2-1-2014

Film censorship in Egypt: power and subject-making

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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

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ABSTRACT

This study's focus is censorship on film in Egypt from 1971 onwards; when the first sign of incorporating religion as a source of law appeared with the addition of article 2, which states that "Islamic Shari'a is a main source of legislation." Film is the most culturally powerful artistic medium in the Egyptian society due its mass consumption and has, from its point of introduction, served as a mirror into Egyptian politics and morality. Foucault's mission of understanding how "subjectivity" forms and the power relations/modes that bring it about is a lens through which this project intends to examine the dynamic of artists, artistic material and their relationship to different power mechanisms in Egypt as they induce subjectivity. This study argues that the Egyptian state operates within a certain power dynamic that has allowed the freezing of a moral framework, which began in the 1970s. This framework began with a constitutional makeup that intended to and was successful in making a specific moral and religious ideal permanent, allowing it to permeate Egyptian society, and which can be traced through observing censorship of film. This dynamic has resulted in a peculiar reaction from artists and intellectuals, along with the public, who, holding on to a moral archetype that needs to be protected by the state, have accepted the concept of censorship to varying degrees, and have all at one point deemed it somehow necessary rather than revolted against it.

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Introduction

The very notion of the state defining what constitutes art, and judging what is obscene, immoral or socially unacceptable within it, is one that has been philosophized, broken down and, in several instances, resolved by the law and society. One of the main access points in understanding a society's ideas about itself, and what it deems immoral, obscene or valuable, is censorship on artistic material.

The definition of a censor is "a person who examines books, movies, letters, etc., and removes things that are considered to be offensive, immoral, harmful to society, etc."[1] Censorship of artistic material has been widely practiced and employed by the state and other agencies throughout history for different political and ideological reasons. States that are now considered to be relatively progressive in terms of censorship had to process legal cases and form a body of jurisprudence on the matter to reach this, arguably imperfect, stage. In the US, for instance, hundreds of books were banned because their content was considered obscene, starting from John Cleland's *Fanny Hill* in 1749,[2] to Voltaire's critically hailed satire, *Candide*, in 1930,[3] to D. H. Lawrence's *Lady Chatterley's Lover*, which "was the object of numerous obscenity trials in both the UK and the United States up into the 1960s."[4]

The focus of this study is, specifically, censorship on film in Egypt from 1971 onwards; when the first sign of incorporating religion as a source of law appeared with the addition of article 2, which states that "Islamic Shari'a is a main source of legislation." One of the reasons for choosing film as a focus point in this project is the evolution of laws and regulations on such an influential and powerful medium. Due to the wide reach of cinema and its high consumption among Egyptians, there stemmed a need for regulation to establish control over what can be viewed or expressed through film. The social makeup of the Egyptian state resulted in a fundamentally different dynamic from other models (such as the US, for instance) that preserved censorship in a different form and on a distinct pedestal. This dynamic shifted under different ruling systems, from King Farouk and British occupation, and

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[1] "Censor." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 10 Mar. 2014. <http://www.merriam-webster.com/dictionary/censor>.
[2] Banned Books Online, *available at*: http://onlinebooks.library.upenn.edu/banned-books.html.
[3] *Id.*
[4] *Id*.

their effects in Egyptian public life, to Gamal Abdel Nasser and the post-1952 revolution era. However, there is continuity between the ideologies and social influences introduced in the 1970s under Sadat's regime and the ones upheld by the most recent governments and social institutions.

This paper focuses on analyzing censorship and its social and legal drivers from the 1970s onwards, in a way that this continuity can be traced and studied. The introduction of article 2 in the 1971 constitution has led to major changes in Egyptian jurisprudence, the interpretation of relevant social values and the individual rights associated with them. This will be analyzed throughout this paper, along with the peculiar dynamic the state holds with its subjects, which has led to the preservation of the concept of censorship. I use the word "subjects" in a Foucauldian sense, whereby this task of identifying with, developing and being oneself is what Foucault calls "care for the self," and where he "defines our 'subjectivity' as what we make of ourselves when we do devote ourselves to taking care of ourselves."[5] The key problem to which Foucault devoted himself is an investigation into the historical ontology of the Western reason "of the constitutive relations between the operation of power relations, the production of knowledge, and ways of relating ethically to oneself and others."[6] His mission of understanding how "subjectivity" forms and the power relations/modes that bring it about is a lens through which this project intends to examine the dynamic of artists, artistic material and their relationship to different power mechanisms in Egypt as they induce subjectivity.

Through the abovementioned analysis, I argue that the Egyptian state operates within a certain power dynamic that has allowed the freezing of a moral framework, which began in the 1970s. This framework began with a constitutional makeup that intended to and was successful in making a specific moral and religious ideal permanent, allowing it to permeate Egyptian society, and which can be traced through observing censorship of film. This dynamic has resulted in a peculiar reaction from artists and intellectuals, along with the public, who, holding on to a moral archetype that needs to be protected by the state, have accepted the concept of censorship to varying degrees, and have all at one point deemed it somehow necessary rather than revolted against it.

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[5] DIANNA TAYLOR, MICHEL FOUCAULT: KEY CONCEPTS, 128 (Acumen 2010) (2010).
[6] Roger Deacon, *Strategies of Governance Michel Foucault on Power*, *92 JOURNAL OF SOCIAL AND POLITICAL THEORY* 113, 113-148 (1998).

It is important to position this paper among the literature already written on the topic of film censorship in Egypt. The conclusions that have been drawn and the focus of existing critique are crucial for analyzing the framework and narratives surrounding censorship, in order to better explain the points made by this paper. However, that said, there is not an abundance of literature on the topic of censorship in Egypt, and the body of work that exists has largely chosen to dryly document laws or facts rather than analyze issues that would contextualize censorship. There are a number of key works that I will discuss, some for the relevance and significance of their authors to the film industry or the institutions of censorship, and others because of their contribution to archiving the history. A number of works help in cementing the arguments made by this paper and so are important to review. However, overall, the choice to review these particular works is both due to the scarcity of sources on the topic, and the aim of this paper to encompass almost all works relevant to the subject.

In some key works, the existence of censorship is accepted as a necessary function of the state, but in a way in which its mechanisms and its motives are questioned. For instance, Amal Fouad Erian starts her book *Sultat Al-Cinema, Sultat Al-Reqaba* (Authority of Cinema, Authority of Censorship)[7] with the fundamental question of whether censorship is in place to protect a political system, or if it genuinely exists for the purpose of protecting "authentic" creations.[8] The idea of protecting good versus bad art is reflected throughout the critique of censorship. The author believes that the fundamental notion of protecting public morality is a legitimate and acceptable purpose in and of itself, but has a problem with its implementation and the genuineness of institutions carrying out that purpose. The same can be said about two other works: *Al-Cinema Wa Al-Sulta* (Cinema and Power) by Mohamed Salah Al-Din and *Al-Reqaba 'Ala Al-Intag Al-Fikry* (Censorship on Intellectual Production) by Hasna' Mahgoub.[9] Salah Al-Din's book includes an introduction that asserts the inevitability of a clash between creativity and power.[10] The author sees this clash as a fact that will remain so long as art is created within a

[7] AMAL ERIAN FOUAD, SULTAT AL-CINEMA… SULTAT AL-REQABA (Wekalat Al-Sahafa Al-Arabiya 1999) (1999).
[8] *Id*. at 5.
[9] HASNA' MAHGOUB, AL-RIQABA 'ALA IL-INTAG IL-FIKRY FI MISR 37, (Al-Araby lil Nashr wal-Tawzi' 1998) (1998).
[10] MOHAMED SALAH AL-DIN, AL-CINEMA WAL-SULTA (Maktabit Madbuli 1996) (1996).

society, given its natural power structures, and argues that only in a vacuum can this clash be avoided.

The authors then continue to offer either a history of censorship, pinpointing when the practice began in Egypt with censoring prints and theater in the 19th century, or a case-by-case account of key incidents where film clashed with the authorities in an anecdotal fashion. Beyond the introduction, the books contain very little analysis, and are mostly historical breakdowns of the laws and decisions pertaining to censorship. In the aforementioned works, the opinions provided pertaining to the function and purpose of censorship are accepting of the process, and the authors' questions revolve around its administration rather than its existence altogether.

Another approach taken by writers on the topic is pure and dry historical documentation of the laws or the practical evolution of the process. Writers such as Samir Farid, in his text *Tareekh Al-Reqaba 'Ala Al-Cinema Fi Misr* (History of Film Censorship in Egypt),[11] do not attempt to adopt an opinion on the topic. The book is a historical account of film censorship beginning with its origins with theater and moving through key incidents of film censorship from the 1930s to 2001. Farid does not criticize censorship nor does he praise it; instead, he simply recounts the story. The author gives a detailed picture of the law and its social surroundings, from articles written for or against censorship by filmmakers and critics, to incidents where there was public outcry for or against the screening of certain films.

Following a similar path comes Mahmoud Ali's book *Ma'at 'Am Min Al-Reqaba 'Ala Al-Cinema Fi Misr* (One Hundred Years of Film Censorship in Egypt).[12] It is, also, a historical analysis of the law, from its inception to its current form, and of the structure of the institution of censorship. The author includes what he considers to be significant instances of censorship, for which he provides court cases, detailed reports with required edits from the Ministry of Culture, as well as concurrent opinions, to give a comprehensive depiction of the history of film censorship. The same author also provides us with a three-volume legal encyclopedia that contains comprehensive documentation of all legislation pertaining to the film industry. It is not, however, specifically about censorship and contains a few cases that could be relevant, but are not central to the literature on censorship.

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[11] SAMIR FARID, TAREEKH AL-RIQABA 'ALA AL-CINEMA FI MISR (Al-Maktab Al-Masry li Tawzi' al-Matbou'at 2002) (2002).

[12] MAHMOUD ALI, MA'AT 'AM MIN AL-RIQABA 'ALA AL-CINEMA AL-MISREYA 42 (Al-Magles Al-'A'la lil Thaqafa 2008) (2008).

After having presented the main works that constitute the literature on film censorship in Egypt, I would like to position this project among them to shed light on where it stands in terms of the discourse surrounding censorship. My project is not an attempt at documentation — I do not aim to provide an exhaustive description of the history of the institution or the notion of censorship, nor do I offer a comprehensive report of the laws pertaining to censorship. My paper, however, differs from the existing literature in that it acknowledges the presence of a documented history of the process, and moves on from this step into analysis. This paper attempts to analyze the power modes surrounding censorship, what drives it and what preserves its permanence. Rather than just look closely at the incidentals without providing an analysis of the drivers for censorship, it aims to examine the dynamic between the state and its subjects. In doing so, it attempts to provide a more abstract analysis of the notion of censorship and its place in Egyptian society in terms of law, the progression of art and its entanglement with religion and morality.

In the first chapter, a brief history of the laws of censorship and its evolution to the form it currently takes is established. A breakdown of the different stages of censorship on film, from the very first stages to the final ones, is also provided, in order to paint a vivid picture of the criteria and standards the state upholds when judging artistic material. The chapter then gives an account of existing legislation on censorship, the constitutional texts and relevant jurisprudence that demonstrate the state's stance and approach towards censorship, as well as the role of artistic material as exemplified by film.

The second chapter provides the theoretical framework through which this paper analyzes the modes of power at work in relation to censorship. I adopt the Foucauldian model of bio-power to elucidate the overarching dynamic in which censorship operates in Egypt, and which also largely explains the jurisprudence, legal theory and societal reactions surrounding censorship. It also provides an explanation for the peculiarity of the Egyptian model, which will be juxtaposed with two other models (the Iranian and the American) at a later stage. This power model, as explained through Foucault, allows for an understanding Egypt's particular model of constitutionalism, as well as how this model aids the preservation of censorship as a state function.

Following this, the third chapter consists of a detailed analysis of Egyptian constitutionalism and the standard of public policy, which demonstrates the state's

role as a moral agent, whose jurisdiction extends from religious freedoms to rights pertaining to artistic expression. The fourth and final chapter concludes with a comparison between the Egyptian model and the Iranian and American ones. It is a reiteration of the aforementioned point regarding the subsequent involvement of artists and intellectuals in complicity with the state, to preserve its role as an agent of morality.

I. History of Censorship and the Sources of the Law

There is a necessary distinction to be made within the laws that govern the broadcasting of film material, in that there are laws that regulate the logistics of screenings, such as the licensing of venues to screen films and the consequential penalties, and there are regulations that deal directly with the content of the artwork itself. Both forms are relevant to this project and will be discussed, however, I am more concerned with the latter form of regulation, which is censorship. In the first section, I will examine the existing legislation on censorship by which the bodies administering censorship on film operate and will trace the evolution of these bodies from the first introduction of the concept of censorship over artistic material to its current institutional form. This allows the reader to better understand the position of the concept of censorship from a legal and technical viewpoint before discussing the social and theoretical aspects of the concept. I will then go through the reinforcements of or limits on censorship through the most recent constitutions to present the general rhetoric of the state on censorship.

A. Legislation on Censorship

Under the rule of Khedive Ismail, theater bands and performances increased exponentially after the construction of the Cairo Opera House and other public theaters surrounding it in Ezbekeyya district.[13] This is when theater as an art form began an intertwined relationship with Egyptian society and politics, and heavily influenced public opinion, specifically in regards to political issues concurrent with the flourishing of the Urabi revolt against the government and foreign interference.[14] The state then realized the importance of controlling content. Consequently, theater and publications fell under the auspices of state censorship, and the first law regulating printed material was pronounced in November 1881 (and was later amended to include supervision of film in 1904),[15] to monitor newspapers and flyers with political content. Censorship was especially stringent on theaters, and hundreds

[13] FOUAD, *supra* note 7, at 30.
[14] *Id*. at 31.
[15] FARID, *supra* note 11, at 6.

of plays with negative religious or political connotations were subject to editing and banning. This process was mainly in the hands of the ruler, regardless of existing codification.[16] In 1909, for example, the Ministry of Interior (MOI) banned a play that was based on the Denshawai incident.[17] The incident that took place in the village of Denshawai, in which a dispute erupted between British soldiers and Egyptian villagers that resulted in the shooting of an Egyptian woman and the summary executions of a few Egyptian villagers by the state, is considered a nationalistic turning point in the history of Egyptian resistance against British occupation.[18] Another example is the banning of a play (also by the MOI) entitled *Shuhada' Al-Wattaniya* (Martyrs of Patriotism), by Zaki Mabru,[19] an Arabic adaptation of Victorian Sardou's *La Patrie*, and the interception of the play *Fi Sabil Al-Istiqlal* (For the Sake of Independence) by Ibrahim Salim Al-Najjar. In such cases, the state arbitrarily censored or banned plays with content "capable of inflaming nationalist feelings."[20]

The case did not differ with the introduction of film as a new form of expression. Film was first introduced to Egypt in January 1896, with the screening of the Lumière brothers' first film in prestigious cafes around Alexandria. This was followed shortly by the introduction of film equipment and the dispatching of cameramen to Alexandria by the Lumière brothers to shoot material for their documentaries.[21] European communities and Italian companies in Alexandria followed suit and started producing their own documentaries,[22] which were simple moving photographs of events, and included little storytelling.

Film remained practically outside the reach of censorship, as it was yet to have a large influence on the cultural scene that it does today. Regardless of the amount of influence this new form of art possessed, most laws regarding film, including the amendment of 1904, was to regulate theaters and screening venues in terms of permits, and penalties regarding disturbance of public order. Censorship of content

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[16] *Id.*
[17] GAREEDAT WADI AL NIL, December 15, 1909, at 2.
[18] Kimberly Luke, *Order or Justice: The Denshawai Incident and British Imperialism*, 5 HISTORY COMPASS, 278 – 287 (2007).
[19] MOHAMED MUSTAFA BADAWI, EARLY ARABIC DRAMA, 66 (Cambridge University Press 1988) (1988).
[20] *Id*.
[21] FOUAD, *supra* note 7, at 11.
[22] *The Early Years of Documentaries and Short Films in Egypt, available at* http://www.bibalex.org/alexcinema/films/Early_Films.html.

mostly applied to theatrical plays, where scripts were submitted for review long before the production came to life.[23] This was based on a meeting in December 1909, when theater owners were warned by the state that no script could be acted out or viewed by an audience without it obtaining a license from the governorate beforehand.[24] The list of regulations for theaters issued by the Ministry of Interior in July 1911, however, included some articles, such as article 10, that required the review of topics or "scenes" in films that could potentially disturb public morals.[25] The article states that the police had the right to ban shows, and even shut down the theater, if "scenes, personifications or gatherings are against public morals and order."[26] However, the limited provisions relevant to the content of films could not be implemented in practice, as the programs of screenings changed at a very frequent pace on a daily basis.[27]

Attention to the content of film started by the end of World War I (WWI) when *Al-Qesm Al-Fanny* (The Art Department),[28] under the auspices of the MOI, was created to censor film reels, which were categorized as publications. Publications also included newspapers, flyers and music records. A unified censorship law was enacted for a short period of time in 1928 on film and books, but eventually the 1881 and 1928 laws on publications were regarded as obsolete and were abolished altogether in 1931.[29] Censorship then came under the auspices of the Ministry of Social Affairs (MSA) in 1936, when the ministry adopted the mission of promoting social values and elevating of the quality of artistic and media outlets.[30]

This control over film by the MSA was short-lived, as censorship then moved back again under the jurisdiction of the MOI during World War II (WWII), and a number of ministerial decrees were issued between 1939 and 1944 to tighten control over media outlets and artworks. Censorship came specifically under the Office for Protecting Public Morals[31] in the MOI, where one of its missions, as articulated by a ministerial decree that came out in 1940 to define its role, was supervision on cinema

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[23] *Id*.
[24] *Supra* note 16.
[25] *Id*.
[26] Arabic Original: المكتب الفني في وزارة الداخلية: ممنوع ما كان من المناظر أو تحت المادة العاشرة من لائحة التياترات التشخيص, أو الاجتماعات مخالفاً للنظام و الاداب و للبوليس الحق في منع ما كان من هذا القبيل و إقفال التياترو عند الاقتضاء
[27] *Id*.
[28] Arabic Original: القسم الفني
[29] Tashreaat Database, *available at*: http://private.tashreaat.com/private/view_leg.aspx?id=287&flag=1.
[30] ALI, *supra* note 12, at 71.
[31] Arabic Original: مكتب حماية الاداب العامة

and theater.[32] There was a long feud between the two ministries over censorship, until another decree from the ministerial cabinet gave both ministries jurisdiction over regulation of artistic material, with the Ministry of Social Affairs taking the lead on issues related to censorship. In 1948, when the war in Palestine broke out, censorship was brought back under the jurisdiction of the MOI as a state of emergency was declared.

With the 1952 revolution, and the new government that established itself after King Farouk, regulation of cinema and art was brought under the jurisdiction of the new Ministry of National Guidance, from within which the Ministry of Culture and Media (MOC) was created. This eventually broke off with its own separate role, which still includes film censorship to this day. The developments that came post-1952 included change in legislation, as the first unified law on censorship was passed. In 1955, law no. 430 was enacted to include "film, theater plays, music, photographic slide projectors, monologues, music records and cassette tapes under state censorship, with the intention of protecting public morals and decency and preserving public order and the higher interests of the state."[33]

Here, the state also took interest in the mental and moral development of the population and assumed the role of preserving social values. The law gave extensive power to the state over all forms of artistic expression, as it was the intention of the law to protect public decency along with public order, two abstract concepts that can only be defined circumstantially and by the state's own apparatuses. There is also an explanatory memorandum[34] annexed to the law to explain the legislature's intentions behind the law. The commentary begins with iterating concern over the decline in public taste in music, monologues and films, and the task that the ministry took upon itself to elevate the quality of artistic output and to preserve the sanctity of familial values that are entrenched within Egyptian society.[35] The law was later amended by law no. 38 of the year 1992, with more focus on copyright issues. For instance, article 5 of the law now states that only the author of any given work has the right to "exploit

[32] ALI, *supra* note 12, at 73.

[33] Arabic original: المادة ٦ من قانون ١٩٥٥، ١٩٥٥: يخضع رقابة الاشرطة السينمائية و لوحات الفانوس السحري و المسرحيات و المنولوجات و الاغاني و الاشرطة الصوتية و الاسطوانات او ما يماثلها و ذلك بقصد حماية الاداب العامة و المحافظة علي الامن و النضام العام و مصالح الدولة العليا

[34] Arabic original: مذكرة ايضاحية

[35] MAHMOUD ALI, MAUSOO'AT AL-TASHRI'AT AL-CINEMA'EYA- AL-GOZ' AL-THANI 132 (Al-Maglis Al-'A'la lil Thaqafa 2010) (2010).

his/her product financially"[36] and article 47 currently places a financial penalty or a prison sentence on whoever violates rights stipulated by previous articles, such as article 5.[37] The 1992 amendments also widened the scope of law no. 430 and changed article 1 of the law to apply censorship over "audio and audio/visual products, whether it is a live performance, or recorded on a tape, CD or any other technological form of recording, with the purpose of protecting public order and morals and the higher interests of the state."[38]

Law no. 430 of 1955 was followed by ministerial decree no. 163 of the year 1955, which issued a list of executive regulations for the law. These included regulations regarding which offices should be applied to for approval of a film script or how many copies are to be submitted. This list went through several amending ministerial decrees over the years, until it reached its current form in 1993, which is discussed in detail in the following section.

A number of subsequent ministerial decrees were issued to specialize the process of censorship, instead of it being carried out by a minor branch under the Ministry of National Guidance. The first of these is decree no. 91 of the year 1968 that established the Council of Censorship over Artistic Products,[39] which was then expanded by ministerial decree no. 350 of the year 1970 to form the General Administration for Censorship over Artistic Material.[40] This administration later came under the auspices of the new MOC, which was formed through decree no. 350 of the year 1972. Subsequently, the Central Administration for Censorship over Audio and Audio/Visual Products was formed and became the institution responsible for censorship of film, a role that that it still performs today. [41]

B. Coming to Light: The Stages of Censorship

[36] Arabic original: المادة ٥: وله وحده الحق في استغلال مصنفه مالياً، ولا يجوز لغيره مباشرة هذا الحق إلا بعد الحصول على إذن كتابي من صاحب حق الاستغلال المالي للمصنف الأصلي أو خلفائه، ويتضمن الإذن طريقة ونوع ومدة الاستغلال.

[37] Arabic Original: المادة ٤٧: يعاقب بالحبس وبغرامة لا تقل عن خمسة آلاف جنيه ولا تزيد على عشرة آلاف جنيه، أو بإحدى هاتين العقوبتين كل من ارتكب أحد الأفعال الآتية:
أولاً: من اعتدى على حق من حقوق المؤلف المنصوص عليها في المواد : 5 و 6 و 7 من هذا القانون.

[38] المادة الأولى: يستبدل بعبارة (وزير المعارف العمومية) عبارة (وزير الثقافة) أينما وردت في قانون حماية حق المؤلف الصادر بالقانون رقم 354 لسنة 1954 والقرارات المنفذة له. كما يستبدل بعبارتي (وزير الإرشاد القومي) و (وزارة الإرشاد القومي) عبارتا (وزير الثقافة) و (وزارة الثقافة) أينما وردتا في قانون تنظيم الرقابة على الأشرطة السينمائية ولوحات الفانوس السحري والأغاني والمسرحيات والمنولوجات والأسطوانات وأشرطة التسجيل الصوتي رقم 430 لسنة 1955 والقرارات المنفذة له.

[39] Arabic Original: مجلس الرقابة على المصنفات الفنية

[40] Arabic Original: الإدارة العامة للرقابة على المصنفات الفنية

[41] Arabic original: الإدارة المركزية للرقابة على المصنفات الفنية

The function of censorship over artistic products falls under the Supreme Council of Culture[42] under the MOC.[43] From this Council stems six administrations, only one of which is of concern to this paper: the Central Administration for Censorship over Audio and Audio/Visual Products (Central Administration for Censorship). The Central Administration for Censorship then branches out into three General Administrations,[44] one regulating Arabic/foreign films, one regulating theater and music, and the final one regulating advertising material. The first one regulating film is divided into two specialized administrations: one specifically for Arabic language films, and the other is for foreign films. These administrations form randomly selected Committees,[45] which consist of three employees who review each film, from the script-writing stage to the final product, and which change with each film. The Committees are selected from within the employees of the Administration, and there are no specific criteria in place for choosing them. The head of the Central Administration for Censorship has the authority to dissolve the Committee and form a new one if he/she does not approve of its report on the film it reviews.[46]

Egyptian filmmakers are painfully aware of the tedious battle that awaits them with the Committee when they decide to embark on a new project. Even though it is not formally required, writers tend to preemptively submit a summary of their film, in order for the subject itself to be approved and to avoid the wasted effort of writing an entire script that may be rejected at face value.[47] The summary of the film normally consists of a few pages that explain the general plotline, the characters and the issues that the film wishes to discuss or convey to the audience. In some instances, when the subject of the film is considered sensitive in terms of national security, the summary, or even the script itself, might have to pass through the scrutinizing eyes of state security or military intelligence to ensure the film does not pose any threat to the "higher interests of the state." In these situations, it is the Committee that chooses to send the document to the specialized security bodies to free itself of the responsibility of an erroneous judgment on the matter.[48] There are several cases to cite in this regard,

[42] Arabic original:المجلس الأعلى للثقافة
[43] Interview with Ahmed Awad, Former Head of the Central Administration for Censorship. August 24, 2014.
[44]Arabic original: ادارات عامة
[45]Arabic original: لجان
[46] *Supra* note 44.
[47] Interview with Medhat El Adl, script writer and producer. August 27, 2014.
[48] *Id.*

such as the recent conflict over the film *Al-Ra'is Wal Mosheer* (The President and the Field Marshal), which attempts to depict the controversial relationship between former President Gamal Abdel Nasser and Abdel Hakim Amer, his Minister of Defense.[49] Some scripts are also sent to Al-Azhar and the Coptic Orthodox Church to consider their opinion on matters related to religion.[50]

Naturally, a significant number of films get rejected on the basis of this very first stage every year.[51] However, if the Committee (unofficially) approves a film's summary, the filmmaker feels more at ease in continuing to write the script. The formal procedure begins when the writer submits the finished script, which is then reviewed by the Board to ensure that no changes need to be made before shooting begins. A written approval is attached to the script and sent back to the writer, with a list of amendments to the script required by the Committee attached.[52] It is also clarified in writing that said approval is temporary until the final product itself is reviewed.[53] The final product is assessed once again by the Committee, which is then entitled to request even more edits during post-production, and before the film comes out to be viewed by an audience. The Committee also reserves the right to ask for another screening until all edits are finalized and agreed upon by the different parties.

Another potential obstacle still stands in the way of a film even if it has been showing for weeks in public theatres, namely article 9 of the law no. 430 of the year 1955, which allows the Central Administration for Censorship to withdraw the permit for screening a film if, at any given point, circumstances arise that require it to do so.[54] The article states that "the authority responsible for censorship has the right to withdraw any of its prior decisions that previously provided a license to an artwork at any given point in time, if new circumstances arise that would require that it does so. In this case, it has the right to reissue the license after it administers what it sees fit in terms of additions, omissions or amendments without resulting in any fines." This article practically deems any cinematic product to be artistically under the control of

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[49] *Hal Yatahayal Gihaz Al-Riqaba 'Ala Hukm Al-Idareya Al-'Olya bi 'igazat Taswir Film Al-Ra'is wal-Mosheer* (March 11, 2010), *available at* http://afteegypt.org/freedom_creativity/2010/03/11/84-afteegypt.html.
[50] *Supra* note 48.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Arabic original: المادة ٩: يجوز للسلطة القائمة على الرقابة أن تسحب بقرار مسبب الترخيص السابق إصداره في أي وقت إذا طرأت ظروف جديدة تستدعي ذلك ولها في هذه الحالة إعادة الترخيص بالمصنف بعد إجراء ما تراه من حذف أو إضافة أو تعديل دون تحصيل رسوم.

the Central Administration for Censorship at all times, from the moment of its inception to its ongoing screenings throughout the years.

The reports of the Committee's censors on the films they view are quite artistically invasive, as they decide on the order of the scenes, what is to be considered valuable to the artistic worth of the artwork and what should be taken out, if deemed unnecessary in terms of its dramatic placement. One example of the reports issued by the Board is its review of the film *Al-Moznibоun,* (The Sinners, 1976), where the film fell victim to article 9 of the law and its permit was withdrawn. The film is an adaptation of Naguib Mahfouz's novel of the same title, and attempts to paint a picture of the corruption that was insidiously proliferating through Egyptian politics and social fiber. Seventeen weeks after it was first screened, and after winning five national awards, the Minister of Culture formed a committee[55] of "intellectuals" and specialists to review the film. The film's permit was then withdrawn, as it was perceived to be a work of defamation of Egypt that negatively affects the image of expatriate Egyptians and politicians, an act that is within the capacity of the minister, as the Central Administration for Censorship falls under his authority.[56]

Also among the measures that are within the authority of the Board, is the power to disallow the exportation of the film to specific countries. In this case, *Al-Moznibоun* was not allowed to travel to any Arab state, including Sudan and Syria, before the newly required changes had been made. The Board issued an explanatory note detailing its reasons for withdrawing its approval of the film. The note included opinions that alluded to its support of artistic expression of any societal issue, but also rejected the commercial requirements that lead to frivolous works that only reflect a deleterious image of Egypt.[57] Examples of the edits required to renew the film's permit included the removal of any sexual innuendos through dialogue or gestures, such as a suggestive pose. Also, any reference that negatively depicted expatriate Egyptians living in Arab Gulf states was considered offensive, and was required to be cut out as a reaction to the uproar the film triggered within those expatriate communities.[58]

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[55] The committee consisted of prominent figures such as Yusuf Idris which is interesting to note in terms of the relationship between artists and state censorship and will be discussed in more detail at a later section.

[56] ALI, *supra* note 12, at 311.

[57] *Id*., at 312. Arabic original: اننا لا ننكر حق المعالجة الفنية لأي موضوع، إلا أن غلبة الفكر التجاري تؤدي أحياناً إلى معالجة تافهة أو غير عادلة.

[58] *Id*.

Another interesting example of how far the Committee went with its required amendments is the report on the film *Za'ir Al-Fagr* (Visitor of the Dawn, 1973). The film's concept was accepted by the Board, which deals with the rights to privacy and freedom of expression against the backdrop of 1971 Egypt. The Committee, however, had trouble passing the film as it thought its message was not clear enough, and that it delved too ambiguously into ideas that could be related back to the government, with insinuations that could be negatively interpreted. The Board then went on to suggest some changes to the structure of the film, the dialogue and even the genre.[59] Additions were suggested, however, by some of the filmmakers to try and make the film more palatable to the Committee. For instance, producer and leading actress Magda Al-Khatib wrote a letter to the Minister of Culture proposing changes, even adding a clarifying statement to the ending of the film so that no misinterpretation could occur regarding the film's intentions, given that it was seen as perilous to "question the status quo" at that current moment:

> The age of injustice has ended on May 15th, and so has the era of the police state. Those who are honorable have come to light, and a new dawn is upon Egypt. [60]

These invasive opinions and requirements undermine the artistic value of any artwork and completely neutralize the filmmaker's idiosyncratic techniques and vision. It is also worth noting that there is no relevant criteria that regulates the selection of these censors. It is merely a bureaucratic process of appointment that depends on the ladder of employment at the Ministry of Culture.[61] The only position that is considered more carefully during the selection process is that of the head of the Central Administration for Censorship. This post is usually granted to a credible intellectual that would give legitimacy to the Administration, as exemplified in the appointment of Ali Abu Shadi, a prominent and respected film critic, during the late 1990s and until the early 2000s, and writer Naguib Mahfouz in the late 1960s.

It is also noteworthy to understand the amount of freedom, or lack thereof, afforded to the censors on the Committee. The head of the Central Administration has the ultimate authority to pass or reject a film, but there are punitive mechanisms that

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[59] ALI, *supra* note 35, at 358. Arabic original of some of the required edits: ١- حذف جملة "متسيبني بقى احفظ ٥٠ القضية والرقابة تمنعها. صفحة
٢- حذف الحوار بين المحقق ومساعده ص. ٤٠ فهو حوار إنهزامي لا يليق

[60] *Id*., at 362. Arabic original: إنتهى عهد الظلام وانتهت مراكز القوى في ١٥ مايو وتنفس الناس الصعداء وأشرق على مصر فجر يوم جديد.

[61] *Supra* note 44.

can be used against the censors or the head of the Central Administration, if they are seen as having erred in their judgment. In the previously mentioned case of *Al-Mozniboun*, the censors — including the head of the Central Administration at the time, I'tidal Momtaz — were fined by the Supreme Disciplinary Court of the State Council, as a penalty for initially issuing a permit to a film that caused such an uproar and was deemed morally questionable in relation to society's values and perceptions of decency.[62] This act of approval was considered a betrayal to their nationalistic role of protecting public morals.

A Grievances Committee exists within the ministry as a channel for filmmakers to petition the decisions of the Committee. The binding nature of the Grievances Committee's decisions was challenged by the Central Administration for Censorship but was then affirmed in the Supreme Administrative Court's decision in 1991 regarding the film *Darb Al-Hawa*. In this instance, the court deemed the Grievances Committee a governmental body with a judicial appellate role, rendering its decisions binding, as opposed to the Central Administration's earlier claim that the committee's decisions are of a merely consultative nature.[63]

As for the guidelines for judging content, a list of executive regulations, which was mentioned earlier, is the current reference used by the Committee to this day.[64] The list was issued by the Egyptian Cabinet as decision no. 162 of the year 1993, and contains instructions that pertain to the duties of the Committee, including, for example, the need to provide the applicant (for the permit to screen his/her work) with written reasons for rejection.[65] The list also contains four types of content that are not permissible under any circumstances, according to article 8:

1. Promoting atheism or offending the three monotheistic religions: Islam, Christianity and Judaism.
2. Depiction of sinful acts in a way that would encourage their practice.

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[62] ALI, *supra* note 35, at 319.
[63] *Id*. at 337.
[64] *Supra* note 44.
[65] Cabinet Decision 162/1993, *available at* http://goo.gl/AgYF7y. Arabic original:
ولا يجوز على وجه الخصوص الترخيص بأي مصنف إذا تضمن أمراً من الأمور الآتية:
1 الدعوات الإلحادية والتعريض بالأديان السماوية.
2 تصوير أو عرض أعمال الرذيلة أو تعاطي المخدرات على نحو يشجع على محاكاة فاعليها.
3 المشاهد الجنسية المثيرة وما يخدش الحياء والعبارات والإشارات البذيئة.
4 عرض الجريمة بطريقة تثير العطف أو تغري بالتقليد أو تضفي هالة من البطولة على المجرم.

3. Explicit sex scenes or anything that could offend modesty, such as profane language or gestures.
4. Depiction of crime in a way that would garner sympathy for the criminal, encourage imitation or portray him/her as a hero.

The Board then judges a work based on these criteria and automatically requires editing out any of the above content, regardless of its use for the film as a whole.

This concludes the formal process of censorship by the appointed body, and details the technical stages a film has to go through in order to be screened. It is imperative to understand the judicial trajectory of issues related to censorship on film, as this reflects not only the state's view, but also that of the different societal factions on the value of censorship and art in general.

C. The Constitution on Censorship

A question that has accompanied this project from its inception is the relevance of constitutional jurisprudence to ideas related to censorship. In other words, have our constitutions and courts aided, justified or battled censorship? One would assume the very concept of censorship had already been processed and dealt with in the Supreme Constitutional Court (SCC), given the nature of the question and how it is conceptually in opposition to several constitutionally guaranteed rights. However, the question of the constitutionality of law no. 430 of 1955 never actually reached the SCC. Cases related to censorship that were dealt with by the SCC have had very little to do discussing the abstract and general legitimacy of the concept of censorship, and will be examined shortly. Before doing so, however, an examination of the constitutional articles that are directly relevant to censorship must be conducted in order to answer the question of the law's constitutionality.

1. Constitutional Texts

Egyptian constitutions have always formally guaranteed the right to freedom of expression, "within the parameters of the law." Unlike the US or the UK, there is no differentiation between artistic or obscene material and no form of expression is

practically protected by the constitution from different practices and institutions of censorship, up until the 2014 amendments of the 2013 constitution. To take the 1971 constitution as an example, freedom of expression and opinion is mentioned in general without specific reference to artistic material, and no case law seems to indicate that articles guaranteeing freedom of expression specifically protect artistic material. Article 47 states that "freedom of opinion is guaranteed. Every individual has the right to express his/her opinion and to disseminate it verbally, in writing, illustration or by other means within the limits of the law. Self-criticism and constructive criticism is a guarantee for the safety of the national structure."[66]

The parameters of the law have always been used throughout Egypt's constitutions to linguistically implement limits to freedoms. The language of all constitutions has put freedom of expression — which artistic creations are categorized under — within the framework of, but not constitutionally above, changeable legislation. In article 48, "freedom of the press, printing, publication and mass media shall be guaranteed. Censorship on newspapers is forbidden. Warning, suspension or abolition of newspapers by administrative means is prohibited. However, in case of a declared state of emergency or in time of war, limited censorship may be imposed on newspapers, publications and mass media in matters related to public safety or for purposes of national security in accordance with the law."[67] Censorship on newspapers, specifically, is expressly forbidden. The assumption is that the 1971 constitution attempted to leave space for outlets of expression related mostly to political matters, which, as prophesized by the following part of the article, was practically void after emergency law legislation was reenacted in 1981.

Censorship of other forms of expression, which could affect the moral makeup of society, was never forbidden or viewed in a negative light. The 2013 amended constitution, however, is more specific in its clear reference to artistic material and its protection from censorship. Article 67, which is titled "artistic and literary creation," is a largely altered approach from the complete absence of reference to artistic material in previous constitutions:[68]

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[66] EGY CONST. 1971, art. 47. Trans. *available at* http://www.sis.gov.eg/En/Templates/Articles/tmpArticles.aspx?CatID=208#.Ux3VfBlVTbg.
[67] *Id*. at art. 48.
[68] EGY CONST. 2013, art. 67. Trans. *available at* http://www.atlanticcouncil.org/images/publications/20131206EgyptConstitution_Dec.pdf.pdf.

> Freedom of artistic and literary creation is guaranteed. The state shall undertake to promote art and literature, sponsor creators and protect their creations, and provide the necessary means of encouragement to achieve this end.

The article asserts the state's role in promoting a social virtue, namely artistic and literary creation. It views art as a functional part of society that needs to be encouraged and protected, in a way where the state is taking interest in the mental wellbeing and development of the population. There are other factors to be considered in terms of intentionality, however, such as the need to stand in the face of Islamic movements in reaction to the recent clashes between the state and Islamists. There has been pressure from intellectuals on the state to show signs progressiveness in terms of art to prove that it is against the Islamization of the state.

The second part of the article discusses the legal trajectory of censorship, and stipulates who can practice it over artistic material. The article reserves this right to the state and removes the mechanisms by which the public can bring a case against an artistic product:

> No lawsuits may be initiated or filed to suspend or confiscate any artistic, literary, or intellectual work, or against their creators except through the public prosecution. No punishments of custodial sanction may be imposed for crimes committed because of the public nature of the artistic, literary or intellectual product.

Public prosecution is the only route for a case to be brought against the content of an artistic product, and no artist should face a custodial penalty as a result of showing content that the court deems as inappropriate for public viewing. It is interesting to note the similarity between this article and the state's decision on the once existent and functional "*hisba*" law, law no. 3 of 1996, which allowed for any citizen to bring cases against individuals in relation to personal status law. This law has been used against intellectuals and writers to censor and confiscate their work, whereby it allows citizens to file charges of apostasy and blasphemy against other citizens. The most prominent *hisba*-related case was the Court of Cassation ruling that deemed Nasr Hamid Abu Zayd an apostate in 1996, in reaction to his work on hermeneutics and the Qur'an. Intellectuals and artists have long called for the abolishment of the *hisba* law, as it gives power to certain ideas over others, and confines them to the boundaries of

decency and religiosity, which are decided on by the state.[69] *Hisba* law was then amended after the Abu Zayd case to limit cases only to those brought through the public prosecutor, and not through individual citizens that have no standing.[70] The most recent constitution then removes the same mechanisms that enable citizens to fight artists on the value of their work. This article can be interpreted as the state showing support for the arts, in the sense that it is limiting arbitrary and extremist claims that could weaken the potential of art. However, in doing so, the state is reserving for itself all the mechanisms of censorship. In this way, it has the final say on the value of the artwork, and its practices of censorship are also quite arbitrary and demanding.

The last part of the article specifies that incitement to violence and discrimination will not be considered among the protected content of any artistic product, which implies that an artist can face any type of penalty, even custodial sanctions, as later defined by the parameters of the law:

> The law shall specify the penalties for crimes related to the incitement of violence, discrimination between citizens, or impugning the honor of individuals. In such cases, the court may force the sentenced to pay punitive compensation to the party aggrieved by the crime, in addition to the original compensations due to him for the damages it caused him. All the foregoing takes place in accordance with the law.

In terms of constitutional text, the legal mechanisms of censorship have been solely granted to the state, and what the state decides should be worth the process of examining for censorship.

As mentioned earlier, the cases that do reach the constitutional court have little to do with the constitutionality of the law on censorship, and more to do with regulatory articles, such as case no. 42 of the constitutional judicial year 19, which was decided upon on the 7th of February, 1998.[71] The case revolved around the constitutionality of article 15 of law no. 430, which stipulates a penalty of no less than EGP5,000 and no more than EGP10,000 and/or a prison sentence of no more than two

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[69] *Thawrat Al-Mothaqafeen 'Ala "Tugar Al-Hisba" Tafdah Tawato' Al-Hukuma Ma'a Al-Tayarat Al-Rag'eya*, AL- YOUM AL-SABI' (14 May 2010), *available at* http://www1.youm7.com/News.asp?NewsID=226086.

[70] Mauritis S. Berger, *Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts*, 25 HUM RIGHTS QUART 720, 722 (2003).

[71] The official gazette, 19 February 1998, issue 8.

years upon the violation of article 2 of the same law.[72] Article 2 deemed illegal any of the following acts[73]:

1. Unauthorized recording or filming of an art product with the intention of commercial exploitation.
2. Unauthorized performance, screening or broadcasting of an art product.

The part in article 15 that is in question is the fact that the financial penalty cannot be suspended, which was eventually deemed by the Constitutional Court as unconstitutional.

There seems to be more jurisprudential focus on regulatory articles rather than the very concept of censorship, and this focus is also reflected in what the public and filmmakers deem worthy of questioning and bringing to the court. If anything, there are cases brought to the court by the public calling for more stringent censorship which led to the aforementioned constitutional amendments of article 67 (refer to page 27).

There is the self-evident question about the public's sentiments toward censorship on film. What is meant by the public here is those factions of society that fall between the state or individuals that make up the state, and the bloc of filmmakers, artists or intellectuals that are naturally expected to have opinions and reactions on the role and limits of censorship. There are no indications that there is strong opposition to the concept of censorship, or even a strong dialogue about the issue. There seems to be an acceptance of the concept, and even a call for a more focused direction on the part of the Board in what it chooses to censor. These reflections on the trends of censorship, and the type of content that is perceived as offensive or obscene, differ from one socio-economic level to another. The normal trajectory for citizens attempting to influence decisions made by the state on the content of film was through claims brought before the Administrative Courts.

2. The Case of *Bahib Al-Cima*

[72] Arabic original: المادة ١٥: يعاقب كل من صور شريطاً سينمائياً بقصد الإستغلال بدون ترخيص بالحبس مدة لا تقل عن شهر ولا تزيد عن ستة أشهر وبغرامة لا تقل عن مأتي جنيه ولا تزيد على خمسمائة جنيه أو بإحدى هاتين العقوبتين.

[73] Arabic original:
مادة ٢: لا يجوز بغير ترخيص من وزارة الارشاد القومي:
أولاً: تصوير الأشرطة السينمائية بقصد الاستغلال.
ثانياً: تسجيل المسرحيات أو الأغاني أو المونولوجات أو ما يماثلها بقصد الاستغلال.
ثالثاً: عرض الأشرطة السينمائية أو لوحات الفانوس السحري أو ما يماثلها في مكان عام.

One prominent example of this situation would be the case of *Bahib Al-Cima* (I Love Cinema, 2004),[74] where seven Coptic citizens brought claims before the court regarding the film's allegedly offensive depiction of the Egyptian Coptic community. The claimants saw that the film was deliberately conveying a negative image of the Egyptian Christian community and intentionally excluding some denominations of the Christian faith that exist in Egypt to give a distorted image of the Christian demographic. They also had problems with the depiction of the main character as a prim Christian with extremist ideas that, the film implies, led to his wife committing adultery. They believe the film should portray Christianity in its normalcy and in moderation, arguing that the film's message, as it stands, is ambiguous and does not reflect well on their faith. The idea of a film or an artwork depicting an unfiltered, harsh reality, an anomaly or a state of extremism without necessarily having a moral message to convey is not conceivable to many, including the state, which still judges artistic products based on their moral value. The court goes on to defend the film and its value as a portrayal of an Egyptian family against a backdrop of significant political, social and economic issues, where all elements of the film come together perfectly to deliver the meaning intended by the filmmakers. It supports the decision of the Board in letting such a valuable project come to light, and eventually rejects the claims brought against the film. Similar claims appeared continuously against artistic products in all their forms, and, as mentioned in a previous section, the most recent constitution of 2013 has closed the door on this mechanism, a step perceived as victorious by the artistic and intellectual communities.

3. The Case of *Darb Al-Hawa*

The SCC has never formally answered the question of the constitutionality of the law no. 430 of 1955. However, other court cases give us an idea of how the law is argued to be constitutional. Firstly, the most recent constitutional texts do not at any point protect artworks from censorship. However, articles that guarantee the right to freedom of expression can be used to back up a claim about the unconstitutionality of the law.

There are, nevertheless, other articles that strongly limit freedoms provided by

[74] Mahkamat Al- Qada' Al- Idary, Case no. 26899 of Judicial Year 58, *available at* http://qadaya.net/?p=4476.

the constitution. In appeal no. 1007 for the judicial year 32 (1991), the Supreme Administrative Court (SAC) heard the case for the film *Darb Al-Hawa* (The Road of Love, 1983)[75] whose permit was withdrawn on the 24th of August, 1983, after a few weeks of screening and it garnering hostile reactions from the public and some members of the filmmaking industry. The SAC decided specifically on the question of whether the decisions of the Grievances Committee were binding to the Board, as it had prescribed some edits to be made to the film to allow the renewal of its screening permit, instead of banning it permanently. The SAC decided in favor of the Grievances Committee, as referenced in an earlier section, and deemed its decisions binding on the Board.

The relevant section of the SAC's decision to the current question, however, was the SAC's citation of constitutional law regarding the practices of censorship and its importance as a socially indispensable institution. The SAC goes on to cite article 47 of the 1971 constitution on freedom of expression, and the full guarantee of the right of any individual to practice that freedom through any form of media he/she chooses. It also acknowledges the state's obligations toward the international community as per its signing of the Universal Declaration of Human Rights, the provisions of which have become binding customary law, and include the duty of the state to guarantee the right to freedom of expression.

Immediately after citing article 47, followed by a lengthy acclaim for the sanctity of the rights it iterates, the SAC mentioned that there exist limits to the right to freedom of expression that the constitution provides. These limits are embodied by the "provisions" of the constitution, which take the form of article 2 of the constitution that states that the principles of Islamic Shari'a are the main source of legislation. Even though article 47 is also a constitutional provision, the SAC seems to be reaffirming the priority article 2 takes over other constitutional provisions, by virtue of the textual powers given to it as a source of all legislation. The SAC also mentions article 9 of the constitution[76]:

> The family is the basis of the society and is founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family-together with the values and traditions it embodies-while affirming and developing this

[75] Annexed

[76] Arabic original: المادة ٩:
الأسرة أساس المجتمع، قوامها الدين والأخلاق والوطنية.
وتحرص الدولة على الحفاظ على الطابع الأصيل للأسرة المصرية وما يتمثل فيه من قيم وتقاليد، مع تأكيد هذا الطابع وتنميته في العلاقات داخل المجتمع المصري

character in the relations within the Egyptian society.[77]

This is followed by articles 10[78] and 12[79] respectively:

> The State shall guarantee the protection of motherhood and childhood, take care of children and youth and provide suitable conditions for the development of their talents.
>
> Society shall be committed to safeguarding and protecting morals, promoting genuine Egyptian traditions. It shall give due consideration, within the limits of law, to high standards of religious education, moral and national values, historical heritage of the people, scientific facts and public morality. The State is committed to abiding by these principles and promoting them.[80]

The state takes it upon itself to preserve a certain conception of morality that it seems to believe is a permanent and unchanging feature of Egyptian society. Hence, it contributes to its permanent status, by enforcing strict practices to preserve this notion of morality in the face of any societal change or intellectual movements which it deems as alien to whatever culture it decides is Egyptian.

The SAC then explained how the legislature provides freedom in terms of cinematic creativity, but limits it within parameters drawn by the law. These parameters are "the protection of public morals, the preservation of peace and public order and the higher interests of the state. This will mean that any artistic product deviating from these confinements is considered outside of the principal political, economic, social and moral elements that are protected by the constitution, which always transcend, in terms of priority and worthiness of the state's protection, those requirements demanded by individual freedoms."[81] The SAC concluded this statement by requiring individual citizens to strive for protecting the public and collective good

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[77] *Supra* note 67.

[78] Arabic original: المادة ١٠:
تكفل الدولة حماية الأمومة والطفولة، وترعى النشء والشباب، وتوفر لهم الظروف المناسبة لتنمية ملكاتهم.

[79] Arabic original: المادة ١٢:
يلتزم المجتمع برعاية الأخلاق وحمايتها، والتمكين للتقاليد المصرية الأصيلة، وعليه مراعاة المستوى الرفيع للتربية الدينية والقيم الخلقية والوطنية، والتراث التاريخي للشعب، والحقائق العلمية، والسلوك الاشتراكي، والآداب العامة، وذلك في حدود القانون.
وتلتزم الدولة باتباع هذه المبادئ والتمكين لها.

[80] *Supra* note 67.

[81] Arabic original: ومن حيث إن مؤدي هذا التنظيم القانوني أن المشرع قد أطلق حرية الابداع الفني في مجال الفن السينمائي، إلى أنه قيد هذا الاطلاق بحدود بينها القانون على سبيل الحصر هي حماية الأدب العامة، والمحافظة على الأمن، والنظام العام، ومصالح الدولة العليا. بحيث إذا ما خرج المصنف السينمائي عن أحد هذه الحدود عد خارجاً عن المقومات الأساسية الإقتصادية أو الاجتماعية أو الأخلاقية أو السياسية التي يحميها الدستور والتي تعلو وتسمو دائماً في مجال الرعاية والحماية على ما تتطلبه الحرية الفردية الخاصة، اذ لا شك في أنه من المبادئ الرئيسية العامة التي تقوم عليها الدول المتحضرة من الأفراد لتحقيق الغايات والصوالح العامة التي يستهدفونها في نطاق إقليم الدولة وجوب إحترام السلطة العامة وتقديم الصالح العام على الصالح الخاص لأحد الأفراد، إذا وجد تعارض بينهما.

and asserting the state's obligation in supporting the latter in case a conflict arises between individual and collective interests.

From here, it is important to attempt to identify patterns in constitutional jurisprudence, in order to better understand the philosophical drives behind the Egyptian judicial system's decisions in cases related to individual rights, including freedom of expression. Before delving into that, however, there needs to be an analysis of the wider power dynamic that is conducive to our constitutional logic. The next chapter is an application of established theories on power to the Egyptian model and is followed by a close breakdown of constitutional jurisprudence that ultimately preserves censorship.

II. The Institutionalization of Morality: Knowledge and Power

In Volume One of *The History of Sexuality,* Foucault explains bio-power as "a power, which takes hold of human life." Throughout this work, Foucault traces the shift from sovereign power to disciplinary and bio-power, or a shift from "a right of death to a power over life."[82] Sovereign power is the right to take life or let live, or take away labor, property or services.[83] It is not concerned with regulation or control. Bio-power, however, through both discipline[84] and regulation, is interested in character, conditions, and the overall state of the population. What goes under this understanding of power is an interest in education, health, culture and public morality. This is a result of the power dynamics that caused the "emergence of the population," a being whose habits of nutrition, health, knowledge and reproduction have to be monitored and recorded by the state.[85] Foucault does not try to ascribe value to power, but rather tries to understand it through what he calls "analytics," or the breakdown of modes of power. To him, disciplinary power, for instance, is not an adversarial relationship, but is one where individuals are subjects and power relations are called into being by free actions.[86] Dany Lacombe critiques the social control thesis and adopts a Foucauldian approach to study penal law reform:

> "[…] In light of his work on sexuality and governmentality, I examine how Foucault's productive notion of power, already outlined in *Discipline and Punish*, should not be reduced to a claim for the production of social control. It is best understood in terms of "a mechanism for life" that includes strategies for both self-development that both constrain- through objectifying techniques- and enable, through subjectifying techniques- agency. […] In fact, Foucault gradually understood the constitution of the modern subject not in terms of strategies of domination, but rather, in terms of "governmentality" to maximize life. This conception of power and the subject facilitates an understanding of law reform that does not reduce to it a structure that simply reproduces the dominant social order."[87]

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[82] DIANNA TAYLOR, MICHEL FOUCAULT: KEY CONCEPTS 41 (Acumen 2010) (2010).
[83] *Id*.
[84] Discipline is at times used as a distinct mode of power and at others used by Foucault within the understanding of bio-power.
[85] MICHEL FOUCAULT, THE HISTORY OF SEXUALITY- VOL. 1: AN INTRODUCTION 25 (Vintage Books 1990) (1978).
[86] Roger Deacon, *Strategies of Governance Michel Foucault on Power*, *92* JOURNAL OF SOCIAL AND POLITICAL THEORY 113, 113-148 (1998).
[87] Dany Lacombe, *Reforming Foucault: A Critique of the Social Control Thesis*, 47 THE BRITISH JOURNAL OF SOCIOLOGY 334, 332-352 (1996).

The interest the Egyptian state takes in its modern subjects, and the mechanisms by which it practices censorship and regulates morality, is not channeled through an adversarial relationship. The model described above applies to the bond between state institutions regulating morality and its subjects — it is not a conscious strategy of domination, but an interest in the maximization of these lives, that permeates and reflects through the subjects themselves. There is a consensus over the ideal, the moral and what the state demands of the different representatives of morality, which includes art. The ideas of what art is, what is required of it and what purpose it is intended to serve, is not only promoted by the state, but also by its subjects, who are in conformity, cooperation and agreement with its institutions. Through the establishment of bodies such as the Ministry of Culture, the Ministry of Social Affairs, the Vice Police, and Al-Azhar, there is a general institutionalization and policing of morality. As shown through the courts' jurisprudence, this conception of the good and the moral is promoted and preserved at every chance and regulated by the state on an institutional level.

The process Foucault describes of sex exploding into discourse during the 18th and 19th centuries is somewhat similar to the treatment of art as being representative of morality and sexuality, or a medium of expression for their components, within the Egyptian state. Foucault describes the process as "the multiplication of discourses concerning sex in a field of exercise of power itself: an institutional incitement to speak about it and to do more and more; a determination on the parts of the agencies of power to hear it spoken about, to cause it to speak through explicit articulation and endlessly accumulated detail."[88] The channels for this explicit articulation, however, were limited to a form that, although endless, were nonetheless specific in their type.

He explains the moving away from the Middle Ages' organization around the theme of the flesh, and the practice of penance as a discourse, to the more recent centuries where "an explosion of distinct discursivities took form in demography, biology, medicine, psychiatry, psychology, ethics, pedagogy, and political criticism.[89] There is a dispersion of the centers from which these discourses arise, and it is not a vertical but rather a horizontal extension where the forms of these discourses diversified, meaning that "rather than a massive censorship, beginning with the verbal properties imposed by the Age of Reason, what was involved was a regulated and

[88] FOUCAULT, *supra* note 86, at 18.
[89] *Id*. at 33.

polymorphous incitement to discourse."[90] With all their diversity, these discourses, however, still stick to a specific form, the form of being useful, by virtue of being a discourse that exists for the purposes of transcription, theorization and regulation. Sex is confined to its reproductive value and pleasure exists within the conjugal context, which had been established as the norm and the only arena where sex can be left alone as it settles into its normalcy. As much as sex was heavily present through these endless discourses, it was silent anywhere else — a silence of certain forms that could be considered 'crude' or 'coarse' that was necessary for discourses to function around a cluster of power relations.[91]

The rigid process of institutionalization of morality has led to a similar route with art as a representative of morality. Akin to sex in Foucault's model, which is regulated through useful discourses, art is allowed limited paths and manifestations that are confined to the moral values demanded of it. Just like debauchers, libertines, homosexuals and hermaphrodites were rejected as irregular sexualities and could not stand on their own outside the channels of useful discourse and objectification, art is under the same pressure to be valuable, morally appropriate and limited to the confines of useful and meaningful practice. Otherwise, it cannot exist and cannot be termed as art.

From this point comes an assumption that Egyptian society, including its own artists, is infatuated with: the concept of "useful" art. A fundamental underlying basis for the notion of censorship, this means that if a work cannot be argued to be socially valuable, carrying a moral or cautionary message, then censorship is justifiable. Conceptual transformations that occur within the art scene can induce change in the laws, and the state can, in some cases, be compelled to respond to them. In his piece, "The Influence of the Art for Art's Sake Movement upon English Law, 1780–1959," In an interesting piece tracing the relationship between law and art, Dawn Watkins gives an analysis of how the law reacts to the evolutionary separation of art from conventional morality, hence changing its own standards to judge the artistic.[92] Watkins sees the connection between public morality and art, and, thus observes the law's reaction to changing morality and art as they in turn change one another. His

[90] *Id*. at 34.
[91] *Id*. at 30.
[92] Dawn Watkins, *The Influence of the Art for Art's Sake Movement upon English Law, 1780–1959*, THE JOURNAL OF LEGAL HISTORY 233, (2007).

article deals with the law as it eventually becomes separate from the artistic, a disengaged judge that is forced to deal with that subject matter and can only offer insight through a framework of legal theory specifically about and for law. In this case, the progression of art's ideas about itself leads to change in the channels through which the state can interfere with it. Artists no longer accept the moral judgment placed on their works and subsequently remove it as a defining factor, hence obliging the state to change its own perception of what is art and how to judge it.

About his infamous classic *Lolita*, Vladimir Nabokov makes this statement: "I am neither a reader nor a writer of didactic fiction, […] Lolita has no moral in tow. For me a work of fiction exists only insofar as it affords me what I shall bluntly call aesthetic bliss, that is a sense of being somehow, somewhere, connected with other states of being where art (curiosity, tenderness, kindness, ecstasy) is the norm."[93] While only a minority holds this definition, it is apparently not the norm even within the artistic community in Egypt, which is shown throughout earlier sections and will be discussed in more detail shortly. There is no agreement on separating art from morality, which would be the first step toward the breakdown of censorship.

The interest the state takes in art is not one of banishment or rejection, and it is not from an antagonistic position, but rather a stance of support, acceptance and an active effort to watch it grow and develop as part of this strategy of governmentality and maximization of life. It falls, however, within this conception of the good the state has so solidly reiterated over the years, and which it has decided draws the boundaries of how art can be useful and an indispensable tool for the betterment of its subjects and the society. The moment art deviates from the required moral — not artistic — parameters, it is subject to the scrutiny, uproar and analysis of society, just as Foucault describes how "inconsequential bucolic pleasures, could become, from a certain time, the object not only of a collective intolerance but of a judicial action, a medical intervention, a careful clinical examination, an entire theoretical elaboration."[94]

In the next chapter, I attempt to analyze the logic of the SCC and how the idea of useful art and the state's pronounced conception of the good permeate through our constitutional jurisprudence to maintain state censorship as a general concept.

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[93] VLADIMIR NABOKOV, LOLITA 315 (Penguin Books Ltd 1995) (1959).
[94] FOUCAULT, *supra* note 86, at 31.

III. Egyptian Constitutionalism and Public Policy

The idea promoted by the state, and throughout the constitution, of a shared standard of morality, tradition and common values resonates with John Rawls' idea of public reason.[95] Rawls puts a lot of faith in what he calls the "moral duty of civility," which requires equal citizens to explain and justify their political choices to each other with "fair-mindedness," in light of agreed upon general and fundamental political values. There is the assumption that everyone will be in agreement on the content of public reason (on which citizens will base their justifications). Those general principles are already established in Rawls' theory and the problem lies solely in trying to be compatible with them.

By the same logic, Rawls states that matters of constitutional essentials, as well as basic structure of governmental and public policies have to be justified to all citizens based only on widely accepted general beliefs and forms of reasoning found in common sense. The Egyptian constitution and state seems to be making the same problematic assumption that Rawls is making in thinking there could exist what he terms public reason. And the more the state believes in the existence of this notion, the more it strives to force it into manifestation.

Regardless of the extensive critique Rawls receives for the infeasibility of this mechanism of equal intellectual effort from all citizens to invent, not an aggregate, but customized system of belief that appeals to all, the main factor in his theory is the actual input of "citizens." The Egyptian state, on the other hand, has already assumed what that system is and is continuously working against any change to it. It has a placed a standard of "public policy" as, Maurits Berger puts it, against which all rights are to be weighed. In his article, "Secularizing Interreligious Law in Egypt", Berger gives us a presentation of how personal status law was divided between family courts, which each applied one of the nine family laws dictated by the Muslim, Christian and Jewish communities that lived in Egypt under the Ottoman regime and up until the 1952 revolution. Every individual was subject to his/her own religious laws and enjoyed religious autonomy in matters of personal status. This changed with the

[95] JOHN RAWLS, POLITICAL LIBERALISM, 225 (Columbia University Press 1996) (1996).

reforms of 1955, when family courts were abolished and non-Muslim laws could only be applied in matters of marriage and divorce, and only in compliance with the barometer of "public policy." That barometer of public policy was decided to be relevant Islamic principles. The unification of courts under a single, national court was said to serve "the purpose of national unity by subjecting all Egyptians, regardless of their religion, to a single judiciary that was both Egyptian and secular."[96]

This notion of equal citizenship, ironically, achieved the very opposite of equality. The state intended to unify citizens as equal subjects of the law, except the law is, by nature, discriminatory and explicitly favors the religion of one over the other, by making the law synonymous with that religion. Equal citizens are brought before courts that apply on them laws dictated by a religion they do not adhere to. Furthermore, the courts actually set that religion as the (public policy) standard when applying those different factions' own religious laws. The problem here lies in the choice the state made to select a certain ideal to favor, or, in other words, adopt a conception of the good to endorse. The state, in this case, claims equal citizenship for all of its subjects, calls its personal status law pluralistic and alleges to be respectful of other ideals; however, this all comes to nothing when said ideals conflict with the state's own conception of the good.

This same notion can be seen throughout the jurisprudence of the SCC and its analysis of where other constitutional provisions stand vis-à-vis article 2 (in which the standard of public policy is exemplified). Religious culture is probably the main outcome determinant of Egyptian constitutional jurisprudence in many fields. There seems to be an implicit use of the constitution to further the ultimate goal for the rule of law of Islamic Shari'a. The placement of the principles of Islamic Shari'a as the main source of legislation by article 2 of the Egyptian constitution has resulted in a unique form of constitutionalism that is quite different from constitutionalism rooted in a culture of liberal democracy, for instance. In the textual structure of the constitution, articles protecting individual rights are not placed with lower priority than article 2, but the jurisprudence of the court proves article 2 to have a hierarchical relationship with other articles in the constitution, as exemplified by the case of *Darb Al-Hawa* and that will be shown through SCC decisions shortly. Alongside article 2, the Egyptian Supreme Court deemed the standard of public policy to which all

[96] Maurits Berger, *Secularizing Interreligious Law In Egypt* 12 ISLAMIC LAW AND SOCIETY 403, 394-418 (2005).

legislation or judicial review would be held equivalent to Islamic Shari'a, as it makes up the fiber of shared ideals and values in Egyptian society, such as the articles cited in the previously discussed case.

When comparing the jurisprudence of the Egyptian court to that of a liberal democracy, the focus of the reasoning is remarkably different. In Roe v. Wade[97], the American Supreme Constitutional Court was to decide on whether those statutes criminalizing abortions violated any constitutional rights of the woman getting the abortion. What is of interest here is the process by which the court decides if a constitutional right had been lawfully violated. In Roe v. Wade, the Supreme Court follows the doctrine that requires the state to have a compelling state interest to violate fundamental rights of citizens, and that the means by which the interest is achieved has to be the least restrictive on the citizen. In this case, the compelling state interest was the preservation of the right to life (or the potentiality of life, as the court puts it) against the right to privacy of the woman. The process of limiting a constitutional right in a culture of liberal democracy, hence, is individualistic, attempting to balance one individual right against the other.

The rationale differs when it comes to the Egyptian SCC. The SCC decided on the question of Baha'is in 1975, when Baha'i individuals challenged the constitutionality of Decree 263, as part of their appeal when convicted of illegal activities based on said decree. The court adopted quite an interesting approach to interpreting religious freedom and equality in the Egyptian constitution. It gave itself complete discretion in deciding what the text should mean, and managed to attribute connotations to it that go far beyond the capacity of the script itself. It concedes that freedom of belief and practice are both granted in the 1971 constitution, but swiftly limits the freedom of practice to the contours of "public order," based not on the text of the 1971 constitution, but on texts of previous constitutions that explicitly mention public order as a limitation on the freedom to practice religion.[98] The court states that, even though the limitation of public order is overlooked by this current constitution, this does not mean that the concept has fallen apart or that omitting it from the text was, in any way, intentional. The court hence deems Baha'is undeserving of that right

[97] *Roe v. Wade*, 410 U.S. 113 (1973).
[98] AI-Mahkama al-'ulya, case 7, judicial year 2 (1 March 1975), in Majma'at ah~km wa-qarrd rat al-mahkama al-'uly, ed. al-Mahkama al-'Ulya (Cairo, 1977), vol. 1, part 1, 228-44.

based on their disruption of public order (which the court decided to be Islamic Shari'a).

The SCC placed their violation of what it deemed as public policy as a legitimate excuse for a limit on the Baha'is religious freedom and their right to freedom of expression, both protected rights under the 1971 constitution. In this case, we see the jurisprudence of the Egyptian courts to be remarkably different from that of the US Constitutional Court. While the latter attempts to balance different rights against each other, the Egyptian Court is not seriously concerned with those rights as much as it is concerned with whether it can afford to grant those rights in light of what it deems to be public policy. Citizens are explicitly deemed unequal before the law, because public policy prefers one group to the other. Freedom of expression and freedom of religion are violable rights, not because they violate the rights of other individuals or groups, but because they violate public policy. Public policy, in this context, is what the majority believe to be the tenets of their society, as opposed to minorities, such as Baha'is. Hence, from this case, the court cannot be seen to adhere to the concept of constitutionalism as it is intended to function in a liberal democracy, namely to limit the power of the majority.

The Egyptian constitution and the SCC jurisprudence then will remain home to the most fundamental conflict: the tension between article 2 and the provisions obliging the state to protect the shared values of the Egyptian family, as public policy and the liberal individual rights afforded by the constitution. We can see this tension between a cultural aspect and individual rights in the jurisprudence of other Constitutional Courts; however, they are resolved differently. In the example of the Federal Constitutional Court of Germany, the question of whether the display of the Christian symbol of a crucifix inside state-owned classrooms violated some students' rights to freedom of religion was decided on in 1995.[99] In this case, there was tension between the cultural association with Christianity and its symbols and the individual rights of students to freedom of religion. These tensions were not inherent in the constitution, but they are tensions within the political culture surrounding the FCC and the German Basic Law.

[99] 93 BVerfGE 1 (1995) (Federal Constitutional Court of Germany).

The way the state resolved this tension was by claiming neutrality, by consciously choosing not to move this tension from the realm of societal conflicts to that of the constitutional. In the case of Egypt, the complete opposite took place. As unresolvable as these tensions between article 2 and other rights, the SCC decided, through its insertion of the concept of public policy and by virtue of its legislative power, to place article 2 and Islamic Shari'a as the ultimate test to what rights will or will not be protected. The Egyptian state, officially endorsing Islamic principles as the primary source of legislation, does not think it needs to act as an intermediary, as one party to the conflict is inherently superior to the other. Whenever there is tension between liberal individual rights and article 2, or the principles of Islamic Shari'a, the latter will win.

The institution of censorship will remain intact so long as the state has already assumed the obligation to defend and preserve what it sees as the public reason. Freedom of expression will remain one of the compromised rights if the question ever arises within the courts. The flipside is also just as significant to explain the complex narrative surrounding censorship in Egypt. It is important to trace and describe the intricate relationship between artists, intellectuals and state censorship, which will be discussed in the upcoming section.

IV. Subject-making: Artists and Intellectuals

With this dynamic in mind, the focus now shifts to the "subjects" of this power dynamic and their relationship to the state's institutions of morality. As mentioned before, there seems to be a Rawlsian consensus over the moral parameters of Egyptian society, as iterated by its constitutions and preserved by its courts and institutions. This power relationship, one that is not necessarily of dominance, can be seen as it echoes from both the public and artists/filmmakers/intellectuals. There are challenges to the system, but within specific structures as agreed upon collectively by a society.

There seems to be an implicit liaison between the state and the intellectuals, where they do not necessarily stand at opposite ends from one another but engage in a complex and organic dynamic where artists are sometimes one with the state. In the case of *Al-Mozniboun*, the committee created by the Minister of Culture to review the film and suggest edits to be made before permitting the film to screen once again was comprised of different intellectual figures, including director Ahmed Kamel Morsi and figures hailing from the fields of sociology, law and publishing. The most noteworthy name, however, is renowned writer Yusuf Idris, whose short stories, plays and novels are pillars of realism in Egyptian literature that go over themes of corruption, perversions and frustrated sexualities.[100] The content of his works is often sexually charged and is a raw depiction of the emotions, realities and disturbances that fall under the themes he tries to portray. The fact that he would be included in a committee to review and censor a film, especially one based on a novel by prominent writer Naguib Mahfouz, is worth highlighting. It is, firstly, a step by the state to claim its cooperation with and closeness to the intellectuals and patrons of the arts. I cannot ascribe personal affiliations or factors that might have led the famous author to participate in the committee reviewing *Al-Mozniboun*, but can only attribute a belief in the system of censorship on, at least, a conceptual level to have agreed to become one with the apparatus. One would argue that artists can get involved with the institutions of censorship to instigate change from within; however, there are no notes of the meetings of said committee to give us an idea of what that particular member agreed

[100] ALI, *supra* note 12, at 321.

or objected to in relation to the suggested edits. However, as previously demonstrated, the edits were fairly invasive and trespassed all creative and expressive rights afforded to the filmmakers. This participation indicates an acceptance of the notion of censorship at the very least. The same argument applies to the appointment of figures such as Ali Abou Shady, which indicates progressiveness on the state's side, and the outcome of the type of films that are allowed to the market changes with every head that leads the Central Administration for Censorship. Nonetheless, the involvement of artists and intellectuals with the Board, in a way where they end up being the decision-makers on what is to be censored, allows one to infer the acceptance of the concept of censorship by at least a considerable portion of them, even if their perceptions vary from one type of content to the other.

Ali Abou Shady, in an interview from 2009, states that even though he, as a writer, does not think there should be any limits to freedom of creativity, he cannot be in denial about the reality he lives in, as censorship is essential to execute the law that places restrictions over speech and art. Shady claims that only when real democracy manifests in Egypt can state censorship be demolished, and only then will there be a form of societal censorship to regulate artistic material.[101] Shady still maintains the idea that there is need for censorship; however, in his opinion, its source should be society, rather than the state.

This rationale is continuous from the 1970s onwards. In the previously mentioned example of obtaining the permit for the screening of *Darb Al-Hawa* and *Khamsa Bab* (Five Doors), another film whose permit was also revoked on 24th of August, 1983, the reaction to the ministry's decision was quite demonstrative of the dynamic I describe. The two films seemed to have spurred collective outrage and prompted major support for the ministry's decision to remove the two films off the market. The two films generally discussed some political themes, but contained relatively heavy sexual insinuations, drug-related content and depicted the physical and societal atmospheres surrounding prostitution. Many perceived the films, including a number of critics and filmmakers, as frivolous and meager attempts at making art. The sentiments toward the films were ones of rejection and a fear of the mildest implication that these two films would be attributed to the Egyptian film industry, as they were to be considered acts of defamation to the entire profession.

[101] Alaa' Al-Sawi, *Ali Abo Shady Ra'is Al- Riqaba 'Ala Al-Mosanafat Al-Faneya* (2 February 2009), *available at* http://www.masress.com/misrelgdida/225.

One article written by director Medhat Al-Seba'y starts with thanking then-Minister Abdel Hamid Radwan for his strong stance against "the wave of trashy films that has recently gone viral and damaged Egyptians' reputation inside and outside of Egypt," urging him to review the permits given to other films of a similar sort that depict "the lives of prostitutes, pimps and homosexuals."[102]

Another article, written by film critic Ires Nazmy, also praises the minister's decision and claims that this is what the ministry should be doing to protect the film industry from such shameful works:[103]

> Like everyone else, I felt relief with the minister's decision to ban these two films that I consider the greatest offense to Egyptian cinema, its critics, audience and history. The minister's brave decision protects us from the sorts of those films.

These strong opinions coming from the heart of the film community indicates widespread support for the general role of the Board, and even a demand for a stronger presence.

In an interview with Atef Soleiman, the film critic and journalist reiterates the need for censorship and the natural role of the state as a moral agent, stating that "censorship exists in other countries and the formalization of the process in Egypt started in synchronization with countries like Russia with the evolution of theatre. All states feel the need to protect public morals, and I believe that freedom of expression and specifically art, should be respected as long as it does not harm others."[104] Soleiman believes that art cannot exist without state censorship, and rhetorically asks if freedom means showing a nude man on screen. When asked how an artist is expected to depict sexual content that is indispensible to the artwork, Soleiman claims that there are ways to work around it and suggested euphemism and allusions.

Another opinion to note is prominent actor Ezzat El-Alayly's, who sees the necessity for state censorship as justified by the high level of illiteracy and the very poor educational standard in Egypt. He believes the state has a role to protect and to

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[102] SABAH AL-KHEIR, October 1, 1983. Arabic original: من واجبنا بالطبع أن نشكر وزير الثقافة عبدالحميد رضوان على موقف الحاسم تجاه موجة الأفلام المبتذلة التي استشرت في هذه الفترة واساءت كثيراً سمعة مصر والمصريين في الداخل والخارج فأصدر أمره بوقف عرض الفيلمين وكذلك مراجعة التراخيص الرقابية التي منحت لكثير من الأفلام التي تندرج تحت هذه النوعية والتي تتناول حياة العاهرات والقوادين والشذوذ جنسيا.

[103] AKHER SA'A, September 31, 1983. Arabic original: لقد شعرت مثل الجميع بالإرتياح الشديد الكامل لقرار وزير الثقافة بوقف هذين الفيلمين الذين اعتبرهما أكبر إساءة للسينما المصرية ولنقادها وجمهورها وتاريخها كله. إن قرار وزير الثقافة الشجاع حماية لنا جميعاً من تلك الأفلام.

[104] Interview with Atef Soleiman, journalist and critic. August 24, 2014.

elevate public taste.[105] He also agrees with Soleiman on the use of allusions instead of an explicit and vivid depiction of morally inappropriate content. He gives the example of the film *Al-Tawoos* (The Peacock, 1982), where the events are set during a wedding night, but where the director does not film a sexual act and merely refers to it, and, thus, constructively discusses themes related to a societal issue without exposing the audience to any content that might shock them. El-Alayly also states that if the censoring committee was intelligent enough, it should recognize the social value of such a film and not object to this type of storytelling. He does not believe censorship should be practiced when it comes to political content, but only content that could be deemed morally questionable.

Film critic and writer Ola El-Shaffei offers insight into the context in which the majority of artists and intellectuals have come to support censorship to varying degrees.[106] El-Shaffei herself is not a proponent of censorship. She believes the relevant laws currently in place are obsolete and loosely formulated, which leaves art unprotected against cultural setbacks and changing ideologies. She explains how a major cultural shift took place in the 1970s, with mass migration to the Gulf from Egypt and the transference of the Wahabi mindset to the Egyptian society with those returning later to it, which brought with it an extremism that had never existed before in Egypt. She mentions an incident in a press conference around the film *Banat El A'mm* (The Cousins, 2012) where director Dawood Abdel Sayid was brought up in the discussion. El-Shaffei claims that the three leading actors in the film unanimously agreed that his films are to be deemed inappropriate, and that they do not understand the necessity behind the sex scene he filmed in his *Rasayil El Bahr* (Letters from the Sea, 2010). She believes that Egyptian society has difficulty in accepting any "other," or those who do not conform to a predetermined ideal.

A. The Minority Voices

It would, nevertheless, be inaccurate to claim that censorship has gone unchallenged up until now. There have been voices within artist and intellectual circles that oppose censorship and many of the practices of the Central Administration for Censorship. Intellectuals and writers have spoken out against censorship of literature and art on

[105] Interview with Ezzat El-Alayly, actor. August 28, 2014.
[106] Interview with Ola El-Shaffei, journalist and film critic. August 27, 2014.

numerous occasions, particularly against censorship that serves political purposes. In an interview in 2001 with Nobel laureate Naguib Mahfouz, the author was asked about his opinion on the concept of censoring literary works and whether he supported the notion itself. Mahfouz stated that he rejected the notion of censorship entirely and that he believed that there has to be complete freedom in art from any external censors.[107] Many artists shared and still share Mahfouz's sentiments toward censorship. What is remarkable, however, is that Mahfouz himself was a consultant for cinema affairs to the Ministry of Culture from 1969 to 1971, and director of the Central Administration for Censorship during the late 1960s, where he was quite the stringent censor on many works, despite his opinions on censorship.[108]

When it comes specifically to film, there were sporadic and scattered criticisms of the state's regulation of film material. In relation to the *Darb Al-Hawa/Khamsa Bab* incident, prominent screenwriter and film critic Raouf Tewfik objected to the minister's decision, stating that:

> The government's interference to ban a film, regardless of its quality, means that the film community is incapable of defending the reputation of its craft; it also means that we need the state to think for its citizens and guide them towards what is right and protect them from what is wrong as if the state's institution of censorship is the sole executioner for this helpless people that is need for someone to cry over its damaged reputation. [109]

Despite similar opinions, there were never any consolidated efforts to call for abolishing the institution of censorship, and the notion was only introduced toward the later years of Mubarak's reign, only to manifest after the 25th of January revolution.

A wave of newly introduced and organized social movements commenced following the 25th of January revolution in 2011. With this trend comes the first organized movement against film censorship in 2012: the Egyptian Creativity Front. This was founded by a number of filmmakers and film critics at a moment when a window was open for the assertion of freedoms and a fight against the state's overbearing interference in matters related to the arts had hopes to be won, as a

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[107] Gihan Al- Hosseini*, Naguib Mahfouz: U'ayid Wazir Al-Thaqafa fi Mawqefo min Al- Riwayat Al-Mamnou'a* (18 February 2001), *available at*: http://www.aawsat.com/details.asp?issueno=8070&article=26716#.U0GRZRlVTbg.

[108] Interview with Tarek Al- Shenawy, Film Critic at Al- Tahrir Newspaper and other Publications. April 23, 2014.

[109] ALI, *supra* note 12, at 328.

reaction to the intellectual ambitions the Muslim Brotherhood held in terms of influencing culture. The Front is outspoken on all matters related to art and has initiated strikes and sit-ins in response to state decisions on artistic institutions. The most recent of these was a two-week long sit in that took place in April 2013 in front of the headquarters of the Ministry of Culture, held after Opera House director and flutist Inas Abdel Dayem was dismissed by ousted President Mohamed Morsi's government. The Front is not always, however, in opposition with the Central Administration for Censorship, and their position depends on the stances the Administration takes under different managements.

In recent months, the Front has been issuing statements supporting the work of the Administration in being relatively progressive in terms of the permits they are issuing for recent films. As mentioned before, the decisions of the Administration are not always consistent, and at times are considered to be more progressive or more stringent depending on the leading figure. Since September 2013, the Administration has come under the management of director Ahmed Awad, whose decisions have been hailed as pro-art and the film community.[110] The most recent incident took place after the release of the American production *Noah,* on which Al-Azhar issued a *fatwa* in March 2014 that deemed its screening incompatible with the principles of Islamic law.[111] The film portrays the story of the prophet Noah, while the personification of prophets in artworks has always been an issue for Al-Azhar. The Administration has refused the *fatwa* issued by Al-Azhar, as it considers the film to be up to par with its moral and artistic standards and should not be banned from screening. The Front has joined the Administration in its opinion and asked Al-Azhar to move past the rigidness of the religious rhetoric and to move toward employing reason and rationality. A main crux of the Front's response to the *fatwa* was asking the question of why Al-Azhar would focus on banning such valuable and purposeful films, such as *Noah*, but leaves films with heavy sexual and violent content untouched.[112] The reference is made, more specifically, to the class of films that the critics' community would attribute no artistic merit to and considers immature works only produced for money generating purposes. These are the type of films that have no protector, no

[110] Interview with Mohamed El-Adl, Producer and Founding Member of the Egyptian Creativity Front. April 25, 2014.
[111] *Al-Azhar Yatlub Man' 'Ard Film Yugasid Shakhseyit Al-Nabi Nuh* (April 6 2014), *available at:* http://arabic.cnn.com/entertainment/2014/03/06/noah-movie-azhar.
[112] *Al- Intag Al-Fanni Bayn Al- Tahrim wa Huriyat Al- Ibda'*, Sky News Arabia Interview, *available at*: http://www.youtube.com/watch?v=xWSdJ5Dj2Qs.

savior from the ferocity of the moral argument. They have no redeeming value in the eyes of the intellectual community that would warrant a defense of their right to express. This is not, however, the opinion of the more prominent figures in the Front, who are a minority in terms of their aspirations of reducing the Administration's role to merely categorizing film according to age appropriateness.

Director Ahmed Awad, a member of the Front and the head of the Administration from the 25th of September 2013 to the 17th of April 2014, shared with me his ideas on the role of the Administration, which he believes should only be confined to age rating of films and not to banning. He does not believe artistic expression should be confiscated or edited with only one exception, which is profanity.[113] This is where he draws the line. He also does not believe film should be judged by quality, because this could be used as a pretense to justify censorship for political reasons, for instance. When asked why he chose to join forces with the Board if he is against the very concept of it, Awad claims to have seen it as an opportunity to change from within instead of leaving the institution to others that would stifle creative freedoms. "I will not ban a film, a song or an idea," is what Awad told me was his response to the Minister of Culture offering him the post of heading the Administration. I asked Awad why he thinks artists do not stand against censorship and he responded by saying that "some genuinely believe there should be censorship and others do it out of hypocrisy to please the state… in light of the recent incidents, I no longer think that change is possible from within."

Another prominent figure is critic Tarek El-Shenawy, who also believes that regulating artistic material should only pertain to age rating of artworks and films. He argues that the focus should be more on the social effects of the film, rather than political reasons, since the censor and the state usually interpret the "protection of public order" as the protection of the ruling government and its head.[114] When asked if artists should practice self-censorship, Shenawy states that artists cannot isolate themselves from their societies, and that if a film has too much sexual or profane content, it will not be well received. He argues that artists who believe that this kind of content will increase a work's popularity are mistaken, and states that this was never the case in Egypt. He still maintains, however, that there should not be state

[113] Interview with Ahmed Awad, Director and Former head of the Central Administration for Censorship. April 22, 2014.
[114] *Supra* note 109.

censorship. Shenawy also asserts that the public usually rejects explicit sexual content, regardless of the artistic or social value of the film, but the artists and intellectuals themselves are the ones who make this distinction between a "socially valuable" film and one that isn't. On how artists join forces with the state on matters related to censorship and its institutions, Shenawy claims that artists do not stick to their opinions if they feel it might anger the government. However, he also says that genuine intentions are not clear, and recounts a story in which he "was once told by [director] Saeed Marzouk, who can confirm the incident, that Naguib Mahfouz is the one who stood against *Al-Khof* (Fear), which was made after the 1967 war, and objected to its screening." He also claims that even though the institutions of censorship were always criticized, there were never any movements that called for its abolition.

In another interview, producer and founding member of the Front Mohamed El Adl gives an account for how the Front started. According to him, the Front, as the first organized movement to protect freedom of expression in the creative context, was created as a reaction to the Muslim Brotherhood's growing influence and fear for the arts from the rising rightist tendencies. In response to the question of whether the Front was created to battle Islamist movements and not necessarily the state's censorship apparatus, El Adl claims that the Front acknowledges the permanence of the Administration and does not call for its abolishment, but instead calls for its restructuring to a rating system according to age appropriateness. El Adl also traces the ideology of the Board to the exported Wahabi influences that entered Egypt in the 1970s, stating that "the Board has three taboos: sex, religion and politics. And it's not possible to measure art by morality. In what they call the golden age of cinema, we used to count how many kisses we would find in an Abdel Halim Hafiz film. Those types of films would be taboos nowadays, and that is because of the changes Egypt saw in the 1970s that reshaped our ideas about religion and art. It turned us into something completely different."

The only instances, according to El Adl, where the Front would side with the Administration is when the Board is defending the freedom of a film that is rejected by other institutions such as Al-Azhar. "I sided, however, with the Administration when Ahmed Awad wanted to edit a derogatory term out of the film *Asrar 'A'elaya* (Family Secrets, 2014)," El Adl states, referring to the film depicting a story about homosexuality in Egypt. "I thought it was more of artistic weakness than necessity,

they did not need to use such a term. It is their absolute right, however, to discuss the issue of homosexuality, for instance."

Despite their belief that censorship should not exist to ban or edit, it seems that even the minority hold back in terms of absolute freedom of expression. Both Awad and El Adl drew the line at profanity, which, in their opinion, would not add any artistic value to the work. However, in some cases one would argue that profanity could be a realistic part of the depicted story, and is an integral part of telling it. In the case of *Asrar 'A'elaya,* one could argue that the employment of the derogatory term used to describe the protagonist is essential in a realistic and raw portrayal of his daily encounters, his psyche or his societal struggles.

On the participation of artists and intellectuals in the Administration, El Adl claims that a director like Ahmed Awad attempted a change from within by trying not to be the censor that he was expected to be. However, someone like critic Ali Abou Shady was still a censor — no matter how progressive he was, he still fulfilled the fundamental role of the censor and genuinely believed in it. El Adl was also asked about the majority of artists who seem to defend the role of censorship and the Administration, and responded by stating that he believes that the older they are in terms of age, the more they believe in the need for society to protect. He gives the example of actor Ezzat El-Alayly, who is now against the screening of the film *Halawit Roh* (whose case will be discussed in a later section), even though he starred in a film in the late 1960s called *Zi'ab La Ta'kol Al-Lahm* (Wolves That Do Not Eat Meat, 1973) that was full of sexually explicit scenes. According to El Adl, the others also genuinely believe in the moral argument of censorship and the need to protect against the "negative" influence of films, which eventually affects the power of the artists to battle the state and its apparatuses. He believes that the Egyptian society has "frozen" the moral ideals that it wants to see and anything that falls outside it is deemed as "irregular" or outside the scope of morality.

One can conclude from these opinions that there are more substantial efforts towards fighting censorship and state interference in artistic expression compared to the previous decades. However, the majority of opinions still seem to agree with the role of the Administration in terms of editing and censorship. Moreover, even those who believe the Board should be restructured often seem to draw arbitrary moral lines, such as agreeing with censoring profanity by arguing that it would not add to the artwork as a whole and can be dispensed with. The Rawlsian moral fabric, thus, still

persists, even underneath relatively progressive and commendable efforts, which leaves me questioning how far these movements will actually go in terms of securing absolute freedom of the artistic process. A more recent case that can attest to the existence of this dynamic is the case of *Halawit Roh* (The Beauty of Roh, 2014), which shows the continuity of sentiments projected in the 1970s and 80s toward films that are considered harmful to society.

B. The Case of *Halawit Roh*: The Full Dynamic

The ongoing controversy created by the film *Halawit Roh* has come to be the most demonstrative example of the Egyptian society's ideas about obscenity and the purpose of art. The film is loosely based on the Italian award-winning film *Malèna*, where a beautiful widow "provokes sensual awakenings in a group of adolescent boys" in 1940s Italy. In the Egyptian version, the film depicts the story of a woman who becomes the object of sexual fantasy of all the men in her neighborhood, including a group of young adolescents, and, in particular, a 13-year-old boy who fantasizes about Roh, the main character, throughout the film.

The Board initially issued an extensive report, which Ahmed Awad rejected, releasing a permit for the film to be screened. The report of the review Board contained comprehensive remarks that touched upon not only visual elements, but also the holistic message that is allegedly implied by the film. For instance, the report includes comments about what the negative role models depicted in the film could imply:[115]

1. A wife whose husband travels, but wears revealing clothes through which one can see her chest throughout the whole film and still maintains that she is virtuous and honorable. It is a negative image of the Egyptian woman who undresses once her husband is away.
2. All the men in the neighborhood care for nothing but how to acquire the body of Roh, and live a lifestyle full of alcohol, prostitutes and sex-enhancing drugs.

[115] Mohamed Abdel Kareem, *Bayan Al- Riqaba 'an "Halawit Roh",* AL TAHRIR NEWSPAPER, April 21 2014 at 16.

3. All the women of in the neighborhood are promiscuous… The only virtuous woman is Roh, who only seduces the characters and eventually rejects them.

4. All the children in the film are criminals and little pimps…. their leader snoops around Roh to peek at her body, and the rest are either watching pornography on their mobile phones or discussing their friend having sex with Roh.

These are the type of comments the Committee gave as reasons to reject the film, arguing against its obscene content and representations, along with other numerous comments on language and physical indications of obscenity.

The film was released in theatres in the beginning of April 2014, and after a mere two weeks of its screening, it stirred enough controversy that a decision was made by Prime Minister Ibrahim Mehleb to revoke its permit and remove it from theaters. This decision in and of itself created an outrage in the film community, as it was perceived by the Administration and its former head Ahmed Awad, as a form of overstepping the role of the censor, deeming the entire institution void. This led to Awad announcing his resignation from his position in objection to Mehleb's decision.

The Prime Minister held a meeting on the 19th of April, 2014, with an assembly of intellectuals, producers, directors and critics to discuss the film's situation and the future of the filmmaking industry in light of this incident and what it represents. Mehleb also claimed that he did not ban the film outright, but only temporarily revoked its license so the Committee could review it. He alleged that this decision was taken due to the negative feedback the film received, as well as the public outcry against the immoralities depicted in the film, which, according to him, misrepresents the Egyptian people and is harmful to their reputation. Opinions were markedly divided between supporters of and critics of Mehleb's decision. Some thought it was a necessary decision against obscenity, while others saw it as an indication of a grim future, where creativity is vulnerable to arbitrary executive decisions that do not pass through the accepted routes of regulation. Mehleb was supported by director Ahmed Atef, who claims that the film is a form of prostitution, and director Mohamed Fadel, who defended the decision by likening it to the state

interfering to confiscate rotten foods being sold to the public.[116] Actor Mohamed Sobhy claimed to have cried tears of joy, stating that Mehleb's decision protects his grandson, whom he found looking for a bootlegged version of the film on the Internet.[117]

Opponents of the decision, however, are numerous. Critics such as Samir Farid and Tarek El-Shenawy, The Egyptian Creativity Front, the head of the Union for Cinematics and many other prominent figures and institutions within the film industry have attacked the decision to ban the film, arguing that it is a violation of their rights as artists. They make it clear that this is not a defense of the film itself, but rather a defense of the rule of law as the film was already approved by the Administration. They believe that only the Administration and its manager, Ahmed Awad, should have the authority to withdraw its screening permit. The reasoning here is quite interesting, since it is not an objection to the confiscation of the film based on its content, but an objection to the state's interference in regulating artistic content outside of the accepted channels which, in this case, is the censor, and also a state institution. Director Dawood Abdel Sayid describes the decision as an outrageous intrusion on the role of the censor and indicative of the dreadful phase the arts are going through, seeing Ahmed Awad's resignation as a rightful response to Mehleb's imposition.[118]

In this case, the dynamic clearly manifests in different and even contradictory positions. On the one hand, the Administration, from the very beginning, rejected the film as an indecent misrepresentation of Egyptian society. The public reacted negatively to the film and its relatively explicit content, the state interfered to preserve the prescribed moral fabric, some artists and factions of the public supported the decision, claiming they cared for the protection of public morality, while others objected to the decision, largely because of the channel it went through and partly because they are against the arbitrary confiscation artistic material. Through this case, all sides can be seen: the majority, the state, the opposing artists that still maintain belief in the role of the censor and the unrepresentative minority that opposes the concept of censorship.

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[116] Hend Moussa, *Wakil Neqabat Al- Cinema'eyeen: Narfod Man' Al- Film*, AL TAHRIR NEWSPAPER, April 21 2014 at 16.
[117] Tarek Al- Shenawy, *'Indama Yusbih Al- Muthaqafoon Ghata'an le-Tawahush Al- Dawla*, AL TAHRIR NEWSPAPER, April 21 2014 at 17.
[118] Walid Abu Al- Su'ood, *Kawalis Leqa' Al- Fananin ma'a Ra'is Al- Wuzara' Hawl Azmit "Halawit Roh"*, AL SHOROUK, April 21 2014, issue no. 1905 at 15.

It would be valid to ask the question of how the Egyptian model differs from any other. The evolution of the laws and the different power relation that the state has with its citizens makes for a different case than the relatively progressive American model, or the purely dominant power relation of the Iranian Islamic state. The American model will be looked at in the next section to trace, generally, how the US reached a state where censorship is no longer viewed as a necessary function of the state. A brief snippet of the Iranian dynamic will be discussed right after to give an idea of a different power structure where the bio-power model cannot be applied.

C. The American Model

There was, "a nationwide scheme to enact film censorship" in the early 20th century in the US.[119] Butters asserts that "almost from the inception of film, the issue of control over the exhibition and content of this new entertainment medium became important politically and socially. As an increasingly large number of Americans flocked to see these new 'photoplays,' a powerful and forceful contingent of Americans attempted to control what the public saw."[120]

The Hays Code in the US regulated film industry from 1930 until 1968, and banned violent, profane and sexual content, as well interracial or same-sex relationships, or any content it deemed anti-Christian.[121] The Code was not enforced by the government, but was made necessary by the threat of government censorship. The First Amendment did not protect film material[122] and the film industry adopted the Code as a means of avoiding outright federal censorship. Censorship of film was also strongly prevalent on the state level; The Kansas State Board of Review of Motion Pictures, for instance, managed to function from 1915 until 1966.[123] The US Supreme Court, however, started differentiating between artistic works to be protected by the First Amendment and obscene works, when it lifted the ban on James Joyce's *Ulysses* in 1933,[124] before finally iterating the constitutional definition of obscenity in

[119] GERALD R. BUTTERS, BANNED IN KANSAS: MOTION PICTURE CENSORSHIP, 1915-1966 (University of Missouri Press 2007) (2007).
[120] *Id*.
[121] NORA GILBERT, BETTER LEFT UNSAID: VICTORIAN NOVELS, HAYS CODE FILMS, AND THE BENEFITS OF CENSORSHIP (Stanford University Press 2013) (2013).
[122] Mutual Film Corp. v. Industrial Comm'n of Ohio - 236 U.S. 230 (1915).
[123] TAYLOR, *supra* note 5.
[124] *United States v. One Book Called "Ulysses"*, 5 F. Supp. 182 [S.D.N.Y. 1933].

Miller v. California and later in *Roth v. United States*.[125] Similarly, the UK enacted the Obscene Publications Act (OPA) in 1959,[126] after a series of cases starting with *R v. Hicklin*[127] (from which the US borrowed its first test and standard for "obscenity"). In Roth v United States, the Supreme Constitutional Court defined a work as obscene if it was "utterly without social importance," and if "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeal[s] to prurient interest."[128] The court could not completely abandon the state's responsibility over artistic material, but still felt the need to create a specific standard that should leave all else that falls outside of it constitutionally protected.

This evolution of film censorship in the US can be attributed to a specific dynamic and a progression of societal ideas that led to change in the values that censorship naturally exists to preserve. The idea of traditional family values and the state's role in protecting them has slowly and gradually disintegrated with the civil rights movement, the gradual integration of LGBT rights into legislation and the notion of a liberal society that focuses on individual/minority rights, rather than one that favors a collective approach to rights. This societal change resulted in a different understanding of the role of the state as a moral agent and, even though the state still maintains a responsibility over morals and the public good, it fulfills it with the utmost care so as not to override individual rights, unless that violation is completely defensible and justified. The state no longer has a say in judging what is artistic and what is not, and has limited its test of obscenity (through the jurisprudence of its Supreme Constitutional Court) to very specific standards that can only apply to a narrow range of productions, that is generally limited to pornography.

D. The Iranian Model

The scope of this paper does not allow for a fair or in-depth analysis of the complex and multilayered Iranian cinema experience. However, some areas of comparison can be drawn between the Egyptian model and the Iranian one. In both models, there is heavy involvement on the part of the state in matters related to creativity, and specifically film, as both societies are profoundly culturally dependent on the art form

[125] MILLER V. CALIFORNIA, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419.
[126] WATKINS, *supra* note 93.
[127] R v Hicklin (1868) LR 3 QB 360.
[128] *Roth v United States*, 354 U.S. 476, 77 S. Ct. 1304 (1957).

that became intertwined with both social fabrics along the years of its long history in both countries. The dynamic between the state and the artist, however, varies in both models and yields different outcomes in terms of societal change and the evolution of art.

The history of cinema in Iran dates back to 1900, when the first documentary was produced.[129] The first Iranian feature film was produced in 1930, and the industry flourished in the 1960s and 1970s under the rule of Shah Mohamed Reza Pahlavi, where numerous Iranian films won awards and recognition in international film festivals. The Iranian revolution of 1979 brought the governance of Islamist Ulama and signaled a change to the entire art culture of Iran. In his first speech after returning to Iran from exile, Ayatollah Khomeini showed his support for cinema as a new medium that could be utilized to the advantage of the Muslim state:

> "We are not opposed to cinema, to radio, or to television… The cinema is a modern invention that ought to be used for the sake of educating the people, but as you know, it was used instead to corrupt our youth. It is the misuse of cinema that we are opposed to, a misuse caused by the treacherous policies of our rulers."[130]

From the very beginning, Khomeini places the usefulness of cinema as a condition for its existence in the new Iran. This condition marks the fundamental structure for censorship, which took an extreme form in the example of Iran.

As exiled artist Mohamed Karimi Hakak describes it, "artistic censorship in Iran usually involves intervention at any one or all of three stages: the artist's intention to create, the artist's engagement in the creative process and the artist's presentation of he/she created."[131] Hakak is a director whose recreation of Shakespeare's *A Midsummer Night Dream* was stopped on its fourth night in public theaters, and who was prosecuted and sent to exile because of the production.[132] He breaks down the process and the invasiveness of the censorship institution in Iran in this excerpt:

> At the first stage, the script must be approved. The principal artists — director and/or playwright — must be approved. The actors, designers, production staff, and even the gofers must be approved. The physical spaces, both for rehearsals and for the performance, must be approved. The rehearsal and performance schedule must be approved, and so on. Maddeningly, each approval is issued by a different office. As

[129] Hamid Naficy, *Iranian Cinema under the Islamic Republic*, 97 AMERICAN ANTHROPOLOGIST 548, 548-558 (1995).
[130] *Id*.
[131] Mahmood Karimi-Hakak, *Exiled to Freedom: A Memoir of Censorship in Iran*, 47 TDR 18, 17- 50, (1988).
[132] *Id*.

> you can imagine it takes months, or even years, before a production secures all the necessary approvals. It took me over five years before I was allowed to begin work on A Midsummer Night's Dream. The production was closed down on its fourth public performance. Only after all these approvals are secured, can the group meet for the first time.[133]

The author then moves on to describe the next phase, which deals with the minutest details in terms of conduct and behavior during the making of the artwork. Not only is the content of the product being regulated, but also the "morals" that go into the process of bringing it to completion are as well. The author explains how:

> In this phase, to make sure that nothing against the unspoken, unwritten, unspecified laws of moral conduct happens during rehearsals, the male and the female group members are not to address each other in any manner that might suggest personal or unprofessional communication; they are not to call each other by their first names; they are not to use the informal second person pronoun when addressing each other; they are not to make repeated eye contact; they are not to wear tight-fitting clothes; they are not to sit comfortably next to one another; they are not to smile too much or laugh. Touching, even a simple handshake, is unimaginable, and may result in blacklisting the person or persons involved, closing down the show, a public whipping of up to 80 lashes, and/or imprisonment. Therefore, there are no improvisations during rehearsals because that may lead to a line or an action in violation of these laws.

The third phase still lies ahead, that of presentation, the censors attempt to read into the work meanings that could possibly amount to negative political, religious or moral connotations and the consequences would lead to prosecution:

> If the group survives the first two stages, there remains the third stage of censorship: the scrutiny of the presentation by the authorities. A group of observers are sent to see the play prior to its public performance. After they watch the play, the director must respond to their criticisms, which can range from choice of costumes to a possible hidden meaning of an image or a spoken phrase, from a movement to a specific color used in the painting of the sets, from the overall meaning of the production to the director's concept and artistic vision, the style of the play, its language, and of course the plot. If a production survives the stages of censorship up to this point, and if it is eventually issued a Performance Permission, that still does not guarantee that the production will run its course. Such was the case with our A Midsummer Night's Dream. A few good citizens, or even one individual, ignited by zeal or assigned by invisible forces, might decide that your play is indeed detrimental to the public interest. The remaining performances of your show can then be canceled. Furthermore, as was the case with our Dream, the director, designer, cast, and crew might be prosecuted and punished.

[133] *Id*.

As demonstrated by the detailed account of Hakak, the Iranian state's position towards art is somewhat different from that of Egypt. The Iranian state monitors every move, every notion and utterance. The artists are not necessarily in agreement with the state over what moral code they should be obliged to adhere to. The Egyptian state, however, leaves room for some creative freedom, while maintaining the wider framework of public morality or the common public reason, which the artists have come to view as part of their society's inherent nature.

The Iranian state's position on film contributes to a trend of opposition and a consolidation of the artists' position. In a 2008 news article on opposition to censorship in Iran, author Anna Fifield tells the story of the film *Santouri,* which revolves around a musician who struggles to obtain a permit to perform in public. The film itself is also banned from public viewing, and in disapproval, Iranians "are snapping up copies of the film from bootleg DVD sellers around the country."[134] The state authorities' position is made clear through a statement by Javad Shamghadri, the arts advisor to the president, who he publicly condemned the movie, and implied that it is part of a wider problem in Iran's film industry.[135] The author adds that, in early 2008, Shamghadri told reporters that "Even changing the train cannot solve the Iranian movie industry problem; we should change the railways."[136]

Censorship has strikingly worsened under President Mahmoud Ahmadi-Nejad's government, as Dariush Mehrjui, the film's director states that, "Things have become very bad in the last two years, not only in the realm of cinema, but in theatre and music and publishing too."[137] According to the author, orchestral and theater performances are increasingly rare, and in the same year, the government banned nine magazines because they contained too many photos of "corrupt" Hollywood stars and details about their "decadent" private lives. Mona Zandi-Haghighi, a young Iranian filmmaker, talks about the grim atmosphere that surrounds the filmmaking industry in Iran, saying that "as a filmmaker, I have a lot of difficulties to get the facilities I need

[134] Anna Fifield, *Iranians Defy Censor by Snapping Up Bootleg DVDs*, FINANCIAL TIMES, April 5, 2008 at 4.
[135] *Id*.
[136] *Id*.
[137] *Id*.

to make my films… There is no basic support for filmmakers here. That is the difference between making films in Iran and in America."[138]

In the Iranian model, this dominance of the state and the overbearing institutions lead to a strong opposition and a consolidated stance from artists and filmmakers. The state is strongly and straightforwardly opposed to the film industry and offers it no support — on the contrary, it is a sturdy hindrance to its survival, and the industry strives to exist in spite of the state. This dynamic leads to a polarity that does not exist in the Egyptian model, where opposition is diluted and exists only insofar as the extremity of censorship goes, but does not battle the concept itself. The difference lies in the power elements manifesting in either model. The Iranian one is that of dominance, while the Egyptian one, as explained in an earlier section, is one of governmentality, and hence allows for its own ideas to reflect through its subjects, which includes artists, intellectuals and filmmakers. This changes the outcome in terms of societal change — the former dynamic is an inducer for change, and a strengthened battle against the institutions of censorship and the freedoms to be afforded to art, even if so far it has been unsuccessful. The latter maintains and preserves the status quo and recycles its ideas through the artists themselves, hence protecting the permanence of the moral framework that allows for censorship.

The US model offered an example of a liberal society in which the individual takes priority over the collective; a dynamic that does not allow for the forms of censorship that exist in Iran or Egypt. The comparison is not necessarily acclaiming the American model, but is merely a vital demonstration of a different outcome to the Egyptian dynamic where the state does not promote a specific conception of morality and values individualistic moral choices over collective ones. These two comparisons provide two contrasting ends of the spectrum, one of total domination and aversion and another of the state offering its citizen almost absolute moral freedom which both differ from the bio power model of the Egyptian state demonstrated throughout the thesis.

V. Conclusion

[138] *Id*.

In this thesis, I attempt to describe a dynamic that rotates between the state and its citizens and contributes to the creation of their subjectivity. The freezing of a moral dynamic, that began in the 1970s with a constitutional makeup that intended and was successful in making a certain moral and religious ideal permanent and permeate throughout Egyptian society, is described through film censorship. A dynamic that kept the artists and intellectuals, along with the public, holding on to a moral archetype that needs to be protected by the state, where all else is deemed as irregular and un-Egyptian.

The concept of censorship over ideas, and the state being a moral agent, has only been recently challenged, and still done within limits that resonate with the bigger moral framework that is supposedly that of Egyptian society. This dynamic described through the model of film censorship extends to other areas, such religious freedoms or sexuality. The content that is deemed as obscene, offensive or problematic is usually a mirror of, not only what Egyptians do not wish to see on screen, but what they do not wish to encounter in their daily lives.

When the state is accepted as a moral agent that dictates and strives to maintain the public's own ideas about itself (mostly voiced by the majority), those who fall outside of said ideas are unprotected and are deemed as obscene, offensive and problematic. The 1975 case on Bahai's demonstrates this dynamic and, more recently, crackdowns on atheists and homosexuals are illustrative of that moral framework, which only endeavors to protect the majority.

In a recent televised phone interview in March 2014, the head of Alexandria Security Directorate declared that a taskforce will be formed, which consists of police officers specialized in working on such "crimes," and who will be tasked with arresting atheists who announce their beliefs on social media websites, calling them destructive and foreign ideas.[139] Four men who were arrested in their flat in Cairo were sentenced to eight years in prison for committing "debauchery"[140]in April 2014, the law's term for homosexual practices. In a separate incident, 14 men were arrested in a medical center in Cairo for practicing homosexuality earlier in October 2013.[141]

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[139] *Police Vow to Arrest Alexandria-based Atheists* (March 26, 2014), *available at* http://madamasr.com/content/police-vow-arrest-alexandria-based-atheists.
[140] *Men Sentenced 8 Years Prison Debauchery* (April 7, 2014), *available at* http://www.madamasr.com/content/men-sentenced-8-years-prison-debauchery.
[141] *14 Arrested 'Practicing Homosexuality'* (October 13 2013), *available at* http://www.madamasr.com/content/14-arrested-practicing-homosexuality.

These incidents display continuity in the rationale of a preserved and permanent Egyptian morality that is mirrored through what is accepted in film and art. This moral fabric that is imagined and kept permanent by the state and its subjects will aid the justified violation not only of rights dealing with freedom of expression and creativity, but also of rights that pertain to taboos such as sex, religion and politics.

APPENDIX I: Arabic Original of the Case of *Darb Al Hawa*

بسم الله الرحمن الرحيم

باسم الشعب

مجلس الدولة

المحكمة الإدارية العليا

دائرة منازعات الأفراد والهيئات والتصويبات

بالجلسة المنعقدة علنا برئاسة السيد الأستاذ/ محمد حامد الجمل

رئيس مجلس الدولة ورئيس المحكمة

وعضوية السادة الأساتذة المستشارين/ محمد أمين المهدى ومحمود عبد المنعم موافى وإسماعيل عبد الحميد إبراهيم وأحمد شمس الدين خفاجى .

نواب رئيس مجلس الدولة

وحضور السيد الأستاذ المستشار على رضا مفوض الدولة ووكيل مجلس الدولة وسكرتارية السيد/ حسام الخطيب .

أصدرت الحكم الآتى :

فى الطعن رقم (١٠٠٧) لسنة ٣٢ القضائية .

المقدم من :

١ – شركة أفلام اللطليعة (وجيه إسكندر وشركاه) .

٢ – حسام الدين مصطفى .

ضـــد

١ – وزير الدولة للثقافة .

٢ – مدير عام الإدارة العامة للرقابة على المصنفات الفنية .

٣ – مدير عام شركة إخوان جعفر .

٤ – رئيس مجلس إدارة شركة مصر للتوزيع ودور العرض .

٥ – مدير عام شركة مودرن سنتر .

فـــى

الحكم الصادر من محكمة القضاء الإدارى – دائرة منازعات الأفراد والهيئات – بجلسة ١٠ من يناير سنة ١٩٨٦ فى الدعوى رقم (٥٥٦٩) لسنة ٣٧ القضائية المقام من الطاعنين ضد المطعون ضدهم .

الإجـــراءات

أودع الأستاذ الدكتور/ شوقى السيد المحامى عن شركة أفلام الطليعة وحسام الدين مصطفى فى يوم الثلاثاء الموافق الثامن من فبراير سنة ١٩٨٦ قلم كتاب المحكمة الإدارية العليا تقرر طعن قيد جدولها برقم (١٠٠٧) لسنة ٣٢ القضائية فى الحكم الصادر من محكمة القضاء الإدارى (دائرة منازعات الأفراد والهيئات) بجلسة ١٤ من يناير سنة ١٩٨٦ فى الدعوى رقم (٥٥٦٩) لسنة ٣٧ القضائية المتقدمة من الطاعنين ضد المطعون ضدهم والقاضى برفض الدعوى .

وطلب الطاعن – للأسباب الموضحة بتقرير الطعن – الحكم بقبول الطعن شكلا ، وفى الموضوع بإلغاء الحكم المطعون فيه ، وبإلغاء القرار المطعون فيه ، وإلزام المطعون ضدهم بالمصروفات عن الدرجتين .

وأعلن تقرير الطعن إلى المطعون ضدهم على الوجه المبين بالأوراق وقدم السيد الأستاذ المستشار الدكتور/ حسنى درويش مفوض الدولة تقريراً مسببًا بالرأى القانونى ، ارتأى فيه الحكم بقبول الطعن شكلاً ورفضه موضوعًا وإلزام الطاعنين بالمصروفات .

وعين لنظر الطعن أمام دائرة فحص الطعن لهذه المحكمة جلسة ١٦ من فبراير سنة ١٩٨٧ وتداولت نظره بالجلسات على النحو المبين بمحاضرها ، وبجلسة ٢٠ من فبراير سنة ١٩٨٩ قررت الدائرة إحالة الطعن إلى هذه المحكمة . وقد تحدد لنظره أمامها جلسة أول أبريل سنة ١٩٨٩ ، وقد نظرت المحكمة الطعن على النحو المبين بمحاضرها ، وبجلسة الثامن من ديسمبر سنة ١٩٩٠ قررت المحكمة إصدار الحكم بجلسة اليوم السبت الموافق ٢٦ من يناير سنة ١٩٩١ ، وفيها صدر الحكم وأودعت مسودته المشتملة على أسبابه عند النطق به .

المحكمة

بعد الاطلاع على الأوراق ، وسماع المرافعة ، والمداولة .

من حيث إن الطعن قد استوفى سائر أوضاعه الشكلية ، ومن ثم فهو مقبول شكلاً .

ومن حيث إن عناصر هذه المنازعة تتحصل - حسبما يبين من الأوراق - فى أنه فى الخامس من سبتمبر سنة ١٩٨٣ أقام الطاعنان الدعوى رقم ٥٥٦٩ لسنة ٣٧ القضائية أمام محكمة القضاء الإدارى (دائرة منازعات الأفراد والهيئات) . وطلبا فى ختامها الحكم بصفة مستعجلة بوقف تنفيذ القرار المطعون فيه مع ما يترتب على ذلك من آثار. وقال الطاعنان شرحا لدعواهما إنه فى ١٤ من سبتمبر سنة ١٩٨٢ وافقت الرقابة على المصنفات الفنية على الترخيص لها بالمعالجة السينمائية لموضوع فيلم "درب الهوى" وفى التاسع من فبراير سنة ١٩٨٣ أجازت السيناريو الخاص بالفيلم ،

فبدأ حقها فى عمل المصنف السينمائى بذات العنوان ، وتم تصوير الفيلم وفقًا للسيناريو المجاز ، وفى الرابع من يوليو سنة ١٩٨٣ وافقت الرقابة ورخص لها بعرض الفيلم وعرض بدور العرض اعتباراً من ١١ من يوليو سنة ١٩٨٧ ، وفى ٢٣ أغسطس سنة ١٩٨٣ قررت الرقابة على المصنفات الفنية سحبها الترخيص وبنت قرارها على أساس أنه قد اتضح للرقابة بعد عرض الفيلم أنه قد أحدث انطباعًا سيئًا لدى الجماهير ، وأن سحب الترخيص كان حرصًا على حماية الآداب العامة والمحافظة على الأمن والنظام العام ومصالح الدولة العليا .

ونعى المدعيان فى دعواهما على القرار المطعون فيه ما يأتى :

١ – أن سحب الترخيص ينطوى على مصادرة للعمل الفنى ، وهو الأمر المحظور وفقًا لنص المادة (٣٦) من الدستور .

٢ – أن القانون رقم ٤٣٠ لسنة ١٩٥٥ قد قيد ما كفله الدستور من المادة (٤٩) من القانون المشار إليه ، إذ لم يستجد ما يدعو لسحب الترخيص بعد صدوره .

ومن ذلك انتهى المدعيان إلى توافر ركن الجدية فى طلبها وقف تنفيذ القرار المطعون فيه ، أما ركن الاستعجال فأرجعاه إلى أن الفيلم السيمائى بضاعة سريعة البوار ، وأنه يترتب على سحب الترخيص بالفيلم أضرار جسيمة تنتج عن إلغاء الارتباطات الخاصة بتسويقه .

وردت جهة الإدارة على الدعوى بأن سحب الترخيص يستند إلى حق مقرر فى المادة (٩) من القانون رقم ٤٣٠ لسنة ١٩٥٥ التى تجيز للسلطة القائمة على الرقابة أن تسحب بقرار مسبب الترخيص السابق إصداره فى أى وقت إذا طرأت ظروف جديدة تستدعى ذلك . وقد طرأت فى حالة الفيلم محل التداعى ظروف تمثلت فى سخط جماهيرى عام فى الداخل والخارج وأودعت جهة الإدارة حافظة حوت صوراً مما نشرته بعض الصحف والمجلات فى هذا الشأن وطلبت جهة الإدارة الحكم برفض الدعوى .

وبجلسة ١٤ من يناير سنة ١٩٨٦ قضت محكمة القضاء الإدارى برفض الدعوى. وأقامت المحكمة قضاءها على أن المشرع فى القانون رقم ٤٣٠ لسنة ١٩٥٥ أجازت لجهة الإدارة رفض منح الترخيص ابتداءً أو أن تسحبه إذا طرأت ظروف جديدة تستدعى هذا السحب . ومقتضى ذلك أن لجهة الإدارة أن تسحب الترخيص إذا طرأت ظروف جديدة تقتضى ذلك .

وفى الحالة الماثلة لاحظت الرقابة على المصنفات الفنية بعد الترخيص بعرض فيلم (درب الهوى) استياء الجمهور لما انطوى عليه الفيلم من تشويه لتاريخ مصر وإساءة لسمعتها واعتداء على الحياء الخلقى للمواطنين والمساس بمشاعرهم .

وأضاف الحكم المطعون فيه أنه لا حجة فى استناد المدعيين إلى قرار لجنة التظلمات لأن هذا القرار استشارى لا يلزم الإدارة العامة للرقابة على المصنفات الفنية التى طرحته وظل قرارها بالسحب قائمًا .

ومن حيث إن مبنى الطعن أن الحكم المطعون فيه قد صدر معيبًا لأسباب جوهرية هى أنه لم يقيد بقرار لجنة التظلمات ، وهى لجنة إدارية ذات اختصاص قضائى وقد أصدرت قرارها بإلغاء قرار الرقابة بمنع عرض الفيلم ، ورغم ذلك أغفلت جهة الإدارة هذا القرار واستمرت فى سحب ترخيص الفيلم دون سند من القانون .

ومن حيث إن موضوع النزاع الماثل إنما يتصل فى جوهره بحرية التعبير بالوسائل المختلفة ويقضيه مدى حرية التعبير الفنى فى إطار الضوابط المشروعة الواجبة الالتزام حماية للمجتمع ورعاية للظام العام والآداب العامة والقيم الأخلاقية والمثل التى تحكمه .

ومن حيث إن الإعلان العالمى لحقوق الإنسان الذى أقرته الجمعية العامة للأمم المتحدة وأعلنته فى العاشر من ديسمبر سنة ١٩٤٨ ينص فى المادة التاسعة عشرة على أن "لكل شخص الحق فى حرية الرأى والتعبير ، ويشمل هذا الحق حرية اعتناق الآراء دون أى تدخل ، واستقاء الأنباء والأفكار وتلقيها وإذاعتها بأية وسيلة كانت دون تقيد بالحدود الجغرافية .

وينص فى المادة السابعة والعشرين على أن :

١ – لكل فرد الحق فى أن يشترك اشتراكًا حرًا فى حياة المجتمع الثقافية وفى الاستمتاع بالفنون والمساهمة فى التقدم العلمى والاستفادة من نتائجه .

٢ – لكل فرد الحق فى حماية المصالح الأدبية والمادية المترتبة على إنتاجه العلمى أو الأدبى أو الفنى .

وتنص الاتفاقية الدولية للحقوق المدنية والسياسية التى أقرتها الجمعية العامة للأمم المتحدة فى ١٦ من ديسمبر سنة ١٩٦٦ والتى وقعت عليها جمهورية مصر العربية فى الرابع من أغسطس سنة ١٩٦٧ وصدر بالموافقة عليها قرار رئيس الجمهورية رقم ٥٣٦ لسنة ١٩٨١ فى المادة (١٨) على أن "لكل فرد الحق فى حرية الفكر" وتنص المادة (١٩) على أنه :

١ – لكل فرد الحق فى اتخاذ الآراء دون تدخل .

٢ – لكل فرد الحق فى حرية التعبير وهذا الحق يشمل حرية البحث عن المعلومات أو الأفكار من أى نوع وتلقيها ونقلها بغض النظر عن الحدود ، وذلك إما شفاهة أو كتابة أو طباعة ، وسواء كان ذلك فى قالب فنى أو بأية وسيلة أخرى يختارها .

ومن حيث إن مقتضى هذه النصوص أن حرية التعبير الفنى هى إحدى الحريات التى كفلتها الإعلانات والاتفاقات الدولية لحقوق الإنسان ، تلك الإعلانات والاتفاقات التى لم تجعل حرية التعبير الفنى مقصورة فقط على صاحب الإبداع الفنى ، وإنما جعلت من حق الإنسان غير المبدع أن يتلقى إبداع الفنانين ونتاج فنونهم وأن يستمتع به لأن فى هذا إثراء لحياة المجتمع الثقافية ، وترقية للمستوى الحضارى للإنسان . لذلك فقد نص دستور جمهورية مصر العربية فى وثيقة إعلانه على أننا "نحن جماهير هذا الشعب المؤمن بتراثه القومى الخالد ، والمطمئن إلى إيمانه العميق والمعتز بشرف الإنسان والإنسانية . نحن جماهير هذا الشعب الذى يحمل إلى جانب أمانة التاريخ مسئولية أهداف عظيمة للحاضر والمستقبل . نحن جماهير شعب مصر : باسم الله

وبعون الله نلتزم إلى غير ما حد ، ودون قيد أو شرط أن نبذل كل الجهود لتحقيق التطور المستمر للحياة فى وطننا عن إيمان بأن التحدى الحقيقى الذى تواجهه الأوطان هو تحقيق التقدم ، والتقدم لا يحدث تلقائيًا أو بمجرد الوقوف عند إطلاق الشعارات وإنما القوة الدافعة لهذا التقدم هى إطلاق جميع الإمكانيات والملكات الخلاقة والمبدعة لشعبنا الذى سجل فى كل العصور إسهامه عن طريق العمل وحده فى أداء دوره الحضارى لنفسه وللإنسانية" .

ولا شك فى أن تلك العبارات تمثل تعبيراً شعبيًا ملزمًا عن أن ملكات الخلق والإبداع فى هذا الشعب يجب أن تنطلق ، وأن انطلاق هذه الملكات هو القوة الدافعة لتقدم هذا الوطن . ومن أجل ذلك جاء نص المادة (٢٧) من الدستور معبراً عن تلك القاعدة فى وضوح وذلك بإعلانه أن "حرية الرأى مكفولة" ولكل إنسان التعبير عن رأيه ونشره بالقول أو الكتابة أو التصوير أو غير ذلك من وسائل التعبير فى حدود القانون ، والنقد الذاتى والنقد البناء ضمان لسلامة البناء الوطنى ، وكذلك جاء نص المادة (٤٩) من الدستور على أن تكفل الدولة للمواطنين حرية البحث العلمى والإبداع الأدبى والفنى والثقافى وتوفر وسائل التشجيع اللازمة لتحقيق ذلك .

هكذا يعلن دستور مصر كفالة حرية الرأى ، وحرية التعبير ، وذلك بمختلف وسائل الإعلام ، مكتوبة ، ومسموعة ، ومرئية . وكذلك حرية النقد البناء الذى لم يحظره الدستور ، بل على العكس من ذلك تمامًا ، نص على أنه السياج والضمان لكفالة سلامة البناء الوطنى وذلك على إيمان وطنى بأن حرية الرأى من شأنها تحرير المجتمع من معاناة أية عزلة فكرية فى أى مجال من مجالات الحياة ، على اعتبار أن التجارب الفكرية كجزء من الحضارة الإنسانية تعيش بالانتقال الخصب وبالتفاعل الخلاق ، ذلك أن مشعل الحضارة – التى قوامها الفن الرفيع – إنما ينتقل من شعب إلى شعب ومن دولة إلى دولة ومن مناخ إلى مناخ ولكنه فى كل بلد يحصل على زيت جديد يقوى به ضوؤه على امتداد الزمان .

ومن الحقائق المسلمة أن مصر بالذات لم تعش حياتها الثقافية والفنية فى عزلة عن المنطقة المحيطة بها ، بل كانت دائمًا بالوعى ، وباللاوعى فى بعض الأحيان ، تؤثر فيما حولها وتتأثر به ، كما يتفاعل الجزء مع الكل ، وتلك حقيقة ثابتة تظهرها دراسة الفن الفرعونى ونشر الحضارة المصرية والإنسانية الأولى ، كما تؤكدها بعد ذلك فنون عصور السيطرة الرومانية والإغريقية ، ثم جاء الفن الإسلامى بالضوء الذى صاغ منه الفنان فى مصر ثوبًا فنيًا جديداً مطرزًا بالفكر والوجدان الروحى .

من أجل ذلك كان من حق كل مواطن أن يمارس الفن بقدر ما يتحمل استعداداً أو موهبة لأن الفن – شأنه شأن العلم – طريق تعزيز الحرية الإنسانية وتكريمها ، ذلك أن من شأن الفن الهادف أن يربط آمال المواطنين مع غيره من أجل غد أفضل ، من أجل غد عزيز لهم جميعًا وللأجيال القادمة من أبنائهم وأحفادهم .

غير أن المحكمة وهى تبين عن هذه الحالة الفنية اللازمة والقائمة ، إنما تؤكد فى ذات الوقت أن لكل نشاط مشروع غاية ، تصان حريته طالما ابتغاها ، ولكن حريته تُنتهك إذا ما تعداها وغاية الفن الارتقاء بالمشاعر ، والسمو بالقيم ، والدعوة إلى الحق والخير والجمال فإذا ما التزم الفن بتلك الغايات وجب صيانته وتشجيعه وإذا ما خرج عليها وأصبح نشره وإذاعته يتضمنان تهديد النظام العام والآداب العامة أو حقوق الغير وحرياتهم ومشاعرهم لزم حماية المجتمع من أضراره وشروره لتجريده من سلاحه وهو النفاذ العام إلى الجماهير مثل كل من يسىء استخدام السلاح .

ومن حيث إن تلك الحقيقة الأساسية قد أفصح عنها فى وضوح الإعلان العالمى لحقوق الإنسان – سالف الإشارة إليه – حيث نص فى المادة التاسعة والعشرين منه على أنه :

١ – على كل فرد واجبات نحو المجتمع الذى يتاح فيه لشخصيته أن تنمو نمواً حراً كاملاً .

٢ – يخضع الفرد فى ممارسة حقوقه وحرياته لتلك القيود التى يقررها القانون فقط ، لضمان الاعتراف بحقوق الغير وحرمانه واحترامها ، ولتحقيق المقتضيات

العادلة للنظام العام والمصلحة العامة والأخلاق فى مجتمع ديمقراطى . "كذلك أفصحت عن تلك الحقيقة الاتفاقية الدولية للحقوق المدنية والسياسية – السابق الإشارة إليها – وذلك فى نصها بالمادة (١٩) على أنه :

٣ – لكل فرد الحق فى حرية التعبير، وهذا الحق يمثل حرية البحث عن المعلومات أو الأفكار من أى نوع وتلقيها ونقلها بغض النظر عن الحدود ، وذلك إما شفاهة أو كتابة أو طباعة ، وسواء أكان ذلك فى قالب فنى أم بأية وسيلة أخرى يختارها .

٤ – ترتبط ممارسة الحقوق المنصوص عليها فى الفقرة من هذه المادة بواجبات ومسئوليات خاصة ، وعلى ذلك فإنها قد تخضع لقيود معينة ، ولكن فقط بالاستناد إلى نصوص القانون والتى تكون ضرورية .

(أ) من أجل احترام حقوق أو حرية الآخرين .

(ب) من أجل حماية الأمن الوطنى أو النظام العام أو الصحة العامة أو الأخلاق .

وفى هذا الإطار ، وأخذاً بذات المفهوم نص دستور مصر فى المادة (٤٧) على أن "حرية الرأى مكفولة ، ولكل إنسان التعبير عن رأيه بالقول أو الكتابة أو التصوير أو غير ذلك من وسائل التعبير فى حدود القانون" .

ولا جدال فى أن حدود القانون هى السياج الذى يجب أن تمارس فى إطاره حرية الرأى أيا كانت وسيلة التعبير عنه للغير ويشمل ذلك حرية التعبير بالصوت والصورة فى صيغة فيلم سينمائى .

وحيث إن الحدود القانونية التى يجب أن تلتزم بها ممارسة حرية الرأى والتعبير إنما تبدأ من حدود القانون الوضعى الأول والأسمى المتمثل فى أحكام الدستور وحيث إن الدستور المصرى قد نص فى المادة (٢) على أن "الإسلام دين الدولة ، واللغة العربية لغتها الرسمية ومبادئ الشريعة الإسلامية المصدر الرئيسى للتشريع" كما نص فى المادة (٩) على أن "تحرص الدولة على الحفاظ على الطابع الأصيل للأسرة المصرية وما يتمثل فيه من قيم وتقاليد مع تأكيد هذا الطابع وتنميته فى العلاقات داخل

المجتمع المصرى" ونص فى المادة (١٠) على أن "تكفل الدولة حماية الأمومة والطفولة" وترعى النشء والشباب ، وتوفر لهم الظروف المناسبة لتنمية ملكاتهم "وأوجب فى المادة (١٢) أن " يلتزم المجتمع برعاية الأخلاق وحمايتها وبالتمكين للتقاليد المصرية الأصيلة ، وعليه مراعاة المستوى الرفيع للتربية الدينية والقيم الخلقية والوطنية ، والتراث التاريخى للشعب ، والحقائق العلمية والسلوك الاشتراكى ، والآداب العامة ، وذلك فى حدود القانون ، وتلتزم الدولة باتباع هذه المبادئ والتمكين لها، تلك إذن هى حدود حرية الرأى ووسائل التعبير عنه بمختلف أنواعها وفقًا لما نص عليه القانون الوضعى الأول فى مصر ، وتلك هى الضوابط العليا الأساسية الحيوية الجوهرية اللازمة لحياة الوطن والمواطن والحاكمة لتقدم الدولة صوب غد أفضل لأجيال متلاحقة من المصريين وهى الضوابط الدستورية العامة التى يجب أن يلتزم بها المشرع المصرى وأيضًا الفنان المصرى فى كل مجال من مجالات الفن بمختلف فروع صوره وأشكاله ووسائله ووجهاته .

ولا شك أن فن السينما من أخطر وسائل التعبير عن الرأى والفكر والنشر للأخلاق والقيم والمفاهيم الإنسانية لأنه كالمسرح مجمع الفنون ، بل إنه يزيد على المسرح بما له من انتشار غير محدود من خلال دور العرض فضلا عن الإذاعة المسموعة والمرئية ، بل وهى خلال أجهزة (الفيديو) ذات الانتشار الواسع حتى فى أعماق قرى مصر فى هذه الأيام . إن فن السينما على هذا النحو مخاطب كغيره من وسائل الإعلام ، بل وقبل غيره منها ، بأن يلتزم بإطار وحدود الحرية المشروعة فى التغيير والتأثير كما يتلزم بقيم المجتمع المصرى فيما يعرضه على أبناء مصر الذى يؤثر بعمق فيهم ويشكل دون وعى منهم أفكارهم بأكثر وأخطر مما يؤثر البيت والمدرسة ووسائل التعليم ، ففن السينما مدرسة شعبية ذات خطر شديدة الأثر فى حياة عقل ووجدان كل فرد وبخاصة الأجيال الصاعدة من هذه الأمة التى تحمل مشاعل وأعلام قوتها وحضارتها فى مستقبل الأيام ، ولذلك فإن المشرع فى القانون رقم ٤٣٠ لسنة ١٩٥٥ – ينظم الرقابة على الأشرطة السينمائية ولوحات الفانوس السحرى والأغانى والمسرحيات والمنولوجات والأسطوانات وأشرطة التسجيل الصوتى – بأن ينص فى

المادة (١) على أن "تخضع للرقابة الأشرطة السينمائية ولوحات الفانوس السحرى والمسرحيات والمنولوجات والأغانى والأشرطة الصوتية وإسطوانات أو ما يماثلها ، وذلك بقصد حماية الآداب العامة والمحافظة على الأمن والنظام العام ومصالح الدولة العليا .

وقد ذكر المشرع فى المذكرة الإيضاحية للقانون المذكور أن الأغراض المقصودة من الرقابة هى المحافظة على الأمن والنظام العام وحماية الآداب العامة ومصالح الدولة العليا ، وإقرار النظام العام والآداب وأن ما يقصده المشرع من مصالح الدولة العليا هو ما يتعلق بمصلحتها السياسية فى علاقاتها مع غيرها من الدولة ، كما تضمنت هذه المذكرة الإيضاحية أن الرقابة على عرض الأشرطة السينمائية أو ما يماثلها فى مكان عام أوسع من الرقابة فى غيرها إذ أن فى خروج المصنف الخاضع للرقابة من مرحلة التحضير والإعداد إلى حيز العرض ما يجعله أكثر خطراً إذا ما تضمن أى مخالفة للآداب العامة أو النظام العام .... كما تضمنت هذه المذكرة أنه لما كانت من بين الأغراض التى هدف إليها القانون حماية سمعة البلاد ومصالحها العليا فقد نص على ضرورة الحصول على ترخيص خاص بالتصدير للمصنفات الفنية .

ووفقًا لهذا النص فإن المشرع قد أطلق حرية الفنان المصرى خارج النطاق الذى يمس القيم العليا للمجتمع ، حيث فرض الرقابة اللازمة فقط لضمان التزام هذا الحق الذى لا يجوز تجاوزه ويتفق ذلك مع القواعد المقررة فى الإعلان العالمى لحقوق الإنسان ، والاتفاقات الدولية والدستور المصرى ، وبالتالى فإن حدود الرقابة ومجالاتها التى نص عليها المشرع فى قانون الرقابة على المصنفات الفنية يجب أن تكمن فى المبادئ أو القيم والغايات السابقة التى حددتها نصوص الدستور الحالى الصادر سنة ١٩٧١ ويتعين تفسير عبارات قانون الرقابة فى إطار وضمن الحدود التى تقررها أحكام الدستور على النحو سالف البيان .

ومن حيث إنه قد حظر القانون المشار إليه فى المادة (٢) تصوير الأشرطة السينمائية بقصد الاستغلال بغير ترخيص خاص به . ونص فى المادة (٣) منه على

أن يشمل الترخيص بتصوير الأشرطة السينمائية الترخيص بتسجيل ما تضمنه سيناريو الفيلم من مصنفات خاضعة للرقابة ، ونص فى المادة (٤) على بيان إجراءات التقدم بطلب الترخيص ومنحه ، وبين فى المادة (٥) المدة التى يسرى خلالها الترخيص وحدد فى المادة (٦) إجراءات طلب تجديد الترخيص ، وأوضح فى المادة (٧) حدود استعمال الترخيص بعدم جواز استعمال ما قررت السلطة القائمة على الرقابة استبعاده من المصنف المرخص به فى الدعاية له ، وأوجب فى المادة (٨) على المرخص له ذكر بيانات الترخيص بالعمل الفنى المرخص به ، ونص فى المادة (٩) على أنه "يجوز للسلطة القائمة على الرقابة أن تسحب بقرار مسبب الترخيص السابق إصداره فى أى وقت إذا طرأت ظروف جديدة تستدعى ذلك ، ولها فى هذه الحالة إعادة الترخيص بالمصنف بعد إجراء ما تراه من حذف أو إضافة أو تعديل دون تحصيل رسوم ، ونص القانون فى المادة (١٠) على بيان الرسوم التى تفرض على ما يخضع للرقابة من مصنفات ، وبينت المادة (١١) حالات الإعفاء من هذا الرسم . ويتبين من الأحكام السابقة أن الجهة القائمة على الرقابة تتابع العمل السينمائى وترخص به منذ بداية التصوير حتى عرضه للرقابة والترخيص مرحلة تحت إشراف الجهة الإدارية المختصة ومن حيث إنه قد نصت المادة (١٢) على أنه " يجوز التظلم من القرارات التى تصدرها السلطة القائمة على الرقابة إلى لجنة تتشكل من :

١ – مدير عام مصلحة الاستعلامات أو من يندبه لذلك ... رئيسا .

٢ – مندوب من مجلس الدولة يندبه رئيس .

٣ – رئيس نقابة السينمائيين أو من يختاره مجلس النقابة .

ونص القانون فى المادة (١٣) على أنه "يرفع التظلم إلى اللجنة ، مبينا فيه موضوع القرار المتظلم منه وأسباب التظلم فى مدى أسبوع على الأكثر من تاريخ إبلاغ المتظلم بالقرار بكتاب موصى عليه مشفوعًا بالمستندات والأدلة المؤيدة لوجهة نظره وبالإيصال الدال على دفع مبلغ التأمين الذى يحدد بقرار يصدره وزير الإرشاد القومى ، ويرد هذا المبلغ إذ صدر قرار اللجنة بالموافقة على طلبات المتظلم ، ويجوز أن

يحضر المتظلم اجتماعات اللجنة أو ينيب عنه محاميًا فى ذلك ، أو أن يقدم لها مذكرات مكتوبة .

ويجوز للجنة أن تستدعى من تشاء من موظفى السلطة القائمة على الرقابة لمناقشتهم فى موضوع التظلم أو أن تكلف خبيراً بوضع تقرير على نفقة المتظلم ، ويجب عليه فى هذه الحالة أن يودع بخزينة مصلحة الاستعلامات بصفة تأمين لأتعاب الخبير ولا تلزم بما يرد فى تقريره . " ونص القانون فى المادة (١٤) على أنه " يجب على اللجنة أن تفصل فى موضوع التظلم خلال ثلاثين يوما على الأكثر من تاريخ ورود التظلم إليها ، وتصدر قراراتها بالأغلبية ، وتكون قراراتها نهائية ، وتكون قراراتها نهائية وتبلغ إلى أصحاب الشأن بكتاب موصى عليه " .

ومن حيث إن مؤدى هذا التنظيم القانونى أن المشرع قد أطلق حرية الإبداع الفنى فى مجال الفن السينمائى ، إلا أنه قيد هذا الإطلاق بحدود بينها القانون على سبيل الحصر هى حماية الآداب العامة ، والمحافظة على الأمن ، والنظام العام ، ومصالح الدولة العليا . بحيث إذا ما خرج المصنف السينمائى عن أحد هذه الحدود عد خارجًا عن المقومات الأساسية الاقتصادية أو الاجتماعية أو الأخلاقية أو السياسية التى يحميها الدستور والتى تعلو وتسمو دائمًا فى مجال الرعاية والحماية على ما تتطلبه الحرية الفردية الخاصة ، إذ لا شك فى أنه من المبادئ الرئيسية العامة التى تقوم عليها الدول المتحضرة من الأفراد لتحقيق الغايات والصوالح العامة التى يستهدفونها فى نطاق إقليم الدولة وجوب احترام السلطة العامة وتقديم الصالح العام على الصالح الخاص لآحاد الأفراد ، إذا وجد التعارض بينهما .

وإذا كان المشرع قد أجاز لجهة الإدارة عند قيام المقتضى المشار إليه ألا تسمح بعرض العمل السينمائى ، فقد أجاز لها بعد الترخيص به أن تسحب بقرار سبب هذا الترخيص إذا طرأت ظروف جديدة تستدعى ذلك . ولا شك أن مقتضى التفسير المتناسق للنصوص يتطلب القول بأن تلك الظروف الجديدة ينبغى أن تتعلق بذات الضوابط الواردة فى نص المادة (١) من القانون ، وهى حماية الآداب العامة ،

والمحافظة على الأمن والنظام العام ، ومصالح الدولة العليا على النحو السالف تحديده مرتبطة بأحكام الدستور ويفيد ما ورد فيه ، أى أنه يجوز للجهة الإدارية أن تسحب الترخيص إذا ما وُجِدَت ظروف تجعل من العمل السينمائى بعد الترخيص به متعارضًا مع أى من مقومات المجتمع الأساسية المشار إليها فى تقدير جهة الإدارة وذلك سواء كانت هذه الظروف تتعلق بذات المصنف أو بجمهور المشاهدين أو بالحالة العامة للدولة أو المجتمع فما يمكن قبوله وقت السلم قد يتعارض مع النظام العام فى حالة الطوارئ أو الحرب ، وما قد لا يؤثر فى مصلحة الدولة العليا وقت العلاقات السلمية مع إحدى الدول قد لا يسوغ عند قطع العلاقات مع إحداها أو بعضها وما قد يباح فى حالة قطع العلاقات مع دولة أو أكثر لوجود حالة حرب أو انقطاع العلاقات لا يسوغ فى حالة عودة هذه العلاقات .

ومن حيث إن تقدير جهة الإدارة إنما ينبغى أن يقوم على عناصر تتجه وتبرره عليها ويستند إليها ، غايتها تحقيق الصالح العام الأعلى للمجتمع والدولة فى إطار الشرعية وسيادة القانون ، فقد أجاز القانون لمن يرفض طلب الترخيص له بالعمل السينمائى أو من يسحب الترخيص الصادر له به أن يتظلم من القرار الصادر بذلك إلى لجنة إدارية ذات اختصاص قضائى يضم تشكيلها عنصرًا قضائيًا ، تتولى البت فى أمر التظلم بمراعاة المبادئ والقيم المتقدمة جميعًا دون إفراط فى تقييد حرية التعبير والرأى على خلاف الدستور والقانون أخذا باتجاهات جامدة متطرفة تتبناها أقلية من أفراد المجتمع ودون أى تفريط فى المقومات الأساسية الأخلاقية والاجتماعية والاقتصادية للأمة وفقًا لما حدده الدستور والقانون والتى تلتزم بها وتحترمها وتقدسها الأغلبية الساحقة من المواطنين .

ومن حيث إن لجنة التظلمات لا شك تصدر فيما تنظره قرارًا إداريًا نهائيًا حسب صريح نص القانون ويجوز الطعن فيه لكل ذى صفة أمام مجلس الدولة بهيئة قضاء إدارى ، ومن ذوى الصفة فى هذا المجال كل من المتظلم وجهة الإدارة المتظلم من قرارها ، وذلك احترامًا لكون اللجنة سالفة الذكر جهة إدارية تفصل فى منازعة بين

طرفين فهى أيضًا من الناحية الموضوعية تختص بالفصل فيها وفقًا للقانون لإزالة أية مخالفة لأحكامه تمكينًا للحق والعدل . وقد نظم المشرع إجراءات عمل هذه اللجنة ونص على أن قراراتها لا تخضع لرقابة لاحقة ولا لتصديق من سلطة أخرى ، بل جعل هذه القرارات نهائية نافذة فور صدورها وبالتالى فلا تملك السلطة الإدارية إلغاءه أو وقفه أو تعديله إلا من خلال القضاء الإدارى إذ أن حقيقة الطبيعة القانونية للجنة التظلمات المذكورة أنها لجنة إدارية ذات اختصاص قضائى تصدر قرارات نهائية ونافذة (مثلها فى ذلك مثل مجالس التأديب بالجامعات كما سبق وأن جرى على ذلك قضاء هذه المحكمة) .

ومن حيث إنه تلخص وقائع الطعن الماثل وفق الثابت من الأوراق فى أنه فى ١٩٨٢/٩/١٤ وافقت جهة الإدارة على موضوع فيلم (درب الهوى) ، وفى ١٩٨٣/٢/٩ وافقت على سيناريو الفيلم ، وفى ١٩٨٣/٧/٤ وافقت على عرضه الذى بدأ فى ١٩٨٣/٧/١١ ، وفى ١٩٨٣/٨/٢٧ تم سحب القرار الصادر بالترخيص ، وجاء بديباجة هذا القرار أنه انبنى على " ما اتضح للرقابة أنه بعد عرض الفيلم أحدث انطباعًا سيئًا لدى الجماهير ، وحرصًا على حماية الآداب العامة ، والمحافظة على الأمن والنظام العام ومصالح الدولة العليا ، ومن حيث إن الثابت من أوراق الطعن أنه قد تم التظلم من القرار المشار إليه أمام لجنة التظلمات المختصة التى نظرت التظلم بجلستها المعقودة فى الثانى من أكتوبر سنة ١٩٨٣ . فقررت هذه اللجنة حذف سبعة مشاهد محددة على سبيل الحصر من الفيلم مع الموافقة على استمرار عرض الفيلم على الكبار فقط كقرار الرقابة السابق وعلى أن يعرض الفيلم على لجنة التظلمات بعد تنفيذ الملاحظات فى حضور مدير إدارة الأفلام القومية .

ومن حيث إن جهة الإدارة المطعون ضدها لا تجادل فى صدور هذا القرار الذى أودعت صورته فى حافظة مستنداتها المودعة أمام محكمة القضاء الإدارى بجلسة ١٩٩٣/١٢/١٣ كما لم تنف ما أبداه الطاعنان من أنهما على استعداد لتنفيذ قرار لجنة التظلمات بحذف المشاهد التى قررت حذفها وأنها لم تستجب لهما .

ومن حيث إن قرار لجنة التظلمات المشار إليها ، وهو على ما تقدم قرار إدار نهائى صادر من لجنة إدارية ذات اختصاص قضائى وهو بهذه الصفة قرار واجب النفاذ ما لم يصدر حكم قضائى بإلغائه ، ويتعين قانونًا طالما بقى نافذًا أن تصدر الجهة الإدارية المختصة القرارات اللازمة لإعمال أثره وتحقيق نفاذه .

ومن حيث إن هذا القرار قد صار منطويًا على إلغاء قرار جهة الإدارة بسحب الترخيص بعرض فيلم (درب الهوى) ومقررًا جواز عرضه بعد حذف بعض المشاهد منه، على أن تتحقق اللجنة من تمام التنفيذ وتعيد النظر فى الأمر بعده لتصدر إرادتها الحاسمة نهائيًا للنزاع بين الرقابة على المصنفات الفنية والمتظلمين أمام اللجنة .

وحيث إن هذا القرار لم يتم الطعن عليه من جانب جهة الإدارة قضائيًا وقد كانت تملك الالتجاء إلى القضاء بطلب إلغائه خلال المواعيد القانونية المقررة ، ومن ثم فهو قرار إدارى نهائى ونافذ قانونًا ويتعين على جهة الإدارة إصدار القرارات اللازمة لتحقيق هذا النفاذ ، وامتناع الجهة الإدارية عن تحقيق ذلك يعد قرارًا سلبيًا مخالفًا للقانون متعين الإلغاء .

ومن حيث إن حقيقة تكييف الدعوى التى أقامها الطاعنان والتى صدر فيها الحكم المطعون فيه أنها طعن على القرار السلبى من جانب جهة الإدارة أى الرقابة على المصنفات الفنية بالامتناع عن تنفيذ قرار لجنة التظلمات المشار إليه بما كان يتعين عليها معه مطالبة المتظلم بإجراء حذف المشاهد المطلوب حذفها وأعمال رقابتها على المصنف بعد إجراء الحذف وتقدير ما تراه من جديد وإعادة العرض على لجنة التظلمات بما تراه بشأن الفيلم بعد الحذف ثم تنفيذ ما تنتهى إليه اللجنة فى هذا الشأن .

ومن حيث إنه بناء على ما سبق يكون ما يطالب به الطاعنان على هذا الحد يطابق صحيح حكم القانون وبالتالى فإن طعنهما يكون قد وافق صحيح حكم القانون .

ومن حيث إن الثابت من الأوراق أن الرقابة على المصنفات الفنية ووزارة الثقافة معًا قد امتنعا عن تنفيذ قرار لجنة التظلمات الصادر بشأن الفيلم محل النزاع على

أساس من القول بأن قرار هذه اللجنة لا يلزم أيهما بأى إجراء لأنه مجرد قرار استشارى لا نفاذ له – وهذا بذاته ما ذهب إليه الحكم المطعون فيه على خلاف صحيح حكم القانون وصريح نصه كما سلف البيان والذى يقضى بأن لجنة التظلمات المذكورة تفصل فى التظلم بتشكيلها الإدارى الذى يدخل فيه عنصر قضائى فى المنازعة بين الرقابة والمتظلمين على استقلال عن الجهة الإدارية ملتزمة بأحكام الدستور والقانون ومقيدة بضمائر أعضائها فهى تصدر طبقًا للقانون فى التظلمات التى تفصل فيها قرارات نهائية واجبة النفاذ ، ومن ثم فإن الحكم الطعين إذا ذهب فيما قضى به على خلاف صحيح حكم القانون وصريح نصوصه فإنه يكون قد أخطأ فى تطبيق القانون وتفسيره وتأويله ويكون بالتالى حقيقًا بالإلغاء .

ومن حيث إنه لا يفوت المحكمة أن تنوِّه بأن إلغاء القرار السلبى الذى يتمثل فى امتناع الإدارة عن تنفيذ قرار لجنة التظلمات الصادر بالفصل فى تظلم الطاعنين من سحب ترخيص فيلم (درب الهوى) نزولا على الشرعية وسيادة القانون الحصن الشرعى لجميع العاملين فى مجال الإنتاج السينمائى بكل مراحله فى مصر ، فإن هذا الإلغاء لا يترتب عليه تلقائيًا عرض الفيلم المذكور وإنما إعادة الحالة بشأنه إلى إطار الشرعية وسيادة القانون بحيث تلتزم الجهات الإدارية المختصة بالرقابة على المصنفات الفنية ووزارة الثقافة بالتقيد بقرار لجنة التظلمات الصادر بشأنه وتعيد عرض الأمر عليها وفقًا لما قررته بشأنه ، لتعيد النظر فى أمر الفيلم فى ضوء تنفيذ قرارها ، وتقرير ما تراه بمراعاة أحكام الدستور والقانون بشأن الترخيص بعرضه ، وفى إطار ما يقضى به الدستور والقانون من حماية ورعاية لحرية الرأى والإبداع الفنى وفى حدود المقومات الأساسية للمجتمع المصرى وبما لا يتعارض مع النظام العام والآداب والمصلحة القومية العليا للدولة على نحو ما سلف بيانه .

ومن حيث إن من يخسر الدعوى يلزم بمصروفاتها إعمالاً لحكم المادة (١٥٤) من قانون المرافعات .

فلهذه الأسباب :

حكمت المحكمة بقبول الطعن شكلا ، وفى الموضوع بإلغاء الحكم المطعون فيه ، وبإلغاء القرار السلبى بالامتناع عن تنفيذ قرار لجنة التظلمات الصادر فى الثانى من أكتوبر سنة ١٩٨٣ بشأن فيلم (درب الهوى) على النحو المبين بالأسباب وألزمت الجهة الإدارية المطعون ضدها بالمصروفات .

صدر هذا الحكم وتلى علنًا بجلسة يوم السبت ١٠ من رجب سنة ١٤١١هـ الموافق ٢٦ من يناير سنة ١٩٩١م بالهيئة المبينة بصدره .