowledge Fountain.

<https://fount.aucegypt.edu/etds/1739>

MLA Citation

El Sheikh, Mayy. *The politics and poetics of memory: law and temporality in contemporary Egypt*. 2020. American University in Cairo, Master's Thesis. *AUC Knowledge Fountain*.

<https://fount.aucegypt.edu/etds/1739>

This Master's Thesis is brought to you for free and open access by the Student Research at AUC Knowledge Fountain. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of AUC Knowledge Fountain. For more information, please contact thesisadmin@aucegypt.edu.

**The American University in Cairo
School of Global Affairs and Public Policy**

**The Politics and Poetics of Memory
Law and Temporality in Contemporary Egypt**

**A Thesis Submitted to the
Department of Law**

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Mayy El Sheikh

September 2019

*To the memory of my brother, Ebrahim El Sheikh—
a fierce dreamer who embodied the hope and despair of our shared January.*

ACKNOWLEDGEMENTS

My deepest gratitude goes to my supervisor, Dr. Mai Taha, and members of the committee, Dr. Hani Sayed and Dr. Hanan Sabea. Before their involvement with my thesis, I was lucky enough to have them as teachers who inspired me inside and outside the classroom and helped me find the courage to explore a topic in which I have great personal investment. I would not have made it without the time they have generously given to think with me and to ask me difficult questions that helped me refine my ideas to the best of my ability.

My heartfelt thanks go to Dr. Taha for our rich conversations about every detail of the thesis, and for her careful reading of my drafts and her thorough feedback. These discussions were as enjoyable as they were productive and I am indebted to her enthusiasm, friendship and pointed comments. Most importantly, I am thankful to her for the intellectual freedom I felt throughout the writing process.

I am grateful for all my other professors inside and outside the Department of Law, namely Dr. Thomas Skouteris, Dr. Jason Beckett and Dr. Martina Reiker. Each of their classes influenced my ideas and work. I am also thankful for the invaluable support and encouragement given by the Director of the Legal English Training Unit, Diana Van Bogaert, at every stage of the program and through the writing of this thesis.

I gratefully acknowledge the Yousef Jameel GAPP Public Leadership Fellowship at The American University in Cairo for funding my study.

This thesis would not have been possible without the loving partnership of my husband, Ahmed Abdel Hakam. We had our first baby in the middle of the program. He gave me the most valuable assets I needed to be both a mother and a graduate student while continuing to hold a job: time, unwavering support and coffee.

My warmest and deepest thanks go out to my family, Aida el-Sakhawy, Mohamed el-Sheikh, and Enas and Omar el-Sheikh, for their unconditional love and support throughout this process, and for coming to the rescue when it was most needed.

This thesis has been greatly influenced by the birth of my daughter, Asya Abdel Hakam, whose laughter, stubbornness and love for dancing were almost entirely responsible for the epilogue of hope at the end of the thesis. I will forever be grateful to the joy and faith she sparks in my life every day.

The American University in Cairo
School of Global Affairs and Public Policy
Department of Law

THE POLITICS AND POETICS OF MEMORY
LAW AND TEMPORALITY IN CONTEMPORARY EGYPT

Mayy El Sheikh

Supervised by Professor Mai Taha

ABSTRACT

Eight years have passed since the 25th of January revolution in 2011 which succeeded in removing former President Hosni Mubarak after 30 years in power. Initially, the revolution was hailed for its promise of democratization and its anticipated positive impact on improving the condition of human rights. Today, Egypt is under military authoritarian rule and the human rights situation is worse than it has ever been in the country's modern history. Critics of Egypt's authoritarian turn often invoke the "rule of law" as a solution and a desired course of action to rectify Egypt's failed democratic venture. This thesis investigates the role of law in Egypt's current wave of tyranny and how it contributed to, rather than stood up against, the failure of the revolution's promise.

This thesis looks at law at the heart of the rising tide of tyranny in today's Egypt to make an argument about memory as an object of power and to examine the role of law in this relationship. This examination reveals that the Egyptian state is *ruling by law*, and is using memory as one of its key instruments in the production of subjects with violable bodies.

TABLE OF CONTENTS

INTRODUCTION	1
I. LAW THE ORATOR.....	8
A. Chapter One: Constitutive Memories.....	13
1. <i>Understanding the Inside and Outside of Law</i> <i>Temporally</i>	13
2. <i>Constitutional Preambles between Rupture and</i> <i>Continuity</i>	18
B. Chapter two: Courts and the Interpretation of Memory.....	24
1. <i>Assembling the Master Narrative</i>	24
2. <i>Interpreting the Preambles</i>	32
3. <i>Silencing Counter-Narratives</i>	35
C. Chapter three: Governing Memory.....	41
II. BODIES IN THE HOLD OF THE LAW.....	52
A. Chapter One: Law and Dehumanization.....	56
1. <i>Foundational Violence</i>	56
2. <i>Foundational Violence's Placement on a Spectrum</i> <i>of Inside/Outside of Legality</i>	59
B. Chapter Two: The Temporality of Precarity	68
1. <i>A Hierarchy of Absence and Presence</i>	68
2. <i>Absent Bodies, Present Memories</i>	76
C. Chapter Three: Terrorists and Martyrs	81
1. <i>Constructing Figures</i>	81
2. <i>Terrorists and Other Others</i>	85
2. <i>Martyrs</i>	89
III. EPILOGUE.....	95
A. Memory and the Engineering of a Political Community	95
B. Memory and Agency	98

LIST OF ABBREVIATIONS

AUC	The American University in Cairo
CPJ	The Committee to Protect Journalists
ECESR	The Egyptian Center for Economic Social Rights
NMA	National Media Authority
NPA	National Press Authority
SCAF	The Supreme Council of the Armed Forces
SCC	The Supreme Constitutional Court
SCMR	The Supreme Council for Media Regulation

INTRODUCTION

On August 14, 2013, the entrance of *Yūsif ‘abbās* street was closed off by a military checkpoint to prevent outsiders from gaining access to the site of the ongoing massacre in *Rab ‘a*. A young military officer with coiffed hair and chic sunglasses stopped a passing taxi which had a bearded man in the passenger seat. The officer asked the driver to open the trunk, and the driver complied. The officer uttered a profanity and the driver politely protested. The young officer did not say a word as he dragged the driver by the neck to the sidewalk and beat him up in broad day light and in full view of passers-by.

I was standing right there, next to a colleague from the *New York Times* bureau where I worked at the time, with a notebook and a pen in my hand. Instead of taking notes, I hid my notebook in my handbag. I had just left the site of the killings at the other end of the street. I already knew what the driver did not: the grotesque sights and smells of *Rab ‘a* had just robbed us, all of us, of our status as right-bearing citizens. Law, in its protective capacity, had already abandoned us.

The saga of the Egyptian revolution cannot be separated from the narratives of two squares: *Tahrīr* and *Rab ‘a*. Each narrative signifies a different moment on a timeline of a rise and fall. Each narrative founded a constitution and a slew of laws. Each narrative was complicit in assembling its own polity, and the production of two seemingly disparate models of the right-bearing subject.

But narratives are dynamic and constructed in relations— images that need to be seen to live on and words that must be heard or read to survive. Without recognition, narratives, memories, images and stories acquire a spectral quality. In Hannah Arendt’s words: “For us, appearance— something that is being seen and heard by others as well as by ourselves— constitutes reality.”¹ This “shadowy kind of existence,” argues Arendt, only turns into reality when experiences take the shape of narratives that can be publicly recognized, mostly through storytelling.²

¹ HANNAH ARENDT, *THE HUMAN CONDITION* 50 (Second Edi ed. 1998), <http://www.bibliovault.org/BV.landing.epl?ISBN=9780226025988>.

² *Id.*

Standing at the entrance of *Yūsif ‘abbās* street with words I never wrote down or spoken, I was allowing the violence done to the taxi driver and what it signified to lead this shadowy existence Arendt is speaking of. At the time, it was my job as a reporter to bear witness. As time went by, bearing witness has become more and more dangerous. Gradually, acts of commemoration, archiving, storytelling and narrative production became criminal offences often prosecuted in courts of law. Memory became an object of the Egyptian legal order.

In January of 2011, street protests erupted and lasted for 18 days of sit-ins, marches and clashes with the police that claimed the lives of hundreds of demonstrators. On February 11, 2011, Vice President Omar Soliman announced President Hosni Mubarak had stepped down and left the Supreme Council of the Armed Forces (SCAF) in charge of the transitional period. In January of 2012, an Islamist-dominated parliament was elected. In June of 2012, that parliament was disbanded by SCAF based on a ruling by the Supreme Constitutional Court (SCC). Also, in June of 2012, Mohamed Morsi of the Muslim Brotherhood was elected President. In December of 2012 an amended version of the 2012 constitution was ratified after a public referendum. On July 3, 2013, a military takeover ousted Morsi, suspended the 2012 constitution and installed the president of the SCC in his place. In June of 2014, the leader of the military takeover, then Minister of Defense Abdul Fattah el-Sisi, became the new President. In January of 2014, a new constitution was ratified after a public referendum. In April of 2019, the constitution was amended to extend Sisi’s term without election.

This thesis looks at law at the heart of the rising tide of tyranny in today’s Egypt to make an argument about memory as an object of power and to examine the role of law in this relationship. This examination reveals that the Egyptian state is *ruling by law*, and is using memory as one of its key instruments in the production of subjects with violable bodies.

In this thesis, I use “law” and “legal order” interchangeably in reference to the entirety of practiced legality. The thesis also addresses relationships between a legal order and a normative order. But this should not be confused with Hans Kelsen’s conceptualization of normativity which views law as a pyramid of norms where each norm refers to another,

and where all norms refer to a presupposed, constitutive basic norm.³ Kelsen's normativity⁴ features prominently in the liberal constitutionalist understanding of a pure rule of law that has the capacity to objectively govern human conduct without being governed by it. In this theoretical tradition, "the state is nothing else than the legal order itself," and is therefore "identical with its constitution."⁵ This conceptualization banishes "sociological elements" from a purely "juristic" rule of law where a legal order and a normative order are collapsed into each other.⁶

Instead, I understand law or a legal order as a contingent world of actors and relations where the social, the political and the juristic inevitably overlap, but cannot be reduced to one another. Following Pierre Bourdieu, law can be understood as a "social field." Bourdieu's translator compared the social field to a magnetic field that exerts force on everything within its reach. Those affected by these forces, however, "are generally not aware of their source."⁷ Within the multiple and diffused network of power relations, law operates as "a force, like gravity, through which our worlds exercise an influence upon one another, a force that affects the courses of these worlds through normative space."⁸

In line with Robert Cover's writing, I understand law as constitutive of normativity only when combined with narratives that give law meaning, history and purpose, and with actions that signify actors' commitment to live by the meanings illustrated in narratives.

³ Tomas Berkmanas, *Schmitt v. Kelsen: The Total State of Exception Posited for the Total Regulation of Life*, 3 BALT. J. LAW POLIT. 98–118 (2010). at 105.

⁴ Kelsen was one of the most prominent positivist legal theorists of the early twentieth century. His "Pure Theory of Law" insists that a pure rule of law that is entirely objective and can be shielded from all moral and political influence is possible. This stirred a debate about the relationship between law and politics that continues today. The most prominent scholarly opponent of Kelsen's ideas is Carl Schmitt who insisted that sociological elements and sovereign decision can never be precluded by any system of norms, no matter how sophisticated or comprehensive. In Schmitt's words: "What matters for the reality of legal life is who decides. Alongside the question of substantive correctness stands the question of competence" (See Carl Schmitt's book, *Political Theology*, at page 34). For Schmitt, this dynamic is most evident in a state of exception.

⁵ CARL SCHMITT, *POLITICAL THEOLOGY* 19 (2005).

⁶ *Id.* at 18.

⁷ Pierre Bourdieu, *The force of law: toward a sociology of the juridical field Translators Introduction*, 38 HASTINGS LAW J. 811 (1987). P.805

⁸ Robert M. Cover, *The Supreme Court, 1982 Term. Foreword: Nomos and Narrative*, 97 HARV. LAW REV. 4 (1983), <https://www.jstor.org/stable/1340787?origin=crossref>. at 10

A key conceptual model in this thesis comes from Robert Cover's work on law and narrative, and law and violence. In Cover's writings, law is the link between reality and an imagined normative future.⁹ Each member of a political community has their understanding of what a good life is and a corresponding vision of the future. Each of them can interpret legal ideals, mostly found in constitutions, to facilitate the realization of this imagined future, either by reinventing the meaning of existing texts or by introducing new ones. This is what Cover means by "interpretation" which is understood as broader than institutionally privileged judicial interpretation of existing texts. He gives the example of American anti-slavery theorists who used the ideals of the constitution to interpret slavery as unlawful even though it was codified in legal texts.¹⁰

An interpretation, or conferring a legal meaning onto texts, is only realizable when interpreters are "prepared to live by it."¹¹ This is what Cover calls an "interpretive commitment." An interpretive commitment and the vision of the future signified by this commitment become sharable when they are narrativized— spoken, written, visualized. This may give rise to a collective interpretive commitment. But an interpretive commitment, no matter how widely shared and morally legitimated through narrative, can never be realized without violence to enforce it.

Constitutive moments of social change or revolutions occur when a group seek to realize their interpretative commitment to a new normative world, and to a vision of the future that is radically different from that of the existing system of power. This does not have to involve a regime change (think women suffrage or the end of slavery). At such constitutive moments, opposing interpretive commitments compete for realization. This realization can be inscribed in legal texts or in the flesh, or in both.

Here, I am interested in engaging with the temporality of law and social change. An interpretive commitment to a vision of the future maintained by an existing system of power becomes an interpretive commitment of continuation. It seeks to maintain a certain organization of time towards a specific future destination. This is not only about

⁹ *Id.* at 9.

¹⁰ *Id.* at 37-38.

¹¹ *Id.* at 44.

maintaining existing legal texts, but also about defending the legal meaning conferred onto them which entails an investment in the past. In Cover's words: "Prescriptive texts change their meaning with each new epic we choose to make relevant to them. Every version of the framing of the Constitution creates a 'new' text in this sense."¹²

Similarly, agents of social change and revolutionaries have an interpretive commitment to an *alternative* vision of the future which necessarily entails a rearrangement of the existing system of power, and a reinvention of the existing legal order by creating a break in time. These are interpretive commitments of discontinuation that seek to reorganize time towards new future potentialities. As such, social change and revolutions often take the form of rupture of the pre-existing legal order's hold over the political community in order to redistribute power and usher in new ways of organizing communal life.

I read the Egyptian revolution of January 25 as one of these constitutive moments that carry the potential of inaugurating a new normative world. It is a break in time and a rupture of the old legal order towards an imagined alternative future. I read subsequent turmoil as a battle between competing temporal sensibilities with disparate readings of the past and visions for the future— a conflict between interpretive commitments of continuity and interpretive commitments of rupture.

This thesis investigates the pre-existing legal order's use of narrative, memory and violence to realize interpretive commitments of continuity in legal texts and onto bodies to fend off the threat of rupture. Narratives of continuity have been inscribed in ink and blood to crush, assimilate or appropriate the potential disruptive force of the January revolution into a teleological organization of time. This has been done in service of a future that reproduces present power relations. This thesis hopes to show that memory was a central site of contestation in this dynamic.

Throughout this thesis, I keep my arguments and analysis to Egypt. Law operates temporally everywhere; it has a vested interest in narrative everywhere; it also inscribes its temporal narratives in text and bodies everywhere. But I do not believe in universal archetypes. Systems of domination have shared logics. But believing in agency means

¹² *Id.* at 4.

believing that systems of domination will encounter dissimilar modes of resistance which means they will change their tactics, if not their strategies, accordingly. For example, part of this thesis is about the legal appropriation of martyrdom, because martyrdom narratives are part of the resistance's arsenal in Egypt. This might be relevant for many other countries. But it cannot be said to be universal.

I choose to use the subjective voice following Patricia Williams's proclamation that "a subject position is everything in my analysis of the law."¹³ In her book, *The Alchemy of Race and Rights*, Williams argues that what is "personal" is not equal to what is "private," but is rather a common reference to what is "particular." Avoiding our own subjectivity might be counter-productive, even a little cowardly:

The other thing contained in assumption of neutral, impersonal writing styles is the lack of risk. It is not only a ruse, but a warm protective hole to crawl in, as if you were to throw your shoe out the front door while insisting that no one's home.¹⁴

She wanted the reader to know she was having a bad morning when she started writing her book. I want you to know that I marched the streets in 2011 as a protester, and then covered most incidents of mass killing by men in uniform as a journalist until 2014. My personal investment in the topic has inevitable consequences for my writing.

The arguments of this thesis are organized into two sections, both of which investigate law's engagement with memory in the realization of interpretive commitments of continuity. The first section examines this process in relation to legal texts, and the second investigates the same process in relation to bodies.

Using textual reading and analysis, the first section is divided in three chapters, each examining law's engagement with memory at a different level of legality. The first chapter further unpacks the conceptual model referenced earlier and analyzes constitutional texts since the revolution to frame the conversation within the foundational tension between continuity and rupture in Egypt since 2011. The second chapter looks into the level of judicial interpretation in courts through analyzing several high-profile, politically charged

¹³ PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 3 (1991).

¹⁴ *Id.* at 93.

cases. Reading these texts reveals law's investment in assimilating the threatening potential of the 2011 moment of rupture into the state's hegemonic master memory narrative.

The third chapter delves into how the Egyptian legal order is committing alternative memory narratives to forgetfulness. Law's capacity to neutralize the disruptive force of alternative temporalities is revealed most explicitly in the use of legislation to monopolize the *means of production of public memory narratives*. New legislations have effectively brought all material sites of public communication under the hold of the law. The court and the newsroom have become nearly indistinguishable, and Egyptians have been largely dispossessed of the platforms through which alternative narratives can circulate and gain value.

The second section also uses a reading of texts and analysis of laws, decrees and court rulings to explore law's inscription of interpretive commitments of continuity into the bodies in its hold. The section is divided in three chapters. The first chapter addresses the question of whether arbitrary state violence in Egypt is inside or outside law and introduces a temporal perspective into the debate. The second chapter investigates law's capacity to hierarchize bodies on a spectrum of violability with memory as both a means and an end. This includes an analysis of the connections between discourse and the materiality of violence and how both elements come together to realize dehumanization. The third chapter analyzes law's role in the production of abstracted figures that facilitate the work of dehumanization and violability. This includes an examination of the figure of the martyr and the figure of the terrorist as opposite poles in a hierarchy of grief and violability which has consequences on the violability of living bodies.

But focusing on how law is trying to interpellate a subdued polity does not mean it is succeeding. To a large extent, reading legal texts as the primary source of analysis restricts the majority of this project to the scripts of the law. This does not preclude the scripts of resistance. At the end of this thesis, I dedicate an epilogue to examining the potential of understanding the scripts of the law temporally. The epilogue provides a glimpse into the scripts of rupture, agency and the memory narratives of resistance.

I. LAW: THE ORATOR

In order to put together a comprehensive chronology of the 2011 revolution in Egypt, Lama Abu Odeh recommends the Official Gazette as a good place to start.¹⁵ The story of the revolution is a very legal one. It began with a suspension of the 1971 constitution and went through a transitional constitutional declaration, two “complementary” constitutional declarations after that, two full-fledged constitutions written by two separate constituent assemblies, and, most recently, a set of constitutional amendments ratified in 2019. This does not count constitutional declarations to abolish or amend previous constitutional declarations. The eight-year journey also includes an endless number of court rulings, decrees, and new legislations. It might be that Abu Odeh did not mean exactly that, but the Official Gazette is arguably an archive of the revolution.

From the moment Mubarak stepped down in 2011, crucial political disputes were taken to court to the point that Abu Odeh concluded that the political was “annexed by the legal.”¹⁶ Abu Odeh goes on to argue that, while political adversaries took politics to courts, judges left the courts and stepped into the public political arena,¹⁷ holding press conferences and giving media interviews where they expressed political opinions.¹⁸

But I do not wish to investigate the bias, nor do I wish to explore the implications of judges’ public presence in politics. I think the bias no longer needs proving and judges never needed

¹⁵ Lama Abu Odeh, *Of law and The Revolution*, 34 PENNSYLVANIA J. INT. LAW 341–363 (2013), <https://scholarship.law.upenn.edu/jil/vol34/iss2/3>. at 344

¹⁶ *Id.* at 344

¹⁷ One of the cases Abu Odeh cites was when a sitting judge on the Supreme Constitutional Court (SCC) gave an interview to The New York Times and admitted she advised SCAF to not allow parliamentary elections before the writing of the constitution— a move that that was preferred by non-Islamist politicians to avert Islamists’ plausibly anticipated electoral success. Her admission came after the SCC disbanded the Islamist-dominated parliament which led many Islamist politicians to cite the newspaper article as proof of the court’s bias. Working at the New York Times at the time, I was one of two reporters who did that interview. Both el-Gebali and Islamist lawmakers from the disbanded parliament filed complains with the public prosecution demanding our testimonies. It was a classic case of the use of legal means to settle political disputes at the time.

¹⁸ Abu Odeh, *supra* note 15.

to leave their courts to demonstrate it. They perform political roles every day, on the pages of their rulings, and on the bodies in the cages over which they reign. By engaging memory and producing public memory narratives, judges have been, since 2011, playing a political role that, I think, is far more dangerous than what Abu Odeh addressed in her piece.

To understand the menace of the role law has been playing here, we must approach law as a temporality. The very logic of how law functions is temporal. Cover theorizes law as a “system of tension” that bridges the reality of here and now to a “vision” of an imagined future shaped by law’s stipulation of what ought to be.¹⁹ Law’s basic function of hierarchizing human behavior in a community on a spectrum of lawful permissibility and unlawful prohibition entails law’s involvement in a *vision* of how community members should live.

Both the reality and the vision law aims to bridge “can be represented in their normative significance only through the devices of narrative.”²⁰ Law generally operates in a normative world of “right and wrong, of lawful and unlawful, of valid and void.”²¹ Cover’s analysis reveals law and narrative as co-dependent equals in the normative order of a society:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live. In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse - to be supplied with history and destiny, beginning and end, explanation and purpose. And every narrative is insistent in its demand for its prescriptive point, its moral.²²

Cover’s word choice attaches law to a specific kind of temporality. The words “history” and “destiny” certainly carry different weight than “past” and “future.” A history and destiny form a trajectory of self-realization. Through narrative and the creative work of

¹⁹ Cover, *supra* note 8. at 9.

²⁰ *Id.* at 9.

²¹ *Id.* at 4.

²² *Id.* at 4-5

historicity, law can assemble for itself this teleological trajectory, but not without resistance.

In her work on the legal colonial history in India, Renisa Mawani relies on the work of Elizabeth Grosz and Henri Bergson to theorize the *double time* of law.²³ There is this teleological time that subscribes to the finalism of a history and a destiny. And then there is *lived time* with multiple temporalities which always carries the potential of rupture, resistance and disruption. This is the time lived in events and by subjects which opens up alternative potentialities and temporal sensibilities and therefore threatens law's desired teleological continuity.

The work of legal historians of colonialism like Renisa Mawani's work on India, and Samira Esmir's work on "juridical humanity"²⁴ in Egypt are just two examples of how *rupture* can mean domination rather than revolution against domination. Their analysis shows that the introduction of secular law has disrupted the normative orders of the colonies with the aim of building new ones where European supremacy is pre-prescribed.

It is true, not all ruptures signify a revolution. But all revolutions seek rupture. In Walter Benjamin's words: "The awareness that they are about to make the continuum of history explode is characteristic of the revolutionary classes at the moment of their action."²⁵ The tension between the state's commitment to continuity and revolutionaries' commitment to rupture naturally becomes a primary site of conflict. These are *interpretive commitments*, according to Cover, as they signify disparate normative worlds based on opposing interpretations of what the law should be. And so, the stage of conflict is set between interpretive commitments of continuity and interpretive commitments of rupture. Since the battle is for normative worldbuilding, these commitments inevitably demand realization in narrative which endows them with meaning and signification.

²³ Renisa Mawani, *Law As Temporality: Colonial Politics and Indian Settlers*, 4 IRVINE LAW REV. 65–96 (2014), <https://scholarship.law.uci.edu/ucilr/vol4/iss1/5/>. at 72.

²⁴ SAMIRA ESMIR, *JURIDICAL HUMANITY A COLONIAL HISTORY* (2012).

²⁵ WALTER BENJAMIN, *ILLUMINATIONS: ESSAYS AND REFLECTIONS* (Hannah Arendt ed., 2007). at 261.

But narratives of continuity and narratives of rupture have different temporal characterizations. Mawani's reading of Elizabeth Grosz's work differentiates between "overarching time" and lived time.

With the exception of constitutions which have their own "temporal rhythms"²⁶ that are often reflected in narratives of foundational myths, legal texts (court rulings and decrees for example) usually appeal to facts and information rather than emotions and morality. The Egyptian legal texts analyzed for this thesis, however, are different. In most court rulings discussed in this thesis, trials seem to be mainly about context, not crimes, and definitely not about the individuals awaiting judgment. These texts disguise themselves in emotion, appeal to collectiveness, call for commemoration, and take the form of storytelling.

Since 2011, each constitutional document cites memory as its authorizing force. Each court ruling produces a narrativized memory and gives it the exclusive authority of the law. This inevitably entails law's operation within a field of visibility and knowledge — constantly making decisions about what the truth is, what to tell and what to discard, what to show and what to hide, who has a voice to speak and be heard and who is silenced.

This section will attempt to show, through a reading of a selected set of constitutional documents, court rulings and legislations,²⁷ that law engaged memory in three main ways: by producing memory narratives, by silencing and excluding alternative narratives, and finally by authorizing the state's legal monopoly on the means of production of public memory narratives.

To build this analysis, the section is divided in three chapters to trace the engagement of memory in three levels of legality: constitutions, interpretation in courts, and legislation. The first chapter traces temporal and memory narratives in some of the key constitutional documents Egypt has gone through since the revolution of 2011.

²⁶ Mawani, *supra* note 23. at 72.

²⁷ Most of the legal documents cited in this thesis can be found at: manshurat.org, a digital archive of legal documents created by a research unit, "Law and Society" at The American University in Cairo. The Official Gazette and court rulings are not realistically accessible to the public. Therefore, Manshurat has been an indispensable resource for the analysis in this paper. The downside of this is that most citations will have to list these sources as web pages.

The second chapter then looks at the scene of judicial interpretation in courts through a reading of the rulings on several high-profile, politically charged cases that used the legal arena to mandate remembrance of certain narratives and condemn others to oblivion. The chapter also examines how the constitution's engagement of memory impacted legal interpretation in courts.

The third chapter delves more deeply into exactly how the Egyptian legal order is silencing counter-narratives and using legislation to monopolize the means of narrative production. The section looks at Egypt's arsenal of what could be titled *laws of discursive policing* that evolved in recent years. The reinvigorated legal arsenal now includes key legislations that not only seeks to control the content of speech and public narratives, but also aims at controlling all platforms through which narratives become public and sharable.

A. Chapter One: Constitutive Memories

1. *Understanding the Inside and Outside of Law Temporally:*

It is not difficult to read the sequence of events since the ouster of Mubarak as an extended battle over the authors and content of the constitution. The end of the Mubarak era was marked by repudiating the legal foundations of his rule. Two days after Vice President Omar Soliman announced Mubarak's decision to step down, SCAF issued a constitutional declaration to chart the way ahead. The declaration had a story to tell, commitments to make and a memory to attach itself to:²⁸

The Supreme Council of the Armed Forces... realizes that the real challenge facing our precious homeland, Egypt, is about achieving *progress...* through providing an atmosphere of freedom and facilitating democracy by means of constitutional and legislative amendments to meet the legitimate demands made by our people in the past days... in a way that befits the stature of Egypt whose people inscribed the first lines of human civilization on the pages of *history*.

The Supreme Council of the Armed Forces has a firm belief that the foundations of legitimacy for any ruling regime in the country in the coming period is human freedom, *the rule of law*, supporting the values of equality, democracy, pluralism and social justice, and uprooting corruption.²⁹

The declaration suspended the 1971 constitution and disbanded Mubarak's parliament. It instituted SCAF as the interim ruling and legislative authority. It also promised to form a constituent assembly to draft a new constitution and to manage the election of a new parliament and a new president.³⁰

²⁸ All emphasis in the quote is mine

²⁹ Constitutional Declaration of 13 February, 2011. It can be found at: 'i'lān distūrī bita'tīl āl'amal bi'aḥkām āldustūr, THE OFFICIAL GAZETTE. 2-4 (2011), <https://manshurat.org/node/4258>.

³⁰ 'i'lān distūrī bita'tīl 'al'amal bi'aḥkām 'aldustūr, THE OFFICIAL GAZETTE. 2-4 (2011), <https://manshurat.org/node/4258>. at 3.

Appeals to continuity were clear in the document's language of a past origin that dates to "inscribing the first lines of human civilization on the pages of history," and a future destination of "progress". But most importantly, this document was an early sign that the temporal tension between continuity and rupture was taking on a spatial representation of a tension between an inside and outside of the law.

In this instance, SCAF declared itself the sovereign in the Schmittian sense of the word—"he who decides the exception."³¹ In this moment of legal rupture, SCAF made the decision without reference to any pre-existing legal norm. In doing so, SCAF still belonged to the broader legal order, even if it acted from outside the realm of prescriptive legal norms. In Carl Schmitt's words: "Although he [the sovereign], stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety."

This tension between the outside and the inside of the legal order was evident in the maneuver SCAF used to give itself a legal entry point. Instead of relying on the fact of the matter or the status quo, and without being able to rely on a legal norm that allowed the transition since none existed, Mubarak's statement of abdication also "charged the Supreme Council of the Armed Forces with the government of the country's affairs."³²

And although no prior legal precepts gave the president the right to hand over his presidential privileges and duties to the armed forces, the constitutional declaration shows repeated attempts to conferring some sort of legal legitimacy on the transition. The very nature of the document was peculiar. Why did it have to take the form of a "constitutional declaration" and what did that mean in the absence of rules to regulate such documents in pre-existing laws?

The constitutional document based the SCAF's authority on Mubarak's statement of abdication. It proclaimed the "rule of law" as one of the founding principles of the new era and promised to manage the transition through "legislative and constitutional amendments." The declaration cited the very constitution it suspended as the legal

³¹ CARL SCHMITT, *POLITICAL THEOLOGY*, 5 (2005).

³² bayān tanahī mubāarak 'an 'alḥukm, STATE INFORMATION SERVICE (2011), <http://www.sis.gov.eg/Newvr/egyptionrevoution/julythree.html>.

foundation of the armed forces' power. It also invoked history as a source of legitimation. SCAF's new sovereign position was framed as being "in fulfillment of its [SCAF] historic and constitutional responsibility in protecting the country and ensuring its security and the safety of its lands."³³ This language appealed to the legitimacy of the law and summoned historical national myths involving the military.

Even with its de facto hold over the country, SCAF still felt the need to establish the *sense* of legal legitimacy and at least maintain the illusion that the legal order was not entirely ruptured. This desperate attempt to remain within the boundaries of legality endured through brief periods of constitutional vacuum, and even when no pre-existing laws addressed the rapidly unfolding developments. Inserting every action, every decision and most political debates in the legal realm became a theme of the years since that moment in February of 2011.

If decisions are made outside of legality and are allowed to exist as external, this would rupture the appearance of uniform continuity the legal order seeks to fabricate. Specifically, the memory of *Tahrīr* Square and the January revolution has always been a threat to this continuity. Every interpretation of that memory as a constitutive, disruptive moment carried the potential of realizing a new way of being and of doing things. This would endanger this imagined thread of continuity which allows the powerhouses of pre-existing system of domination to keep their privileges.

The political turmoil since 2011 can be read along the lines of the temporal tension between the inside and the outside. Is the January revolution outside of legality? Is it allowed to initiate a new legality of its own and rupture entirely the existing system? Does the January revolution realize an alternative normative order of its own?

In Egypt, the battle over the content of the constitution was largely about this question of continuity and rupture. Somehow, by the end of it, the memory of the January revolution was successfully brought in line, reigned in and appropriated into a narrative of continuity.

The first standoff between Islamists and non-Islamists was about whether to write the constitution first or have parliamentary election first. It was a political dispute over

³³ The Constitutional Declaration of 13 February 2011, 2, *supra* note 5.

asserting continuity in the face of rupture. Islamists campaigned on continuity which, in this case, meant keeping *Sharī'a* in the charter. They won. They also won the majority of the parliament, controlled the formation of the constituent assembly, and eventually won the presidency.

On the eve of the presidential elections, and as informal results confirmed that the Muslim Brotherhood candidate had won, SCAF issued a fateful *complementary* constitutional declaration and gave itself legislative powers. The declaration also gave the head of SCAF, among others, the power to object to any new constitutional clause that goes against “recurring principles in previous constitutions”— a convenient legal cover for arguments of continuity in the face of the prospects of rupture in the new constitution. According to the new declaration, the SCC would have the final power to decide on whether or not a proposed text is consistent with the revolution’s principles, and the constitutional traditions of previous charters.³⁴ But, in their founding moments, constitutions are meant to be “constitutive” and therefore entail a potential discontinuity between a past state of affairs and a new one.³⁵ SCAF’s complementary constitutional declaration can be read as an attempt to pre-empt the threat of temporal rupture by creating boundaries of pre-existing legality.

Now that all is said and done, it is very difficult to comprehend what value a constitution may hold when Egypt has gone through four constitutional referenda, scores of amendments and at least a dozen constitutional documents (full-fledged constitutions, constitutional declarations, constitutional declarations to amend previous constitutional declarations, and constitutional declarations to abolish previous constitutional declarations). Constitutional interpretation may be performed from a perspective heavy on continuity, going as far as restricting interpretation to framers’ intent. Another approach to constitutional interpretation that is lighter on continuity relies on the evolution of the valuation given to constitutional stipulations.³⁶ But what continuity is there to discern, and

³⁴ ta’dīl āl’i’lān āldistūrī ālṣādir bitārikh 30 māris sanat 2011, THE OFFICIAL GAZETTE, June 17, 2012, at 2–4, <https://manshurat.org/node/3567>. at 3.

³⁵ Mawani, *supra* note 23. at 72.

³⁶ Terrance Sandalow, *Constitutional Interpretation*, 79 MICH. LAW REV. 1033–1034 (2016), <http://www.jstor.org/stable/1288056>.

how would a body of law survive under this constant transformation? Would the many changes not create constitutional fluidity instead of permanence?

I think that, in the case of Egypt, something remained fixed and rigid despite all changes. To borrow from Arendt, there was a latent “supersense” in the constitution that was never disturbed by any number of textual changes. In Rodolfo Sacco’s investigation of legal “cryptotypes,” he argues that comparative legal studies helped discover “non-verbalized,” self-evident “formants” of legal systems that are more heavily ingrained in legal practice than in written texts.³⁷

Perhaps it was this unwritten latent system of norms that allowed torture to endure without interruption under all the different charters since 2011. That underlying supersense of absolute state supremacy is probably behind the sacred-like aura given to judicial rulings as indisputable. This idea is so deeply entrenched in public discourse that even with the brief period of openness that followed 2011, many young revolutionary politicians had to tip toe around how to frame their critique without being attacked as somebody who “comments on the rulings of the judiciary.”

Any close follower of reporting by rights groups since 2011 would conclude that torture in detention centers never really ceased under any of the consecutive charters; and that torturers were seldom held to account for it. Cases of blasphemy and “insulting the state” continued to be raised and tried regardless of what the constitution said about the freedom of expression and conscience. In Egypt’s case, these cryptotypes proved to be foundational³⁸ in nature and better capable of permanence than texts— something that Sacco calls an “extreme case” where cryptotypes constitute the “conceptual framework of the whole system.”³⁹

³⁷ Rodolfo Sacco, *Legal Formants : A Dynamic Approach to Comparative Law (Installment II of II)*, 39 AM. J. COMP. LAW 387 (1991), <https://www.jstor.org/stable/840784>.

³⁸ Consider, for example, the legal impunity of security apparatuses and how foundational this was as a practice to the political developments of what followed 2011.

³⁹ Sacco, *supra* note 37. 386

For these implicit cryptotypes to endure through all these charters, they needed to be brought into a narrative of continuity that leaves no room for deviations in interpretation. This is when the constitutional preambles come into play.

2. *Constitutional Preambles between Rupture and Continuity:*

Despite the large number of constitutional documents in the past few years, Egypt has only seen two constitutional preambles, one that introduced the 2012 charter under President Morsi of the Muslim Brotherhood, and one that led the 2014 constitution after the military takeover that ousted him. Each preamble cited foundational memories as its source of legitimacy and its activating force.

In 2012, the constitution was written by a constituent assembly largely controlled by Islamist politicians. The assembly included representatives of different state institutions, minorities and opposition parties. In November of 2012, Morsi issued his momentous constitutional declaration shielding his decisions and the constituent assembly from courts' jurisdiction. Demonstrations erupted and civil fighting broke out between Morsi's supporters and the opposition. At least ten protesters were killed in the violence. In protest, opposition politicians pulled out of the constituent assembly. But the Brotherhood and its supporters surged through and put the constitution to vote. It was ratified and entered into force in December of 2012.

This is how the preamble starts:

This is our constitution: the charter of the 25th of January revolution, which was set off by our youth, embraced by our people and with which the armed forces aligned... [when] we professed our full rights: 'bread, freedom, social justice and human dignity,' propelled by the blood of our martyrs, the pains of our injured, the dreams of our children and the struggle of our men and women.⁴⁰

The preamble had a temporal character securely founded in the memory of the 2011 revolution. In addition to calling itself "the charter of the 25th of January revolution," the preamble cites *Tahrīr* Square and the revolution's iconic chant of: "bread, freedom, social Justice." The preamble reads like a timeline that starts with the revolution and refuses to

⁴⁰ Egypt. Const. preamble. Can be found at: 'iṣdār dustūr gumhūriyat miṣr āl'arabiya lisanat 2012, Manshurat Qanuneya (2012), <https://manshurat.org/node/3573>.

look back. The only instance of reflecting on time before the revolution was a statement that portrayed the revolution as a “reclamation” of ancient glories, skipping all modern nationalist myths. Instead, it gave the 25th of January revolution the stage all for itself. The foundational memory here was the 25th of January revolution and nothing else.

The 2012 constitution was largely non-consensual and born into and out of political contestation. It was a preamble that attempted to invoke the image of *Tahrīr* Square in each line at a time when, literally, the actual square was raging with demonstrations against the charter and its authors. The narrative it was trying to create in the preamble was at great juxtaposition with some of the continuities of its content: *Shari‘a* principles were to persist as the main source of legislation;⁴¹ the state remained committed to helping women *balance* work with family duties;⁴² the state would continue to protect social values and public morality;⁴³ civilians could still be prosecuted before military tribunals if they committed crimes that “cause harm to the armed forces,”⁴⁴ etc.

Months of agitation followed the rushed referendum and were marked by stark polarization between Morsi’s supporters and everybody else. The military stepped in, offering a coup to anti-Islamist leaders,⁴⁵ reportedly financing youth groups that were portrayed as grass-root movements,⁴⁶ and sending public messages to assure people the military will protect them if they take to the streets. Masses of anti-Muslim Brotherhood protesters filled the streets on June 30— a date which was later coined as the name of the new revolution, or

⁴¹ Egypt. 2012 Const. art. 2 (See: ‘iṣdār dustūr gumhūriyat miṣr āl’arabiya lisanat 2012, MANSHURAT QANUNEYA (2012), <https://manshurat.org/node/3573>. at 6).

⁴² Egypt. 2012 Const. art. 10 (See: *Id.* at 7).

⁴³ Egypt. 2012 Const. art. 11 (See: *Id.* at 8).

⁴⁴ Egypt. 2012 Const. art. 198 (See: *Id.* at 49).

⁴⁵ Later, in a book authored by the New York Times Cairo Bureau Chief of 2011-2015, members of an opposition umbrella group that called for the June 30 mass demonstrations, the National Salvation Front, said they later learnt that senior leaders in the military intelligence and the military council were in talks with the leaders of the movement to negotiate a forcible overthrow of Morsi. The book came out in 2018 under the title of “Into the Hands of the Soldiers: Chaos and Freedom in the Middle East” by David D. Kirkpatrick.

⁴⁶ David d. Kirkpatrick, *Recordings Suggest Emirates and Egyptian Military Pushed Ousting of Morsi*, THE NEW YORK TIMES, March 1, 2015, <https://www.nytimes.com/2015/03/02/world/middleeast/recordings-suggest-emirates-and-egyptian-military-pushed-ousting-of-morsi.html>.

the only revolution, or the continuation of the first revolution, or the military coup, depending on who you ask.

Finally, on July 3, the Minister of Defense at the time, now President Abdul Fattah el-Sisi, announced the ouster of Morsi and installed in his place Adly Mansour, the president of the SCC, as interim president.⁴⁷ Simultaneously, all media outlets affiliated with the Muslim Brotherhood or other Islamist groups were shut down and scores of senior Islamist politicians were arrested from their homes. Morsi himself was held incommunicado for months.

Islamist supporters had gathered in the *Rab'a* and *Nahda* squares in Cairo and Giza and would remain in a full-time sit-in until they were violently dispersed in a bloody massacre on August 14, 2013. The massacre claimed the lives of nearly 1,000 people in the biggest incident of mass killing in Egypt's recent history. The new government charged a new constituent assembly with the writing of a new charter. Early in 2014, the new constitution was ratified after a public referendum.

The preamble of the 2014 constitution is packed with a dizzying number of historical clichés memorized by every Egyptian who ever went to public school. In this modern official mythology, Egypt has always been the “gift of the Nile,” “the heart of the world,” “the cradle of religions,” and “the meeting point of civilizations” with a “genius location” and a grand history. That history of Egypt is the history of the concept of the nation state itself:

At the onset of history, human conscience was looming and illuminating in the hearts of our great ancestors. And so, their good wills were united, and they founded the first central state which regulated and disciplined the life of Egyptians on the banks of the Nile. They created the greatest miracle of civilization and their hearts aspired for the heavens before earth learnt of the three monolithic religions.⁴⁸

The preamble goes into a detailed chronology of the milestones of modern Egyptian history and lists names of nationalist historic figures including presidents Gamal Abdel Nasser and

⁴⁷ David d. Kirkpatrick, *Army Ousts Egypt's President; Morsi Is Taken Into Military Custody*, THE NEW YORK TIMES, July 3, 2013, <https://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?hp>.

⁴⁸ Egypt. Const. preamble. See: The *'iṣḍār dustūr gumhūriyat miṣr āl'arabiya ālmu'adal lisanat 2014*, Mansurat Qanuneya (2014), <https://mansurat.org/node/4256>.

Anwar el-Sadat. The preamble talks of wars and glorifies historic victories. The relatively long, and quite exhaustive, timeline finally reaches the station of the 25th of January and makes the argument for its inclusion within a historical narrative of harmony and apparent homogeneity:

We offered martyrs and sacrifices in many outbreaks, revolutions and revolutions until our patriotic military took the side of the overwhelming popular will in the revolution of ‘25 January- 30 June’ which called for living freely, and with pride under the shadows of social justice, and which reclaimed for the homeland its independent will... This revolution is a *continuation of a procession of patriotic struggles...* and a culmination of two great revolutions in our modern history (emphasis added).⁴⁹

Those two great revolutions are the 1919 revolution against the English occupation, and the 1952 military takeover that turned Egypt from a kingdom into a republic and marked the beginning of largely continuous military rule to this day. Nowhere is the January revolution mentioned without the suffix of June 30. In the language of the powerful, the January revolution was no longer allowed to exist on its own. It was condemned to eternal hyphenation.

This unconscious,⁵⁰ or perhaps deliberate, effort to reign in the memory of the 25th of January in a narrative of continuation was loudly echoed in the discussions of the 50 committee about the wording and phrasing of the preamble. On its 53rd meeting, Khaled Youssef, originally a film director and a member of the drafting assembly, hailed the preamble as a literary text and praised it for how “it reconciles history with itself, and revolutions with each other... This genius text reconciled history, reconciled revolutions, it even reconciled leaders.”⁵¹

⁴⁹ Egypt. Const. preamble. (See: *Id.* at 3).

⁵⁰ The preamble was written by a well-known poet, Sayyid Hegab. According to records of the 2014 constituent assembly, a copy of which can be found in the digital archive of *Manshurāt Qanuneya*, the preamble phrasing was debated through several meetings and sessions, but not because of the characterization of the January revolution. The controversy surrounded another topic of continuity, namely the framing and wording regarding *Sharī’a’s* role in legislation.

⁵¹ *āl’ijtimā’ ālthāliṯ wa ālkhamsun lilajnit ālkhamsīn l’i’dād ālmashrū’ ālnihā’ lilt’s’dīlāt āldustūriya*, MANSHURAT QANUNEYA (2013), <https://manshurāt.org/node/12533>. at 47.

After voting on the final draft, the members of the 50 committee came together to celebrate before the referendum. Sameh Ashour, the head of the lawyers' syndicate and a member of the constituent assembly, said the draft they wrote was:

[i]nspired by all of our glorified history ... the history of our ancestors and our national leaders. We did not leave out any of them and we did not exclude any of them because we consider the January revolution and the June 30 revolution to be a natural extension of the July 23 revolution,⁵² a natural extension of the 19[19] revolution, a natural extension of the Urabi stand and the Urabi revolution,⁵³ a natural extension of the renaissance we have witnessed since the time of Mohamed Ali, a natural extension of the Pharaonic civilization, a natural extension of the Coptic civilization, a natural extension of the Islamic civilization and the Islamic conquest.⁵⁴

Comparison with the 2012 preamble reveals opposing visions of the ties that bind the political community; and contrasting interpretations of legal meaning that refer to disparate normative futures. In the selective citation of memory, the 2012 and 2014 preambles are not unique compared to constitutional preambles all over the world. Mawani's analysis of "Law as Temporality" focuses, in part, on constitutions' many temporal features including their ability to "connect the polity through a series of absences, through memories and fragments of the past."⁵⁵ Constitutions are "[f]igured in a moment of discontinuity and interruption, between the past and future of social and political life."⁵⁶ The 2012 preamble tried to create a break in time by separating the January revolution from Egypt's entire modern history. The 2014 preamble skipped that break and reconnected with the same history avoided by the 2012 preamble.

The preamble of the post-coup constitution of 2014 effectively created the line with which to thread the 2011 revolution into historical chronology. The memory of the 18 days was no longer *constitutive*. Its potential for ushering in a new way of living, a new image of the subject, a new social contract, was crushed under the weight of a telos that imposed itself on the revolution's promise.

⁵² The military takeover of 1952.

⁵³ A late 19th century military officer and nationalist who protested the Anglo-French domination of the Egyptian administration.

⁵⁴ *āl'ijtimā' ālthālith wa ālsitūn lilajnit ālkhamsīn l'i'dād ālmashrū' ālnihā'ī lilt's'dīlāt āldustūriya*, (2013), <https://manshurat.org/node/12550>. at 13.

⁵⁵ Mawani, *supra* note 23. at 71-72.

⁵⁶ *Id.* at 72.

Constitutive memories, as expressed in the 2012 and 2014 preambles, have a value that go beyond symbolism and affect the political community in very material ways. Words, images and narratives spilled out from the constitutional text into court decisions, public discourse and political agendas. In the parliament elected after the 2014 constitution, the small opposition block, and I use the word '*opposition*' very loosely, called itself the "25-30" block. A popular political television show, whose host was eventually banned from the air despite his support of the coup, was called "25-30."

The narrative of the 2014 preamble became the narrative of politicians, the courts and the media. Whether the preamble codified the narrative or founded it is not the point of this investigation. What matters for the purpose of this thesis is that the 2014 preamble documented that narrative, authorized it for others and endowed it with legal accreditation. The medium of the constitution allowed that narrative to influence the political community in tangible ways. Other levels of legality soon followed suit to realize law's interpretive commitment to the continuity fabricated by the preamble, both in text and in blood. The following is an analysis of how the interpretive commitment of continuity was realized in legal text, in court rulings and legislation. Analysis of courts' inscription of interpretive commitments of continuity in the flesh will be later discussed in the second section of this thesis.

B. Chapter Two: Courts and the Interpretation of Memory

1. *Assembling the Master Narrative:*

It did not take long after the 2011 revolution before courts became a site to contest memory and demand authority for certain memory narratives. Rhetorical narratives in the preamble of the constitutional declaration of February 2011 were not sufficient when courts were confronted by cases that demanded ruling on the concrete rather than the symbolic. In their interpretative function, courts went beyond the individual cases and bodies in their hold and orated narratives to assemble memory narratives and endow them with legal authority, while committing counter-narratives to oblivion.

In March of 2011, only two months after Mubarak's ouster, an urgent lawsuit was filed against the government demanding the removal of the names of Mubarak and his wife from schools, streets, squares and libraries— a lawsuit to demand forgetting. In its ruling, the court produced one of the earliest legal accounts of the events of the 2011 revolution in the usual purple prose⁵⁷ of the Egyptian judiciary:

[W]hereas it is known that the Egyptian youth have conducted a revolution on January 25 ... and that it was protected by the men of the armed forces, the shield of the people, and that it demanded social justice and aimed at toppling the regime and its symbols. They [the youth] sacrificed all that is dear and precious for the sake of this goal including their blood and their lives to liberate the homeland from the corrupt ... They [Mubarak and his officials] unjustly chased their flesh desires and their whims. They insisted on pursuing their personal and illegitimate interests without regard to the positive laws and their harsh penalties, thinking they were above the law and that it was not posited for the likes of them. When bereaved mothers and fathers and orphaned children see the names and images of the former president and his wife on establishments ... [it] is provocative to their feelings and increases their pain.⁵⁸

⁵⁷ Sentences in some of the court rulings analyzed in this paper cover entire paragraphs or even pages without break at times. As such, some editing to break up sentences is inevitable.

⁵⁸ Case number 500, Cairo court for urgent matters, 2011. See: raf' 'ism wa šuwar ḥusnī mubārak wa sūzān mubārak min jamī' ālmayādīn wālšwār' wa ālmadāris wa ālmaktabāt, MANSHURAT QANUNĒYA (2011), <https://manshurat.org/node/1311>. at 3-4.

The court went as far as interpreting this mental suffering as “imminent danger” and used this as the grounds to order the removal of the Mubaraks’ names and pictures from the public urban sphere.

Following Mubarak’s ouster in February of 2011, demands to put him and his family on trial were escalating. Eventually, Mubarak and his Minister of Interior, Habib el-Adly, in addition to chiefs of police divisions at the ministry at the time of the revolution were arrested and charged with killing the protesters during the 18-day revolution.

The trial received nearly unprecedented publicity and was known in the media as “the trial of the century.” For most of the trial time, Mubarak was kept in the prison’s hospital and then in an armed forces luxury medical facility on the outskirts of Cairo. A helicopter flew him in and out and he was almost always seen on a stretcher wearing sunglasses during hearings.⁵⁹

In its ruling, the court produced another, more politically charged account of the 18 days—one that continues to be reproduced by courts to this day and that has ultimately become the dominant narrative about the January revolution. According to the full-length ruling of the trial of the century, and in a classic move to avoid implicating law enforcement agents in murders as direct perpetrators, the prosecution and the court insisted that unknown conspirators were behind the killing of protesters during the 18 days. This allegation was bolstered by the testimony of the head of SCAF, Field Marshal Mohamed Hussein Tantawy, who claimed unknown assailants infiltrated the protests and killed the hundreds of demonstrators who lost their lives during the revolution.

The court did grant legal legitimacy to the protest movement, again, using purple prose:

With the morning of Tuesday, the twenty fifth of January 2011, the sun of a new dawn shone over Egypt that was never seen before. [It was] a dawn whose rays were white, fine and bright with a looming hope that was long in waiting to be fulfilled. [It came] with its strong illuminous rays and a clear air cleansed of impurities. So the intelligent people breathed in relief after a long nightmare of a dark night that did not last for half a day according to the laws of nature, but lasted for thirty years instead— deep darkness that was pitch black, black, black like a freezing winter night without hope for darkness to lift and leave

⁵⁹ Yasmin Wali, *Outside courtroom, Egyptians react to surprise Mubarak verdict*, AHRAM ONLINE, June 3, 2012, <http://english.ahram.org.eg/NewsAFCON/2017/43630.aspx>.

behind a bright morning with light, freshness and life...[The protesters were] chanting: “peaceful, peaceful” to the fill of their mouths, with their stomachs empty and their powers too weak for struggle and fighting. They screamed and pleaded: “have mercy on us, may God have mercy on you; save us, rescue us, lift us from the torment of poverty, from belittlement and from a life of humiliation.”⁶⁰

The court, however, ended up acquitting the police divisions’ chiefs and convicted Mubarak and Adly of failing to protect the protesters, not for murder or conspiracy to murder. In its reasoning, the court refused to consider the hundreds of testimonies collected from protesters about the police’s responsibility for the killings due to fears that the general hostility against the police at the time could have tainted the impartiality of the testimonies. In justifying this decision, and this is a theme in most rulings investigated by this t whenever evidence is presented to counter the state’s case, the court says it has absolute discretionary power over what evidence to consider and what evidence to “ignore” or “discard” based on the *narrative* the court is “content with.”⁶¹

Another note that is significant for later analysis is the court’s rigorous investigation of physical material evidence and basing its inability to convict Mubarak and Adly, in part, on the lack of such certain proof. The prosecution had presented a log of weapons and ammunition that belonged to central security forces within the Ministry of Interior as evidence. But the court decided to “turn away” from this evidence because the records were not seized at the time of the crime or right after, which means there is a “possibility of tampering” that the court could not dismiss. Finally, the court stressed that there was no way to establish individual criminal responsibility or direct causality between the actions of the defendants and the injuries of the victims.

The victims, the court concluded, were murdered by foreigners: “treacherous forces who plotted against Egypt and the Egyptian people and worked with agents and criminals to

⁶⁰ Public prosecution case number 3642, 2011, qasr ālnīl criminal division, registered under number 157, 2011, Middle Cairo Collective. And case number 1227, 2011, qasr ālnīl, registered under number 57, 2011, Middle Cairo Collective. See: ālmu’abad liḥusnī mubārak wa ḥabīb āl’ādly wa barā’at musā’dī āl’ādli fī tuham qatl ālmutazāhirīn, wa ’inqiḍā’ ālda’wā ālginā’iya limubārak wanagluh waragul āl’a’ māl ḥusīn sālim fī tuham fasād, MANSHURAT QANUNEYA, June 2, 2011, <https://manshurat.org/node/1298>. at 34.

⁶¹ *Id.* at 35.

attack the peaceful protesters who demanded their most basic rights in order to trap them and abort their procession and silence their voices.”⁶²

The ruling was later overturned by the Court of Cassation and a retrial acquitted all defendants.⁶³

Having lived through the events, I remember how laughable these allegations were at first. The myth of the infiltrators, foreigners, plotters, or “third party” agents who killed the protesters and broke into prisons to set convicted criminals loose and terrorize the people was openly mocked and disputed. But, when it was repeated time and again in relation to incidents of violence after the 2011 revolution, protest organizers took it more seriously. The relative openness in the public domain allowed young political activists to produce counter narratives.

Unlike the general impression today that judicial bias in adopting state narratives has gotten worse after the military coup in 2013, analysis of available rulings starting 2011 show that judges, especially in criminal courts, have always been telling the same stories in almost complete synchronization with state narratives. The only difference is that, before 2013, law had not yet monopolized all access to public recognition of memory narratives. In resistance to official narratives of denial, rights and political groups were able to use creative campaigns that combined strategic litigation with media and street activism— tools of generating narrative and public recognition that are no longer available.⁶⁴

⁶² *Id.* 18

⁶³ Egypt’s Hosni Mubarak acquitted over 2011 protester deaths, BBC, March 2, 2017, <https://www.bbc.com/news/world-middle-east-39140887>.

⁶⁴ A good example of this dynamic is the infamous case of “virginity tests.” Military forces arrested protesters from *Tahrir* square on March 9, 2011 and subjected several women to virginity tests. The incident drew significant attention and was the subject of heavy campaigning by anti-SCAF rights and political groups. Events were organized to publicize the women’s testimonies (for example, see this video from 2011: *TahrirDiaries, SHIHĀDIT SALWĀ- TAM ’I’TIQĀLHĀ MIN ĀLGĪSH YŪM 9 MĀRIS 2011 (+SUBTITLES)* (2011), <https://www.youtube.com/watch?v=ajCe1km7UFM>). And see this news report about a ‘*askar Kazibūn*’ event in Cairo university that also invited survivors to speak: Safaa Soror, «*kāzibūn gāmi’at ālqāhira*» *tunāzim* «*mūlid ālmuḥākamāt āl’askariya*» *watuhāgim* «*maḥākamat āl’atfāl*», AL MASRY AL YOUM, April 4, 2012, <https://www.almasryalyoum.com/news/details/170068>). National and international rights groups issued reports and press statements and, most importantly, had access to military leaders and confronted them with the women’s testimonies (see this report from Human Rights Watch which recounts admissions from SCAF leaders about the routine practice of virginity tests: Human Rights Watch, *Egypt: Military*

For example, public meetings were organized to allow survivors to recount their testimonies and to screen videos proving security agents' involvement in killing protesters. A campaign under the name of *'askar Kazeboon*, or "Lying Junta," began to collect audiovisual documentation of incidents of violence against protesters.⁶⁵ The material was published online and the campaign organized screenings in random public spots, mostly in Cairo. The purpose of the campaign was to interrupt people's exposure to the military propaganda with footage that shows the other side of the story.

The argument of the hidden hands and third-party instigators continued through the presidency of Mohamed Morsi of the Muslim Brotherhood until the military forcibly removed him from power. Not so ironically, the military replaced him with an interim president that also happened to be the highest-ranking judge in the land. It was not until the judiciary turned its full rhetorical powers against the Muslim Brotherhood that the alleged third party was finally identified as the Brotherhood itself.

Following the military coup, Morsi was held incommunicado for months before he appeared for the first time in court, charged with the murder of protesters in the *'itiḥādiya*

Impunity for Violence Against Women, Human Rights Watch, April 7, 2012,

<https://www.hrw.org/news/2012/04/07/egypt-military-impunity-violence-against-women>).

Based on the admissions of some of SCAF leaders, including Abdul Fatah el-Sisi, then the head of the Military Intelligence and now the President, who defended the practice, rights groups were also able to file a lawsuit in the State Council to stop virginity tests as a routine procedure. They won. However, the doctor who performed the test was acquitted by a military tribunal (see: *The Egyptian Initiative for Personal Rights, We Pledge to Continue the Pursuit of All Involved in this Crime and Attempted Cover-Up: Military "Virginity Testing" Verdict: Not the Last Battle*, The Egyptian Initiative for Personal Rights (2012), <https://eipr.org/en/press/2012/03/we-pledge-continue-pursuit-all-involved-crime-and-attempted-cover-military-virginity>).

An activist was sentenced to 3 years in prison for criticizing SCAF after the incident (see court ruling in case number 18/2011, misdemeanor, High Military Court, fifth circuit which can be found here: *'uqūbāt mutanawī'a limutaḥāhirī 'aḥdāth faḍ mīdān āltaḥrīr māris 2011*, MANSURAT QANUNEYA (2011), <https://manshurat.org/node/1318>). And, despite allegations of torture by military officers, the protesters who were arrested on that same day, March 9, were convicted for disturbing the peace and vandalism and received various prison sentences (see court ruling in case number 249/2011 in East Cairo military criminal court which can be found at: *'uqūbāt mutanawī'a limutaḥāhirī 'aḥdāth faḍ mīdān āltaḥrīr māris 2011*, MANSURAT QANUNEYA (2011), <https://manshurat.org/node/1318>). A review of those two last cases reveals the criminal court's complete endorsement of the military's narrative of the events.

⁶⁵ Nada El-Kouny, *AUC: SCAF's latest scapegoat?*, AHARAM ONLINE, February 14, 2012,

<http://english.ahram.org.eg/NewsContent/1/64/34505/Egypt/Politics-/AUC-SCAFs-latest-scapegoat.aspx>.

marches of December, 2012.⁶⁶ Morsi and senior leaders of the Muslim Brotherhood have since been the object of many more indictments focusing on incidents of violence in the aftermath of the military takeover. Two inter-related cases in particular, however, departed from the time's contemporary politics and went even beyond the year Morsi spent as president. Both cases looked backwards to effectively fill in the gaps of the legal narrative about the January revolution.

The first case included charges of espionage with Hamas in Gaza. The second is commonly known as the “prison break case” and was closely connected to the first one and is the focus of this analysis. The case focuses on the events of the 18 days in 2011, finally identifying the Brotherhood as the third party, the hidden hands and the previously unknown instigators who killed protesters and broke into prisons to free criminals and terrorize Egyptians.⁶⁷ This not only absolved the police and the military from blame for the violence of the 18 days, but for all the incidents of violence that characterized the political upheaval after Mubarak's ouster.

The indictment and the court ruling propagate a specific narrative: long before the protest movement of January 25, the Muslim Brotherhood has been in contact with foreign militant groups to plot against Egypt in fulfilment of an American plan of “creative chaos” to restructure the Middle East.⁶⁸ It is implied that the Muslim Brotherhood even played a part in instigating the events of January 25 through incitement, misinformation and spreading rumors to fan the flames of public discontent with the government.⁶⁹ When the fateful

⁶⁶ Morsi and Brotherhood leaders believed the SCC was preparing to disband the second chamber of the parliament, the constituent assembly and to rule the presidential election law unconstitutional and therefore ending Morsi's presidency. The SCC used similar tactics to disband the Brotherhood-dominated parliament of 2012. In November of 2012, Morsi issued a constitutional declaration immunizing himself and the constituent assembly at the time from courts' powers and decisions. Through the declaration, he selected a new public prosecutor in violation of the legal selection process. Protests erupted and civil infighting broke out when Brotherhood supporters violently dispersed the encampment of the protesters outside of the presidential palace of *'itiḥādiya*. Videos circulated the internet that showed Brotherhood supporters abusing protesters and interrogating them in full view of the police. Ten protesters were killed, mostly from the Brotherhood.

⁶⁷ See case number 56460 , 2013, at Nasr City's first criminal division registered under number 2926 , 2013 at East Cairo collective which can be found at: 'i'dām muḥamad mursī wa'akharīn fī qaḍiyat 'iqtihām ālsugūn, MANSHURAT QANUNEYA (2013), <https://manshurat.org/node/1290>. at 226-229.

⁶⁸ *Id.* at 34-36

⁶⁹ *Id.* at 42

moment of January 25 finally arrived, the leaders of the Brotherhood coordinated with militant fighters from Gaza's Sunni Hamas, Lebanon's Shiite Hezbollah, and the Iranian revolutionary guard⁷⁰ under the watchful supervision and with the support of American, Turkish and Qatari intelligence.⁷¹ Over 800 militant fighters entered Egypt through its Eastern border with Gaza. They attacked police stations and checkpoints, first in Sinai, and then all over the country. They infiltrated protests and killed peaceful demonstrators.⁷² On January 28, they attacked prisons and broke out terrorists and Brotherhood leaders who were arrested on January 27 without a warrant.

The evidence? Mainly investigation reports by national security officers including transcripts of alleged tapes that the prosecution said recorded calls and meetings where the scheme was plotted. However, the tapes were lost in an attack on the State Security headquarters in Cairo amid the chaotic aftermath of the revolution, the prosecution said. The court concluded that it is "content with" and "believes" the explanation.⁷³ Only the transcripts written by national security officers were available and they were accepted by the court as valid and truthful even in the absence of the tapes.

The punishment? Six defendants were sentenced to death including the ousted president, the speaker of the parliament dissolved by the SCC in 2012, and a former elected parliamentarian. Twenty defendants were sentenced to life in prison, also including several elected parliamentarians.⁷⁴

Judicial bias hardly needs proving at this point and is not the focus of this thesis. But a few points in this regard seem noteworthy in connection to courts' capacity for narrative production. Analysis shows that there are several common defenses in cases of political violence starting in 2011 and until now. These defenses include failure to establish individual criminal responsibility, lack of physical/material evidence to establish causality

⁷⁰ *Id.* at 41

⁷¹ *Id.* at 38-39

⁷² *Id.* at 43

⁷³ *Id.* at 40

⁷⁴ The ruling was subsequently overturned and a retrial is underway. After their acquittal of wrongdoing, Mubarak and Adly were called in to testify against Morsi and Brotherhood leaders in televised sessions of the retrial where they repeated the same narrative about the 800 foreign fighters coming in from Gaza.

between the defendants' actions and injuries and/or fatalities, the influence of political bias on testimonies and investigations, and reliance on unsubstantiated investigation reports that are essentially narratives with or no physical evidence to support it. For police officers, Mubarak and Adly, these defenses were grounds for acquittal.⁷⁵ For Brotherhood members and protesters arrested from street demonstrations and charged with violence, they were mostly dismissed, and courts proceeded to convict defendants, which sometimes led to executions.

In justifying dismissing these defenses in several cases, courts asserted their absolute discretion in assembling *narratives* that fit their “conviction” about what happened. In the case against Mubarak and Adly, the court clearly stated:

Whereas it is determined in judicial practice that the subject matter court has the right to discern the reality of the incident and to turn it into its correct image as deduced from the collective evidence presented to [the court]... To *extract the image of the incident that is drawn into the court's conscience*, this extraction does not have to be based on witness testimony. It is enough to extrapolate [evidence] by deduction and using all possible mental faculties, as long as it is sound and consistent with the judgment of rational, logical thought.

Whereas it is determined that the court is not restricted to only consider explicit testimonies and their obvious indications. Instead, in formulating

⁷⁵ In addition to the example of Mubarak and Adly trial elaborated earlier, see the acquittal of the assailants in the Camel Battle incident during the 18 days who were charged with conspiring with Mubarak's regime to murder protesters in *Tahrir* Square (see court ruling in public prosecution case 2506 , 2011 at Qasr el-Neil criminal division, registered under number 338 , 2011 collective which can be found at: *barā'at ālmutahamīn fī qaḍiyat mawqī'at ālgamal*, MANSHURAT QANUNEYA (2012), <https://manshurat.org/node/1331>). In pages 41-42, the court cites lack of “conclusive evidence” and the political bias of witnesses and their conflicting testimonies as grounds for acquittal. In page 52, the court also cites unsubstantiated individual criminal responsibility. In page 58, the court cites the lack of evidence to establish causality between a criminal act attributed to the defendants and the injuries and fatalities. Another example is acquittal of several officers from the charge of murdering protesters around the police station of Zawya, Cairo citing lack of “conclusive” evidence and conflicting testimonies (see court ruling in public prosecution case number 3961 , 2011 registered under number 746 , 2011 which can be found at: *barā'it ālzubāṭ min tuham qatl ālmutazāhrīn bdā'irat qism ālzāwya*, MANSHURAT QANUNEYA (2012), <https://manshurat.org/node/1325>. at 4).

In the case against Mubarak and Adly itself, and since it included an element of financial corruption regarding a deal to trade in natural gas with Israel, the court explicitly dismissed the dreaded “investigation report” as evidence in page 78: “Tahareyat (investigation reports) are statements by the investigator deduced from secret sources that were not revealed to the investigative bodies due to allegations of confidentiality. Therefore, they are nothing but opinions of the investigator that may be right and may be wrong.”

its conviction about the correct image of the incident in question and the order of the legal facts attached to it, the court can rely on what it deduces based on all the elements presented to it.

Whereas it is determined in the rules of deduction that the court is not bound to speak in its ruling except about the evidence that had an influence in formulating its conviction. Ignoring some incidents implicitly means the court banished them and is instead content with what was proven by the incidents and evidence the court relied on in its ruling.⁷⁶

Similar language is found in several other cases analyzed for this thesis. Based on the above account, judicial discretion is reflected in the court's ability to construct an "image" of what happened, a narrative, based on *some* of the evidence presented to it. In doing so, the court is free to dismiss evidence if it contradicts what the court is "content with" as the "correct image" of the incident in question. Courts also repeatedly dismiss defense lawyers' attempts to question the evidence the court uses to formulate this conviction once this conviction is established. Most importantly, examination shows that, in practice, much evidentiary power is given to *Maḥdar At-Taḥriyat*, or the investigation report prepared by police officers, mostly from the National Security apparatus. These reports are essentially stories locating the defendants in relation to the events in question.

2. *Interpreting the Preambles:*

But perhaps one of the most illuminating instances of courts' use of narrative production and how these narratives link to the constitutive memories spelled out in the constitution comes from the earlier discussed case against Morsi and leaders of the Brotherhood regarding their alleged plot during the January revolution. One of Morsi's defenses, which he used in all the lawsuits filed against him, was that the court has no jurisdiction over him as he remained the legitimate president of the republic who was ousted by a military coup. Rejecting the foundational memory of the legal order's legitimacy propelled the court to move away from discussions of "absolute discretion" or citation of legal texts to the realization of its interpretive commitment of continuity signified by the 2014 preamble. In terms that are very similar to how the January revolution was characterized in the Mubarak

⁷⁶ ālmu'abad liḥsunī mubārak wa ḥabīb āl'ādly wa barā'at musā'dī āl'ādli fī tuham qatl ālmutazāhirīn, wa 'inqidā' ālda'wā ālginā'īya limubārak wanagluḥ waragul āl'a'māl ḥusīn sālīm fī tuham fasād, *supra* note 60. at 34-35.

case, the court followed the lead of the constitutional preamble and went on to reign in the memory of the 18 days into a narrative of continuity:

On the day of June 30, 2013, and as the sun of a new dawn shone after a long, pitch black night that lasted for an entire year which is the period of the Muslim Brotherhood rule, *the dawn of human consciousness loomed and illuminated the hearts.*⁷⁷ Masses of the valiant Egyptian people ... declared their revolution against the ruling regime, represented by the defendant Mohamed Morsi and the remaining members of his Brotherhood group. They refused to let them continue in power after they had excluded the masses who did not belong to the Muslim Brotherhood and divided the children of the one people: this as a Muslim Brother and this as a non-Muslim Brother. They unrightfully hid behind the cover of religion...

As such, all sincere national forces, diverse as they are in their directions and sects, individuals and leaders, Muslims and Christians, elderly and men and women, came together in support of the people and their will to change a ruling regime that failed in everything except in its pursuit to divide the sons of the homeland into factions- something that even the worst enemies of the homeland failed to do. It [the homeland] remained in solidarity throughout its history. When this overwhelming popular revolution blossomed, the time came for the joining of the armed forces on July 3, 2013, and they sided with the overwhelming revolutionary will that cannot be denied except by those who are unthinking or complicit...

Such was the revolution of the great Egyptian people and the armed forces behind them. This glorious revolution ousted the president from his position with a conscious will and an overwhelming popularity the likes of which the world has never seen before. The capacity of the defendant ... as the President of Egypt was then removed based on this overwhelming popular revolution which was described in the preamble of the 2014 Egyptian constitution ... as, together with the January 25 revolution, unique among the grand revolutions of humanity's history.⁷⁸

The 2014 preamble was essential here. The emphasized sentence in the first paragraph of the above quotation is an exact replica of a line used in the preamble that too described a dawn of human consciousness that blossomed in hearts and illuminated them. Perhaps the most crucial question that threatens to rupture the veneer of legality in the post 2013 coup is: what is the legal basis for removing Morsi from office and for stripping him of the privileges and immunities of a president? How can a coup be assimilated into a continuum

⁷⁷ Emphasis added

⁷⁸ *barā'at ālmutahamīn fī qaḍiyat mawqī'at ālgamal*, *supra* note 67. 226-229

of legality? Understanding law as temporality realizing its commitment to continuity makes that question existential. The court ruling on the prison break case simply turned to the memory narrative of the 2014 constitutional preamble and quoted an entire paragraph from it to legitimate June 30's standing as a continuation of the January 25 revolution. The ruling on the *itihādiya* case where Morsi was charged with murder of the protesters against his constitutional declaration was more creative.⁷⁹

The ruling's text frames the June 30 "revolution" as a response to the Brotherhood's breach of a consensual social contract with the Egyptian people.⁸⁰ The ruling proceeds with a sober analysis of revolutionary legitimacy and recognizes that a revolution is never legal, and never legitimate in the eyes of the political order against which it breaks out. But it becomes legitimate the moment it succeeds in forcing the ruler to comply with its demands, "voluntarily or involuntarily."⁸¹ The ruling then says that such legitimacy extends retrospectively to cover all the actions of the revolution since its start, not since it succeeds, and concludes that "the success of a revolution is the material criterion of its legitimacy."⁸² This much is true for all revolutions, the ruling asserts, but the June 30 revolution is different because it is not only legitimate, but also entirely lawful since the moment it started.

To justify this legality, the ruling cites the preamble of the 2012 constitution, which was in force when Morsi was president and at the moment of his ouster before then Minister of Defense Abdulfattah el-Sisi announced its suspension on July 3. The court specifically refers to the paragraph cited in the previous chapter which proclaims the 2012 constitution the charter of the January revolution and hails the armed forces for siding with the demands of the people:

This constitutional preamble then confirms that the former Egyptian constitution [2012's constitution] recognizes revolution as a legitimate act, even a civilizational act, with the capacity of arranging a new fully-fledged status characterized by legitimacy. Even though the preamble specifically addresses the January revolution, constitutional texts are

⁷⁹ Public prosecution case number 10790, 2013, Masr el-Gadida criminal court, registered under number 963, 2013, East Cairo Collective. (See: *ālsign ālmushadad 20 'āmān limuḥamad mursī wa'akhrīn fī 'āḥdāth qaṣr āl'itihādiya*, MANSURAT QANUNEYA (2015), <https://manshurat.org/node/1271>).

⁸⁰ *Id.* at 102.

⁸¹ *Id.* at 103.

⁸² *Id.*

always naturally general and abstract. As such, the stipulation of this preamble is inclusive of the January revolution, and of all similar material acts as long as this preamble is enforceable. Not only that, but the preamble stipulates that the armed forces' support of the revolution is an indicator of its success ... As such, this preamble has constitutionally established the foundations of legitimacy for any revolution, and the indicators of its success.

In this preamble's conceptualization, we find that the people's embracing of a revolution is the evidence of its legitimacy, and that the support of the armed forces is the indicator of its success. As such, and whereas the revolution of the thirtieth of June erupted with an overwhelming popular consensus and an obvious and overpowering patriotic will that is undisputed; and whereas it [the June 30 revolution] gained the support and compliance of the armed forces and all other state apparatuses and authorities, ... this means it is a unique revolution from the legal perspective as it originated while characterized by constitutional legitimacy since its inception and until its success. The truth is that this is a paradox the likes of which are rare, if not impossible to find, in any other constitutional order.

This reasoning then brings the 2013 military takeover within the boundaries of legality, firmly placing it on the inside of the law. In this ruling, the court is strictly demarcating the inside of law by adding the military's support as a pre-condition of legality: a revolution is only a revolution if the military supports it.

3. Silencing Counter-Narratives:

The case about the Mubaraks' names was a case about what Egypt as a nation needed to forget. The case against Mubarak and Adly was also a case about what is needed to be forgotten: endless number of testimonies and audiovisual evidence circulating the internet showing police officers gunning down peaceful protesters during the 18 days. The case against Morsi was about what Egypt, as a nation, is legally obligated to remember: a narrative that hyphenates the January revolution and ties it to the scene of June 30, a narrative of conspiracy and plotting that absolves state security apparatuses through convicting political Islam leaders; a narrative that firmly establishes the military as the sovereign who can decide on the exception, suspend legal orders and start legal orders anew, arrange the past to govern the present, and grant legitimacy to movements of social change. Law and narrative came together to realize an interpretive commitment to continuity in legal texts which had material consequences for tens of thousands of bodies

that now populate the Egyptian penal system. Since 2011, the appropriation of the January potential was authorized in text and licensed in blood. Narrative and violence were inseparable.

The narrative assembled to domesticate the January revolution was facilitated by the villanization of the Muslim Brotherhood and the memory narratives courts produced around the horrific violence directed against their supporters. It was like manipulating the memory of *Rab'a* authorized the manipulation of the memory of *Tahrir*.

On the day of the *Rab'a* massacre, and in addition to the hundreds of protesters who were gunned down, hundreds more were arrested and charged with murder, among other things. The trial took five years and a verdict was finally out in September of 2018. The master narrative constructed in the prison break case was already featured prominently in the court's reasoning. Using the violence in *Rab'a* as an entry point, the court went back to January of 2011 and ruled that January 28⁸³ was the end of the *good* revolution and its righteous marching youth who were described positively in earlier verdicts before the coup. The 18 days were shortened to only three. According to the new narrative, the legitimate revolution was over on January 28:

On 28/1/2011, the Muslim Brotherhood and its followers and supporters dominated and controlled the aforementioned revolution. And so, the peaceful demands of the Egyptian people for bread, freedom and social justice *ended* and a new phase *began* of mobilization, murder and sabotage to the state's infrastructure including public and private property on the afternoon of the aforementioned day (emphasis added).⁸⁴

History was being rewritten, absolving the police and the military from all wrongdoing in all incidents of mass violence since January 28, and cleansing their hands of the blood of thousands of slain protesters across the country. In the introduction of the court's reasoning, the judges wrote:

⁸³ January 28, 2011 is commonly referred to as the Friday of Rage and was the bloodiest of the 18 days of the revolution. Protesters attacked police stations around the country and many officers reportedly ran away— a cause for public humiliation that was cited as one of the reasons behind the police's markedly weaker performance until the 2013 coup. It was also the day prisons were broken into.

⁸⁴ Case number 34150,2015, Nasr City first criminal division registered under number 2985, 2015. 'i'dām 75 muthmān wālmu'bad li 47- akharīn min qiyādāt āl'ikhwān fī qaḍiyat faḍ 'i'tiṣām rāb'a, MANSHURAT QANUNEYA (2018), <https://manshurat.org/node/33196>. at 80-81.

The court's record and documentation of these events and facts is for history so it becomes an example⁸⁵ for coming generations and to become *the truth* for generations that did not live through these events (emphasis added).⁸⁶

Once again, at a different level of legality, the law, as the “bridge linking a concept of a reality to an imagined alternative,” had to use “the devices of narrative” to represent the “normative significance” between the two states of affairs it aspired to bridge.⁸⁷

According to Matti Koskenniemi, historical and criminal truths are two very different things. In his article, “Between Impunity and Show Trials,” he discusses international criminal trials, but he acknowledges certain similarity between that and transitional justice cases. The main common characteristic is that these are cases that almost entirely depend on one's interpretation of the context within which the act in question takes place. In such cases, he says, the function of “recording the truth” that criminal cases tend to carry out becomes risky if trials are fair.⁸⁸ If allowed to speak, defendants can use the trial as a platform to publicize their counter memory narratives about the context and against the powers putting them on trial. If defendants are allowed to speak, they will be able to publicly interpret their guilt as martyrdom and their alleged crimes as heroism.⁸⁹

Nonetheless, “[i]n order to attain ‘truth’, and avoid a show trial, the accused must be allowed to speak.”⁹⁰ When trials profess the purpose of remembrance in such circumstances, “the line between justice, history and manipulation tends to become all but invisible.”⁹¹

From their cages, Morsi and his people shouted that what happened was a coup, challenged the court's jurisdiction, and raised their hands with open palms and the thump tucked in to form the number four. It was the iconic gesture that came to represent solidarity with the

⁸⁵ The word *`ibra* can also be translated as *warning*.

⁸⁶ *'i`dām 75 muthmān wālmū`bad li 47- akharīn min qiyādāt āl'ikhwān fī qaḍiyat faḍ 'i`tiṣām rāb'a*, *supra* note 84. at 70.

⁸⁷ Cover, *supra* note 8. at 9.

⁸⁸ Matti Koskenniemi, *Between Impunity and Show Trials*, 6 22 (2002).

⁸⁹ *Id.* at 35.

⁹⁰ *Id.* at 58.

⁹¹ *Id.* at 34.

victims of the *Rab'a* massacre because the word "*Rab'a*" also means "fourth" in Arabic. This is where courts had to perform the role needed by all hegemonic discourses: silencing the counter-narrative. It was not symbolic, and it was as free from pretense as anything can be. One day, Morsi and his co-defendants were simply placed in a specially made, sound-proof glass cage so their voices could no longer be heard.⁹²

Soon enough, anti-Islamist activists, some of whom campaigned for the June 30 demonstrations, were the target of the same narrative that quickly expanded to rearrange everything that preceded the coup. One of these attempts at rearrangement was the case against Ahmed Douma, a vocal anti-Islamist political organizer who supported the coup and the violence of the summer of 2013. In 2014, Douma was arrested for his involvement in an earlier incident of violence from December 2011 known as the "cabinet events." The police and the military had gunned down more than a dozen protesters at the time, but, as usual, protesters were the ones to face trial. Douma was sentenced to life in prison for his role in the demonstrations which was then overturned. His retrial reduced the sentence to 15 years. During the sentencing hearing, the presiding judge, Mohamed Sherine Fahmy, gave a dramatic reading of the verdict which was televised:

Loyalty to one's homeland is a supreme value. A person's life has no value if they do not take pride in their homeland. Good citizenship is not about resonant slogans that address emotions and titillate sentiments. Nor is it about zealous speeches or showy moves designed for propaganda. Good citizenship is a positive, creative interaction. It is about building, development, morals and credibility.... Real sense of belonging to the homeland means a connection to its land and feelings. It is a sentiment that gives rise to a number of values that push towards preserving its [the homeland] possessions and the public facilities owned by the society...

The nation is plagued by a handful of fools and mercenaries who are intellectually defeated and socially bankrupt. They have no goal except for dislodging established social values. They have turned against their identity and patriotism and they feed off their society's values, morals and constants. Lost in the mazes of life, they search for a standing to position themselves as national figures. They are liars, deceivers, conspirators, opportunists and crooks. They falsify facts and mislead public consciousness. They make an art out of fallacies. They preach

⁹² David d. Kirkpatrick & Mayy El Sheikh, *Egypt Locks Morsi in Soundproof Cage During Trial*, THE NEW YORK TIMES, January 28, 2014, <https://www.nytimes.com/2014/01/29/world/middleeast/egypt-morsi-trial.html>.

rebellion and degeneration. They dance over the calamities of their nation...

They distort the image of the homeland and its men who defend it in an attempt to destabilize its security and to create a gap between the people and its protectors through repeating allegations, falsehoods, lies and delusional stories we only hear from them...

In the aftermath of the instable events following the revolution of the twenty fifth of January, 2011, which were characterized by chaos, violence, rioting and sit-ins in the squares ... they organized a demonstration that they called the Friday of Rescuing the Revolution.⁹³

At the end of the speech, Judge Fahmy said he wished he could sentence Douma to a harsher penalty than 15 years in prison. But he was bound by the legal rule that defendants should not receive harsher sentences after appeal.

In the audience were many of Douma's friends including some of the most prominent activists and political organizers of the 2011 revolution. Many in the audience took to social media after the sentencing and said they felt the judge was lecturing them all, sentencing them all. One of them, Rasha Azab, wrote about it for Mada Masr and said the set up was carefully designed, with rows of security officers separating each row of the attendance:

We all sat in silence as he [the judge] narrated to us the events we lived through. He told us the sit-inners insisted on provoking the police to incite clashes and that demonstrators attacked policemen and injured them, blocked the road, tried to attack the People's Assembly building and, finally, burned down the Egyptian Scientific Institute. The judge never spoke of the martyrs of the cabinet events at all, or the torture of the demonstrators inside the People's Assembly building, or the reports filed against specific officers in these incidents. We heard every word to deafness.

Of the courthouse and the scene, Azab wrote: "Here we crush you in the name of God, the homeland and the law."⁹⁴

⁹³ Sada Elbalad, 'ALĀ MAS'ŪLIYATĪ - KALIMĀ NĀRIYA LILMUSTASHĀR MUḤAMAD SHIRĪN FAHMY FĪ GALSAT ĀLḤUKM 'ALĀ 'AḤMAD DŪMA (2019), <https://www.youtube.com/watch?v=65ngch6V44Q>.

⁹⁴ Rasha Azab, *waqā'i' muḥākama 'alāniya lilḥamāma*, MADA MASR, January 13, 2019, https://madasr.com/ar/2019/01/13/opinion/u/وقائع-محاكمة-علانية-للحمامة/?fbclid=IwAR3bz_j7vnK_FpLrtU7Ef71MMYRMD59Q0c8gc80vAMRtUxd2W_Ua0I5z7HQ.

Incidentally, the presiding judge, Mohamed Sherine Fahmy, also happens to be the presiding judge on Morsi's retrial for the prison break case. And, like the Brotherhood leaders he fought against, Ahmed Douma too was in a sound-proof glass cage.

Douma and Azab's experience of lived time, was being effaced by the overarching time of the law. But courts always do that, everywhere. Perhaps the broad discretion of Egyptian courts with the selection of testimony and evidence to build narratives helps facilitate this function. And maybe the use of emotional language and oration to engage the context instead of focusing on facts is another factor in why Egyptian court narratives seem so overtly invested in memory. But court narratives are never enough to govern memory in any community because memory, Koskenniemi writes, cannot be dictated by the law:

“[M]emory” may not be something that can be authoritatively fixed by a legal process. To document and to testify is necessary. But documents and testimony are not memory as such. The organisation of archives and the interpretation of testimonies so as to construct coherent narratives involves selection and emphasis that are aspects of the historical craft.⁹⁵

What happens, then, if law aims to control the organization of archives, the interpretation of testimonies, and the construction of coherent narratives outside courts as well as inside them?

The Egyptian legal order is engaged in an ambitious project of governing memory based on an admittedly thin narrative. Assimilating the disruptive potential of the January revolution in the constitution was certainly useful in informing the work of the remaining institutions. Courts' amazing ability to rearrange the past to fit into this master narrative was a logical next step. But the legacy of the moment the new order so desperately needed to be forgotten was too recent, too powerful and too bloody to banish from Egyptians' collective memory by legal codification and interpretation alone. Silencing Morsi and his co-defendants in glass cages was not enough. The spectacle had to dominate the public outside courts.

⁹⁵ Koskenniemi, *supra* note 88. at 34.

C. Chapter Three: Governing Memory

Beyond the walls of the courthouse, a battle over memory was raging. Archiving initiatives were increasing. New, independent news media outlets were emerging and heavily engaging in commemoration and revisions of past events. Such outlets, like Mada Masr, were rapidly becoming the only reliable source of news for many people like me who were interested and informed. The memory narratives produced in courthouses had competition. Another level of legality came in to wipe that out: legislation, regulation and bureaucratization.

The first major piece of such legislation after the coup was the protest law, issued in November of 2013. The new law banned all public assembly of more than 10 people without prior permission and specified penalties that amount to seven years in prison and hefty fines. Article 7 of the law lays down additional prohibitions once a public assembly is formed:

Participants in public assemblies, processions or demonstrations are prohibited from disturbing public order and security, obstructing production or inviting obstruction, obstructing the interests of citizens or causing them harm or endangering them or preventing them from exercising their rights and from working, influencing the course of justice or the operation of public facilities, blocking roads or obstructing land, water or air means of transportation, obstructing the flow of traffic, assaulting lives, public or private possessions or endangering them.⁹⁶

Article 8 requires organizers to submit a written request including the purpose of the assembly and the demands participants intend to make and the slogans they intend to chant. The violation of the very loosely worded prohibitions in Article 7 is punishable by up to 5 years in prison and a fine of up to EGP 100,000.⁹⁷

Then, in September of 2014, the government amended Article 78 of the penal code to outlaw the ability to receive funding or mobilize resources, including money, assets,

⁹⁶ law number 107, 2013. bitanzīm ālḥaq fī āl'igtimā'āt āl'āma wālmawākib wāltazāhurāt ālsilmiya, THE OFFICIAL GAZETTE 2–8 (2013), <https://manshurat.org/node/6547>.

⁹⁷ *Id.* (See Article 19)

weapons, tools, or “other things” for the purposes of “[c]arrying out an act that causes harm to national security or that would damage the country’s independence, unity, or the safety of its lands, or to carry out hostile activity against Egypt, or to disturb public order and security.”⁹⁸

In stark contrast to the article’s vagueness in describing the crimes, it is specific about punishment: life in prison and a fine of EGP 500,000 for offenders. If the perpetrator is a public servant, parliamentary member, or if the crime was committed in time of war or to further *a terrorist purpose*, the punishment goes up to the death sentence.⁹⁹

This lack of clarity in the amendment of Article 78 was compounded with the enactment of the new anti-terrorist law in 2015 which uses equally vague language to identify who a terrorist is. The anti-terrorism law criminalized all “use of force, violence, threats or *intimidation* inside or abroad”¹⁰⁰ with purposes as loosely defined as, among others, “disturbing public order,” “endangering social safety, interests or security,” “harming and terrifying individuals,” “causing harm to national security” and jeopardizing people’s rights and freedoms.¹⁰¹

In practice, the protest law was used to arrest scores of demonstrators, Islamist and non-Islamist alike. In fact, the first protesters to be arrested for violating the protest law were non-Islamists who organized a peaceful demonstration against military trials of civilians only two days after the law was published in the official gazette.¹⁰² The amendment of Article 78 complicated the legal status of the country’s independent human rights and civil society organizations and hindered their ability to raise resources to maintain their operations.

⁹⁸ Presidential decree issuing law number 128, 2014. ta’dīl ālmāda 78 min qānūn āl’uqūbāt bidha’n āltamwīl ālagnabī, THE OFFICIAL GAZETTE (2014), <https://manshurat.org/node/345>.

⁹⁹ *Id.*

¹⁰⁰ Emphasis added

¹⁰¹ Law number 49, 2015, last amended on April 27, 2017. qānūn mukāfḥat āl’irhāb raqm 94 lisanat 2015, MANSHURAT QANUNEYA (2015), <https://manshurat.org/node/14679>.

¹⁰² Ahrām Online, *Egypt arrests prominent blogger Alaa Abdel-Fattah under new anti-protest law*, AHRAM ONLINE, November 29, 2013, <http://english.ahram.org.eg/NewsContent/1/64/87800/Egypt/Politics-/UPDATE--protesters,-activist-AbdelFattah-detained-.aspx>.

Having lost the streets, and as the restrictions on independent civil society work escalated, the media and the internet were all that was left for alternative memory narratives to surface to the level of public recognition. It did not take long before the law found a way to bring those sites of narrative production under control as well.

In May of 2017, several prominent news and human rights organizations' websites were abruptly blocked—no law, no administrative decision that can be appealed, no notification, no prosecution; just blocked. The number of banned websites has grown rapidly to over 500 today. The banned websites include those associated with the Muslim Brotherhood, Qatari and some international news media websites, local and international human rights organizations' websites, young and independent media platforms like Mada Masr, and even a few personal blogs.¹⁰³ The informal practice was soon enshrined in legality, however, and became heavily regulated as further analysis will show.

However, it is important to note that even though the early attempts of domination and control did not use direct legislation, that does not mean they were not part of the legal order. Mada Masr, arguably the most prominent independent media outlet in the country, was among the early blocked websites in 2017. In response, and like many other websites, they used different applications, migrated to different domains and utilized new technology to make the website accessible. Attempts to block them, however, never stopped. In response, they filed a legal complaint and moved a case against all power holders capable of articulating the legal basis for the blocking of the website so they can appeal against it formally. The list included the President, the Minister of Defense, the Minister of Interior, the Supreme Council for Media Regulation and the head of the General Intelligence Directorate. According to Mada's lawyer, by September 2018, they had received no answers and the court stalled by referring the case to a committee of technical experts in the Ministry of Justice which can take years to examine the case.¹⁰⁴

¹⁰³ Association of Freedom of Thought and Expression, *BLOCKED WEBSITES'S LIST IN EGYPT (2018)*, <https://afteegypt.org/en/blocked-websites-list#> (last visited Dec 14, 2018).

¹⁰⁴ Mada Masr, *Neither victory nor defeat: Court refers Mada Masr blocking case for technical review*, MADA MASR, September 30, 2018, <https://madamasr.com/en/2018/09/30/news/u/neither-victory-nor-defeat-court-refers-mada-masr-blocking-case-for-technical-review/>.

In courts, the assemblage of the master narrative in key politically relevant cases was complemented by the expansion in the scope of punishable discursive offenses to ensure alternative narratives are silenced and are therefore unable to challenge the state's narratives publicly. The Egyptian legal system has been using these laws to govern the content of speech long before 2011. But, with the closing of the public space, these prosecutions acquired a new significance as they played an integral role in the policing of public memory narratives.

This was accompanied by an expansion of interpretation to bring new forms of expression under courts' jurisdiction, including content of personal social media accounts. Facebook posts and personal videos started being used as the basis of charging scores of young women and men with already ambiguous offences such as: insulting the state prestige, insulting the president, causing harm to national security, spreading false news and rumors, etc.

For example, in 2015, an appellate court confirmed a one-year sentence against a Mohamed Zakareya Zaki because he:

1. Spread false news that can disturb public security and cause fear through publishing images and articles on the social media platform, Facebook
2. Insulted the President of the Republic by publishing damaging images of him on the same page
3. Incited demonstrations and damage to public security
4. Misused tools of communication through publishing photos on Facebook to commit the crimes illustrated above¹⁰⁵

The tightening grip on producing alternative narratives that question the state was reinforced by expanding the use of law to shield judges and prosecutors, the state narrators in the judiciary, from criticism. Many defendants in politically motivated cases face charges of insulting the judiciary for things they said or done during the course of their trials. Insulting the judiciary is the focus of an infamous collective case that spanned the course of several Egyptian administrations. Under Morsi, the Minister of Justice ordered an

¹⁰⁵ Case number 16581, 2015, Nozha misdemeanors, registered under number 21946, 2015 at East Cairo misdemeanors appeals: ta'yīd ḥabs mutaham bi'izā'at ākhbār kāziba wa'ihānit ra'īs ālgumhūriys wāltshṛīd 'lā āltszāhur biṣṣfḥstih ālshakhṣiya 'lā mawqī' āltawāṣūl āl'igtimā'ī Facebook sana ma'a ālshughl, MANSHURAT QANUNEYA (2015), <https://manshurat.org/node/1550>.

investigation into allegations of insulting the judiciary in the media. The investigation continued through Morsi's fall. The political elite who ordered the investigation became its target. As the master narrative expanded to disenfranchise anti-Islamist politicians along with Islamists, the investigation ultimately culminated in the indictment of 25 defendants from across the political spectrum in January of 2014. The charges included criticism by the defendants of Mubarak's "trial of the century," and statements made by parliamentarians while still serving in the parliament even though Egyptian law immunizes parliamentarian from courts' jurisdiction in the absence of explicit authorization by the parliament. Twenty of the 25 defendants received prison sentences and the remaining five were to pay fines.¹⁰⁶ One of the defendants, former elected parliamentarian Mostafa el-Naggar, disappeared in September of 2018. While his family and friends fear he is forcibly disappeared by security agencies, the government strongly denies having him in custody.¹⁰⁷

Across the board, the Egyptian state created a complex and sophisticated network of laws and institutions to enable wide-scale discursive policing of its citizenry on the one hand, and to tighten the grip on lawfully acting news media outlets and content providers on the other hand. The escalating crackdown on independent narrative production went beyond policing the content of the narratives to govern the field of visibility and appearance altogether. The scope of new techniques of surveillance and policing is dizzying. A non-exhaustive list of new strategies include the purchasing of the majority of authorized private television networks through a mega-corporation reportedly owned by the intelligence;¹⁰⁸ blocking websites; enacting new laws to legalize internet surveillance;¹⁰⁹ the creation of a

¹⁰⁶ Mada Masr, *Court sentences 20 charged with 'insulting judiciary' to 3 years, orders 23 to pay LE1 mn*, MADA MASR, December 30, 2017, <https://madasar.com/en/2017/12/30/news/u/court-sentences-20-charged-with-insulting-judiciary-to-3-years-in-prison-orders-23-to-pay-le1-million/>.

¹⁰⁷ Former MP Mostafa El-Naggar not "forcibly disappeared", still evading 3-year jail sentence: Egypt's SIS, AHRAM ONLINE, October 18, 2018, <http://english.ahram.org.eg/NewsContent/1/64/313658/Egypt/Politics-/Former-MP-Mostafa-ElNaggar-not-forcibly-disappeare.aspx>.

¹⁰⁸ Hossam Bahgat, *Looking into the latest acquisition of Egyptian media companies by general intelligence*, MADA MASR, December 21, 2017, <https://madasar.com/en/2017/12/21/feature/politics/looking-into-the-latest-acquisition-of-egyptian-media-companies-by-general-intelligence/>.

¹⁰⁹ Association of Freedom of Thought and Expression, *LEGALIZING BLOCKING AND COMMUNICATIONS SURVEILLANCE : NEW LAWS ENACTED BY THE STATE TO TIGHTEN ITS CONTROL ON THE INTERNET (2018)*, https://aftegypt.org/digital_freedoms/2018/09/04/15710-aftegypt.html.

media regulatory body to monitor the content of all media platforms including films and televised drama;¹¹⁰ forcing internet service providers to keep and disclose users' data; forcibly tapping into the servers of internet-based private transportation companies;¹¹¹ importing special new technology for millions of dollars to enable better internet use surveillance;¹¹² and much more.

But perhaps the most devastating episode of this campaign and the one most linked to memory is the war waged against the media. A Washington Post editor once called journalism the “first draft of history.” Journalism gives narratives a different kind of authority than that given by courts. The authority of the print is undeniable. And just like the myth about law's capacity to speak truth to power, news media outlets have the same fabled aura. Following the seeming nationalization of all media outlets through intimidation, corrupt money, and the purchase of satellite channels and newspapers by proxy,¹¹³ it had become more and more dangerous for journalists to bear witness. This tightening grip coincided with a surge in journalists' arrests on trumped up charges of misinformation, or insulting the state, or joining the Muslim Brotherhood which was declared a terrorist organization in 2013. In December of 2018, the Committee to Protect Journalists (CPJ) issued a report that concludes that Egypt, China and Turkey are responsible for more than half of journalists' arrests around the world for the third year in

¹¹⁰ Rana Mamdouh, FÜBYĀ WARIQĀBA..ĀLMAGLIS ĀL'Ā'LĀ LITANZĪM ĀL'Ī'LĀM ARABIC NETWORK OF HUMAN RIGHTS INFORMATION, <http://anhri.net/المجلس-الأعلى-لتنظيم-الإعلام-فويبياحور/>.

¹¹¹ Ranya El-Abd, «*ālnuwāb*» *yuqir qānūn «Uber w Careem»: byānāt ālrukāb mutāḥa li «āl'mn ālqawmī*», MADA MASR, May 7, 2018, <https://madamasr.com/ar/2018/05/07/news/u/النواب-يفرقانون-أوبر-وكريم-بيانا/>.

¹¹² A quote from a recent report by Privacy International: “In 2017, the French magazine Telerama revealed that a €10 million contract was signed in 2014 between Nexa Technologies (ex Amesys) and al-Sisi regime for the sale of a technology using Deep Packet Inspection.” For the full report, titled “State of Privacy in Egypt”: PRIVACY INTERNATIONAL, STATE OF PRIVACY EGYPT (2019), <https://privacyinternational.org/state-privacy/1001/state-privacy-egypt#commssurveillance>.

¹¹³ News reports have consistently revealed ties between the General Intelligence and a mega corporation that started purchasing major newspapers and television stations in Egypt over the past few years. The corporation also has a near-monopoly over television drama production and heavily interferes in the work of state media. Reportedly, this corporation is traced directly to Abbas Kamel, the head of the General Intelligence himself. See note 103. Also, read a recent report by the Media Ownership Monitor from Reporters Without Borders about the involvement of general and military intelligence in media ownership and control in Egypt: MEDIA OWNERSHIP MONITOR, SISIFICATION - OR: THE WINNER TAKES IT ALL, <https://egypt.mom-rsf.org/en/findings/secret-services/>.

a row. CPJ also found that Egypt had the highest number of jailed journalists for “false news charges” in 2018.¹¹⁴

Recent legislation made the task of policing the media easier towards the end of 2018. Three laws were enacted that effectively brought all content creators, distributors and broadcasters under the constant threat of legal action.

Two legislations restructured the National Press Authority (NPA)¹¹⁵ and the National Media Authority (NMA).¹¹⁶ NPA is tasked with oversight over the vast industry of state newspapers, and NMA is tasked with oversight over state television. The tutelage includes financial and administrative oversight including over the vast investments of the state media corporates.¹¹⁷ The biggest blow, however, came with the restructure and the expansion of the powers held by the Supreme Council for Media Regulation (SCMR).

A 2018 law tasked SCMR with the mission of, among other things, ensuring media outlets’ compliance with the requirements of national security.¹¹⁸ The law gave SCMR broad powers to censor content, block websites, and punish journalists and administrators with large fines if they fail to adhere to the prohibitions of the law, some of which are summarized in Article 4 as follows:

¹¹⁴ Hundreds of journalists jailed globally becomes the new normal, COMMITTEE TO PROTECT JOURNALISTS (2018), <https://cpj.org/reports/2018/12/journalists-jailed-imprisoned-turkey-china-egypt-saudi-arabia.php>.

¹¹⁵ Law number 179, 2018. See: qānūn ālḥay’ā ālwaṭaniya liṣḥāḥāfa, THE OFFICAL GAZETTE 2–22 (2018), <https://manshurat.org/node/31483>.

¹¹⁶ Law number 178, 2018. See: qānūn ālḥay’ā ālwaṭaniya lil’i’lām, THE OFFICAL GAZETTE 2–16 (2018), <https://manshurat.org/node/31484>.

¹¹⁷ State media corporations have vast investments in ventures that are not in anyway related to journalism. In opposition to banning his column and a letter by the NPA asking him to refrain from making any administrative or financial decisions until further notice, Ahmed el-Naggar, then president of the largest state newspaper, Al Ahrām, resigned. His resignation listed the achievements he made during his term including paying off a large portion of an EGP 844 million debt the institution somehow accumulated over the years. He proudly announced his successes in the investment portfolio of the institution including real estate developments in lands owned by the institution in the capital and in touristic destinations in Egypt. See the full resignation letter in Arabic at: Hisham Younis, *āḥmd ālnagār yuqadim “‘istiḳāla musababa” min ri’āsāt “āl’āhrām” qabl ‘igtimā’ “ālwaṭaniya liṣḥāḥāfa” litashkīl ḥay’at ālmaktab*, AHARAM GATE, April 19, 2017, <http://gate.ahram.org.eg/News/1455798.aspx>.

¹¹⁸ Law number 180, 2018. See: tanzīm ālṣḥāḥāfa wāl’i’lām wālmaglis āl’a’lā litanzīm āl’i’lām, THE OFFICAL GAZETTE 2–42 (2018), <https://manshurat.org/node/31481>. (Article 10 in page 8, and Article 69 in pages 25 and 26).

Journalistic institutions, media outlets and websites are forbidden from publishing or broadcasting any material or advertisement whose content contradicts the rulings of the constitution, or calls for breaking the law, or contradicts the commitments in the professional code of conduct, or goes against public order and public morals, or incites discrimination, violence, racism or hate.¹¹⁹

The new law also makes it difficult to start new media outlets (news websites, newspapers, radio stations, television channels, etc.). For example, starting a new daily print newspaper requires an application, a long list of documents, and a mandatory deposit of EGP 6,000,000. Starting a news website would require a deposit of EGP 100,000. The law makes it illegal to operate without a license and SCMR can ban or block unlicensed material and exact punishment against violators.¹²⁰ They can also withdraw license as punishment in some cases.

The law forbids journalists from writing anything negative about public servants, elected representatives or government officials unless it is directly related to the competencies of their job and can be proven. The law also asserts the prohibition of publishing any content in violation of gag orders and strictly bans “covering legal investigations and trial proceedings in a manner that would influence the legal positions of those involved.” Instead, media outlets can only “publish prosecution decisions, pronouncement of verdicts and summaries of court reasonings.”¹²¹ In short, judicial matters are not meant to be analyzed, questioned or scrutinized. Most importantly, the law sanctions imprisoning journalists and media professionals in cases that pertain to “inciting violence, discrimination between citizens or damaging individuals’ honorable reputation.”¹²²

SCMR is made up of nine members, two are selected directly by the president, two represent executive bodies whose directors are appointed by the president, one represents the State Council, and four are selected by the president from nominations by the

¹¹⁹ *Id.* at 7.

¹²⁰ *Id.* See Article 6 in page 7 and Article 35 in page 15.

¹²¹ *Id.* See Article 21 in page 11

¹²² *Id.* See Article 29 in page 13

Journalists' Syndicate, the Media Professionals' Syndicate, the House of Representatives and the Supreme Council of Universities.¹²³

The scope of the law covers all forms of content including drama and film. It covers all public platforms including “personal websites, private electronic blogs, or personal [social media] accounts with 5,000 followers or more.”¹²⁴

SCMR's bylaws, decrees and regulations are legally binding,¹²⁵ which makes the regulatory standards they later issued for content creators all the more sinister. In relation to drama and film, SCMR laid down its list of punishable offences including cussing, depicting criminals as heroes, scenes that “do not serve the context of the drama,” sexual innuendo and portraying “unjustified violence,” smoking or abuse of drugs. The “coverage code” also charged drama and film makers with respecting “the values and morals of the society and presenting works that provide entertainment, offer knowledge, spread joy, elevate public taste and demonstrate the areas of beauty within the society.”¹²⁶ The code also tasks drama and film creators with demonstrating “the glorious and courageous role played by the armed forces and the police in defending the homeland.”¹²⁷

SCMR's list of penalties is also legally binding according to the August 2018 law. The list was issued in early 2019 and includes many restrictions to serious journalistic work. This includes banning any suggestion that human rights violations by security officials are systematic. SCMR even uses the same language the state uses in its denial of systematic abuses by security agencies which refers to every infraction as an “individual incidents.” In Article 21 of the list, SMCR dictates:

A newspaper or a media outlet or a website conducting or allowing discussions or interviews that generalize individual incidents as general phenomena in a way that damages citizens' right to enjoy free press and

¹²³ *Id.* See Article 73 in pages 30-31

¹²⁴ *Id.* See Article 19 in page 11

¹²⁵ *Id.* See Article 91 in page 36

¹²⁶ The Supreme Council for Media Regulation, *ĀLMA'ĀYĪR ĀL'LĀMIYA ... AKWĀD ĀLTAGHTIYA ĀLMUTAKHŞIŞA THE SUPREME COUNCIL FOR MEDIA REGULATION* (2019), <http://scm.gov.eg/المعايير-الإعلامية-أكواد-التغطية-الم>.

¹²⁷ *Id.*

media of integrity and a high level of professionalism that is consistent with the Egyptian cultural identity is in violation.¹²⁸

Media outlets are also in violation if they “disturb public order and morals,” “call for debauchery,” or engage in blasphemy.

The work of SMCR has already taken aim at the Ramadan season of drama series in May and June of 2019. After setting up a system to monitor all drama series on television channels in the beginning of Ramadan,¹²⁹ SMCR issued a statement two days into the season warning against a number of violations including sexual innuendo, cussing and “street language.” SMCR also threatened to exact punishments including fines and banning series from the air if producers refused to comply. But, SMCR reassured everyone, it is keen on “protecting the freedom of innovation while committing to Egyptian values.”¹³⁰

At the heart of the state’s campaign to close off Egypt’s public discursive space is a project to monopolize the tools of memory narrative production around events both in the *past* and in relation to their *present* unfolding. The attack can be plausibly interpreted as an effort to monopolize the right to storytelling which has immediate consequences for the construction of collective memories. What do websites and platforms of media outlets, human rights organizations, private social media accounts and personal videos have in common? They are all *public* platforms designed to *document* events, opinions and stories. In other words, they are tools of constructing public narratives.

This is where the Egyptian state’s campaign becomes truly ingenious. It is not only a battle to control the content of public narrative. It is a battle to control the public narrative’s *means of production*. This entailed extending the state’s reach into classic material sites of narrative production, like newsrooms and studios. But it also expanded to penetrating the

¹²⁸ The Supreme Council for Media Regulation, QARĀR RAQAM 16 BI’IṢDĀR LĀ’IḤĀT ĀLGAZĀ’ĀT THE SUPREME COUNCIL FOR MEDIA REGULATION (2019), <http://scm.gov.eg/17937-2/>.

¹²⁹ The Supreme Council for Media Regulation, DRĀMĀ ĀL’Ā’LĀ LIL’Ī’LĀM TUQIR MA’ĀYİR ĀLMUSHĀHDA WATABDA’ RAṢD MUSALSĪĀT RAMAḌĀN THE SUPREME COUNCIL FOR MEDIA REGULATION (2019), <http://scm.gov.eg/-/الأعلى-درا-اما-الأعلى-> <http://scm.gov.eg/-/للإعلام-تقرر-معايير-المشا>.

¹³⁰ The Supreme Council for Media Regulation, ĀL’Ā’LĀ LIL’Ī’LĀM YUḤAZIR ĀLMUTGĀWZĪN FĪ DRĀMĀ RAMḌĀN WAYUHDID BITAṬBĪQ ĀL’QŪBĀT THE SUPREME COUNCIL FOR MEDIA REGULATION (2019), <http://scm.gov.eg/-/الأعلى-درا-اما-الأعلى-> <http://scm.gov.eg/-/للإعلام-يحذر-المتجاوزين-في-درا>.

material sites behind digital narrative production including the servers and databases of private telecommunication and transportation corporations.

It was not enough to ensure media outlets are cajoled and intimidated to stay in line with state propaganda. The state went as far as purchasing them. It was not enough to have state media. The state went as far as taking charge of the administrative and financial management of state media outlets through NPA and NMA whose members are largely selected by the president. It was not enough to widen the scope of the law to regulate the content of digital forms of expression. The state went as far as extending its control over internet service providers and created institutions to formalize and regulate the processes through which public digital platforms are established to begin with. It was not enough for the state to create its own narratives and endow them with legal authority. The state went as far as ensuring its monopoly over all possible means of making public any counter-narrative. Most importantly, law was the means the state used to apply all these techniques of control.

II. BODIES IN THE HOLD OF THE LAW

Over the years, state violence has intensified dramatically. Nearly 5,000 people were killed in incidents of political violence in the first three years since the beginning of the January revolution.¹³¹ Approximately 1,000 of those were killed in *Rab'a* alone. More than 60,000 people were arrested or indicted since the military takeover in 2013.¹³² Systematic torture in detention centers never ceased, not under SCAF, and not under Morsi, and reportedly skyrocketed under Sisi. More than 3,000 people were sentenced to death, mostly in cases pertaining to political events or charges of terrorism. Of those, 179 people were executed since 2014 compared to only 10 people in the six year period before that.¹³³ 465 men were killed by police forces in reported raids as part of Egypt's war on terrorism since the enactment of the new anti-terrorism law which largely shields officers from criminal liability.¹³⁴ In 2014, reports started emerging about a secret military detention facility near Ismailia under the name of “*'azūlī*” that is off the grid and not part of any judicial oversight system. Torture is the norm there and everyone in that prison is forcibly disappeared by default.¹³⁵

¹³¹ For death toll statistics, I use WikiThawra, a documentation initiative launched by the Egyptian Center for Economic Social Rights (ECESR). WikiThawra uses various sources including human rights lawyers who traditionally document counts from morgues and hospitals for their organizations, other human rights organizations, and official records. The verification process includes publishing full Excel sheets with names, cause of death/injury/arrest, location, and details about each case and the source of the information. I have found it to be the most comprehensive and the best documented and the most transparent source of information about statistics: 'infūgrāfik: thlāth sanawāt min ālḥawra ālmaṣriya: qatla 'arb'at 'anzima.. muḥadaṭh ḥata 31 yanāyir 2014, Wiki Thawra (2014), <https://wikithawra.wordpress.com/2014/02/16/infographic3yearsrevolution/>.

¹³² Human Rights Watch, EGYPT: TORTURE EPIDEMIC MAY BE CRIME AGAINST HUMANITY HUMAN RIGHTS WATCH (2017), <https://www.hrw.org/news/2017/09/06/egypt-torture-epidemic-may-be-crime-against-humanity>.

¹³³ Reuters staff, *How Sisi's Egypt hands out justice*, REUTERS, July 31, 2019, <https://www.reuters.com/investigates/special-report/egypt-executions/>.

¹³⁴ Reuters staff, *Egypt kills hundreds of suspected militants in disputed gun battles*, REUTERS, April 5, 2019, <https://www.reuters.com/investigates/special-report/egypt-killings/>.

¹³⁵ Patrick Kingsley, *Egypt's secret prison: 'disappeared' face torture in Azouli military jail*, THE GUARDIAN, June 22, 2014, <https://www.theguardian.com/world/2014/jun/22/disappeared-egyptians-torture-secret-military-prison>.

Lives have certainly grown more precarious in Egypt since 2011. But this precarity is not equally distributed. Some bodies are more vulnerable to arbitrary arrest, forced disappearance, ‘extra-judicial’ killing, torture, and executions than others.

A key argument of this thesis is that the Egyptian legal order is realizing the state’s interpretive commitment to a vision of a future that reproduces the power relations of the present. This realization hegemonizes memory narratives that neutralize the disruptive potential embedded in the memory of the January revolution by assimilating it into a teleological temporality of continuation. These hegemonic memory narratives are inscribed in and bolstered by legal texts. Interpretive commitments of continuity are also inscribed in, and are strengthened by, the hierarchization of bodies on a spectrum of violability which constantly reproduces itself. The top of the hierarchy is the body of the martyr—celebrated, commemorated, and immortalized. The bottom of the hierarchy is the body of the terrorist—violable, unworthy of mourning, ominously hyper-visualized or made ripe for oblivion. Both figures refer to death but are constitutive of ways of living. Both figures are sensationalized, spectacularized and abstracted. The tension between them has consequences on the violability of all bodies in the hold of the law.

Among the first group of protesters to be arrested in enforcement of 2013’s protest law was Alaa Abdel Fattah, one of the best-known non-Islamist figures of the January revolution and its aftermath. He spent a five-year sentence and was released earlier this year. He is currently spending five more years of probation during which he will have to spend the night in a police station, all night, every night, for five years.¹³⁶ During his imprisonment, an article he wrote was smuggled out and was later published in *Al Shorouk* newspaper under the title of *Autism*. From his position on the inside of the penal system, Abdel Fattah gave us a poignant account of the hierarchy of bodies inside. He speaks of “latent knowledge” and a “latent system” that sounds similar to Sacco’s description of the legal order’s cryptotypes:

In the “latent constitution” there are complex rules for torture depending on the identity of its victims. Torture is only a crime when done to groups whose torture is forbidden. For those groups, repression is limited to

¹³⁶ Egyptian activist Alaa Abdel Fattah released from jail after five years, BBC NEWS, March 29, 2019, <https://www.bbc.com/news/world-middle-east-47746481>.

slander in the media and pre-trial detention in relatively good conditions for relatively short periods of time. Groups whose torture is forbidden are defined based on socio-economic status, race, whether they have a second citizenship, party affiliation, level of education, age, and any and all details that can be used to categorize people. Exceptional circumstances might broaden the categories whose torture is permitted on the condition that they are brutalized on the moment of arrest and before reaching the stage of prosecution. But it would be unacceptable for torture to continue afterwards.

This is why the constitution drafters, party leaders, national council members, and prominent writers only speak of the state's "mistakes" when torture reaches Khaled or Nagi. What is meant here is not the systematic violation of the written constitution; it is what they imagine to be an unintended error in the enforcement of the latent constitution. They speak as if those who tortured them did not know who they were and mistook them for members of the Brotherhood. They are certain the error will be rectified. And they insist on the state's right to torture the correct categories.¹³⁷

The same hierarchy Abdel Fattah describes for torture largely applies for the so-called extra judicial killings and executions. Recently, however, there have been signs that more and more non-Islamist bodies are joining the category of violability. An argument could also be made about how the absolute violability of one group has deepened the precarity of the lives of all Egyptians.

This hierarchy is closely connected to how these bodies are *remembered* in death. Along with the many criteria of categorization Abdel Fattah lists in his article, a fundamental question in deciding a person's legal violability is: could they be plausibly remembered as terrorists?

Repressive regimes' investment in creating a collective enemy to justify their domination is common. My purpose here is not to prove some kind of exceptionalism. My aim is to investigate how law, particularly in its investment in memory narratives, has featured into the development of this hierarchy.

The first section painted a positive relationship between law and the visibility of memory narratives, mostly through legal texts. This section will attempt to analyze law's effort to

¹³⁷ Alaa Abdel Fattah, *Tawahud*, AL SHOROUK, March 4, 2014, <https://www.shorouknews.com/columns/view.aspx?cdate=04032014&id=1f06d9e8-db6d-4cf3-87a0-377b21be64f6>.

inscribe memory into bodies to bolster the state's public memory narratives on the one hand, and to create a legal spectrum that hierarchizes bodies' vulnerability to violence on the other hand.

To build this argument, this section is divided in three chapters. The first chapter investigates the question of what "inside" and "outside" the law means in this context. Existing literature about the relationship between law and arbitrary violence seems to focus in no small part on this inside/outside duality with some scholars placing violability outside the law, and some problematizing the distinction between an inside and an outside to begin with.

The second chapter examines the temporal aspects of foundational violence in relation to memory. The chapter discusses the relationship between law, a field of visibility of memory and precarity.

The third chapter discusses the legal work behind the hierarchy of precarity including the construction of abstracted *figures* of terrorists and martyrs. This includes an analysis of how abstracted figures of hate, fear and disgust impact the violability of individual bodies; and how these dynamics serve law's realization of its interpretive commitment to continuity in blood.

A. Chapter One: Law and Dehumanization

1. Foundational Violence:

It is important to start by clarifying what violence means in the context of this analysis. The intersection between violence and power is too broad with varied types and degrees, some of which are simply part of the operation of law, and some are more specific to legal orders facing a crisis of potential rupture.

The kind of violence this section attempts to analyze in relation to memory is distinct from the inherent violence of law which prompted Foucault to describe juridical systems as the “sword” of power.¹³⁸ With more nuance, Robert Cover declared that “[l]egal interpretation is either played out on the field of pain and death or it is something less or more than law.”¹³⁹ Judges “deal pain and death”¹⁴⁰ even when no torture is involved. Cover places subjects’ fear of law’s inherent violence at the heart of their obedience to its precepts. Convicts do not peacefully walk back to their cells after their trials only because they are indoctrinated to obey the rule of law. They know the extent of the violence that will be unleashed against them if they do not obey.¹⁴¹

The kind of violence addressed in this section is also distinct from the inherent investment of all power in the body in ways that could plausibly be understood as violence or violation. Michel Foucault says humanity has abandoned “the pain of the body” as the object of punishment, and has instead opted for a rights-economy of punishment where deprivations and constraints of rights are the essence of penalties.¹⁴² The publicity of physical pain that characterized medieval times gave way to a “utopia” of punishment where the infliction of pain is avoided in all situations, even in carrying out executions.¹⁴³ Instead, punishment has

¹³⁸ MICHEL FOUCAULT, 1 THE HISTORY OF SEXUALITY (1 ed. 1978), <https://www.jstor.org/stable/10.2307/1904618?origin=crossref>.

¹³⁹ Robert M. Cover, *Violence and the Word*, 95 YALE LAW J. 1064 (1986), <http://www.jstor.org/stable/796468?origin=crossref>. at 1606- 1607.

¹⁴⁰ *Id.* at 1609.

¹⁴¹ *Id.* at 1607.

¹⁴² MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (Second ed. 1995). 11

¹⁴³ *Id.*

entered a broader “political economy of the body” which abandons pain as a target but continues to centralize bodily forces and their “utility” and “docility.”¹⁴⁴ The evolution of systems of power that saw the rise of discipline as the predominant technology of governmentality at the turn of modernity, and then security as the predominant technology of governmentality towards the end of Foucault’s life never did away with the centrality of the body:

But the body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs... [t]he body becomes a useful force only if it is both a productive body and a subjected body. This subjection is not only obtained by the instruments of violence or ideology; it can also be direct, physical, pitting force against force, bearing on material elements, and yet without involving violence it may be calculated, organized, technically thought out; it may be subtle, make use neither of weapons nor of terror and yet remain of a physical order.¹⁴⁵

An investment in the body’s capacities and utilities, or what Foucault calls “biopolitics” is inherent in systems of power. But Elaine Scarry argues the body takes more primacy in times of crisis as systems of power tend to further lean on the “factualness of the human body” whenever a “central idea or ideology or cultural construct has ceased to elicit a population’s belief.”¹⁴⁶

There is much to say about this model of *painless*¹⁴⁷ investment in the body in the contemporary Egyptian system of domination. Just a few examples would include the Egyptian state’s family planning¹⁴⁸ and Hepatitis C campaigns, the president’s repeated

¹⁴⁴ *Id.*25

¹⁴⁵ *Id.*25-26

¹⁴⁶ ELAINE SCARRY, *THE BODY IN PAIN THE MAKING AND UNMAKING OF THE WORLD* (1985).

¹⁴⁷ It is never truly painless in the physical sense, but, as Foucault explains, it does not aim at inflicting pain as the primary target.

¹⁴⁸ This has been an ongoing campaign to encourage Egyptian families to limit their fertility to only two children. According to the Minister of Social Affairs, the campaign targets the poorest parts of Egypt which also have the highest fertility rates. The campaign consists of offensive television ads, bill boards, awareness raising sessions attended by medical personnel and religious leaders, and door-to-door visits by medical professionals (See this recent report covering the campaign and its activity: Mohamed Taha, «*āltadāmun*» *tu’lin natā’ig mashrū’ «2 kifāya» fī 2257 qarya*, AL MASRY AL YOUM, July 10, 2019, <https://www.almasryalyoum.com/news/details/1411537>.) Meanwhile, there is a marked decrease in the supply of oral contraceptives according to news reports, although government officials claim government health clinics have sufficient supply despite the supply decline in the private market (see coverage of the

mentions of Egyptians' weight and lack of exercise,¹⁴⁹ a new plan to incorporate military training in the first year of technical vocational schools across the country to enhance students' discipline,¹⁵⁰ or the gendered discourses of moral crisis regarding divorce rates or homosexuality.

But this section is not about this kind of investment in the body either.

The violence addressed here is the old-fashioned violence of broken bones, hanged bodies, invisible corpses, and forbidden memories. This section is concerned with the type of violence that is unique to the “normative worldbuilding which constitutes ‘law’.”¹⁵¹ This kind of violence is invoked when a legal order faces the threat of discontinuation and rupture at constitutive moments, which therefore threatens the normative order that bases itself on that legal order's continuity. This relates to Cover's conception of “interpretive commitments,” or the extent to which different actors are willing to go to uphold and live by their own interpretations of legal meaning, usually inferred from legal values enshrined in the constitution. In times of extreme challenge to established legal orders and the interpretations that allow them to continue to exist, judges and revolutionaries alike have their interpretative commitments tested to the extreme. In such moments of crisis, officials

crisis here: Ghada Mohamed el-Sherif, *mu'ānāt riḥlat ālbaḥth 'an ḥubūb man' ālḥaml*, AL MASRY AL YOUM, July 21, 2019, <https://www.almasryalyoum.com/news/details/1414314>, and of the government's response here: Bassam Ramadan, «*ālṣiḥa*» *takshif ḥaqīqat naqṣ ḥubūb man' ālḥaml fī miṣr*, AL MASRY AL YOUM, July 29, 2019, <https://www.almasryalyoum.com/news/details/1416310>. In accordance with this direction, the Egyptian labor law has been amended to reduce the number of paid maternity leaves women are entitled to from three to two (see the new amendments on the Egyptian government electronic gate: *tashghīl ālnisā'*, GOVERNMENT GATE, https://www.egypt.gov.eg/arabic/laws/labour/law_women/F_worklaw_w.aspx.) Overpopulation and terrorism are the two most used talking points by President Sisi on the rare occasions when he feels he needs to address criticism over his human rights record, or the failings of the austerity program (see one example here: Menna Alaa el-Din, *Terrorism and population growth among biggest threats facing Egypt: President Sisi*, AHRAM ONLINE, July 24, 2017, <http://english.ahram.org.eg/NewsContent/1/64/274142/Egypt/Politics-/Terrorism-and-population-growth-among-biggest-thre.aspx>).

¹⁴⁹ See this recent example in a speech by President Sisi in Labor Day celebration in 2019. During the speech, he stated: “When I look at workers, I first look at their physique. If they are overweight, I say they are not really working. If they work, there would be no room [for gaining extra weight]”: Ahmed El-Sadeq, *naṣ kalimat ālsīsī khilāl 'iḥtifāliyat 'īd āl'umāl 30/4/2019*, AL MANASA, May 1, 2019, <https://almanassa.com/ar/story/12228>.

¹⁵⁰ Ibrahim Moawad, *litaḥsin ḥālit 'inḍibāṭ ālṭulāb.. «ālta'lym» tuwaqī' brūtūkūl t'āwun m'a wizārit āldifā' (tafāṣīl)*, AL MASRY AL YOUM, August 3, 2019, <https://www.almasryalyoum.com/news/details/1417530>.

¹⁵¹ Cover, *supra* note 139. at 1605.

realize their interpretive commitment “in the flesh,” while revolutionaries are typically willing “not only to die but also to kill for an understanding of the normative future that differs from that of the dominating power.”¹⁵² On the extreme end of the spectrum of resistance, there is martyrdom when the willingness to die is readily available, but the willingness to kill might be absent. But the rupture of an existing legal order and the birth of a new one requires a “constitutional understanding” that is “commonly staked in blood”¹⁵³ because “[a] legal world is built only to the extent that there are commitments that place bodies on the line.”¹⁵⁴

Cover warns against an understanding of this type of interpretation through the lens of discourse alone, because pain and death have the effect of unmaking the world interpellated by language.¹⁵⁵ Moments of crisis see legal orders engage in what could be defined as foundational violence to realize an interpretive commitment of continuity. Memory narratives represent the mythos, the language and the history law requires to play its role in this exercise of worldmaking. It follows then that words matter as signifiers of non-discursive structures of reality. Dichotomous labels such as ‘martyr’ and ‘terrorist’, ‘revolution’ and ‘conspiracy’, and ‘law’ and ‘anarchy’ are signs with direct implications on bodies.

2. *Foundational Violence’s Placement on a Spectrum of Inside/Outside of Legality:*

Considering the tight control over the media and civil society organizations as illustrated in the first section of this thesis, President Abdul Fattah el-Sisi is rarely confronted about his human rights record. Such confrontations come only when he is asked questions by foreign journalists in press conferences or in pre-scheduled interviews abroad. On these rare occasions, President Sisi has exactly three talking points, all of which are designed to address the fears and concerns of the west. The first is that Egypt is fighting terrorism on their behalf. The second is that Egypt has an overpopulation problem which could lead to

¹⁵² *Id.* at 1605

¹⁵³ *Id.* at 1607

¹⁵⁴ *Id.* at 1605

¹⁵⁵ *Id.* at 1602

a huge influx of illegal migration to the shores of Europe if he does not have enough international support. The third is that Egypt is living under the rule of law.

In an interview with BBC in 2015, when asked about the “draconian” anti-terrorism law, he said Egypt was once ruled by emergency law for 40 years and that this was no longer the case. The interviewer followed up by asking him about the tens of thousands of those in prison. He answered: “Look, such measures are only taken within the law. These are not illegal detentions. It is in accordance with the law.”¹⁵⁶

More recently, in an interview with 60 Minutes in January of 2019, Sisi was asked again about the tens of thousands of prisoners in Egyptian jails. His answer was: “We do not have political prisoners, or prisoners of opinion. We are trying to stand against extremists who impose their ideology on the people. Now, they are subject to a fair trial. It may take years. But we have to follow the law.”¹⁵⁷

Being “inside” the law is the narrative that is consistently used by the president and other government officials in such situations. It is not the same as before, the state declares, because the letter of the law has not been breached. At first, the government was careful to avoid the use of emergency law, especially before the parliamentary election at the end of 2015. But, following a terrorist attack that targeted two churches and claimed 47 lives, a state of emergency was declared and has been renewed continuously since then.¹⁵⁸ The Egyptian constitution limits a state of emergency to three months, binds it to the approval of the majority of parliament members, and forbids extension beyond a single renewal.¹⁵⁹ And so, the government has been leaving a break after every renewal after which it requests parliament approval for a *new* declaration of a state of emergency instead of a renewal in compliance with the text of the constitution.

¹⁵⁶ BBC News, AN INTERVIEW WITH EGYPTIAN PRESIDENT AL-SISI - BBC NEWS (2015), <https://www.youtube.com/watch?v=KqVPxafKmak>.

¹⁵⁷ 60 Minutes, EGYPT’S PRESIDENT EL-SISI DENIES HOLDING POLITICAL PRISONERS (2019), https://www.youtube.com/watch?v=AvlM_91bgSk.

¹⁵⁸ Ahram Online, *Egypt extends state of emergency for three months: Official gazette*, AHAM ONLINE, July 21, 2019, <http://english.ahram.org.eg/NewsContent/1/64/338365/Egypt/Politics-/Egypt-extends-state-of-emergency-for-three-months-.aspx>.

¹⁵⁹ Egypt. Const. art. 2. 154, cl. 3.

But even though emergency law has been in effect since 2017, the entire legal system is transforming in a way that would soon do away with the need for an emergency law. Many of the deprivations of rights classically associated with emergency laws have been made permanent in other, stand-alone laws. As discussed in the first section, new laws have been introduced that virtually banned street protests, restricted and made criminal activities that are crucial to the work of an independent civil society, and stifled freedom of expression. The new anti-terrorism law also gives security agents impunity for using violence. The appearance of due process is maintained in the form of trials that lead to sentences, but a closer look at the rulings reveals overwhelming disregard for the rights of defendants which will be further illustrated in the next chapter.

Since 2013, nine special criminal court panels were dedicated for adjudicating terrorism cases.¹⁶⁰ Through a recent set of constitutional amendments, the president expanded his powers to hire judges and select the leaders of different judicial bodies. The amendments guaranteed military tribunals wider jurisdiction over civilians and included military judiciary in Egypt's "Supreme Council of Judicial Bodies" under the presidency of Sisi himself.¹⁶¹ The right to face one's natural judge is effectively eroding. Military judges are on their way to becoming civilians' natural judges by virtue of the law and the constitution. Thirty-three civilians were executed in fulfillment of sentences handed down by military tribunals since 2015 compared to none in the previous six-year period.¹⁶²

The special terrorism courts are not a product of the emergency law. They are simply now part of the "normal" legal order. In an interview with the New York Times in 2015, rights activist Mohamed Zarea told the paper that "[t]here is an intention to change the whole juridical system so that it is based on emergency justice."¹⁶³

¹⁶⁰ Manshurat Qanuneya, «'ISTI'NĀF ĀLQĀHIRA» TARFA' 'ADAD DAWĀ'IR ĀL'IRHĀB LI 9 DAWĀ'IR MANSHURAT QANUNEYA (2018), <https://manshurat.org/node/32914>.

¹⁶¹ Rana Mamdouh, *Normalizing the military judiciary: How the constitutional amendments bring the Armed Forces into Egypt's judicial system*, MADA MASR, August 7, 2019, <https://madasr.com/en/2019/08/07/feature/politics/normalizing-the-military-judiciary-how-the-constitutional-amendments-bring-the-armed-forces-into-egypts-judicial-system/>.

¹⁶² Reuters Staff, *How Sisi's Egypt hands out justice*, REUTERS, July 31, 2019, <https://www.reuters.com/investigates/special-report/egypt-executions/>.

¹⁶³ Kareem Fahim & Merna Thomas, *Egyptian President Vows Swifter Justice for Terrorists After Assassination*, THE NEW YORK TIMES, June 30, 2015,

However, it is important to note that the blurriness between the ‘inside’ and the ‘outside’ of legality remains operative to a large extent. By virtue of the text, torture, forced disappearance, secret detention facilities like the ‘*azūlī*’ camp, and forced confessions are all *illegal* even under a lawful state of emergency. But does this mean they are external to the legal order?

Literature on the relationship between the precarity of life and the law is abundant. Using Nazi concentration camps as a model, Giorgio Agamben speaks of the state of exception, when legal protections fail to shield human life from sovereign violence, as at once outside and inside the legal order in what he calls a “zone of indistinction.”¹⁶⁴ It is the exclusion, the illegality of the exceptional act, that maintains the normality of the rest of the legal order. A state of exception is “juridically empty,” maintaining legality only in the form of being a fulfilment of law’s power to discontinue its own provisions.¹⁶⁵ In the Nazi camps, this state of exception was perfected and its most dangerous impact was fulfilled— that is the production of the Homo Sacer. Homo Sacer is a term borrowed from ancient Rome in reference to a person who may be killed with impunity but may not be sacrificed.¹⁶⁶ Homo Sacer’s life is “bare life” which has no “juridical value,” and therefore killing them would not be a “homicide.” The Homo Sacer represents a category of “life unworthy of being lived.”¹⁶⁷ The state of exception, then, is any set of arrangements that create the limit beyond which human life becomes the bare life of Homo Sacer. For Agamben, these arrangements are no longer restricted to the spatial boundaries of a camp, or the temporal boundaries of a temporary state of emergency; it is a fixed part of our contemporary politics because “every society sets this limit; every society -even the most modern- decides who its ‘sacred men’ will be... Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being.”¹⁶⁸

<https://www.nytimes.com/2015/07/01/world/middleeast/egyptian-president-vows-swifter-justice-for-terrorists-after-assassination.html>.

¹⁶⁴ GIORGIO AGAMBEN, *HOMO SACER SOVEREIGN POWER AND BARE LIFE* 64 (Werner Hamacher & David E. Wellbery eds., 2007).

¹⁶⁵ *Id.* at 17.

¹⁶⁶ *Id.* at 7.

¹⁶⁷ *Id.* at 139.

¹⁶⁸ *Id.* at 139

By maintaining the idea of “exception,” even if it is included in the juridical order by the virtue of its exclusion as Agamben argues, he echoes arguments of other scholars who reduce the law to its humanizing, right-giving, life-protecting capacity. Homo Sacer is only an exception to this particular understanding of the law. Hannah Arendt’s work on the Nazi camps is similar in this presupposition. Her equivalent of the dehumanized Homo Sacer is the “living corpses.” The preparation of the “living corpses” first requires the killing of the “juridical person in man” through “putting certain categories of people outside the protection of the law” and putting the concentration camp itself “outside the *normal*”¹⁶⁹ penal system.”¹⁷⁰ The second step, Arendt says, is killing the “moral person in man” whose conscience might prevent his complicity or silence. The moral person is killed by the denial of memory and grief which makes martyrdom impossible.¹⁷¹ Political opposition, Arendt says, becomes impossible when even the most radical sacrifice of one’s life is bound to be forgotten as if it never happened. What value would moral sacrifices have if they have no memory through which they can influence and inspire? This, Arendt says, takes away “the individual’s own death, proving that henceforth nothing belonged to him and he belonged to no one.”¹⁷²

Arendt believes that the exclusion from the normal juridical order is important for the effectiveness of the camp because this exclusion disrupts the predictability of the law. She argues that the mere connection between crime, no matter how ludicrously defined, and punishment, no matter how cruel, is enough to sustain a semblance of a normative order that does not completely negate the juridical person with rights.¹⁷³

Another conceptualization of precarity comes from Samira Esmir’s work on “juridical humanity.” Through vigorous analysis of the introduction of secular law in Egypt in the colonial era, she makes the argument that as soon as “humanity” became a juridical value that is granted, it immediately becomes something that can be taken away.¹⁷⁴ The human

¹⁶⁹ Emphasis added

¹⁷⁰ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 447 (1962).

¹⁷¹ *Id.* at 451-452.

¹⁷² *Id.* at 452.

¹⁷³ *Id.* at 448.

¹⁷⁴ ESMIR, *supra* note 24. at 2.

is a product of the law because the human is what remains in the law after the “expulsion” of the inhuman.¹⁷⁵ In another work of hers, Esmir argues that “juridical humanity” is a symptom of the liberal understanding of modern law in general, and not simply restricted to the introduction of modern law in the context of colonialism. The relationship between law and the human is “not a simple relation of protection, whereby human rights law protects an already given human.” It is a constitutive relationship because “modern law ... aspires to name, define, call into being, redeem the human.”¹⁷⁶ Reducing humanity to a juridical category, Esmir says, makes dehumanization an effect of “law’s capacity to suspend itself.”¹⁷⁷

This is close to Agamben’s argument about the inclusion of the camp in the legal order by virtue of the legal order’s capacity to maintain the camp’s exclusion. But it is not the same and the difference between the two arguments has radical implications for the inside/outside debate regarding foundational violence. Humanity as a juridical concept brings it under the jurisdiction of the law, and makes it vulnerable to negation, not just when law suspends itself in torture camps or during a state of emergency, but also when law asserts itself in a way that realizes the dehumanization of certain bodies and categories. When law inscribes injustice in the *normal juridical order* as Arendt and Agamben call it, then dehumanization ceases to be an effect of exception or suspension. It becomes an effect of law realizing an inherent capacity to allocate humanization/dehumanization differentially.

Fleur Johns and Susan Marks present a case to understand the camp, or the precarity effect of the camp, as hyper-legality rather than absence of or exception from legality. By examining Guantánamo Bay as a case study, Johns finds that “the plight of the Guantánamo Bay detainees is less an outcome of law’s suspension or evisceration than of elaborate regulatory efforts by a range of legal authorities. The detention camps of Guantánamo Bay are ... spaces where law and liberal proceduralism speak and operate *in excess*.”¹⁷⁸ Johns acknowledges that the operation of the Guantánamo camps is indeed informed by the

¹⁷⁵ *Id.* at 91.

¹⁷⁶ Samera Esmir, *On Making Dehumanization Possible*, 121 PMLA 1544–1551 1544 (2006).

¹⁷⁷ ESMIR, *supra* note 24. at 227.

¹⁷⁸ Fleur Johns, *Guantánamo Bay and the annihilation of the exception*, 16 EUR. J. INT. LAW 613–635 (2005). at 614.

possibilities of the state of exception, specifically in relation to the operation of the camps without reference to “pre-codified” rules based on “pre-existing norms.” But she notes the camps have elaborate systems of regulation and exhaustive internal codes to prevent any one individual from taking a sovereign decision in the Schmittian sense. She calls it a domestication of the state of exception but insists that an extensive regulatory system charts legal paths of decision making that cannot fit the model of a state of exception.¹⁷⁹

Similarly, Susan Marks concludes that the only reasons some insist that precarity is a product of the absence of law is that we only think of law, as Arendt did, as a guardian of rights and a protection against abuse. She encourages us to think of law’s capacity to reinforce, institutionalize, or generate the production of Agamben’s “Homo Sacer,” Arendt’s “living corpse,” and Butler’s “precarious life.”¹⁸⁰ She gives the dehumanized figure her own name: the “superfluous.” In her words, “something is superfluous when it is expendable, disposable, useless, unwanted, undesirable, worthless, senseless, or supernumerary. That may be because it is unneeded or ineffectual, or because it is needed and useful but readily replaceable.”¹⁸¹ Superfluity, Marks argues, produces a “mass” with little “individual features” which does not need a camp to come to life.¹⁸² Both Marks and Johns criticize the focus on the bodies of detainees and victims of war and state violence in the discussion of dehumanization, which they think takes away from the superfluity that has become part of our everyday life. Despite their disagreement with Arendt in their conceptualization of the law, they echo her argument about the “faceless mass” produced by modern life and the domination of capitalism which she also identifies as a pre-condition for the production of “living corpses.”¹⁸³

So, is foundational violence inside or outside the Egyptian legal order? On the one hand, practices like torture, forced disappearances, ‘extra judicial’ killings and forced confessions are strictly illegal in the books. *’azūlī* and other torture camps where people disappear, and sometimes never surface, are not legally sanctioned either. The letter of the law says they are outside. And perhaps an argument could be made about their inclusion by exclusion to

¹⁷⁹ *Id.* at 615.

¹⁸⁰ Susan Marks, *Law and the Production of Superfluity*, 2 *TRANSNATL. LEG. THEORY* 1–24 (2011). at 21.

¹⁸¹ *Id.* at 3.

¹⁸² *Id.* at 4.

¹⁸³ *Id.* at 21.

maintain a normal juridical order. An argument could also be made that such spaces are zones where law fulfills its capacity to suspend itself. But I think the question of interiority and exteriority depends on the boundaries of what we call a legal order. If law is only its letter, then the line between a normal juridical order and an exception can be maintained. But a broader understanding of lived law yields a different answer.

In the case known in the media as *Arab Sharkas*,¹⁸⁴ eight men were arrested during a raid in March of 2014 on a warehouse that terrorists used as a hideout according to the prosecution's case. Six men and two officers were killed during the raid. Charged with executing terrorist attacks against military personnel, the eight defendants were subjected to a military trial that ended with the execution of six of the defendants in May of 2015.¹⁸⁵ At least three claimed to have been forcibly disappeared, two of whom said they were kept in 'azūlī since before the date of the crimes they were indicted for. They said their confessions were obtained under torture. Based on a thorough examination of the entire case file, not just the ruling, Hossam Bahgat wrote a lengthy report for Mada Masr with some excerpts of the investigation:

The case file shows that military investigators seem to have been walking on eggshells to avoid even the slightest reference to Al-Azouly. Karim Farouk, a National Security officer who ran the Ministry of Interior's investigation into the Arab Sharkas cell, was asked, "What would you say about the statements of the three defendants claiming that when the crime was committed, they were under arrest?" The prosecutor asked the question without naming the prison, which does not officially exist. The officer denied the claims, and insisted that all the defendants were arrested at the Arab Sharkas warehouse last March.

Bahgat's analysis of the case file also shows that one of the defendants, Khaled Farag, appeared before the prosecutor in a wheelchair with visible signs of torture. He told the prosecutor his confession was indeed obtained under torture. When referred to medical

¹⁸⁴ Case number 43,2014, Criminal Military Tribunal of North Cairo. Ruling can be viewed at: 'i'dām 7 mutahamīn fī qaḍiyat khāliyat 'arab sharkas, 43 (2014), <https://manshurat.org/node/34578>.

¹⁸⁵ Mada Masr, *6 convicted in Arab Sharkas case hanged to death despite suspicions of flawed trial*, MADA MASR, May 17, 2015, <https://madamasr.com/en/2015/05/17/news/u/6-convicted-in-arab-sharkas-case-hanged-to-death-despite-suspicions-of-flawed-trial/>.

examination, Farag had to undergo surgery to repair his fractured thighbone and knee. He was one of those who ended up being hanged.¹⁸⁶

Perhaps we can understand the inside of law as everything the law forgives, not everything the law permits. In a recent report, Human Rights Watch called it the “assembly line of abuse,” designed specifically to “fabricate cases against suspected dissidents, beginning at the point of arbitrary arrest, progressing to torture and interrogation during periods of enforced disappearance, and concluding with presentation before prosecutors, who often pressure detainees to confirm their confessions and take no measures to investigate the violations against them.”¹⁸⁷

But assembly lines are usually put together to produce something. If the products of the assembly line are admissible in a court of law and constitutive of enforceable sentences, would this not make the assembly line on the inside of legality?

Most importantly, the assembly lines of abuse in the Egyptian legal system have a cyclical rhythm where every process initiates the next, and where the final product restarts the cycle. Every forced confession becomes part of the narrative law deploys to fend off the threat of rupture, and to justify repeating the assembly line to produce more confessions. Every hanged body is proof of law’s capacity to realize its interpretive commitment to survival and is therefore invoked as an immortal enemy that motivates law’s pursuit of more hanged bodies. In that sense, the assembly line *has become the normal juridical process*.

If we understand law as temporality with a multiplicity of capacities that are always in tension to maintain, reproduce and protect the continuity of the normative order, then everything the law uses to this end becomes part of the *lived law*, even if it is not inscribed in text.

¹⁸⁶ Hossam Bahgat, *The Arab Sharkas cell: The quasi-covert military trial of Ansar Beit al-Maqdes*, MADA MASR, 2014, <https://madamasr.com/en/2014/09/02/feature/politics/the-arab-sharkas-cell-the-quasi-covert-military-trial-of-ansar-beit-al-maqdes/>.

¹⁸⁷ HUMAN RIGHTS WATCH, “WE DO UNREASONABLE THINGS HERE” TORTURE AND NATIONAL SECURITY IN AL-SISI’S EGYPT (2017), https://www.hrw.org/sites/default/files/report_pdf/egypt0917_web.pdf.

B. Chapter Two: The Temporality of Precarity

1. *A Hierarchy of Absence and Presence:*

While working on this project, former president Mohamed Morsi dropped dead in his glass cage.¹⁸⁸ In my former life as a journalist, I would have been fighting to get to the funeral. But there was no funeral. Authorities denied his family's request to bury him in the family cemetery in his hometown. Instead, he was laid down to rest next to several former leaders of the Muslim Brotherhood in *ālwaḡā' wāl'amal* cemetery in East Cairo, known in the media as the "cemetery of the Muslim Brotherhood's supreme guides." A public procession and funeral were forbidden. And he was buried at the break of dawn, with only his two sons, daughter and wife present. The burial scene was complete with a police escort that remained stationed at the grave to prevent any possible assemblies.¹⁸⁹

I flipped through Egyptian channels, looking for details. My cable subscription restricts access to neutral or dissenting satellite channels broadcasted from abroad. The spur of 24/7 news channels broadcasted from Egypt which started after 2011 was reversed after the military takeover in 2013. I could only find around the clock Egyptian news programming on CBC Extra, and the tickers on other Egyptian satellite channels. The drafting of the news brief was identical everywhere: "Mohamed Morsi Mousa el-Ayat" passed away during trial after having asked to address the court— a request that the news stressed was granted. There was no mention of his former title as president, or of the content of his address to the court. While reading out the brief in a periodic live broadcast, a news anchor on DMC channel concluded the reading of the brief from the teleprompter with: "Sent via Samsung." They all received the same email. On CBC extra, the channel ran non-stop videos of street violence that occurred in the summer of 2013 with the headline of "The Muslim Brotherhood is a Terrorist Group." At one point, another headline covered the screen's lower third: "So we would not forget." The video montages are familiar. Similar videos

¹⁸⁸ Declan Walsh & David D. Kirkpatrick, *Mohamed Morsi, Egypt's First Democratically Elected President, Dies*, THE NEW YORK TIMES, June 17, 2019,

<https://www.nytimes.com/2019/06/17/world/middleeast/mohamed-morsi-dead.html>.

¹⁸⁹ dafn ra'īs miṣr ālrāḡīl muḡamad mursī faḡrān dūn ganāza, MUBASHER AL JAZEERA, June 18, 2019,

<http://mubasher.aljazeera.net/news/دفن-رئيس-مصر-الراحل-محمد-موسي-فجر-ادون-جنازة/>.

still run on state television every day, sometimes with blood seeping from white letter to cover the screen for dramatic effect.

I bought the newspapers for the first time in years the morning after. With the single exception of *Al Masry Al Youm*, all other newspapers I found placed the same 42-word brief in inside pages excluding Morsi's title or any identification of who he was, and with no context and no explanation of who he was in court or how he got there.¹⁹⁰ I immediately remembered Judith Butler's quote: "In the silence of the newspaper, there was no event, no loss, and this failure of recognition is mandated through an identification with those who identify with the perpetrators of that violence."¹⁹¹

Maybe more so than some other cultures, the Egyptian culture sanctifies death. The most common and socially accepted response when you hear of somebody's passing is: "May God bestow His mercy upon her/him." Social media, at least my timelines, were full of condolences to Morsi including by foreign leaders and some political adversaries who supported the military takeover in 2013. Evening talk shows on Egyptian channels seemed to have been designed to thwart this wave of sympathy. It was not easy. Morsi was a former elected president. He was kept in solitary confinement for six years during which he was only allowed to see his family three times. His family, lawyers and supporters have long complained that he was not receiving adequate healthcare. And he had said in court he was afraid for his life and felt he was going to be poisoned.¹⁹² The narrative put forward by Morsi's supporters on social media and on satellite channels broadcasted from abroad declared him a *martyr*. The Hashtag "Morsi is a Martyr" in Arabic seemed to be going viral a few hours after the news of his death. The next morning, funeral prayers for the absent were held for his soul all over the world.¹⁹³

¹⁹⁰ Mada Masr, *42 words on page 3: How Morsi died in Egyptian newspapers*, MADA MASR, June 18, 2019, <https://madamasr.com/en/2019/06/18/feature/politics/42-words-on-page-3-how-morsi-died-in-egyptian-newspapers/>.

¹⁹¹ JUDITH BUTLER, *PRECARIOUS LIFE: THE POWERS OF MOURNING AND VIOLENCE* NEW YORK 36 (2004).

¹⁹² Human Rights Watch, *EGYPT: INDEPENDENTLY INVESTIGATE MORSY'S DEATH FORMER PRESIDENT DIED AFTER YEARS OF INADEQUATE CARE* (2019), <https://www.hrw.org/news/2019/06/17/egypt-independently-investigate-morsys-death>.

¹⁹³ *دُفن في مصر - سرا - صلوات - الغائب - تتوالى - بالعالم - على - محمد - مرسى*, AL JAZEERA MUBASHIR, June 18, 2019, <http://mubasher.aljazeera.net/news/>

Al Jazeera's YouTube channel ran a leaked audio recorded in one of Morsi's many court hearings in 2017. Like the day he died, he had been given the chance to address the court. The 7 minute and 10 seconds long audio featured an obviously frustrated, even enraged Morsi, sometimes shouting in disbelief:

I am completely isolated, from the court and the courtroom and those in it. There is a glass barrier... I had tried to speak to the court about many problems in the case... but the court did not see me and did not hear me. This lighting hurts my eyes very much. I only see the court as shadows... I have not seen my counsel in months. I am often unable to hear the witnesses... I cannot see anybody at all. It is all shadows. The reflection of the image where I am makes me dizzy because there are multiple reflections. I see multiple reflections of myself. The fact that there is a way for me to communicate with the court is good but not enough. I have to be able to communicate with you. I have things to say to the court about many issues. I heard the witness the last time and I wanted to ask her about a few things. I could not. She said things about me that were untrue, but I could not speak. I tried, your honor, last time. You asked a question. You said there were visitations by lawyers to the defendants on the 4th and 5th. Did that happen? Did someone answer you, your honor? I do not know. Who said yes? I tried to tell you it did not happen. I could not. I do not see anyone at all. I am besieged, whether where I reside or where I am now. For me, this is a trial in absentia... I am present and absent... I am being tried in absentia. I am not present. I do not know where I am now. Iron behind iron behind glass behind glass. And I tell you, your honor, the reflection makes me dizzy. What do I do?... Where is my defense counsel? I do not see him. I do not know him. I have not seen him in years. Where is my defense? ... I do not know anything. I do not know anything about anything. Even my life, I do not know much about it. What is this?"¹⁹⁴

His living body was silenced by “iron behind iron behind glass behind glass” and a whole machine of narrative production, as discussed in section one, that apparently uses Samsung. Silencing his dead body, however, was much more complicated.

The night he died, and in addition to the video montages, talk show hosts tried all night to firmly position Morsi's memory into the master public memory narrative that declares him a *terrorist*, partially by bestowing the status of martyrdom on bodies that are placed in opposition to his. These narratives relied heavily on the authoritativeness of the law, and

¹⁹⁴ khāṣ biljāzīra - muḥamad mursī yatahim ālsultāt ālmaṣriya bitshdīduh khilāl tasrīb ṣawtī min 'iḥdā galasāt muḥākamtuh 2017, AL JAZEERA ARABIC (2019), <https://www.youtube.com/watch?v=AJ3EQfrBm7o>.

the public memory narratives put forward by courts. Ahmed Mousa, an anti-Islamist talk show host, launched a shouting tirade as his opening monologue on the night Morsi died:

May mercy be upon the homeland's martyrs from the armed forces and the police. Salute to the souls of our martyrs of the armed forces and the police who were murdered by Mohamed Morsi and the terrorist Muslim Brotherhood... We stand up to support their children, their families, their wives, the widows and everyone who was orphaned because of the incitement of the spy, Mohamed Morsi el-Ayat. Martyrs are everywhere, because of the incitement and based on the orders of the spy, Mohamed Morsi el-Ayat. May mercy be upon the martyrs of Egypt; may mercy be upon the martyrs of Islam; may mercy be upon the martyrs of the faith; may mercy be upon our righteous martyrs, the heroes, our great military, our great police, the civilian citizens from the judiciary, our martyr the Prosecutor General. Who killed him? The children of Mohamed Morsi el-Ayat and the Muslim Brotherhood [killed him]¹⁹⁵ ... Who deserves mercy today? Our righteous martyrs, the military, the police, President Sadat, and the Prosecutor General, martyr Hisham Barakat ... Will the Brotherhood pretend to be heroes today? You and Morsi are murderers.¹⁹⁶

Mousa's enraged statement was one of memory and law, reframing recent past to quell present emotions. Mousa's monologue is laden with legal support. His reference to Morsi as a "spy" and later in the monologue, "officially a spy," relies on the espionage charges brought against Morsi. Throughout his episode, he cites Morsi's indictments, trials and official documents from his cases.

In *The Cultural Politics of Emotion*, Sara Ahmed talks about the performativity of texts and narratives citing the work of Judith Butler and building her own model to explain how this performativity operates through emotions and past associations.¹⁹⁷ Applying her model on Mousa's monologue would lead us to conclude that his words interpellate a "we" that must conjure a certain rage against Morsi and all those associated with his memory; a "we" that

¹⁹⁵ Sada Elbalad, 'ALĀ MAS'ULIYATĪ - ĀḤMAD MŪSĀ: RAḤIM ĀLLAH SHUHADĀ' ĀLWAṬAN ĀLATHĪN SAQAṬŪ BISABAB TAHRĪḌ MUḤAMAD MURSĪ (2019), https://www.youtube.com/watch?v=dttoGQ05P8E&list=PLfd97LjbR12I-iZD0oX_JQRs48DrYIGhV&index=164.

¹⁹⁶ Sada Elbalad, 'ALĀ MAS'ULIYATĪ - ĀḤMAD MŪSĀ: MURSĪ BĀ' ĀLBALAD .. W ĀLMUḤARĪḌ ĀL'AKBAR FĪ TĀRĪKH ĀLBASHARIYA (2019), https://www.youtube.com/watch?v=hZUIjRCQSaA&list=PLfd97LjbR12I-iZD0oX_JQRs48DrYIGhV&index=163&t=0s.

¹⁹⁷ SARA AHMED, *THE CULTURAL POLITICS OF EMOTION* (Second Ed. ed. 2014).

should be afraid for the safety and security of a collective nation whose martyrs only come in uniform; a “we” with a specific, legally sanctioned collective memory narrative.

The bringing up of “Martyr Hisham Barakat” was a repeated theme of the night. If Morsi is the martyr par excellence of the Islamist opposition, Hisham Barakat is the martyr par excellence of the state, always invoked to chain dissenters to the connotations of the label “terrorist.” In a video montage on CBC extra during the coverage of Morsi’s death, a voice over narration told the story of Hisham Barakat’s assassination and the subsequent trial of his assassins. The footage consisted mostly of their scenes confessing and re-enacting the assassination to the cameras after their arrest.

Hisham Barakat was the chief prosecutor in the country and the highest-ranking official to be assassinated in Egypt in decades.¹⁹⁸ Since his assassination in 2015, the repressive machine of the state took a turn to the worst. Several human rights reports observed that the treatment of political prisoners worsened remarkably since the assassination, including the treatment of Morsi himself.¹⁹⁹ Barakat was buried in an elaborate official ceremony attended by the President who declared in the funeral that justice was “constrained by the law” and vowed to introduce measures to speed up trial proceedings and the enforcement of death sentences.²⁰⁰

A month after the assassination, an anti-terrorist law was passed that expanded the use of death sentences and included a broad definition of terrorist acts. Article 8 of the law also stipulated that:

Those assigned to implementing the provisions of this law shall not be held criminally liable if they use force to carry out their duties, or to protect themselves from any imminent danger to their lives or to properties, as long as this use of force is necessary and appropriately proportional to the posed danger.²⁰¹

¹⁹⁸ Ahmed Hassan & Omar Fahmy, *Car bomb attack kills Egypt’s top public prosecutor*, REUTERS, June 30, 2015, <https://www.reuters.com/article/us-egypt-violence/car-bomb-attack-kills-egypts-top-public-prosecutor-idUSKCN0P90UA20150630>.

¹⁹⁹ Human Rights Watch, *supra* note 192.

²⁰⁰ Fahim and Thomas, *supra* note 163.

²⁰¹ qānūn mukāfḥat āl’irhāb raqm 94 lisanat 2015, *supra* note 101. Discussion of Article 8 on Mada Masr can be found here: Mohamed Hamama, Heba Afify & Nadia Ahmed, *License to kill?*, Mada Masr, August 21, 2015, <https://madasr.com/en/2015/08/21/feature/politics/license-to-kill/>.

It was not long before Article 8 was tested. In the months after the assassination, the Ministry of Interior announced in July of 2015 that it killed 13 members of the Muslim Brotherhood including former parliamentarian Nasser el-Houfi in a raid connected to the assassination.²⁰² In February of 2016, the Ministry of Interior declared a second raid that killed two more people, also in connection to the assassination. Finally, in March of 2016, the Ministry of Interior said it arrested the “cell” of terrorist operatives who plotted and executed the assassination of the Prosecutor General.²⁰³ Eventually, in February of 2019, nine men were executed for Barakat’s assassination after having provided the elaborate video confessions which they claimed were obtained under torture.

During the trial against Barakat’s convicted assassins, a video from a televised session showed Mahmoud el-Ahmadi, one of the nine men who ended up being hanged, making a passionate plea to the judge. Ahmadi was allowed out of his sound-proof glass cage for a short address to the court. He said he spent 12 days in forced disappearance during which he was tortured and electrocuted before he was finally presented to the prosecution. He said the video of his confession was filmed during that period. The judge interjected and said the forensic medicine authority said he was not tortured. Ahmadi told the judge the forensic reports lied and rolled back his sleeve, then exposed his knee to try and show the judge marks of torture that he said were still visible on his body six months later. The judge interjected again: “But you confessed.” Ahmadi replied: “Give me an electric detonator and I can force anybody to confess they killed el-Sadat.”²⁰⁴

The court ended up sentencing 28 defendants in the case to death. The court of cassation subsequently confirmed the death sentences for nine of them. The ruling relied heavily on confessions and the investigation’s report prepared by a national security officer. The ruling documents that Ahmadi, defendant 15, and some of his co-defendants were indeed

²⁰² tafāṣīl taṣfiyat qyādāt lil’ikhwān ālmuslimīn bimadīnat 6 ‘uktūbar, AL JAZEERA, July 1, 2015, <https://www.aljazeera.net/encyclopedia/events/2015/7/2/تفاصيل-تصفية-قيادات-للاخوان-المسلمين-بمدينة-6-أكتوبر>

²⁰³ The contradictory reports and the multiple extra judicial killings were pointed out by many media outlets including Al Masry Al Youm: Al Masry Al Youm Gate, «*āl’amn*» *yu’lin* «*ḡabṭ waqat*» *munafizī ‘iḡhtiyāl ālnā’ib āl’ām 3 marāt (taqrīr)*, AL MASRY AL YOUM, March 7, 2016, <https://www.almasryalyoum.com/news/details/905606>.

²⁰⁴ ALJAZEERA MUBASHER, LI’AWAL MARA .. MUTAHAMŪN BIGHTYĀL ĀLNĀ’IB ĀL’ĀM ĀLMAŠRY HISHĀM BARAKĀT YAŠIFŪN MĀ T’RADŪ LAHU MIN ‘MALIYĀT TA’ZĪB (2016), <https://www.youtube.com/watch?v=ZbtZ5u4MbfU>.

examined by forensic doctors a second time. Ahmadi's original forensic report said there were "no signs of electrocution on his body" and concluded that doctors were "unable to find evidence to infer the truth or falsehood of the allegations of defendant 15."²⁰⁵ Three months after the first examination, in July of 2016, the court ordered that Ahmadi is examined again. This time, the forensic report did find injuries that did not appear in the first report and concluded that "the appearance of injuries changed because of the development of the healing process with the passing of time, and it is therefore difficult to determine the date of those injuries or how they were incurred."²⁰⁶

The court nonetheless maintained that a confession is legally sound when it is made before an authority that is legally competent to accept it; when the defendant is mentally competent to make the confession; when the confession is clear and explicit; and when the confession is consistent with the "truth" and the remaining evidence.²⁰⁷ The court also asserted its full discretion over evaluating the soundness of confessions and official forensic reports. Therefore, the court declared that it "asserts the truthfulness of these confessions and is content with them not being the result of coercion or force."²⁰⁸

The arbitrariness of the judge and his assertion of a seemingly absolute discretion to decide the truth based on the parts of evidence he chooses is a consistent theme through all examined cases. But this and other cases that ended with death sentences also showed a spectacular carelessness to substantiate crimes or investigate consistent claims of torture and forced disappearance and absence of lawyers during questioning, which matches Human Rights Watch's description of an "assembly line of abuse."²⁰⁹

The coverage of the media around Morsi's death was marked by certain absences and presences. The narrative of the night granted hyper-visibility to Morsi as a figure that stands

²⁰⁵ Ruling in case 7122/261, 2016, el-Nozha criminal division, registered under number 1300, 2016 at East Cairo Collective. *āl'i'dām li 28- mutahm fī 'ightiyāl ālnā'ib āl'ām hishām barakāt*, MANSHURAT QANUNEYA (2017), <https://manshurat.org/node/20706>. at 136.

²⁰⁶ *Id.* at 137.

²⁰⁷ *Id.* at 134.

²⁰⁸ *Id.* at 137.

²⁰⁹ The recent report by Reuters cited in note 193 found the same pattern to be true for several other cases that ended with enforcement of death sentences. The rulings analyzed for the purposes of writing this thesis also showed the same pattern.

in for all terrorists everywhere. Hisham Barakat's presence as a martyr required the absenting of 15 people killed without trial to avenge him, and the hundreds who were then killed under the protection of the new anti-terrorism law which was made possible by his memory. The forced disappearance and torture of the convicts in his assassination were absent, but their confessions were overwhelmingly present.

Elaine Scarry says physical pain "has no voice" and is "unsharable" because it "destroys language."²¹⁰ Hannah Arendt says "only sheer violence is mute."²¹¹ Robert Cover says torture is the "deliberate infliction of pain to destroy the victim's normative world and capacity to create shared realities."²¹² Sara Ahmed points to a cruelty that comes after the infliction of pain, which is to deny the person who experienced the pain the recognition that would grant pain the status of "an event, a happening in the world."²¹³ Most importantly, Ahmed places the experience of pain, which maybe unsharable but still yearns for a witness, in the spectrums of power's inequality: "The differentiation between forms of pain and suffering in stories that are told, and between those that are told and those that are not, is a crucial mechanism for the distribution of power."²¹⁴

The dispossession of recognition is a cruel form of dehumanization because it denies individuals "access to a socially recognized social being, in a word, to humanity."²¹⁵

Narrative comes together with violence as twin devices of the law in its allocation of recognition. Pain is denied materialization into narrative and is absented by the state's hegemonic discourse. And so, pain acquires a "spectral" quality and becomes less real and less capable of giving rise to political action. On the other hand, confessions reproduce law's memory narratives which are then used to inflict more pain and extract more confessions. The tension between the muted silence of the pain and the roaring noise of the confession has constitutive powers in relation to the normative world we inhabit.

²¹⁰ SCARRY, *supra* note 146. at 3-4

²¹¹ ARENDT, *supra* note 1. at 26.

²¹² Cover, *supra* note 139. at 1603.

²¹³ AHMED, *supra* note 197. at 28.

²¹⁴ *Id.* at 32.

²¹⁵ Pierre Bourdieu, *Social Being, Time and the Sense of Existence*, in PASCALIAN MEDITATIONS 241 (2000).

2. *Absent Bodies, Present Memories:*

In death, public recognition is grief and commemoration, the distribution of which is also highly unequal. All the presences and absences in the narrative about Morsi's death in Egyptian media pertained to dead people. They are only present and only absent in acts of *remembrance* and *forgetting*. The hierarchization of visibility, invisibility and hyper-visibility was a hierarchization of how their bodies were remembered or cast out of memory.

Scholars of performativity have long argued that discourse has constitutive powers over the material world, including the bodies that inhabit it. Judith Butler uses this approach to theorize about the relationship between the discourse of the global war on terrorism, and unequal allocation of physical vulnerability to violence.²¹⁶ The connection she highlights to explain the transition is one of memory, namely "grievability," which refers to bodies' eligibility for public grief and recognition. For Butler, the "obituary" is "an act of nation-building." It is no simple matter, she says, "for, if life is not grievable, it is not quite a life; it does not qualify as a life and is not worth a note."²¹⁷

She distinguishes between two ways through which discourse produces "ungrievability": absence and framed presence. Absence is denial of memory which "works through radical effacement, so that there never was a human, there never was a life, and no murder has, therefore, ever taken place."²¹⁸ Framed presence is designed to represent the bodies that surface to our field of visibility as unworthy of grief by creating an abstract face that is not eligible for grief and imposing it on those bodies.

Butler argues that discourse is materially realized in violence through an engineered "modes of public seeing and hearing."²¹⁹ Absences and framed presences have consequences for the public domain itself:

[I]t seems important to consider that the prohibition on certain forms of public grieving itself constitutes the public sphere on the basis of such a prohibition. The public will be created on the condition that certain

²¹⁶ BUTLER, *supra* note 191.

²¹⁷ *Id.* at 34.

²¹⁸ *Id.* at 147.

²¹⁹ *Id.*

images do not appear in the media, certain names of the dead are not utterable, certain losses are not avowed as losses, and violence is derealized and diffused. Such prohibitions not only shore up a nationalism based on military aims and practices, but they also suppress any internal dissent that would expose the concrete, human effects of its violence.²²⁰

In this sense, her work on grievability bears some similarity with Arendt's understanding of the role of grief in politics. In her earlier-discussed analysis of the production of "living corpses," Arendt speaks of the killing of the "moral person in man" to ensure the silence and complicity of the public through denial of memory and grief. This denial, in Arendt's view, "made martyrdom impossible."

But a focus on discourse alone might obscure the material investments and motivations of power. For example, in the US war against terrorism, as in the Egyptian war on terrorism, there is a great deal of financial profit to be gained. Since the military takeover of 2013, the economic empire of the military has grown dramatically,²²¹ and systematic campaigns of accumulation by dispossession have been organized to clear entire neighborhoods and use the lands in lucrative real estate development schemes.²²² An interpretive commitment to continuity needs realization in discourse, but this framing does not exclude the material meaning and implications of this continuity; nor does it ignore the vested material interest of privileged groups in pushing against rupture. I do not argue that memory narratives give rise to violence as an automatic causal force. My point is to investigate how the law utilizes the rhetorical device of memory narratives to ensure the survival of a normative order that necessarily entails a differential allocation of both material and symbolic privileges.

I read Butler's work as a tool more related to the social acceptance of foundational violence and its ability to reproduce itself, rather than an explanation of why foundational violence originates:

If violence is done against those who are unreal, then from the perspective of violence, it fails to injure or negate those lives since those

²²⁰ *Id.* at 37-38.

²²¹ SHANA MARSHAL, *THE EGYPTIAN ARMED FORCES AND THE REMAKING OF AN ECONOMIC EMPIRE* (2015), <https://carnegie-mec.org/2015/04/15/egyptian-armed-forces-and-remaking-of-economic-empire-pub-59726>.

²²² *Id.*

lives are already negated. But they have a strange way of remaining animated and so must be negated again (and again). They cannot be mourned because they are always already lost or, rather, never “were,” and they must be killed, since they seem to live on, stubbornly, in this state of deadness. Violence renews itself in the fact of the apparent inexhaustibility of its object.²²³

It is also important to stress that this thesis examines narratives that have the material violence of the law at their disposal. The absences and presences in media narratives echo the absences and presences in law’s memory narratives. Morsi was made absent in his own trial before he was made absent in newspapers the morning after his death. The hundreds of slain Muslim Brotherhood supporters in *Rab‘a* were only referred to in the *Rab‘a* case ruling as “others who were deceased.” The only bodies that were named, that were seen as worth prosecuting for, were the bodies of the non-Islamists who were killed that day.²²⁴ In the ruling against Morsi and his supporters in the case of the civil infighting around *’itihādiya* (see the first section), the court approved the prosecutors’ deliberate omission of the names of the seven pro-Brotherhood protesters who were killed that night. The case only made present the three slain anti-Brotherhood protesters which was the basis of the indictment of Morsi and some of his most senior aides.²²⁵ Only the body of the three anti-Islamist victims were worthy of legal recognition and action. Similarly, al-Husseini Abo Deif, one of those three victims, has the only publicly recognizable name and face out of the ten people who lost their lives that night.

The legal governance of commemoration is another example of how the material force of the law is invested in assembling memory narratives based on absences and presences. Martyrs from the police and the military are given formal military funerals. Terrorists like Morsi and the nine men executed for the assassination of Hisham Barakat are often buried at night and are not allowed the customary public funeral prayer and procession.

In the aftermath of *Rab‘a*, the hand gesture of holding up four fingers and folding the thumb, which became the trademark of commemorating the event because *Rab‘a* also means fourth in Arabic, became basis for prosecution. Yellow signs showing an icon of

²²³ BUTLER, *supra* note 191. at 33-34.

²²⁴ *’i’dām 75 muthmān wālmū’bad li 47- akharīn min qiyādāt āl’ikhwān fī qaḍiyat faḍ’i’itishām rāb’a*, *supra* note 84. at 82.

²²⁵ *ālsign ālmushadad 20 ‘āmān limuḥamad mursī wa’akhrīn fī ‘āhdāth qaṣr āl’itihādiya*, *supra* note 79.

that hand gesture were everywhere in the demonstrations of Brotherhood supporters in the immediate aftermath of the event. In one incident, a month after the massacre, five girls were arrested in Ismailia for the possession of yellow balloons in the coastal city of Ismailia. They were strip-searched and held in custody for ten days under accusations of “endangering national security.” One of the girls had lost her brother in *Rab‘a* and they were distributing balloons in a public square during Eid as an act of solidarity.²²⁶

The ability to govern a field of appearance that differentially allocates absence and presence, and a monopoly over the narrative that gives those absences and presences meaning de-realizes certain bodies and experiences; but builds up other bodies in opposition. This has a worldbuilding effect. The unsharable pain of torture, as Scarry would argue, destroys the world of the tortured by the loss of language, but builds up the world of the torturer through the confession.²²⁷ In Cover’s words, torture realizes “the interpretive commitments” of the state “in the flesh.”²²⁸ And the normative world built around the confessions and the realization of interpretive commitments in the flesh is a real world that is just as material as it is symbolic. We even experience it in the built environment around us.

Our surrounding urban space bespeaks the differential allocation of grief and recognition. Today, *Tahrīr* Square has a different image from that of the encampment of the 18 days. In the middle of it, in place of the previously bare center where protesters set up their tents, there is a tremendously long flag flying over perfectly kept grass. New traffic lights have been set up and the walls of The American University in Cairo and nearby restaurants, once covered in images representing the faces of the dead, are now cleansed and freshly painted.

Across the city, at the site of *Rab‘a*’s mass killing, a structure stands in the middle of the intersection: a monument showing two hands cradling a fragile ball. The ball is a

²²⁶Kareem Fahim & Mayy El Sheikh, *Memory of a Mass Killing Becomes Another Casualty of Egyptian Protests*, The New York Times, November 13, 2013, <https://www.nytimes.com/2013/11/14/world/middleeast/memory-egypt-mass-killing.html>.

²²⁷ SCARRY, *supra* note 146. 29

²²⁸ Cover, *supra* note 139. 1605

representation of the docile, right-bearing citizenry worthy of protection. The first hand enclosing the ball is the police. The super-imposing hand engulfing everyone is the military. All traces of the Islamist encampment have been removed. The *Rab‘a* mosque, once scorched to the ground to flush protesters out, has been rebuilt and painted off-white. The square has acquired a new name: “The Square of Martyr Hisham Barakat.”²²⁹

²²⁹ Mohamed Adel, *tarkīb lawḥāt taḥmil ‘ism «mīdān ālshahīd ālmustashār hishām barakāt» ‘alā mīdān rāb‘a āl‘dawiya*, AL SHOROUK, August 8, 2015, <https://www.shorouknews.com/news/view.aspx?cdate=08082015&id=87bdd4be-7c4e-4241-8510-17139e2a9a15>.

C. Chapter Three: Terrorists and Martyrs

1. *Constructing Figures:*

Differential allocation of grief and recognition, and of presence and absence creates the *form* of the hierarchy of memory. The *content* of the hierarchy, however, is made of abstracted bodies, or *figures*. The figure of the martyr and the figure of the terrorist are at the two ends of the spectrum. Both figures are figures of memory, mostly entering the midst of political discourse in association with death, not life. But law's investment in these figures of memory has direct implications for the living.

Two weeks after the execution of nine men for the assassination of Hisham Barakat, President Sisi once again had to face questions from foreign reporters during a joint meeting with European leaders in Sharm el-Sheikh. Answering a question about the increase in death sentences, he said:

You talk about the death penalty. We appreciate that and agree with you, for you... Here in our country, in our Arab region, when someone is killed because of a terrorist act, the families come and tell me they want to avenge their children and their blood ... The culture in this region is that rights must be avenged, legally, through the law... You will not teach us our humanity. We have our humanity; we have our values; we have our morals. And you have your humanity; you have your morals; and we respect them. Respect our morals, our humanity and our values like we respect yours.²³⁰

Sisi framed law as a guardian of a culturally specific humanity. Law, in this framing, is not a force of dehumanization for those executed, tortured, disappeared or killed. It is a force of humanization for those avenged by these practices.

This logic of retaliation through the law is evident in most terrorism-related cases. Many executions took place suddenly, without notifying families or lawyers, in the immediate aftermath of a terrorist attack here or there. Four young men convicted of the murder of military conscripts in Kafr el-Sheikh were executed without notifying their families four days after ISIS operatives killed 11 people in an attack on a church. The nine convicts who

²³⁰ Ahmed El-Sadeq, *naṣ kalimat ālsīsī wawqā'i' ālmu'tamar ālṣaḥafī lilqima āl'arabiya āl'ūrūbiya* 25/2/2019, AL MANASA, February 26, 2019, <https://almanassa.net/ar/story/11862>.

were executed in the assassination of Barakat were hanged two days after three police officers were killed in another terrorist hit. In total, the police killed 320 ‘terrorists’ in alleged shootouts that often followed terrorist attacks. A recent independent investigation by Reuters including forensic examination of available photos gives merit to the consistent allegations by many of the victims’ families that their loved ones were already in police custody before these alleged shootouts.²³¹

These acts of retaliatory violence indicate that particular perpetrators, particular crimes and individual bodies no longer mean much. All Islamists, or anybody who can be plausibly branded as Islamist, are lumped together in the figure of the *terrorist* that is embodied by a large reserve of bodies. If one terrorist kills, all plausible terrorists are fair game for retaliation. It is a self-re-reproducing circle of abstraction. The more bodies the figure devours, the more it grows, the bigger its appetite for more.

In her book, *The Cultural Politics of Emotion*, Sarah Ahmed argues that emotions work like capital which increases in value when it circulates. Emotions do not positively exist in us or in the objects of our emotions. They come to life through “contact” and are relational and economic because they grow in value when circulated. “Signs increase in affective value as an effect of the movement between signs: the more signs circulate, the more affective they become.”²³²

Her model of understanding emotion is grounded in the physicality of the body and a memory-based perception of the present. In other words, emotions are felt in the body and objectified in its sensations based on past memories that allow us to read specific situations as evocative of certain emotions including fear, hate and disgust.²³³

Every time the word “terrorist” is deployed, it brings with it a history of circulation where a range of emotions came to attach themselves to the figure of the terrorist. Fear, disgust and hate are part of the emotional history of the term based on how it came to be and how it circulated, particularly since the summer of 2013.

²³¹ Reuters Staff, *supra* note 162.

²³² AHMED, *supra* note 197. at 45

²³³ *Id.* 7

During their long sit-in in *Rab‘a* and *Nahda* squares, hegemonic, heavily circulated narratives were born that were designed to stir disgust, fear and hate.²³⁴ At the time, rumors never stopped circulating about an alleged spread of “scabies” among the protesters.²³⁵ News reporters wrinkled their noses in disgust while addressing the issue of the *stench* and general lack of hygiene. Other stories invoked fear. Many news outlets claimed the *Rab‘a* sit-in was full of all kinds of weapons from wooden sticks all the way to chemical weapons.²³⁶ There were also reports about a secret chamber under the *Rab‘a* stage full of bodies of people the protesters kidnapped and murdered.²³⁷

Then there were the stories designed to produce hatred through radicalizing the otherness of the Islamist protesters. Brotherhood members were, and continue to be, referred to as “sheep” to signify their supposed blind obedience to their leadership.²³⁸ The sit-ins were not easily vilified as a group of hypermasculine mob. *Rab‘a* was full of women who embodied Egypt’s politics of respectability—mothers and wives who dress modestly and who are surrounded by their children and male family members. The rumor of “sex jihad” came in handy. It was borrowed from reporting about ISIS in the region and heavily circulated Egyptian media. According to the sex jihad narrative, the women in the *Rab‘a* encampment were there to fulfill a perceived religious duty by tending to the men’s sexual needs. According to the rumor, protesters also kidnapped random women from the street and raped them using the justification of sex jihad. Two weeks before the dispersal of the sit-ins, the head of the state’s National Council for Women held a press conference and called on security agencies to protect Egyptian women from being subjected to forced “sex jihad” by the Islamist protesters.²³⁹

²³⁴ Islamist politicians had engaged in discourses of disgust, fear and hatred of their own, both when they were in power in 2011 and 2012, and from the stage of *Rab‘a* during the sit-in.

²³⁵ AHMED, *supra* note 197.

²³⁶ Mohamed Talaat Dawoud & Amr Al-Tohamu, *balāgh rasmī: ‘asliḥa kīmāwiya muharaba min sūryā fī «rāb‘a wālnahḍa»*, AL MASRY AL YOUM, August 6, 2013, <https://today.almasryalyoum.com/article2.aspx?ArticleID=392516>.

²³⁷ Mohamed Abbas, *bilfidyū .. 6 shā‘i‘āt ‘an ‘i‘tiṣām «rāb‘a» māzālit tuthīr āladal*, AL MASRY AL YOUM, August 13, 2014, <https://www.almasryalyoum.com/news/details/500747>.

²³⁸ Mayy El Sheikh, *Reach of Turmoil in Egypt Extends Into Countryside*, THE NEW YORK TIMES, September, 2013, <https://www.nytimes.com/2013/09/16/world/middleeast/reach-of-turmoil-in-egypt-extends-into-countryside.html>.

²³⁹ Abbas, *supra* note 237.

Sara Ahmed particularly stresses the performativity of texts and cultural narratives to interpellate us as subjects with certain emotions towards certain bodies— emotions that are capable of producing violence, or at the very least forgiving it. Ahmed’s work on emotions is useful in understanding how the object of emotion transforms from a single body to brand a collective.

According to Ahmed, and because emotions do not positively reside in objects but are produced in circulation, hate tends to transform individual bodies into a “figure” with an “affective value” that grows “precisely insofar as they [figures of hate] do not have a fixed referent.”²⁴⁰ The effect of hate without a fixed objective of the emotion is chilling:

The impossibility of reducing hate to a particular body allows hate to circulate in an economic sense, working to differentiate some others from other others, a differentiation that is never ‘over’, as it awaits others who have not yet arrived. Such a discourse of ‘waiting [for injury from a figure of hate] ... is what justifies the repetition of violence against the bodies of others in the name of protecting the nation.’²⁴¹

Ahmed’s argument echoes Hannah Arendt’s characterization of the “objective enemy” in totalitarian systems who is “defined by the policy of the government and not by his own desire to overthrow it. He is never an individual whose dangerous thoughts must be provoked or whose past justifies suspicion, but a ‘carrier of tendencies’ like the carrier of a disease.”²⁴²

The figure is also bolstered by confessions. Through the mediation of an abstract figure that operates as a representation of a large group of people, the confession of one terrorist results in a conviction of all the bodies represented by the figure. Then the confessions of the convicts in the Hisham Barakat assassination case²⁴³ became proof of guilt against Morsi. As indicated in the previous chapter, the video confessions of the executed men in the Barakat case were played the night of Morsi’s death under a collective title about the guilt of the Muslim Brotherhood and everyone in it. Similarly, narratives that question the fairness of trials, or highlight abuses are easily framed as a defense of terrorism itself.

²⁴⁰ AHMED, *supra* note 197. 47

²⁴¹ *Id.*

²⁴² ARENDT, *supra* note 170. 423-424

²⁴³ āl’i’ dām li 28- mutahm fī ’ighiyāl ālnā’ib āl’ām hishām barakāt, *supra* note 205.

2. *Terrorists and Other Others:*

Just like the cases examined in the first section of this thesis, cases that culminated in executions also produced memory narratives through which judges placed their rulings within a specific reading of history. In every ruling examined for this thesis, there seems to be a fixed history section where a memory narrative is laid out. What is most notable in rulings of death sentences is that narrative is not deployed against the particular bodies the ruling is set to judge, but against a figure of hatred that brand those bodies with precarity. This is evident in the laying out of a historical reading of events that may look backwards through decades. It is as if *terrorism* as such is on trial, not individual defendants for specific crimes. This might explain why the exact same narrative was used in two different cases that, combined, handed down 103 death sentences, nine of which were already confirmed and enforced.

The history section in Hisham Barakat's assassination case is identical, almost word-for-word, to the history section in the ruling in the *Rab'a* case.²⁴⁴ The same memory narrative that led to the execution of the nine young men in the assassination case was used a year later, almost word for word, to sentence 75 more defendants to death including a few elected parliamentarians and at least one former minister. Both verdicts use the exact same words, vowing "Egypt will never... kneel except for God,"²⁴⁵ citing the same list of historic crimes by the Muslim Brotherhood since its creation in the 1920s, and narrating the same account of the 18 days that blames the Brotherhood for the murder of hundreds of peaceful protesters. The same judge, Hassam Mahmoud Farid, presided over both cases along with the same judicial panel. They simply copy pasted this entire section from one case to the other.

Sarah Ahmed provides a model of movement to understand how emotions expand their attachment from a single body to a collective. Emotions move "sideways" in space and "backwards" in time. Through sideways movement, emotional signs attach themselves to figures and objects that are lumped together; and these signs are only interpreted as such

²⁴⁴ 'i'dām 75 muthmān wālmu'bad li 47- akharīn min qiyādāt āl'ikhwān fī qaḍiyat faḍ 'i'tiṣām rāb'a, *supra* note 84.

²⁴⁵ P. 80 in the Rabaa ruling cited in note 67, and P. 7 in the Assassination ruling cited in note 196

because of the backwards movement through memory narratives that open up past associations onto the present. This then allows some bodies to be interpreted as the “cause” of our emotional response.²⁴⁶

All Islamists become one figure onto whom a memory narrative is constructed that opens up past associations of hatred, fear and disgust in the present. Perhaps this is the way to understand how emotions of hate and fear are also transferred from the Islamist figure to the bodies of non-Islamist dissenters?

It should be noted that the figure of the terrorist had an equivalent before the military takeover of 2013. Under both SCAF and Morsi, there have been attempts to brand all street protesters as “thugs” or “anarchists.” Like the figure of the terrorist, the figure of the thug was also a legal category. SCAF issued amendments to the penal code to criminalize “thuggery,” the definition of which included “demonstrating force or violence, or threatening the use of either of them, or using them” for criminal purposes including “obstructing laws and legislations, resisting authorities, preventing the enforcement of judicial rulings, orders or procedures, disturbing security or public peace.”²⁴⁷ Many protesters were subsequently charged with thuggery and the term often featured in media narratives accordingly.

Following pressure to lift the state of emergency, SCAF issued decree number 59 for the year 2012 ending the state of emergency and all of its subsequent results except in connection to crimes of thuggery—²⁴⁸ a tactic often used in the Mubarak era when a state of emergency was limited to crimes of terrorism and drugs.²⁴⁹ *Tahrir* square also had its own narratives of dehumanization including allegations that young protesters were engaging in sexual activities in sit-in tents. These were narratives pushed forward by Islamist politicians once they made it to power along with pro-military advocates.

²⁴⁶ AHMED, *supra* note 197. 44-45

²⁴⁷ Law number 10,2011 issued by the Supreme Council of the Armed Forces, Article 375. Text of the law can be read here: Ashraf Badr, *ālmaglis āl'askarī yuṣdir marsumān tafṣiliyān bimawād rād'a limukāfaḥit ālbalṭaga*, Ahram Gate, March 10, 2011, <http://gate.ahram.org.eg/News/48039.aspx>.

²⁴⁸ 'inhā' taṭbīq āl'aḥkām ālmutaratiba 'lā 'i'lān ḥālīt ālṭawāri' fi gamī' 'anhā' ālgumhuriya fīmā 'adā garā'im ālbalṭaḡa, MANSHURAT QANUNEYA (2012), <https://manshurat.org/node/4818>.

²⁴⁹ *Id.*

However, the figure of the thug was not nearly as effective as the figure of the terrorist and did not summon the level of violence we see today.

But there are certain images, attributes, and language that associate the figure of the thug which refers to political dissent prior to the 2013 military takeover, with the figure of the terrorist which came to engulf all political dissenters with an Islamist background. Street protests, chants against the military, blocked roads, and clashes with the police that sometimes involved rock throwing, home-made guns or Molotov cocktails, are scenes that bring the two disparate groups of dissenters in proximity to each other. This has enabled a sideways movement of the emotions of fear and hatred to circulate from the bodies in one group to the other. The first section showed how the memory of the violence in *Rab'a* provided an entry point to assault the memory of the January revolution. Similarly, the realization of an interpretive commitment to continuity in the flesh of the bodies that inhabit the figure of the terrorist opened up the bodies of all political dissenters to violability.

Today, more and more blatantly anti-Islamist activists are arrested on charges of joining a banned or terrorist group every day. Commemoration offenses invoke immediate violence regardless of who commits them. The site of the revolution is as heavily policed on key anniversaries as the site of the massacre across the city. In January of 2015, Shaimaa el-Sabbagh, a member of an anti-Islamist leftist party, was shot dead during a small public commemoration demonstration her party organized.²⁵⁰ In January of 2019, the police dispersed a celebration to commemorate the anniversary of the 2011 revolution inside the headquarters of a leftist party. Later that night, five activists who attended the celebration were arrested and briefly disappeared including 74-year old Gamal Abdel Fattah, a veteran leftist political activist who is also openly anti-Islamist.²⁵¹

In August of 2015, Gamal Abdel Fattah wrote an article criticizing the left's inclination to condemn the violence done in *Rab'a* as a massacre led by the military against the Muslim Brotherhood. Instead, he blamed the Muslim Brotherhood for the of the bloody summer of

²⁵⁰ John Beck, *Anatomy of a Killing: How Shaimaa al-Sabbagh Was Shot Dead at a Cairo Protest*, VICE NEWS, February 24, 2015, https://news.vice.com/en_us/article/8x7z7v/anatomy-of-a-killing-how-shaimaa-al-sabbagh-was-shot-dead-at-a-cairo-protest.

²⁵¹ Mada Masr, *5 activists detained after attending revolution commemoration at Karama Party HQ*, MADA MASR, January 28, 2019, <https://madamasr.com/en/2019/01/28/news/u/five-activists-detained-after-attending-revolution-commemoration-at-karama-party-hq/>.

2013 and echoed some of the court narratives regarding the Brotherhood's conspiracy with the Americans, and the militancy of the *Rab'a* encampment. He called *Rab'a* and *Nahda* "criminal focal points" and said the Brotherhood and the military are both counter-revolution forces who must be defeated by the January revolution. He also called the Brotherhood a terrorist group.²⁵²

Nonetheless, upon his arrest on the anniversary of the January revolution, he was charged with joining a terrorist group. At one point during his detention, he was beaten up by the police.²⁵³ The arrest of openly anti-Islamist activists on charges of joining a terrorist organization, which is usually code for the Muslim Brotherhood, has been escalating for several years now. But the beating of a well-known, 74-year old, anti-Islamist activist is not common.

In 2016, an Italian PhD student, Giulio Regeni, disappeared around the time of the January revolution anniversary and was later found to have been tortured to death by the police.²⁵⁴ I have never heard of a white European man being tortured in an Egyptian prison before.²⁵⁵ But the murder of Regeni, like the beating of Gamal Abdel Fattah, are some signs that vulnerability to state violence is difficult to limit to any one group once it passes a certain threshold of severity. As time goes by, it seems that the category of the terrorist is no longer enough to capture the widespread violability of Egyptian bodies when confronted by men in uniform.

In his column, *Autism*, Alaa Abdel Fattah refuses to dismiss these signs as "errors" or mere irregularities:

²⁵² Gamal Abdel Fattah, *āhdāth faḍ rāb'a, garīmat āl'ikhwān wāl'askar, ām mazbahat āl'askr did āl'ikhwān?*, AL HEWAR AL MUTAMADDIN, August 19, 2015, <http://www.ahewar.org/debat/show.art.asp?aid=481152>.

²⁵³ 'i'tidā' hamagī min āfrād shurṭa bilḍarb 'alā sagīn ālra'y gamāl 'abdilfatāh, wablāgh 'āgil lilitahqīq l'iqāb ālmu'tadīn wtaqdīm āl'ilāg lilḍaḥiya, ARABIC NETWORK FOR HUMAN RIGHTS INFORMATION (2019), <https://www.anhri.info/?p=5796>.

²⁵⁴ 'inhā' taṭbīq āl'aḥkām ālmutaratiba 'lā 'i'lān ḥālit ālṭawāri' fi gamī' 'anhā' ālgumhuriya fīmā 'adā garā'im ālbalṭaḡa, *supra* note 248.

²⁵⁵ In an attempt at a cover up, Egyptian security forces shot and killed five men in a microbus and planted Regeni's wallet and passport in the house of one of the victims. The Italian side was outraged, and the Egyptian authorities quickly withdrew the story. The murder of the five men is all but forgotten and nobody was held accountable for their killing.

What they fail to understand is that the state did not make an error. The latent constitution, like any other constitution, stipulates rights and duties. The state tried hard to commit to refraining from torturing anyone except those whose blood is made permissible by the consensus of June 30. But the revolutionaries refused to commit to the latent constitution and challenged it, and so they stripped themselves off its protections.

They drafted the protest law to be used against the Brotherhood, but we insisted to offer our bodies as its first test run. They killed the poor Islamist students of Azhar University, but the students of Cairo University insisted on standing up to their shotguns. They waged a war on terrorism that inevitably summoned terrorism to the heart of the capital. We broke all the rules when we insisted that the bombing of the directorate²⁵⁶ will not wipe from our memories the torture and violations we have witnessed inside it.

The state did not make an error. It is us who made the error and took it too far... Maybe it was out of wisdom and insight on our part, because if you cannot hold an authority accountable for its commitments to a written constitution, you cannot hold it accountable for any constitution. Sooner or later, you will join the category whose torture is allowed.²⁵⁷

3. *Martyrs:*

As this section has shown so far, building and communicating the terrorist as a figure of hate and fear is largely a legal process, and the *terrorist* is a legal category. But building and communicating the martyr as a figure of love, a grievable object of public remembrance, and a force of legitimation is also largely a legal process. A *martyr* is also a legal category. Since 2011, the figure of the martyr has been evolving as a figure of memory. Another way of looking at the hierarchy of violability in Egypt is to define the dehumanized bodies at the bottom of the hierarchy as those that are not eligible for martyrdom.

In Arabic, the word Martyrdom, “*Shihada*,” comes from an Arabic root verb that means “to witness,” “to testify,” or “to be a present audience” to an event. In English, it also stems from a Greek root that means “witness” and an Aryan root that means “to remember.”²⁵⁸ For Cover, “[m]artyrdom functions as a re-remembering when the martyr, in the act of

²⁵⁶ The security directorate of Mansoura was bombed in a terrorist attack in December of 2013.

²⁵⁷ Abdel Fattah, *supra* note 137.

²⁵⁸ Cover, *supra* note 139. at 1064.

witnessing, sacrifices herself on behalf of the normative universe which is thereby reconstituted, regenerated, or recreated.”²⁵⁹ It is a term classically associated with resistance to domination. An earlier part of this section illustrated how Arendt connects denial of memory and grief to “making martyrdom impossible” and therefore ensuring the complicity of silence—a lack of witnessing.

In Egypt, law has been engaged in an appropriation of martyrdom to transform it from “an extreme form of resistance to domination,”²⁶⁰ as another strategy of assimilating the potential of rupture into the body of the state. Martyrdom is inherently disruptive. A martyr’s death magnifies a group’s interpretive commitment to radical change. Commemoration of martyrdom as such *is* a calling out of tyranny as such—a speech act of resistance. The encounter between a system of domination and the body of the martyr is often one of opposition of conflicting normative orders. Torturing and killing the body of a dissenter with an interpretive commitment to an alternative normative order destroys the normative order of the tortured body and builds up the normative order of the torturer and killer. But in memory, commemoration revives the body of the martyr to build up the normative order of the dissenter and destroy the normative order of the tyrant. Marking a death as ‘martyrdom’ in memory has political and normative implications. Since 2011, law in Egypt has vigorously invested in the co-optation of martyrdom.

Less than two weeks after Mubarak stepped down in February of 2011, the cabinet issued an official decree to grant a special pension of 1,500 Egyptian pounds to the “families of each of the martyrs of recent events,” or a lump sum of 50,000 pounds to the heirs in the absence of eligible pension awardees.²⁶¹ The “recent events” were upgraded to a “revolution” in SCAF’s decree number 128 of 2011, but the *martyrs* were downgraded to “victims.” The decree ordered the creation of *The Health and Social Care Fund for the Victims of the Revolution of the 25th of January and their Families*.²⁶² Article 8 of the decree

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 1605.

²⁶¹ Prime Minister Decree issuing law 303, 2011: manḥ ma‘āsh ‘istithnā’ī li’usrit kul shahīd min shuhadā’ ‘aḥdāth thawrat 25 yanāyir, 8 (2011), <https://manshurat.org/node/4691>.

²⁶² Decree by the head of the Supreme Council of the Armed Forces issuing law number 128, 2011: ‘inshā’ ṣandūq ālri’āya ālṣiḥiya wāligtimā’iya liḍaḥāyā thawrat 25 yanāyir 2011 wa’usarihim, THE OFFICIAL GAZETTE 2–5 (2011), <https://manshurat.org/node/7575>.

allocated to the newly created Fund a grant of a hundred million pounds by the Ministry of Defense. The decree did not include any criteria to determine who a martyr is, but said it was the responsibility of the Fund to make the determination. Article 7 outlined the structure of the Fund's board of directors including representatives of several ministries, including the Ministry of Interior, three public figures to be selected by the Prime Minister, and two representatives of civil society organizations to be selected by the Prime Minister. The board had no representation of the military or SCAF.

Later in the same year, the relationship between non-Islamist political activists and SCAF started falling apart after several incidents of violence against protesters perpetrated directly by the armed forces (Maspero in September, Mohamed Mahmoud in November, and the cabinet events in December). The honeymoon, if one ever existed, was over. Right after the cabinet events in December, the cabinet issued Decree 1485 for 2011 in which the "victims" from the previous decree became "martyrs." But there was no mention of the 100 million pounds. It is not clear whether this meant withdrawing the grant. More restrictions were put in place on the structure of the board of directors that decides on the definition of the martyr. Article 6 of the decree changed the structure of the board of directors to include a representative of the Ministry of Defense and to exclude representatives of civil society organizations.

From this point onwards, and instead of fighting the word 'martyr,' it was instead co-opted. The use of the word was no longer problematic, as long as its content is decided by the military government.

Securing this appropriation today took years and needed to overcome some resistance. Under public pressure, when public pressure was possible, the cabinet issued a decree that names the victims of the Maspero, Mohamed Mahmoud and the cabinet events "martyrs" with the same previously stipulated financial entitlements legally allocated to families of martyrs and to those severely injured during clashes.²⁶³

Several decrees were passed to increase or restructure different compensations, or to change administrative structures dedicated for the service of the wounded and the families of the

²⁶³ MENA, *bad' 'igrā'āt šarf ālmustaḥaqāt wāltasgīl li'usar shuhadā' wamušābī thawrat 25 yanāyir*, AHRAM GATE, January 7, 2012, <http://gate.ahram.org.eg/News/157516.aspx>.

martyrs since then. The resources allocated for the compensation of the wounded and the families of martyrs, and the legal character of the whole ordeal meant that people could sue the government over who a martyr is. In such cases, judges decide on families' eligibility to financial compensation by determining whether a deceased person is a real martyr. The surreal rulings investigate the circumstances of a person's death and compare them to past decrees and the bylaws of regulatory bodies concerned with martyrs' affairs to make their determination. Ramadan Sedqi Abo el-Ela is not a martyr, the court said, because even though he was killed during the 18 days, he was shot during a normal fight that was not connected to the revolution.²⁶⁴ But Mohamed el-Shafei Mahmoud is indeed a martyr because he was shot during the events of the second anniversary of the revolution and was not proven to have been killed while attacking the police, or assaulting citizens or public establishments.²⁶⁵ The same goes for Ali Hassan Ali Makhoulf who was killed during clashes in February of 2012 and was not proven to have been killed while attacking the police, other citizens or public establishments.²⁶⁶

Since the military takeover in 2013, the political deployment of the figure of the martyr by the state intensified. In response to a lawsuit asking to consider a victim of the clashes with the Brotherhood supporters as a martyr, the state commissioners' panel at the State Council issued a recommendation to consider all the victims of the June 30 revolution in the list of the revolution's martyrs. This, of course, does not include Islamist victims. In its report, the commissioners' panel cited the 2014 constitutional preamble's hyphenation of the January 25 revolution. The phrasing of the "25 January – June 30 revolution," and the specific use of the singular instead of the plural, means that, constitutionally, June 30 is "nothing but a continuation and a correction of the people's revolution of January."²⁶⁷

²⁶⁴ See court ruling in case number 46859, judicial year 67, Administrative Court, first circuit, at: *rafḍ 'idrāg 'ism mutawafī ḍimn shuhadā' ālthawra*, 1–5 (2014), <https://manshurat.org/node/12981>.

²⁶⁵ See court ruling in case number 36384, judicial year 67, Administrative Court, first circuit, at: *'idrāg 'ism mutawafī ḍimn qa'imat shuhadā' ālthawra*, (2014), <https://manshurat.org/node/13015>.

²⁶⁶ See court ruling in case number 2726, judicial year 67, Administrative Court, first circuit, at: *'idrāg 'ism ḍimn qa'imat shuhadā' ālthawra*, MANSHURAT QANUNEYA (2014), <https://manshurat.org/node/12887>.

²⁶⁷ Shaimaa El Qarnashawy & Mostafa Makhoulf, «*mufawaḍī āldawla*» *tūwṣī bi'tibār ḍaḥāyā 30 yūnyū min shuhadā' ālthawra*, AL MASRY AL YOUN, April 23, 2015, <https://www.almasryalyoum.com/news/details/714905>.

In 2015, a separate decree was issued to allocate a special pension to “families of civilian martyrs of terrorist acts” equal to the 1,500 Egyptian pounds granted to the families of the martyrs of the revolution.²⁶⁸ This time, the decree required proof in Article 3, including a certificate issued by the prosecution office that indicates the circumstances of the incident, its location and date. Requirements also included an official forensic report detailing the cause of death. For the compensation of the wounded in the same decree, Article 3 requested several official documents including a report by an official three-doctor committee that determines the percentage of disability in order to allocate the compensation accordingly. Article 4 mandated the payment of additional lump sum payment for each eligible family and wounded person.

By 2018, a new official body was created under the name of *The Fund of Honoring the Martyrs, the Victims, the Missing and the Wounded in Military, Terrorist and Security Operations and their Families*.²⁶⁹ The decree clearly differentiates between a “martyr” and a “victim” in Article 1 which states that *victims* are those who are killed in terrorist attacks or security operations, but who were not active law enforcement agents at the time of their demise. The new martyr, the decree concludes, must have a uniform. Naming someone a martyr, the decree stipulated, must be done by the Ministry of Interior or the Ministry of Defense depending on which security apparatus the martyr served at the time of their death.

The martyrs in uniform are not like their predecessors who were killed by law enforcement agents since 2011. The entire population is legally bound to compensate them.²⁷⁰ Article 7 of the decree enacts a new tax to be collected through a new mandatory stamp that costs 5 Egyptian pounds required for the issuance of a multitude of official documents including: firearms licenses, driving licenses, cars’ registration, criminal record certificates, sports tickets, party and concert tickets, applications for military and police institutes and colleges, resident visas for foreigners, work permits for Egyptians working with foreign entities whether inside or outside Egypt, bid requirements and specifications needed for auctions,

²⁶⁸ Prime Minister Decree issuing law number 915, 2015 at: *manḥ ma’āshān ’istithnā’iyān l’usrat kul shahīd madanī min shuhadā’ āl’a’māl āl’irhābiya*, 2–4 (2015), <https://manshurat.org/node/6289>.

²⁶⁹ Law number 16, 2018, at: *’inshā’ ṣandūq takrīm shuhsdā’ waḍaḥāyā wamaḥqūdī wamuṣābī āl’maliyāt ālḥarbiya wāl’irhābiya wāl’amniya wa’usuruhim*, THE OFFICIAL GAZETTE 2–12 (2018), <https://manshurat.org/node/25901>.

²⁷⁰ *Id.* at 6-7.

government contracts, license or license renewal for the creation of private or international schools, applications for land plots or residential units in the government's new urban developments, and membership applications or renewal in sports' clubs. Article 8 imposes a "solidarity contribution" of 5 Egyptian pounds for school students, and 10 Egyptian pounds for undergraduate university students to bolster "solidarity and communal participation, and to increase youth's awareness to combat terrorism and to honour the martyrs."²⁷¹ Article 9 allocates to the Fund 5% of the revenue from the mandatory fee of "developing the state's financial resources" which is imposed on issuing new passports, residency permits to foreigners, and applications to obtain the Egyptian nationality, licenses to bear arms, driving licenses, purchase of cellphone lines and permits to utilize quarries.²⁷²

Martyrs in uniform are everywhere. The closest intersection to my house has a huge picture of a young man in police uniform whose name, Mohamed Hamed Abo Ebaid, is now given to the intersection and is preceded by the word 'martyr.' A search for the word 'martyr' in the legal digital archive I used to obtain the documents analyzed in this paper in the time period since 2015 yields dozens of results listing decrees that name streets, schools and squares after martyrs. Other decrees granted posthumous promotions to 'martyred' officers which has an impact on the pensions available to their families.

The martyrs who have already been recognized by the law as such prior to the 2013 military takeover remain martyrs in the eyes of the law. Their memory is appropriated into a narrative of continuity by the appropriation of the memory of the January revolution itself in that narrative. But the 2018 law makes it clear that the category of the martyr, on top of the hierarchy of bodies, is no longer available to civilians. By default, and as the category of the terrorist continues to expand and metamorphose to accommodate more and more bodies, an entire population is theoretically made vulnerable to the state's foundational violence.

²⁷¹ *Id.* at 7.

²⁷² Al Masry Al Youm Gate, *ta'dilāt qānūn farḍ rusūm tanmiya mawārid āldawla (naṣ kāmil)*, AL MASRY AL YOUN, June 28, 2018, <https://www.almasryalyoum.com/news/details/1303591>.

III. EPILOGUE

A. Memory and the Engineering of a Political Community

Human communities have always needed an element of continuity— a measure of “permanence” that is the precondition of a common world without which “no politics, strictly speaking, no common world and no public realm, is possible” because “[i]f the world is to contain a public space, it cannot be erected for one generation and planned for the living only; it must transcend the life-span of mortal men.”²⁷³

For Arendt, this permanence is constantly threatened because “[w]ith each new birth, a new beginning is born into the world, a new world has potentially come into being.” Fending off this threat is a function of the law whose “stability” counteracts the “constant motion of all human affairs.”²⁷⁴ This stabilizing force is what Renisa Mawani refers to in her discussion of law’s “telos” and its capacity to assimilate alternative temporalities. It is the same force Cover refers to in his discussion of interpretive commitments realized “in the flesh.”

Narratives of continuity forge national identities. In “Imagined Communities,” Benedict Anderson traces and analyzes how nations rise, in part, on the back of collective memories or collective amnesias. Contrary to the constant movement and change of our own bodies, memory narratives create the continuities of our biographies. Anderson gives the example of an adult looking at his photo as a baby. There is no way he can *remember* being that baby on his own without the force of narrative. But the photo and the stories that come with it and whatever documentation is available to prove he and the baby are the same person, construct a narrative that forces continuity and forges a biography and therefore gives rise to an “identity.”²⁷⁵

²⁷³ ARENDT, *supra* note 1. at 55.

²⁷⁴ ARENDT, *supra* note 170. at 465.

²⁷⁵ BENEDICT ANDERSON, *IMAGINED COMMUNITIES REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* ENGLISH 204 (3 ed. 2006).

The same is true for nations with some key differences, the most important of which is a stronger “emplotment.”²⁷⁶ Nations do not have the same clear markers of natural birth and death and so their continuities are distinctly different:

Because there is no Originator, the nation's biography cannot be written evangelically, 'down time,' through a long procreative chain of begettings. The only alternative is to fashion it 'up time' - towards Peking Man, Java Man, King Arthur, wherever the lamp of archaeology casts its fitful gleam. This fashioning, however, is marked by deaths, which, in a curious inversion of conventional genealogy, start from an originary present. World War II begets World War I; out of Sedan comes Austerlitz; the ancestor of the Warsaw Revolution is the state of Israel.²⁷⁷

This is how *Rab'a* becomes the ancestor of the '25 January – 30 June revolution.' Governing memory, and the assemblage of collective narratives of remembered presences and forgotten absences is an exercise in nation-building.

Law's temporal powers of conservation can be Arendt's positive conception of ensuring that communal, shared life is possible. They can also be Cover's sinister conception of a normative order of tyranny reproducing itself.

Law's tyrannical hold on time is compounded by the political significance of its authority. Between 2011 and 2014, I was a journalist. There was no way I could have written that a court *alleged* or that a constitution *claimed*. A court *rules* and a constitution *stipulates*. A narrative in a court archive is no longer a narrative. It is a fact. This is precisely why the narratives of the law spilled so easily onto newspaper pages and television screens and into common speech as truths. In Egypt, this claim to the truth was compounded by law's chock hold on public memory narratives' means of production. So much so that the best law-related investigative journalism we can hope for in today's Egypt is entirely based on case files that we know were assembled through torture. Challenging this dominance is not as easy as challenging state propaganda and dispelling the superior aura of the *rule of law* is the work of revolutions.

Battles fought in the arena of memory are not easily winnable, however. This belief is embedded in my own personal experience with the concept. It is simply too soon. There

²⁷⁶ *Id.* at 205.

²⁷⁷ *Id.*

might come a time when another generation's memory will be more influenced by law's narratives and the power of the official archive. But for now, too many of us have personally lived through these events. The openness that followed the 18 days was experienced by many, even those who were not originally invested in the revolution or any of its demands. An example of that is the proliferation of a culture of street protests that engulfed almost every social group.²⁷⁸

Many of us also continue to have interpretive commitments securely anchored in memories that are, after all, still shared. I know exactly where to find the bullet I found embedded in a light post in *Tayarān* street in the aftermath the republican guards' massacre of 2013. It is still there. My memory traces the outer contours of a huge graffiti that constructed a face out of half of Mubarak's face and half of Field Marshal Tantawi's face on the wall of AUC's *Tahrīr* campus facing the square. I can still see the lines behind the fresh paint. I know what happened in Mohamed Mahmoud in 2011, and the Port Said violence of 2012 and in *Rab'a* in 2013, not because I read a court ruling or a news report. But because I survived them. Lived time is still very much lived. Spontaneous memory is still very much spontaneous. An alternative temporality remains alive within this memory. The work of law here is incomplete.

A narrative in a court archive might turn into fact. But it cannot become a *story*. An understanding of memory that is embedded in experience and expressed in storytelling can provide an alternative to law in ensuring the survival of a shared world. In Benjamin's words: "*Memory* creates the chain of tradition which passes a happening on from generation to generation."²⁷⁹

Law can prevent my memory from finding its way to the memories of others who shared the same experiences through controlling our shared field of visibility and our channels of

²⁷⁸ The Egyptian Center for Economic Social Rights (ECESR) started publishing periodical reports under the title of "Bulletin of the protest movement" by the fourth quarter of 2011. The reports traced protests, sit-ins and strikes, especially in relation to labor. A quick survey through the reports reveals that the effects of a culture of political protests and dissent has penetrated diverse geographies and groups for different motivations. The reports can still be found on ECESR website, but the last report covers 2017: Egyptian Center for Economic Social Rights, <https://ecesr.org/?cat=22&paged=2>.

²⁷⁹ BENJAMIN, *supra* note 25. at 98.

communication. But it is not yet successful in entirely disrupting the rise of communities with shared interpretive commitments based on their lived memories. For example, law could not stop the Brotherhood from calling Morsi a martyr and commemorating him as such to bolster a “wound culture” that bases a collective identity on that memory of injury.²⁸⁰

Most importantly, law alone cannot foreclose the disruptive potential that will forever be associated with the thousands of slain bodies since the January revolution. Law’s command over fields of visibility and recognition may ban these bodies from *testifying* today, as per the meaning of the Arabic root of the word ‘martyrdom.’ But, as figures of memory, they will always hold the *potential* of testifying, the potential of bearing witness. In Agamben’s words, potentiality “maintains itself in relation to actuality precisely through its ability not to be.”²⁸¹ Therefore, its failure to become is not really a failure, but a “realization” of its dual nature which does not preclude its capacity to one day “pass over into actuality.”²⁸²

B. Memory and Agency

A system of domination’s goal is to chain the future to the power relations of the present, in other words, to ensure that present relations of power continue to be reproduced in the future.²⁸³ Power is future-oriented. In Foucault’s words: “To govern ... is to structure the possible field of action of others.”²⁸⁴ This, in essence, entails governance of potentiality and agency, understood as the capacity to act, and to act disruptively. A critical understanding of time makes the governance of the past integral to any control of the future. This gives memory a central role as a site of investment for power.

Pierre Bourdieu’s temporal understanding of agency sheds light on the mechanism through which the past influences the future. Law’s capacity to structure the field of what is possible in the present has an influence on what Bourdieu calls “objective chances,” or the range of actions perceived by individuals as realistically available to them as opportunities. A

²⁸⁰ AHMED, *supra* note 197. at 33.

²⁸¹ AGAMBEN, *supra* note 164. at 46.

²⁸² *Id.* at 45.

²⁸³ Maurizio Lazzarato & Joshua David Jordan, *The Making of the Indebted Man*, AN ESSAY NEOLIBERAL COND. 199 46 (2012).

²⁸⁴ Michel Foucault, *The Subject and Power*, 8 CRIT. INQ. 777–795 (1982). at 790.

person's "disposition to be and to do" stands in opposition to these objective chances which are the work of the social world in which we live. The tension between the objective chances available to us, and our subjective dispositions create time and govern the way in which we experience it.²⁸⁵ Objective chances refer to the "possible field of action" in Foucault's quote. Subjective dispositions include the capacity to act, or agency. People tend to adjust their dispositions, and therefore the range of their capacity to act, according to the objective chances available to them.²⁸⁶

Bourdieu then introduces a temporal understanding of subjective dispositions which he calls "habitus," defined as "that presence of the past in the present which makes possible the presence in the present of the forthcoming."²⁸⁷ In other words, our agency is modified by how we anticipate the future based on what we remember of the past. Remembrance and anticipation collapse the past and the future into the present which is the site of political action.

In this sense, the image of *Tahrīr* becomes a promise. Remembering the January revolution as rupture modifies what we perceive as realistically available opportunities which then broadens our "disposition to be and do" and emboldens our sense of agency.

For those who share that memory of lived time, the January revolution will always carry this promise. But, similarly, the image of *Rab'a* becomes a menace. And collapsing the image of *Tahrīr's* potential into the image of *Rab'a's* bloodbath drastically shifts our perception of what is possible.

For those whose memory is more strongly influenced by the narratives of the law and the state, reigning in the image of *Tahrīr* into a seamless stream of images that start before 2011 and continues well into the future, expels the potential of rupture from their field of possible action.

In both cases, memory becomes central to governing agency.

²⁸⁵ Bourdieu, *supra* note 215. at 208.

²⁸⁶ *Id.* at 216.

²⁸⁷ *Id.* at 210.

Another aspect of the relationship between memory and agency is the role of storytelling in regard to our capacity to act. Telling a story is a way for the storyteller to take charge of their role in it, to reclaim agency over their experiences, even if only through the sorting out of the story itself.²⁸⁸ Read by Michael Jackson in his book, “The Politics of Storytelling: Violence, Transgression and Intersubjectivity,” Hannah Arendt argues that subjects are both a humanized “who” with a measure of control over their world and their experiences, and a “what” that is played upon by intersecting systems of power that are largely beyond the reach of their capacity to act.²⁸⁹ The telling of one’s story, and the public recognition of this story is a way of reasserting the human side of her being, the *who* of all that she is. It is so great a human need, Jackson tells us, that it is absolutely imperative for any meaningful sense of agency:

In spite of being aware that eternity is infinite and human life finite, that the cosmos is great and the human world is small, and that nothing anyone says or does can immunise him or her from the contingencies of history, the tyranny of circumstance, the finality of death, and the accidents of fate, every human being needs some modicum of choice, craves some degree of understanding, demands some say, and expects some sense of control over the course of his or her own life.²⁹⁰

To this end, it does not matter if this agency is real or imagined. A *sense* of agency, even if entirely constructed, is all one needs to assert their being as an agent of history according to Jackson.

It is not strange, then, that the battles of the January revolution proponents today are battles of memory and storytelling, not just to challenge the hegemony of narratives of continuity inscribed in texts and bodies by the force of the law, but also to assert agency.

Earlier in the thesis, there was a reference to *'askar Kazeebon*, an initiative that started in 2011 and was mostly carried out by volunteers to screen footage of violence perpetrated by security agents in public spaces to disrupt state narratives that typically portrayed protesters as “thugs.” On its website, the campaign says that the current government made it impossible to find out the truth from traditional media platforms, “but in 2016, there is

²⁸⁸ M JACKSON, THE POLITICS OF STORYTELLING VIOLENCE, TRANSGRESSION, AND INTERSUBJECTIVITY 13 (2002).

²⁸⁹ *Id.* at 13.

²⁹⁰ *Id.* at 14.

technology and there are many ways to find out and publish the truth and to detect the lies.”²⁹¹ They no longer do screenings, of course, but many other initiatives have taken advantage of the technology they address in this last statement over the past few years against the state’s legal campaign to shut down the digital public sphere.

For example, the writing of this thesis would not have been possible without the existence of *Manshurat Qanuneya*— a free legal digital archive that was recently launched by AUC’s Law and Society Research Unit. During my degree’s course work, I had several judges as classmates. I asked a class full of judges once if they could tell me how to get a copy of the ruling on the *Rab’a* case. They all said I should not be making any attempts to get a copy through official means because it is dangerous. One judge told me he would be jeopardizing his own standing in the system if he makes such a request himself.

The Mosireen Collective is another archiving initiative that was born in 2011, long before the current battle over the digital space and audiovisual content became visible. Their website is currently inaccessible, but, on their YouTube page, they define themselves as: “a non-profit media collective born out of the explosion of citizen journalism and cultural activism in Egypt during the revolution.”²⁹²

As early as February of 2011, Mosireen volunteers came together and created the collective after the military dispersed its first sit-in in *Tahrir* square. Seven years later, in 2018, the collective launched “858,” a visual archive of 858 hours of raw footage covering different events and testimonies starting 2011. They called it “An Archive of Resistance” and wrote on the homepage: “It is one collection of memories, one set of tools we can all use to fight the narratives of the counter-revolution, to pry loose the state’s grip on history, to keep building new histories for the future.”²⁹³

And it is precisely this complex connection of “building histories for the future” that drives the state’s campaign and the modes of resistance to it into the field of memory.

²⁹¹ Kazeboon, <http://www.kazeboon.com/>.

²⁹² Mosireen Collective, MOSIREEN YOUTUBE, <https://www.youtube.com/user/Mosireen/about>.

²⁹³ Mosireen Collective, 858: AN ARCHIVE OF RESISTENCE 858 (2018), <https://858.ma/>.

In an interview with Mada Masr, where everyone had pseudonyms for security reasons, one of the collective's members elaborated further on this delineation between future and memory:

One of the questions is, when do you stop working on the past and start working on the future? But also, as a person, everything that makes who you are is about your past, or your memory of it, and if you take that away, you are kind of made of nothing. And so, it is incalculable what the archive can do, and it is incalculable what the harm might be from not having that kind of basis in your own past.²⁹⁴

Granted, the construction of archives, including 858, is often highly political. Surfing the platform, it is clear that there is more focus on certain events than others. And even though the creators of the archive did their best to not impose a narrative on the footage, the mere act of selection, filtering and deciding on what gets to be seen and what does not is constitutive of meaning.

858, with its bigger focus on the pre-2013 events, constructs memory of the potential of resistance and commemorates the power of action. This inserts possibility of change, a promise, into our calculations of the forthcoming. Despite the great violence in the footage of the archive, and the tremendous loss of life, you see the running officers, you remember a fallen government, and you hear chants breaking the silence of everydayness.

WikiThawra is another example of a digital site of memory still standing in the face of the state's campaign to tighten its grip on the digital space. The homepage has a small tagline under the visual identity that reads: "So we do not forget." In the "About" page, the initiative identifies itself as: "a documentation of the revolution's memory from all trusted sources ... so we do not forget."²⁹⁵

While 858 has the declared aim of preserving the revolution's visual memory, WikiThawra is focused on statistics of violence including the names of the injured and the dead in incidents of political violence starting in 2011 and until mid-2014 with the declared aim of "transitional justice."

²⁹⁴ Mada Masr, *858: Archiving as a tool of resistance: On revolution, non-production and subversive documentation*, MADA MASR, February 11, 2018, <https://madamasr.com/en/2018/02/11/feature/culture/858-archiving-as-a-tool-of-resistance/>.

²⁹⁵ WikiThawra, ABOUT WIKITHAWRA, <https://wikithawra.wordpress.com/aboutwikithawra/>.

There is no other resource available online, or offline to the best of my knowledge, where you can simply read the names of those who died and remember them as members of families (last names). Reading through WikiThawra's sheets can teach you interesting things:

Ayman Mahmoud el-Shafei is a 50-year-old civil engineer from Gharbeya, Tanta. He died from gunshot wounds to the head, the lungs and the liver on August 14, 2013. He had five children.

Abdel Rahman el-Sayed el-Araby Abdel Nabi was a 17-year-old secondary school student at the same school my brother went to in Port Said. He died from a head injury caused by the falling of a piece of marble on his head from above in the vicinity of Port Said's security directorate on March 3, 2013.

Sameh Gerges Fekry is a 29-year-old interior design worker from Suhag. He died in the vicinity of Maspero on October 9, 2011. He was runover, probably by a military vehicle like many who died that night. He was a brother to 7 sisters.

Zakeya Abdel Qased Mohamed Elewa was from Manshyet Nasser, Cairo. She was a mother of five and a grandmother. She was runover by a central security vehicle on January 28, 2011 which fractured her skull and killed her.

WikiThawra constructs the image of the menace, the price to be paid. But it also introduces a potentiality of freedom with its emphasis on transitional justice. The archive presents itself as forensic evidence that can never be perceived as useful unless the promise of resistance is fulfilled. In news and human rights reports, deaths are usually reduced to a single collective number. WikiThawra goes into numeration as a deliberate act of humanization— giving each count a full name, a geographical location, a cause and a time of death, a family. In WikiThawra, the *face* of resistance created by 858 is given a *name*. With a face and a name, the *what* is given a *who*.

Battles of memory and storytelling are not just an exercise of agency in the present, they use the same logic of law's memory narratives to adjust the field of possibilities by ensuring bygone events are remembered for their potential for rupture. Introducing a series about archiving, Mada Masr writers explain to their readers the choice of the topic:

The allure of the past in terms of how it speaks to the present and future is certainly not new, though a strong desire to preserve, resurrect, document, narrate and retell often follows moments of political upheaval. This has been compounded in Egypt by lack of access to official archives (often hidden away in government buildings), and the blatant co-option of memory by the state, rendering the archive an *attractive battlefield*.²⁹⁶

²⁹⁶ Mada Masr, SERIES: THE ARCHIVE AS A BATTLEFRONT MADA MASR (2018), <https://madamasr.com/en/2018/05/14/feature/culture/series-the-archive-as-a-battlefront/>. (Emphasis added).