

# **Why Has Egypt Been Under Emergency Rule for the Past Hundred Years?**

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## **Dedication**

This thesis is dedicated to my parents and my brothers and sisters who have encouraged and supported me a lot throughout my life and during my study journey in particular.



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## **Statement of Authentication**

The work presented in this thesis is, to the best of my knowledge and belief, original except as acknowledged in the text. I hereby declare that I have not submitted this material, either in whole or in part, for a degree at this or any other institution.

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# Contents

<b>Abstract</b> .....	<b>vi</b>
<b>List of Abbreviations</b> .....	<b>viii</b>
<b>Chapter 1: Introduction</b> .....	<b>1</b>
1.1 Background .....	1
1.2 Research Questions .....	2
1.3 Egypt as a Case Study .....	2
1.4 Historical Sequence of Emergency Law in Egypt from British Rule to the Present .....	3
1.4.1 Coup of 1952.....	6
1.4.2 Emergency Law No 162 of 1958 .....	7
1.4.3 Revolution of 2011 and coup of 2013.....	10
1.4.4 Major human rights breaches in Egypt as a result of emergency rule .....	11
1.5 Methodology .....	12
1.6 Outlining the Emergency Power Theories .....	15
1.7 Testing the Traditional Theories .....	17
1.7.1 Reza Sadiq Reza and Liguori’s proposed model .....	20
1.8 Deep State Theory.....	22
1.8.1 Introduction.....	22
1.8.2 Outline of the deep state framework .....	22
1.9 Aims of the Thesis .....	26
1.10 Purpose of the Thesis and Gaps in Previous Studies .....	26
1.11 Structure of the Thesis .....	27
<b>Chapter 2: Theories of Emergency Powers</b> .....	<b>30</b>
2.1 Introduction .....	30
2.2 Classical Models of Accommodation .....	30
2.2.1 Ancient Roman dictatorship.....	30
2.2.2 Neo-Roman model .....	32
2.2.3 Germany’s Weimar Republic.....	33
2.2.4 United States Constitution .....	35
2.2.5 French state of siege.....	37
2.2.6 United Kingdom martial law.....	42
2.2.7 Failure of classical models of accommodation .....	45
2.3 Modern Comparative Context Categories of Accommodation.....	46
2.3.1 Constitutional accommodation .....	46
2.3.2 Legislative accommodation .....	47
2.3.2.1 <i>Legislation that can modify the existing law</i> .....	47
2.3.2.2 <i>Special emergency legislation</i> .....	47
2.3.3 Interpretive legislation .....	48
2.4 Business-as-usual model .....	48
2.5 Extra-legal model .....	49
2.6 Illegality model .....	49
2.7 Realist model.....	51
2.8 Testing the Models with Reference to the Egypt Case .....	51
2.8.1 Liguori’s proposed model and thesis criticism .....	52
2.8.2 Failure of traditional emergency power theories .....	55
2.8.3 Head’s criticism of the model of emergency power .....	56

2.9 Conclusion.....	57
<b>Chapter 3: British Imperialism in Egypt.....</b>	<b>59</b>
3.1 Introduction .....	59
3.2 European Imperialist Powers .....	59
3.2.1 Origins of imperialism .....	59
3.2.2 United States imperialism in Latin America.....	63
3.3 European Imperialism in Egypt—Capitulation System.....	64
3.4 British Strategies Towards Controlling Egypt.....	65
3.4.1 Britain’s justification for colonising Egypt.....	70
3.4.2 Growth of Egypt’s opposition to Britain.....	72
3.4.2.1 <i>Dinshaway incident in 1906</i> .....	72
3.5 Martial Law of 1914.....	75
3.5.1 Revolution of 1919.....	78
3.6 Egyptian Constitution of 1923 .....	81
3.7 Military Rule Law No 15 of 1923.....	83
3.8 Anglo–Egyptian Treaty of 1936.....	86
3.9 Martial Law in 1948—The Sykes–Picot and Balfour Declaration .....	89
3.10 Conclusion.....	91
<b>Chapter 4: Egyptian Legal Framework.....</b>	<b>94</b>
4.1 Introduction .....	94
4.2 Coup of 1952.....	94
4.2.1 Development of the military state.....	96
4.2.1.1 <i>Nasser’s containment of his potential opponents</i> .....	97
4.3 Constitution of 1956.....	101
4.4 War of 1956.....	102
4.5 Nasser’s Institutions to Control Political Parties and 1958 Emergency Law .....	103
4.5.1 United Arab Republic (1957–1961).....	104
4.5.2 Emergency Law of 1958 .....	105
4.5.3 Declaring a state of emergency .....	109
4.5.4 Effects of the state of emergency .....	110
4.5.5 State security courts .....	112
4.5.6 Emergency courts.....	113
4.5.7 Military courts.....	113
4.5.8 Arab Socialist Union (1962–1977) .....	114
4.5.9 Sadat’s political strategies (1971–1981).....	118
4.5.9.1 <i>Constitution of 1971</i> .....	119
4.5.10 Mubarak’s political strategies .....	122
4.5.10.1 <i>Containment of potential opponents</i> .....	123
4.5.10.2 <i>Direct strategies</i> .....	123
4.5.10.3 <i>Indirect strategies</i> .....	124
4.5.10.4 <i>Mubarak and the continuous state of emergency</i> .....	125
4.5.10.5 <i>2007 amendments to the 1971 constitution</i> .....	127
4.5.10.6 <i>Collapse of Mubarak</i> .....	128
4.6 Constitutional Declarations of 2011–2013 and Constitution of 2012.....	129
4.6.1 Constitutional declaration of 30 March 2011 .....	129
4.6.2 Military expanded the scope of emergency .....	130
4.6.3 Constitutional declaration of 17 June 2012.....	132
4.6.4 Constitutional declaration of 22 November 2012 .....	134
4.6.5 Egyptian Constitution of 2012 .....	136

4.6.6 Constitutional declaration of 8 July 2013 .....	137
4.6.7 Egyptian Constitution of 2014 .....	138
4.7 Legal Framework for Combating Terrorism and the State of Emergency in Egypt.....	140
4.8 Unconstitutional Emergency Law .....	144
4.9 Conclusion.....	145
<b>Chapter 5: Human Rights Violations During the State of Emergency .....</b>	<b>147</b>
5.1 Introduction .....	147
5.2 Background .....	147
5.3 Restrictions on People’s Movements and Freedom of Gatherings .....	148
5.3.1 Protest law .....	150
5.3.2 Restrictions on striking and sit-ins.....	153
5.3.3 Freedom of the press .....	154
5.3.3.1 <i>Restrictions on the freedom of the press</i> .....	156
5.4 Emergency Law and Non-Derogable Rights .....	159
5.4.1 Existence of a public emergency threatening the life of the nation .....	160
5.4.2 Official declaration of a state of emergency .....	162
5.4.3 Duty of notification via the secretary general .....	163
5.5 Common Human Rights Violations in Egypt During a State of Emergency.....	165
5.5.1 Police brutality .....	165
5.5.2 Mass arrests .....	169
5.5.3 Prison and detention centre conditions and administrative detention.....	170
5.5.3.1 <i>Administrative detention</i> .....	172
5.5.4 Forced disappearance .....	175
5.5.5 Torture.....	177
5.5.6 Military trials.....	180
5.5.7 Harsh sentences including the death penalty .....	185
5.6 Conclusion.....	187
<b>Chapter 6: Contemporary Imperialism.....</b>	<b>189</b>
6.1 Introduction .....	189
6.2 Establishment of Contemporary Imperialism .....	190
6.2.1 Introduction .....	190
6.2.2 World War II.....	192
6.2.3 Golden Age .....	193
6.2.4 Cold War .....	193
6.2.5 Nationalisation .....	195
6.2.5.1 <i>Non-Aligned Movement</i> .....	196
6.2.6 Counter-revolutionary measures .....	196
6.2.7 Debt crisis .....	197
6.2.8 Neoliberalism and the end of Keynesian thought .....	199
6.3 Establishment of the International Monetary Fund and the World Bank .....	201
6.3.1 Introduction .....	201
6.3.2 Rule of the International Monetary Fund.....	202
6.3.3 International monetary funding: remote-control power.....	203
6.3.4 World Bank .....	204
6.3.5 Washington Consensus, World Trade Organization and Financial Action Task Force .....	205
6.3.5.1 <i>Washington Consensus</i> .....	205
6.3.5.2 <i>World Trade Organization</i> .....	206

6.3.5.3 <i>Financial Action Task Force</i> .....	207
6.4 Postcolonial Egypt from Nationalisation to the Age of Neo-Imperialism.....	207
6.4.1 Egypt from nationalisation to the age of neo-imperialism.....	209
6.4.2 Sadat's open-door economic policy.....	214
6.4.3 Mubarak's era and the introduction of a neoliberal economy.....	218
6.5 Egyptian Economy, International Monetary Fund and World Bank After the 2011 Revolution.....	221
6.6 Conclusion.....	225
<b>Chapter 7: Deep State in Egypt.....</b>	<b>228</b>
7.1 Introduction.....	228
7.2 Nature of State Power.....	229
7.2.1 Miliband's nature of social power.....	230
7.2.2 State power in liberal democracies.....	231
7.2.3 State power in Egypt.....	232
7.3 Deep State Examples and Comparisons.....	233
7.3.1 Definition of the deep state.....	233
7.3.2 Deep state in the United States.....	235
7.3.3 Deep state in Turkey.....	236
7.3.4 Deep state in Thailand.....	238
7.3.5 Similarities and differences between the deep state in Egypt and that of other countries.....	238
7.3.6 Broader definition of the deep state.....	240
7.3.7 Role of the military in the deep state in Egypt.....	240
7.3.8 Separation of powers and the rule of law.....	243
7.4 Egyptian Military and Police as the Heads of the Deep State.....	245
7.4.1 Background.....	245
7.4.2 Military interference in political life in Egypt after 2011.....	248
7.4.2.1 <i>Egypt's Supreme Council of the Armed Forces</i> .....	248
7.4.2.2 <i>Examining the political rule of the military</i> .....	251
7.5 Economic Rule of the Military.....	253
7.5.1 Introduction.....	253
7.5.2 Background of the Egyptian Ministry of Defence's enterprises.....	253
7.5.3 Military-economic empire since 2011.....	254
7.5.4 Role of the police and security apparatus.....	256
7.6 Legislative and Judicial Interference.....	258
7.6.1 Domination of the executive power over the legislative branch.....	258
7.6.2 Executive interference in the judiciary.....	260
7.7 Politicisation of the Judiciary.....	265
7.7.1 Trials of the Al Jazeera journalists.....	266
7.7.2 Trials of President Morsi and his supporters.....	267
7.8 Media and the Deep State.....	269
7.9 Business Elite and the Deep State.....	272
7.10 Fake Opposition.....	274
7.10.1 Tamarod (Rebellion) Movement.....	275
7.10.2 National Association for Change.....	276
7.11 Conclusion.....	280
<b>Chapter 8: Conclusions and Recommendations.....</b>	<b>283</b>
8.1 Introduction.....	283
8.1.1 Failed traditional emergency power theories.....	283

8.1.2 Establishment and enshrining of martial law during the colonial period in Egypt.....	283
8.1.3 Developing and expanding the notion of emergency law after the colonial period .....	284
8.1.4 Emergency law was the main cause of human rights breaches in Egypt	285
8.1.5 Age of neo-imperialism .....	286
8.1.6 Deep state’s political and economic interests justified a permanent state of emergency .....	286
8.1.7 Egyptians failed to achieve their goal of creating a democratic country	287
8.2 Thesis Recommendations.....	288
Bibliography.....	290

## **Abstract**

Egypt has been under a permanent state of emergency for nearly 100 years. This thesis aims at exploring and understanding Egyptian emergency law and its contextual background. It uses a combination of historical and theoretical perspectives to explore how Egypt's emergency law has developed since its introduction by Britain to the present day. Chapter two examines theories of emergency powers and the failure of traditional theories of emergency powers to explain and justify the permanent state of emergency in Egypt. Chapter three discusses British imperialism in Egypt to show how Britain introduced and enshrined martial law in Egypt's constitution, as well as other laws, to protect Britain's political and economic interests in Egypt. Chapter four examines the legal framework of emergency law developed in Egypt after Britain's departure to show how emergency law developed and expanded from a temporary measure to a permanent one. Chapter five explores the major human rights violations that occurred during, and as a direct result of, the use of a state of emergency.

Chapter six examines contemporary imperialism to show how economic pressure from neo-imperialist organisations is used as a tool to enforce certain economic and political ideologies and policies. Further, it examines the resulting increased poverty in developing nations and the subsequent uprisings that occur. This study further explores how different political regimes use such uprisings as justification for using the force that is permitted under a state of emergency. Chapter seven explores how a minority group of elites have used the permanent state of emergency in Egypt to protect their political and economic interests.

The research concludes that, given Egypt's history, it would be naïve to believe that formal constitutional or legal constraints could protect the population from dictatorial 'emergency' forms of rule. Further, given the country's record of colonial and neo-colonial oppression, it is unrealistic to conclude that the solutions lie in Egypt alone.

As a result of these conclusions, this thesis recommends social equality, new forms of genuinely participatory democracy, democratic control over all aspects of life (including production, finance and key levers of the economy), guarantees of basic

social rights such as education and health, and guarantees of core legal rights such as *habeas corpus*, open civilian trials and the presumption of innocence.

## List of Abbreviations

FATF	Financial Action Task Force
G7	Group of 7
G77	Group of 77
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
IMF	International Monetary Fund
MPs	Members of the Parliament
OPEC	Organization of the Petroleum Exporting Countries
SAP	Structural adjustment programs
SCAF	Supreme Council of the Armed Forces
UK	United Kingdom
UN	United Nations
US	United States
UWS	University of Western Sydney
WTO	World Trade Organization



# Chapter 1: Introduction

This thesis aims to provide a comprehensive understanding of Egyptian emergency law and its contextual background. It uses a combination of historical and theoretical perspectives to explore how Egyptian emergency law has developed since its introduction by Britain to the present day.

## 1.1 Background

Given Egypt's extended use of emergency powers, the country presents a rich subject of study for the following reasons:

1. Emergency rule has been in effect in Egypt for most of the past 100 years.
2. Egypt provides a textbook example of emergency rule. For instance, it developed from martial law under British rule to emergency law under Nasser, and it evolved from temporary measures to a permanent one.<sup>1</sup>
3. Emergency law is the main cause of human rights breaches in Egypt. National and international human rights groups such as Amnesty International and Human Rights Watch have recorded many cases of alleged torture, arbitrary detention and police brutality during periods of emergency law.<sup>2</sup>
4. Theoretically, emergency law should be used as a last resort to protect a country. This is not the case in Egypt. Emergency law and other exceptional laws in Egypt have been used as the first resort by different political regimes to protect their political and economic interests and suppress their opponents.
5. The separation of powers has been violated. The executive authority headed by the military dominates all legislative and judiciary powers.
6. No comprehensive studies have examined Egypt's experience and its underlying causes. Further, studies have failed to examine the importance of the deep state and neo-imperialist organisations to justify the long and permanent state of emergency in Egypt.

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<sup>1</sup> Reza Sadiq, 'Endless Emergency: The Case of Egypt' (Working Paper No 08-11, Boston University, 2007) 532-534.

<sup>2</sup> Human Rights Watch, *Egypt—Events of 2004* (2005) <<https://www.hrw.org/world-report/2005/country-chapters/egypt>>.

## 1.2 Research Questions

The following research questions underpin this thesis:

1. What theories of emergency powers, if any, can explain, justify or clarify Egypt's emergency rule?
2. Why has Egypt suffered from a long and permanent state of emergency rule?
3. What human rights breaches have occurred in Egypt under emergency rule?
4. How can the concept of the deep state help in understanding Egypt's emergency rule?
5. What, if any, recommendations can be offered to end emergency powers in Egypt?

## 1.3 Egypt as a Case Study

This thesis focuses on Egypt because it is one of the most populous countries in the world and the largest country in Africa and the Middle East. Egypt is in a strategic geopolitical location, making it an object of interest for the great powers. The country links three continents (Europe, Africa and Asia) and connects two waterways through the Suez Canal (the Mediterranean Sea and the Indian Ocean). After the Suez Canal was constructed, Egypt's importance increased in the eyes of the superpowers.<sup>3</sup>

By 1880, most ships passing through the Suez Canal were from Great Britain.<sup>4</sup> By 1913, more than 20 million tonnes of shipping passed through the Suez Canal, 12 million tonnes of which belonged to Britain.<sup>5</sup> Egypt was also politically strategic because of its central position among Arab, Muslim and African countries.

Egypt is a large country, covering around 1,001,450 km<sup>2</sup>. Ninety-five per cent of the country is desert; however, despite its arid terrain, Egypt is an agricultural country that is well known for the fertile land formed by the Nile. It depends on the Nile for agriculture because it experiences low annual rainfall. Egypt's geopolitical position has influenced its socio-political environment. Most of the Egyptian population

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<sup>3</sup> Graham Chapman and Kathleen M Baker (eds), *The Changing Geography of Africa and the Middle East* (Routledge, 1995) 129.

<sup>4</sup> Robert L Tignor, *Modernization and British Colonial Rule in Egypt, 1882–1914* (Princeton University Press, 1966) 12.

<sup>5</sup> Keith Jeffery, *The British Army and the Crisis of the Empire, 1918–22* (Manchester University Press, 1984) 110.

(estimated at 99.38 million people in 2018) live around the narrow ribbon of the Nile valley, which has helped foreign and domestic rulers to control the country.<sup>6</sup>

Egypt was subject to invasion from France between 1798 and 1801. Napoleon Bonaparte introduced the Napoleonic Code to Egypt's legal system during France's occupation in 1798. Subsequently, many Egyptian jurists studied and trained in France, and Egypt's legal system now uses a combination of Islamic sharia law and the Napoleonic Code.<sup>7</sup>

The Egyptian legal system is considered a civil law system based on codified laws.<sup>8</sup> The supreme law is Egypt's written constitution, and the country's most important legislation is the Egyptian Civil Code of 1948. Much of this code was based on France's civil code, with part also based on Islamic sharia law, especially in the area of family law.<sup>9</sup>

Egypt was first occupied by Britain in 1882.<sup>10</sup> In November 1914, Britain declared a unilateral protectorate over Egypt, replaced Khedive Abbas Hilmi II<sup>11</sup> with Hussein Kamel and changed the title from khedive to sultan and then king.<sup>12</sup> On 18 December 1914, Britain declared Egypt independent from the Ottoman suzerainty.<sup>13</sup>

#### **1.4 Historical Sequence of Emergency Law in Egypt from British Rule to the Present**

Britain first introduced martial law in Egypt when Sir General John Maxwell declared martial law on 2 November 1914. Britain justified its declaration because of the beginning of World War I.<sup>14</sup> Martial law was originally designed to guarantee

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<sup>6</sup> Justin Robertson and Maurice A East, *Diplomacy and Developing Nations: Post-Cold War Foreign Policy-Making Structures and Processes* (Routledge, 2005) 166.

<sup>7</sup> Mohamed S E Abdel Wahab, 'Update: An Overview of the Egyptian Legal System and Legal Research' (New York University) (December 2012) <<http://www.nyulawglobal.org/globalex/Egypt1.html>>.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Anthony F Lang Jr, *From Revolutions to Constitutions: The Case of Egypt* (Blackwell Publishing, 2013) 350; Sadiq, above n 1, 535.

<sup>11</sup> Khedive was the title of the viceroy of Egypt under Turkish rule in 1867–1914; see Oxford English Dictionary.

<sup>12</sup> Jeffery, above n 5, 110.

<sup>13</sup> Egypt remained under the province of the Ottoman Empire from 1517 to 1914.

<sup>14</sup> David French, *British Strategy and War Aims 1914–1916* (Routledge, 2014) 47.

discipline and order in the army. It permits the use of all means of force and includes the suspension of ordinary laws.<sup>15</sup>

Martial law was used to protect Britain's interests in Egypt during World War I and II. Britain used martial law to arrest, detain, exile and impose taxes on Egyptians, and to try Egyptian nationalists before military courts. Egypt's anger regarding Britain's interference in the country contributed to the Egyptian Revolution of 1919, in which demonstrations took place throughout Egypt in a call for independence.

In 1922, Britain declared Egypt an independent kingdom;<sup>16</sup> however, in reality, the country only gained partial independence because Britain was still responsible for defending Egypt, communicating with the British Empire, safeguarding foreign interests and minorities, and the status of Sudan.<sup>17</sup>

On 19 April 1923, the Egyptian Constitution was issued by Royal Decree No 42 of 1923, which was modelled after the Belgian Constitution of 1830–1831 and described by Britain and the king as a liberal document.<sup>18</sup> The 1923 constitution adopted a parliamentary system and supported the separation of state powers.<sup>19</sup>

The 1923 constitution was widely criticised because the committee that formed it was not elected, but was appointed by King Ahmad Fouad, who ruled from 1917 to 1936. The constitution deprived students, farmers and workers of their right to protest. More importantly, it failed to end Britain's occupation.<sup>20</sup>

This thesis suggests that the 1923 constitution was a liberal constitution in name only. In reality, it provided the king with the power to abolish the parliament. King Fouad attempted to reduce the parliament's authority to a consultative branch; consequently, the parliament never lasted for its full period of four years and was

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<sup>15</sup> Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press, 2006) 30–35.

<sup>16</sup> Sudan was under Egyptian–Anglo joint rule from 1899 to 1955.

<sup>17</sup> Sherif Omar Hassan, *Emergency Powers of the Executive in France, the United Arab Republic, and the United States* (Master Thesis, Cornell University, 1968) 92.

<sup>18</sup> Dawood I Ahmed and Tom Ginsburg, *Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions* (University of Chicago, 2014) 57.

<sup>19</sup> Mohammed El-Bendary, *The Egyptian Revolution: Between Hope and Despair: Mubarak to Morsi* (Algora Publishing, 2013) 116.

<sup>20</sup> *Ibid.*

regularly dissolved by a royal decree,<sup>21</sup> thus violating the rule of law and the separation of powers.

Britain established the 1923 constitution to pacify Egyptian nationalists who were fed up with Britain's involvement in their country, and to demonstrate that Egypt was on the path towards becoming a democratic state. However, Britain instead enshrined martial law in the constitution. For example, Article 45 gave the king authority to declare martial law.

Britain then reinforced the martial law mechanism by introducing Military Rule Law No 15 of 1923, which gave Britain authority to suppress Egyptian nationalists and other European citizens living in Egypt, such as Germans and Austrians, to protect British interests in Egypt. Further, Act No 15 gave the prime minister, who was appointed by Britain to act as a military governor, the authority to exercise martial law.

To strengthen its position in Egypt, Britain expanded and developed martial law in the Anglo–Egyptian Treaty of 1936, which required Egypt to declare martial law if Britain entered a war or was threatened by war. This thesis suggests that this treaty demonstrated that Egypt had never been an independent country. Britain continued to be the real controllers of Egypt and ruled through the use of martial law, along with expanded and exceptional measures, to protect its political and economic interests. This thesis also argues that Britain established military courts in which to try Egyptians because it did not trust Egypt's national courts.

On 3 September 1939, Britain forced Egypt to declare martial law according to the Anglo–Egyptian Treaty of 1936. The declaration of martial law lasted until 4 October 1945. On 31 May 1948, martial law was declared again as a result of the Arab–Israeli War. This declaration of martial law lasted until 1950.

Gamal Abdel Nasser was one of the Arab leaders who played a major role in challenging Western control. In 1938, Nasser graduated from the royal military academy as a second lieutenant and joined the Egyptian military in an anti-British colony. While serving in Sudan, he created a revolutionary organisation, called the

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<sup>21</sup> Ahmed Abdalla, *The Student Movement and National Politics in Egypt, 1923–1973* (American University in Cairo Press, 2008) 5.

Free Officers, which planned to overthrow both the royal family and Britain. In 1949, Nasser invited General Naguib to lead the Free Officers because Naguib was an older man with a well-recognised name.<sup>22</sup>

On 23 July 1952, Naguib and Nasser, along with the Free Officers, led a coup that deposed the royal family. It is important to explore the 1952 coup in this thesis because after 1952, Egypt suffered from a domestic version of emergency law that enshrined the dictatorial style of rule.

#### **1.4.1 Coup of 1952**

In response to the coup on 23 July 1952, King Farouk signed an abdication act on 25 July in favour of his son. A regency council was then established to maintain the appearance of the kingship until the establishment of the Egyptian republic.<sup>23</sup>

The Free Officers banned the 1923 constitution and dissolved all political parties. They justified their coup on the grounds that it would end corruption, imperialism and capitalism and establish social justice. Nasser's rule succeeded in ending British imperialism, introducing land reform and ensuring the nationalisation of the Suez Canal, as well as enshrining military rule. After the success of the July 1952 coup, Naguib was appointed as the commander-in-chief of the armed forces. Naguib established, and became chairman of, the Revolutionary Command Council, and Nasser was appointed vice chairman. In September 1952, Naguib became the prime minister.<sup>24</sup> He was a key figure who called upon the army to return to its barracks to pave the way to establish a democratic state ruled by civilians. Nasser was the deputy prime minister and the minister of the interior at the same time. In June 1953, Naguib was declared the first president of Egypt, while also remaining the prime minister,

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<sup>22</sup> On 4 February 1942, the British surrounded the royal palace and forced King Farouk to appoint Mustafa El-Nahas as the prime minister. At this time, Naguib submitted his resignation to the king, but the king refused it. For more details, see Ahmed Aboulenein, 'Naguib: The Sidelined General President', *Daily News Egypt* (online), 24 July 2012 <<http://www.dailynewsegypt.com/2012/07/24/naguib-the-sidelined-general-President-2/>>.

<sup>23</sup> Josep Puig Montada, 'Oppositional Movements in Egypt, from 1952 to Mubarak's Downfall' (2013) 39(3) *Nómadas: Critical Journal of Social and Juridical Sciences* 1–17.

<sup>24</sup> Glenn Fowler, 'Mohammed Naguib, First President of Egypt, Dies', *New York Times* (online), 20 August 1984 <<http://www.nytimes.com/1984/08/29/obituaries/mohammed-naguib-first-president-of-egypt-dies.html>>.

the chairman of the Revolutionary Command Council and the commander-in-chief of the armed forces.<sup>25</sup>

Nasser assumed full power in 1954<sup>26</sup> and kept Military Rule Act No 15 of 1923 for some time to suppress his opponents and consolidate his power. Act No 15 of 1923 was then replaced by Act No 533 of 1954, which was in turn replaced by Emergency Law No 162 of 1958.

Nasser issued the 1956 constitution, which went into effect on 24 June 1956 and abolished the monarchy and the multi-party system. The 1956 constitution gave wide-ranging powers to the president. It was later revised in 1958 and 1964 to give the president extraordinary powers.

Nasser relied on public support to advance his own interests to control Egypt, and he depended on his charismatic patriots to impose a new socialist style of dictatorship to stifle his opponents.<sup>27</sup> Thus, Nasser established Emergency Law No 162 of 1958 as a tool to consolidate his power.

It is important to examine Emergency Law No 162 of 1958 in this study because of its contribution to enshrining the permanent state of emergency in Egypt, as well as dictatorial rule.

#### **1.4.2 Emergency Law No 162 of 1958**

Egypt's emergency law, which was introduced by Nasser in 1958, is still in place today, despite the fact that Egypt has been ruled by a number of different political regimes that have issued a number of different constitutions since 1958.

Nasser issued Egypt's emergency law through a presidential decree based on the 1956 constitution, which granted power to the president to issue decrees that had the force of law after receiving approval from the parliament in its first session.

However, Law No 162 of 1958 was unconstitutional because it was not submitted to the parliament until 1964. This violated Article 53 of the 1956 constitution, which

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<sup>25</sup> Aboulenein, above n 22.

<sup>26</sup> In 1954, Naguib was arrested and placed under house arrest. Nasser assumed power in 1954 and officially became the president in 1956.

<sup>27</sup> Molefi K Asante, *Culture and Customs of Egypt* (Greenwood Press, 2002) 30.

required the president to submit any presidential decree to the first sitting of parliament.

Article 1 of Law No 162 of 1958 gave the president power to declare a state of emergency 'whenever security or public order in the territory of the republic or area is at risk, due to war or a state threatening the eruption of war, unrest at home, public disaster, or the spread of an epidemic'.<sup>28</sup>

Declaring a state of emergency under Law No 162 of 1958 had to include the reason, the area covered and the date it was entered into force. The declaration of a state of emergency could be either oral or written,<sup>29</sup> and it gave the president significant powers in the following areas:

1. restricting people from exercising freedom of assembly
2. restricting the movement of people
3. allowing the arrest of suspects or people who allegedly posed a danger
4. allowing the arrest and search of people and places without restriction
5. controlling communications, newspapers, publications and all means of expression prior to publication, and seizing and shutting down places of printing
6. seizing any property, imposing security on companies and institutions, and postponing debts and obligations for what is seized or imposed by the government
7. decommissioning weapons and ammunitions
8. evacuating regions or cutting off transportation between areas.<sup>30</sup>

Law No 162 of 1958 used vague and elastic concepts such as protecting public order and security. The declaration contained the date of declaring the state of emergency but did not include the date of ending the declaration.

Nasser died in 1970 and Muhammad Anwar El-Sadat became the president of Egypt from 1970 to 1981. He was one of the Free Officers in the 23 July 1952 coup and

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<sup>28</sup> Article 1 of Act No 162 of 1958 (issued on 27 September 1958) (enacted in June 1967) translation provided by Panda Unite Organization <<http://pandaunite.org/act-162-of-1958/>>.

<sup>29</sup> Ibid, Article 2.

<sup>30</sup> Ibid. Article 3.



was involved in supervising the abdication of King Farouk. He began as a minister of the state and rose through the ranks to become the vice president to Nasser.<sup>31</sup>

In 1971, Sadat abolished the temporary constitution of 1964 and established a new constitution, which was based on an authoritarian style with a single-party structure.<sup>32</sup> For example, Article 148 gave the president authority to declare a state of emergency with the parliament's approval. The declaration was supposed to be for a limited time. The 1971 constitution gave the president 15 days to submit the declaration to the parliament. The constitution used vague, flexible and undefined concepts to assist in the continuation of the permanent state of emergency.

After the assassination of President Sadat in 1981, Muhammad Hosni Mubarak became the president of Egypt from 1981 to 2011. He graduated from the Egyptian Air Academy and served as its director from 1966 to 1969.<sup>33</sup> In 1972, Mubarak was appointed as the commander of the Egyptian Air Force, and in 1975, Sadat appointed him as the vice president and the senior member of the regime party (i.e., National Democratic Party).<sup>34</sup>

Mubarak's regime used the assassination of Sadat in 1981 as a reason to crack down on any opposition to the regime. Since that time, emergency law has been consistently renewed every two to three years without interruption.

This thesis suggests that successive regimes have kept the same emergency law since 1958 because it is a comprehensive law and has been effectively used as a tool to consolidate their rule and suppress their opponents.

Mubarak's regime has justified the extended permanent state of emergency in Egypt since 1981, arguing that it is necessary to protect national security and public order, and to help fight terrorism and combat drug trafficking.

This thesis proposes that successive regimes have used elastic and vague concepts in different constitutions and emergency laws to expand their rule and silence anyone who could pose a threat to their interests.

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<sup>31</sup> Magdalena Alagna, *Anwar Sadat (Middle East Leaders)* (Rosen Publishing Group, 2004) 43–44.

<sup>32</sup> Robert L Maddex, *Constitution of the World* (Routledge, 1996) 72.

<sup>33</sup> 'Profile: Hosni Mubarak', *Al Jazeera English News* (online), 11 February 2011  
<<http://www.aljazeera.com/focus/2009/12/200912693048491779.html>>.

<sup>34</sup> *Ibid.*

### **1.4.3 Revolution of 2011 and coup of 2013**

On 25 January 2011, Egyptian people joined the Arab Spring to demand freedom and dignity as well as a change to the regime and the abolition of emergency law. On 18 February 2011, Mubarak handed over his authority to the Supreme Council of the Armed Forces (SCAF). The military banned the Egyptian Constitution of 1971 and made a number of constitutional declarations to consolidate its power, promising to hand over authority to a democratically elected president.

In May 2012, the military ended the state of emergency in theory, but did not abolish Law No 162 of 1958. Instead, the regime used an informal emergency law by creating exceptional laws that increased the use of force, increased the number of arrests and tortures, and imposed harsh sentences such as the death penalty. On 30 June 2012, Muhammad Morsi was elected as the first civilian leader from a non-military background. On 30 November 2012, the Egyptian Constituent Assembly finished writing the constitution. A referendum was held on 15–22 December to vote on the 2012 constitution, with 63.8 million people voting yes. This was signed by Morsi.<sup>35</sup>

However, the 2012 constitution still gave power to the military to try civilians accused of harming the armed forces, which led to human rights violations. In January 2013, President Morsi declared another state of emergency for one month in three cities: Port Said, Suez and Ismailia. The state of emergency was declared after demonstrations took place against Morsi and to protest police brutality.

This thesis argues that even an elected president could not manage to rule without declaring a state of emergency and retaining the use of military forces against civilians. The military and the state of emergency were tools used by Mubarak's regime to crush his opposition.

The military and its elite started to put obstacles in place to prevent Morsi from performing his duties. Demonstrations broke out against Morsi, led by his opponents (leftists and secular groups with military support). They called for Morsi to resign and to arrange for another election.

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<sup>35</sup> 'Early Results Show Egypt Constitution Approved', *ABC News* (online), 23 December 2012 <<http://www.abc.net.au/news/2012-12-23/egypt-constitution-approved-in-vote-say-rival-camps/4441796>>.

On 3 July 2013, a military coup overthrew Morsi and appointed Adly Mansour as the interim president. The military banned the 2012 constitution and issued a number of constitutional declarations to stabilise its rule.

In August 2013, interim President Adly Mansour declared a state of emergency for one month and then extended it for two months to control the clashes between Morsi's supporters and the military. General Abed El-Fattah el-Sisi was elected in 2014 and remains in power today. A new constitution was introduced in 2014, and a state of emergency has been declared several times under his rule. Egypt continues to be under a state of emergency today.

#### **1.4.4 Major human rights breaches in Egypt as a result of emergency rule**

In the name of protecting national security and public order, emergency law has been the main cause of numerous human rights violations in Egypt. As a result of emergency rule, Egyptians have suffered from continuous control being exercised over their lives. Their movements have been constrained, their belongings have been confiscated, their publications have been monitored and they have been prohibited from conducting gatherings or peaceful demonstrations.

Emergency Law No 162 of 1958 is controversial because it imposed restrictions on fundamental rights, including non-derogable rights. It also gave the president authority to establish special courts, or state security courts, to try civilians who were accused of ordinary crimes such as demonstrating against the military or violating the emergency orders.

All Egyptian constitutions, from 1923 to the current 2014 constitution, have prohibited torture. However, many detainees have been subjected to torture and ill-treatment by security forces and have died as a result of torture and neglect.<sup>36</sup> The police have used emergency law as a justification for using excessive force to beat

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<sup>36</sup> Human Rights Watch, *Egypt: Rash of Deaths in Custody—Holding Police Accountable Key to Saving Lives* (21 January 2015) <<https://www.hrw.org/news/2015/01/21/egypt-rash-deaths-custody>>.

and kill civilians.<sup>37</sup> Opponents have been electrocuted, hanged naked to force confessions and give up information, and forced to memorise confessions.<sup>38</sup>

After the coup of 3 July 2013, the military introduced many new laws to stabilise its authority. It established an unofficial permanent state of emergency by issuing new laws such as counterterrorism and protest laws. These laws have been applied in ways that have increased human rights breaches.

The informal permanent state of emergency has made the situation worse, resulting in more human rights violations by increasing the number of offences criminalised by these laws. Successive political regimes have used this type of informal emergency as another instrument to suppress the regime's political opponents and journalists.

Therefore, Egyptian emergency rule offers a global testing ground for theories of emergency law. Egypt provides a textbook example of the organic tendency of emergency rule to transform from exceptional law to the norm.

## 1.5 Methodology

This thesis employs a critical socio-legal methodology. Wheeler and Thomas note that 'the word socio in sociolegal studies means to us an interface with the context within which law exists, be that a sociological, historical, economic, geographical or other context'.<sup>39</sup>

Social research can be useful in formulating new theories and framing new laws. Legal research provides knowledge that broadens the outlook of executives, legislators and the judiciary.

A number of factors form the context of social research:

1. The theories that social scientists employ to help understand the social world affect what is researched and how research findings are interpreted.

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<sup>37</sup> Heba Morayef, *A Free Egypt's First Task is to Rein in the Army* (25 May 2012) Human Rights Watch <<https://www.hrw.org/news/2012/05/25/free-egypts-first-task-rein-army>>.

<sup>38</sup> Patrick Kingsley, 'Egypt's Secret Prison: "Disappeared" Face Torture in Azouli Military Jail', *The Guardian* (online), 22 June 2014 <<http://www.theguardian.com/world/2014/jun/22/disappeared-egyptians-torture-secret-military-prison>>.

<sup>39</sup> Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge, 2013) 35.

2. Existing knowledge of the researcher's area of interest forms an important part of the background within which social research takes place. In practice, this means that someone planning to conduct research must be familiar with the literature on the topic or area of interest.
3. Assumptions and views about how research should be conducted influence the research process. It is often presumed that a 'scientific approach will and should be followed, in which a theory is framed and then tested using detailed measurement techniques.'<sup>40</sup>

Traditional doctrinal research focuses first and foremost upon particular past and present structures – doctrines, practises, judgements of law itself as primary causes of current and future legal developments with little or no requirement for reference to extra-legal social considerations in explaining such developments. Socio-legal approaches by contrast focus upon the power of other social developments to influence the doctrines, practices, judgements of law. So, do they explore the wider social consequence of such legal developments.

Different social theories, attempting to categorise, elucidate, distinguish and explain social phenomena, see this interface of law and other social phenomena, in different ways, with different forms and degrees of autonomy and influence or dependence of developments on both sides of the boundary,

As Cownie and Bradney say 'the best socio-legal research will explicitly address issues of theory and method, and readers will be able to identify the researcher's engagement with the relevant methodological and theoretical literature, thus giving their work the intellectual rigour its needs'.<sup>41</sup>

Different social theories seek to provide elucidations and explanations of social phenomena by reference to principles of social causation meaning the exercise of the causal powers of specifically social structures, relations, practices, institutions themselves. Whereas socio-biology e.g. looks to try to explain social phenomena by reference to biologically programmed individual intentions, specifically social theory looks to past and present social practices, institutions and relations themselves as having their own relative autonomy and causal power in influencing and directing their own development and that of each other.

A critical approach, which is also a properly scientific approach, looks not only to issues of internal coherence of such theories, of the reliability of the data from which they have been derived, and the compatibility of such data with the theories in

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<sup>40</sup> Alan Bryman, *Social Research Methods* (Oxford University Press, 4<sup>th</sup> ed, 2012) 5–6.

<sup>41</sup> Watkins, Burton (eds), *Above n39*, 38.

question, but so too does it look to ongoing testing of such theories by reference to new data, to which they should be applicable, by virtue of the level of generality of the theories in question, and to the further development, correction, expansion or even rejection of such theories in light of such new data.

Principled social research involves social scientific theory testing and development, including critique of theories not supported by relevant facts. And, of course, such criticism can be extended to apply to policies based upon such unsupported or incoherent theories.

critical approach involves a degree of ethical interpretation of existing situations of fact of criticism of human rights violations and the application of – reliable, powerful, well established social theories to establish realistic possibilities for ethical progress in the situations under consideration. As a result, the thesis recommends, Social equality, new forms of genuinely participatory democracy, democratic control over all aspects of life, including production, finance and the key levers of the economy, guarantees of basic social rights such as education and health, and guarantees of core legal rights, such as habeas corpus, open civilian trials and the presumption of innocence.

Social theories are differentiated by the ways in which they divide, categorise, conceptualize such institutions and relations, and in particular by their causal prioritisation of particular relations – ideological, political, economic, or legal, in shaping particular societies, states, historical periods, etc.

Typically, particular theories are constructed on the basis of particular sets of data, - drawn from particular societies and historical periods. Such theories are then used to interpret, explain, elucidate other data sets –from other societies or historical periods. This is a central example of social – and socio-legal – research, using a well-established theory to cast light upon established facts.

As long as a theory continues to generate significant new knowledge through verification, it should not be dismissed on the basis of some degree of refutation. It can be legitimately worked upon, corrected or extended to address such issues.

This does not necessarily require the collection and processing of completely new empirical data from the situation in question. It can take the form of finding new significance, new connections, and new interpretations of already existing data.

Much social research of this form, including this thesis, uses both secondary and primary sources. The historical facts addressed in this thesis are mainly collected from credible secondary sources (e.g., books and articles). This thesis relies on secondary sources that examine the history of martial law under Britain and emergency law postcolonialism to the present day. As a result of limited access to information, the researcher had to heavily rely on secondary sources to examine the

military's economic empire. Data and information will be gathered from the sources outlined below:

#### **A. International Conventions**

Information collected from international conventions is from primary sources, including the United Nations' (UN) international conventions and Arab, African, US and European human rights conventions. These conventions are examined to obtain better knowledge of the human rights articles that prohibit human rights breaches.

#### **B. Human Rights Reports**

Examples include Amnesty International, Human Rights Watch and other human rights organisations. Information on human rights violations are collected from primary sources, including public inquiry reports by Amnesty International and other human rights organisations. These reports highlight the major human rights violations that occurred during emergencies and show how successive regimes have misused and violated these rights.

#### **C. Relevant Statutes and Egyptian Legislation**

Examples include Egyptian constitutions from 1923 to the current 2014 constitution, as well as other constitutional declarations since the 2011 revolution. Emergency Law No 162 of 1958 and other exceptional laws (e.g., Protest Law and Terrorism Law) are examined using primary sources. These resources show how emergency law developed from a temporary and exceptional law to a permanent and ordinary one.

#### **D. Books and Journal Articles**

Some books will be bought from international bookstores, and some data will be collected from the University of Western Sydney (UWS) library and UWS online databases such as LexisNexis and Hein Online.

### **1.6 Outlining the Emergency Power Theories**

Various traditional theories have attempted to explain and specify conditions of justification for emergency rule. Most of the recent literature on emergency powers has focused on theory and practice in liberal democratic countries. This thesis will

discuss emergency rule in Egypt as an important country in the developing world that has suffered from a continuous permanent state of emergency.

Certain theories seek to justify forms of martial law as an application of law rather than an extra-legal development. These are called models of accommodation<sup>42</sup> and include:

1. classical models of accommodation, consist of Roman dictatorship, France's state of siege and the United Kingdom's (UK) martial law.
2. modern comparative context, consist of constitution provisions, legislative provisions and interpretive legislations.
3. business-as-usual model.
4. extra-legal model.
5. illegality model.
6. realistic model.

This thesis critically examines a range of different theories of emergency law. It applies and tests theories that focus on the central importance of the political and economic spheres in shaping legal developments in particular types of societies. This thesis examines the political and economic factors by exploring the concept of the deep state theory.

Traditional theories have failed to explain the permanent state of emergency in Egypt and the real beneficiaries of such an arrangement. Thus, it is important to introduce a new theory. The deep state can be defined as a state within a state. It functions as a hidden empire headed by the military and its elite. This hidden empire has its own government and a separate budget. It works secretly to protect its political and economic interests and prevent any attempts by civilians to challenge its rule. This thesis examines Egypt's history and causation, as well as the beneficiaries of the prolonged use of emergency rule.

It is worth examining different types of deep state to help define the deep state that can be observed in Egypt. Identifying the similarities and differences between different types of deep state will show who is really exercising power and benefiting.

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<sup>42</sup> Gross and Ní Aoláin, above n 15, 17–34.



This research considers Nathan Brown's definition of the deep state and examines the deep state in the United States (US), Turkey and Thailand.

While few studies have examined and explained the concept of the deep state and its roots, several authors have drawn attention to what they call the 'dual state', 'parallel state' or 'deep state'. The reason for examining different meanings of the deep state is to discern whether all deep states have the same framework, the same elite and the same objectives.

It is important to examine traditional emergency power theories to understand their weaknesses and determine how they failed to explain and justify the long and permanent state of emergency in Egypt.

### **1.7 Testing the Traditional Theories**

It is important to test the traditional theories with reference to the facts of the Egyptian situation, and to determine whether any of the theories can be applied to Egypt's case. Important questions need to be asked regarding these traditional theories, including:

- Which theories, if any, can explain the continuous state of emergency in Egypt?
- Can any of these traditional emergency power theories explain what is happening in Egypt?
- Can any of these traditional theories provide any future understanding of why Egypt has been under a permanent state of emergency?
- Are these theories applicable in Egypt?

This thesis suggests that traditional emergency theories have failed to answer any of the above questions for the following reasons:

1. Traditional emergency power theories are based on developed countries, whereas Egypt is a developing country. Traditional emergency power theories may apply to the developed world, but they are not necessarily applicable to the developing world, including Egypt.
2. Emergency power theories fail to explain the case of Egypt, which has suffered from a continuous and permanent state of emergency since 1914.

3. Traditional emergency power theories fail to examine the expanded and exceptional authority granted to different political regimes in Egypt as a result of the continuous state of emergency.
4. For example, successive Egyptian constitutions have enshrined a state of emergency and expanded the president's authority to issue decrees. An example of this is the 2007 constitutional amendments to Article 179 of the 1971 Egyptian constitution. The purpose of these amendments was to strengthen the president's authority to refer civilians to military courts. Further, the 2014 constitution made the military courts an independent judiciary, and Article 154 of this constitution gave the president power to declare a state of emergency without specifying the reason for imposing the special measures. This thesis suggests that giving such authority to the president affected the system of checks and balances, as well as the separation of powers.
5. Traditional emergency power theories ignore the military's interference in legislative and judiciary branches. The legislature and judiciary branches serve as a rubber stamp to legalise executive measures and actions.
6. The expansion of the scope of military power has permitted the use of excessive force against peaceful civilians, increased the illegal arrest and detention of people for unlimited periods and increased the authority of military courts to try civilians and impose harsh sentences such as the death penalty. These measures have caused countless human rights violations. Further, to maintain its hold on Egypt, the military established the National Defence Council to expand its authority on issues related to internal and national security.<sup>43</sup>
7. Traditional emergency power theories are based on the notion that a state of emergency law is a temporary resort used in exceptional cases, but this is not the case with Egypt. Emergency law in Egypt developed from a temporary exception law with limited scope and formal declaration to a permanent law with expanded scope using ill-defined and vague concepts. The scope of power exercised by the military has been expanded to permanently declare and extend emergency law.

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<sup>43</sup> Human Rights Watch, *Egypt: Military Power Grab Creates Conditions for Abuse* (21 June 2012) <<https://www.hrw.org/news/2012/06/21/egypt-military-power-grab-creates-conditions-abuse>>.

8. Emergency power theories assume that the aim of declaring a state of emergency is to counter terrorist acts and protect national interests. Egyptian emergency law targets opponents of regimes, including journalists, liberal political activists and the Muslim Brotherhood. During the 2011 Egyptian revolution and again after the 2013 coup, the military dealt with demonstrators and opponents as if they were thugs who had been paid to bring down Egypt.<sup>44</sup> The military justified its measures as preventing the country from falling.
9. Emergency power models ignore the fact that Egypt has suffered from informal states of emergency. Various regimes have used a combination of emergency law and informal emergency provisions, which has increased the number of punishable crimes and caused mass arrests, resulting in the detention of civilians for uncertain periods and the torture of opponents for political reasons.
10. Traditional emergency power theories disregard the fact that imperial Western powers have supported different political regimes in Egypt, thereby preventing real democracy. The unlimited and unconditional support from certain Western powers shows their hypocrisy and double standards. They pretend to support democracy in the developing world; however, in reality, they have supported autocratic regimes. This has led to an increased number of human rights violations, making the situation worse in Egypt.
11. Traditional emergency power theories disregard contemporary imperialist organisations such as the International Monetary Fund (IMF) and the World Bank, which place too much pressure on the governments of developing nations to accept certain policies to pay their debts. These policies cause inequality because they increase both poverty and the gap between the rich and the poor, thereby benefiting minority group elites.
12. Extending and expanding emergency law will not solve the problems of public disturbances and terrorism. In fact, emergency law is part of the problem: lifting and abolishing the controversial emergency law was a major cause of demonstration and one of the main demands of the Egyptian people before and after the 2011 revolution.

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<sup>44</sup> 'Egyptian Army Using Martial Law: Critics', *National Post* (online), 20 December 2011 <<http://search.proquest.com/docview/912407786?accountid=36155>>.

13. Traditional emergency power theories overlook the economic interests behind declaring and extending a state of emergency. In the case of Egypt, the state of emergency was important for the regime to protect the country's deep state economic interests.

### **1.7.1 Reza Sadiq Reza and Liguori's proposed model**

Few studies have examined the permanent state of emergency in Egypt; however, many researchers (e.g., Gross Ní Aoláin and Kent Roach) have addressed the effect of emergency law in Western countries. Further, while emergency law is a growing area for Western scholars, fewer researchers are dedicated to the subject of Egypt.

Sadiq examines emergency law in Egypt based on duration, scope of emergency powers that have been exercised and targets against whom the emergency law is directed. Sadiq concludes that the Egyptian emergency law was designed to maintain control over Egyptian people and to strengthen the state's domination.<sup>45</sup> The gaps in his study are as follows:

1. The study is based on the banned 1971 Egyptian constitution.
2. It was published in 2007, before two significant events: the 2011 revolution and the 2013 coup. Further, the military issued a number of constitutional declarations and exceptional laws after 2007 that gave the military massive powers.
3. The study ignores the interventions of neo-imperialist organisations in Egypt.
4. It fails to discuss the deep state and its political and economic interests.
5. It does not suggest any emergency power theories that are applicable in the case of Egypt.

There is a debate regarding the long and permanent state of emergency in Egypt, as well as an attempt to adopt a new model to resolve the issues. In an attempt to fill some of the above gaps in relation to the Egypt case, Liguori suggests giving the

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<sup>45</sup> Sadiq, above n 1, 551–552.

Egyptian regime sufficient emergency power to deal with serious threats, while limiting its actions and providing accountability.<sup>46</sup>

Liguori suggests that Egypt should follow different emergency power theories than other countries because Egypt is still an immature democratic country.<sup>47</sup> According to Liguori, Egypt could adapt two possible types of emergency power in its constitution:

1. A neo-Roman model would include a mechanism for a formal declaration of emergency along with prescribed emergency measures. It would spell out permissible emergency actions and procedures to be followed before a state of emergency could be declared.<sup>48</sup>
2. A legality model would allow the executive to take action outside normal constitutional procedures without declaring a state of emergency. These actions would be subject to immediate ratification from the legislature and judicial review.<sup>49</sup>

This thesis argues that Liguori suggests that certain models are suitable for Egyptian conditions without examining the history and justification for the long and permanent state of emergency. Liguori ignores the fact that Egyptians demanded the abolition of emergency law after the 2011 revolution. This was because the law was, and remains, the main cause of human rights violations. Further, emergency law is the mechanism used to protect the regime's political and economic interests. In her recommendations, Liguori accepts the need for the continuous application of emergency power in Egypt. In addition, Liguori ignores the fact that emergency law is supposed to be the last resort for tackling exceptional problems in any country. However, in Egypt's case, emergency law has often been used as the first resort, resulting in many cases of human rights violations.

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<sup>46</sup> Michelle A Liguori, 'A New Emergency Law Model for Egypt' (2012) 19(3) *Human Rights Brief* 14.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid* 15.

## **1.8 Deep State Theory**

### **1.8.1 Introduction**

After the fall of Mubarak in 2011, and again after the July 2013 coup, the deep state became a focus of discussion in academic analysis. There are various types of deep states, and each state has its own deep state.

This thesis argues that the postcolonial deep state in Egypt can be defined as a coalition of elites headed by the military, the anti-revolutionaries from the old guard regime, the judiciary, businesspeople, members of fake oppositions and the media. These elites enjoy external financial and political support from various Western powers and use pressure from Western-dominant organisations such as the IMF and the World Bank to maintain control of the country and prevent any modernisation or real democracy from taking root.

The deep state can also be defined as a state within a state. It functions as a hidden empire headed by the military and its elite. This hidden empire has its own government and a separate budget. It works secretly to protect its political and economic interests and prevent any attempts by civilians to challenge its rule.

Many observers were shocked by the way in which Mubarak was removed in 2011, because he was believed to have had tight control of Egypt. However, in reality, the deep state is a single power that works beneath the surface of politics, and it was in fact controlling all aspects of Egypt. The Egyptian revolution in 2011 succeeded in overthrowing the head of the regime, but not the entire regime. Thus, the deep state regime has continued to control Egypt to the present day.

### **1.8.2 Outline of the deep state framework**

This thesis proposes a theoretical framework for understanding the deep state as follows:

1. Nature of state power and definition of the deep state: The nature of the deep state will show who is exercising power and who benefits from this power. Defining the deep state in other countries can provide a better understanding of the similarities and differences between the Egyptian deep state and the deep state in other countries.

2. Separation of powers: It is important to examine the principles of the separation of power in Egypt because the executive branch has consistently overruled the legislative and judiciary branches.
3. Political rule of the Egyptian military: The Egyptian military acts as the head of the deep state and is supported by police, intelligence services, judiciary, state media and businesspeople to maintain its power over the country.<sup>50</sup> On 11 February 2011, President Hosni Mubarak resigned and the SCAF took over and ruled the country for one and a half years, promising a democratic transition to a civilian president.<sup>51</sup>
4. Economic rule of the military as the head of the deep state: As the head of the deep state, the military enjoys cheap government land, no taxes and cheap labour. Some experts believe that the army controls around 15–40% of the Egyptian economy.<sup>52</sup> The military budget is not subject to parliamentary checks because it is part of national security and is considered a taboo or secret subject. The public are not allowed to discuss it.
5. Deep state and the media: The deep state controls sections of the media and gives it a small amount of freedom. However, the media has been used as a tool by successive regimes to mobilise the public in the service of political and economic agendas.<sup>53</sup> The media played a substantial role in the overthrow of the first Egyptian democratic regime in 2013.
6. Business elite and the deep state: The group of business elites known as ‘whales of the Nile’ comprise officials from Mubarak’s regime and business members of the National Democratic Party, all of whom have played a crucial role within the deep state.<sup>54</sup> The business elite have benefited from crony capitalism, which means that regime officials favour a limited group

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<sup>50</sup> Sara Childress, ‘The Deep State: How Egypt’s Shadow State Won Out’, *Frontline* (online), 17 September 2013 <<http://www.pbs.org/wgbh/frontline/article/the-deep-state-how-egypts-shadow-state-won-out/>>.

<sup>51</sup> In 1968, Nasser created the SCAF, which was responsible for planning and strategy during the war. This then became the national governing body that ruled the country after Mubarak was ousted.

<sup>52</sup> Benjamin Isakhan and Steven Slaughter (eds), *Democracy and Crisis: Democratizing Governance in the Twenty-First Century* (Palgrave Macmillan, 2014) 152.

<sup>53</sup> *Ibid* 6.

<sup>54</sup> Steffen Hertog, Giacomo Luciani and Marc Valeri (eds), *Business Politics in the Middle East* (Hurst & Company, 2013) 256.

of family and friends and give them unfair advantages to make money and occupy the majority of political positions.<sup>55</sup>

7. Businesspeople during Mubarak's era benefited from regime corruption. Using the deep state, they built their economic, political and military influence in Egypt during the privatisation period between 1990 and 2000.
8. Fake opposition: The deep state in Egypt feared a loss of power, especially after Morsi became the first elected civilian from a non-military background. In response, the deep state began putting obstacles in place to jeopardise the civilian president's plans and portray him as a failure of a president. The deep state created a fake opposition group called Tamarod (Rebellion), which the military used to justify the 2013 coup and the ousting of Morsi. At this point, the deep state regained its footing and power.<sup>56</sup>

Based on this analysis, the deep state model may explain and substantiate the long and permanent state of emergency in Egypt. As the head of the deep state, the military did not want to give up or share its rule, and it protected itself against both internal and external factors, as outlined below:

#### **A. Internal factors**

1. The military suspended the constitution and nominated Adly Mansour as the interim president. On 8 June 2014, El-Sisi was elected as the president of Egypt. The military was the main engineer of the coup and used a coalition of forces that shared the same benefits and interests.<sup>57</sup>
2. Most officials of the old regime, including Mubarak, the police chief and low- and high-ranking police officers, were cleared of all charges and received no punishment for killing hundreds of civilians.<sup>58</sup>
3. Thousands of Egyptian political activists who launched the 2011 revolution were arrested and faced harsh punishments, including torture. Morsi and his

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<sup>55</sup> Stephen Roll, 'Egypt's Business Elite After Mubarak a Powerful Player Between Generals and Brotherhood' (Research Paper No 8, German Institute for International and Security Affairs Berlin, 2013) 7.

<sup>56</sup> Issandr El Amrani, *Sightings of the Egyptian Deep State*, Middle East Research and Information Project (1 January 2012) <<http://www.merip.org/mero/mero010112>>.

<sup>57</sup> Wael Haddara, 'Egypt's Military Government Endures—But at What Cost?' *Al Jazeera News* (online), 19 February 2016 <<http://www.aljazeera.com/indepth/opinion/2016/02/egypt-military-government-endures-cost-sisi-160217080229171.html>>.

<sup>58</sup> Aboulenein, above n 22.



regime were arrested and received harsh sentences, including life imprisonment and the death penalty.

## **B. External factors**

1. Different political regimes in Egypt have benefited from the financial and political support of Western powers. This support has served to maintain their control and has prevented any real opposition or challenge to the regimes.

For example, the political and economic interventions of the US caused Egypt to lose its popular sovereignty because it became reliant on US aid, which totalled around \$1.5 billion a year. This money was provided to help Egypt financially, and for the purchase of military equipment<sup>59</sup> such as tear gas and tanks, which were often used to suppress opponents. The US justified its aid under the guise of stabilising the region and promoting democracy.<sup>60</sup> On 27–28 June 2011, the US Trade and Development Agency held a forum in Washington at which Egyptian businesspeople had the opportunity to meet US company leaders to discuss work possibilities in Egypt. However, in reality, the forum was designed to give US businesses the opportunity to build relationships with Egyptian businesspeople other than Mubarak capitalist cronies, most of whom had been jailed or no longer held power.<sup>61</sup>

Although the US suspended military aid after the coup on Morsi in 2013, the Obama administration refused to classify it as a coup.<sup>62</sup> Instead, the US gave \$580 million to the Egyptian government for training and counterterrorism and border security protection.<sup>63</sup>

2. The debt pressure on Egypt from the IMF and the World Bank to enforce certain policies only served to increase poverty and enlarge the gap between the rich and the poor. This in turn forced the deep state to use emergency law

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<sup>59</sup> Brad Plumer, 'The US Gives Egypt \$1.5 Billion a Year in Aid. Here's What it Does', *Washington Post* (online), 9 July 2013 <<https://www.washingtonpost.com/news/wonk/wp/2013/07/09/the-u-s-gives-egypt-1-5-billion-a-year-in-aid-heres-what-it-does/>>.

<sup>60</sup> Ibid.

<sup>61</sup> Mesbah Kotb, 'A Business Elite?', *Egypt Independent* (online), 23 August 2011 <<http://www.egyptindependent.com/new-business-elite/>>.

<sup>62</sup> Ahmed Aboulenein, 'Egypt's "Deep State" Proves Victorious', *Public Radio International* (online) 12 December 2014 <<https://www.pri.org/stories/2014-12-12/egypt-s-deep-state-proves-victorious>>.

<sup>63</sup> Ibid.

once again to suppress the majority of the poor and working-class people who posed a potential threat to its interests.

So, does a critical approach involve a degree of ethical interpretation of existing situations of fact of criticism of human rights violations and the application of reliable, powerful, well-established social theories to establish realistic possibilities for ethical progress in the situations under consideration? As a result, this thesis recommends social equality, new forms of genuinely participatory democracy, democratic control over all aspects of life (including production, finance and key levers of the economy), guarantees of basic social rights such as education and health, and guarantees of core legal rights such as *habeas corpus*, open civilian trials and the presumption of innocence.

### **1.9 Aims of the Thesis**

This thesis aims to provide a comprehensive understanding of the Egyptian emergency law and its contextual background. To do this, this study will:

- show which model, if any, can explain and justify the permanent state of emergency in Egypt
- demonstrate how Britain enshrined martial law through the 1923 constitution and the Anglo–Egyptian Treaty of 1936 with a view to controlling Egypt to protect Britain’s political and economic interests
- show how different political regimes in Egypt have developed and expanded the use of emergency law and other exceptional laws to suit their needs
- describe the major human rights breaches caused by the extension of emergency law
- show how the IMF and World Bank have used debt pressure to justify their intervention in developing countries
- examine how the deep state, headed by the military and its elite, has benefited from the state of emergency.

### **1.10 Purpose of the Thesis and Gaps in Previous Studies**

This thesis focuses on the development of emergency law in Egypt from 1914 to the present day. Emergency law has been used as a strategy to consolidate the power of regimes and suppress the opposition rather than protect the public.

Few studies have examined the permanent state of emergency in Egypt; however, many researchers (e.g., Gross Ní Aoláin and Kent Roach) have addressed the effect

of emergency law in Western countries. Further, while emergency law is a growing area for Western scholars, fewer researchers are dedicated to the subject of Egypt. Studies of Egypt have tended to focus on emergency law as a phenomenon rather than addressing it as the main cause and real beneficiary of its continuous use.

Traditional emergency power theories have failed to explain and justify the long and permanent state of emergency, and no studies have yet covered the permanent state of emergency. Most studies focus on Western traditional theories; therefore, there is a need to investigate this topic in the context of Egypt. A major reason for studying emergency law is to show how it evolved from a temporary and exceptional law to a permanent and ordinary one established by Britain and developed by successive Egyptian regimes. In addition, emergency law has been the main cause of human rights violations.

No comprehensive studies have examined the role of imperialism and neo-imperialism in the continuous and permanent state of emergency in Egypt. Further, no studies have examined the role of the deep state in enshrining the permanent and lasting state of emergency to protect its political and economic interests.

The problem in Egypt is that the old and new constitutions can be hollow promises that, while they reflect the people's aspirations, leave them unfulfilled. Although rights and freedoms are guaranteed, they can be limited by law under the justification of protecting national security and public order. Constitutions are written using flexible language, which provides authority to limit the constitution and the rule of law through exceptional measures. For instance, freedom of expression and protest was granted in the 2014 constitution; however, the use of terms such as 'public order' and 'national security' were vague and undefined, thereby undermining the value of these rights. The constitution does not outline any rights that must not be violated under any circumstances. Thus, the constitution is a tool used by the regime to express the state's authority without limitations. It protects the security of the state but does not protect citizens from the state's abuse of power.

## **1.11 Structure of the Thesis**

### **Chapter 2: Theories of Emergency Powers**

This chapter focuses on groups of theories that address the concerns of emergency regimes in democratic societies. These theories include classical models of accommodation, modern comparative context and categories of accommodation (constitutional provisions, legislative provisions and interpretive provisions), business-as-usual model, extra-legal model, illegality model and realistic model. This chapter explores these models and examines which model could explain the permanent state of emergency in Egypt.

### **Chapter 3: Egypt Under British Imperialism**

This chapter examines British imperialism in Egypt and shows how Britain controlled Egypt to protect Britain's interests and prevent other European powers from gaining any power. In addition, the chapter examines how British military rule developed in Egypt through the appointment of a military governor and the hiring of a British counsellor in each Egyptian ministry. This chapter is important to demonstrate how Britain enshrined martial law through the 1923 constitution and the Anglo–Egyptian Treaty of 1936 with a view to controlling Egypt to protect Britain's political and economic interests.

### **Chapter 4: Legal Framework of Emergency Law in Egypt**

This chapter explores the Egyptian emergency law legal framework from 1952 to the present day. In addition, it explores Egyptian Emergency Law No 162 of 1958. The chapter shows how different political Egyptian regimes have developed and expanded the use of emergency law and other exceptional laws to suit their needs.

### **Chapter 5: Major Human Rights Violations During the State of Emergency**

This chapter examines the major human rights breaches caused by the extension of emergency law. It highlights major violations and examines them in accordance with the International Covenant on Civil and Political Rights (ICCPR), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Human Rights of the US, Europe and Africa. This chapter proves that emergency rule was the main cause of human rights breaches.

### **Chapter 6: Contemporary Imperialism**

This chapter discusses how the IMF and World Bank have used debt pressure to justify their intervention in developing countries. It argues that this is a political and economic strategy that has created more poverty and benefited a limited group of people.

### **Chapter 7: Deep State in Egypt**

This chapter explores how the deep state, which is headed by the military and its elite, has benefited from the state of emergency. In addition, it demonstrates the ways in which references to the deep state can explain the permanent state of emergency.

### **Chapter 8: Conclusion and Recommendations**

## Chapter 2: Theories of Emergency Powers

### 2.1 Introduction

This chapter has two aims. First, it aims to identify theories that address concerns related to emergency regimes in democratic societies. These theories include classical models of accommodation, modern comparative context and categories of accommodation (constitutional provisions, legislative provisions and interpretive provisions), business-as-usual model, extra-legal model, illegality model and realistic model. Second, this chapter aims to examine whether any of these models can explain or justify the long and permanent state of emergency in Egypt.

This chapter is important in terms of exploring the limitations of traditional theories regarding emergency power in addressing the ongoing state of emergency law in Egypt.

### 2.2 Classical Models of Accommodation

In democratic countries, the discourse around emergency regimes is governed by models that can be grouped into a general category called models of accommodation.<sup>1</sup> The classical models of accommodation can be divided into three varieties:

1. ancient Roman dictatorship
2. France's state of siege
3. the UK's martial law.<sup>2</sup>

#### 2.2.1 Ancient Roman dictatorship

In the ancient Graeco–Roman world, different legal tools and conceptual frameworks were developed to manage threats to the stability of the state. For example, the Romans swore in a dictator in times of emergency. The ancient Roman constitution contained a complex system of checks and balances on the executive authority, with

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<sup>1</sup> Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press, 2006) 17.

<sup>2</sup> *Ibid* 17–34.

the Roman Senate able to issue edicts and decrees. This system was used to effectively govern Rome when the consuls were away from the city.<sup>3</sup>

The Roman Republic established an executive branch of government that was headed by two consuls with unlimited and veto powers. Every consul was only elected for one year, which could not be renewed. If two consuls did not agree on something or did not act well together, they could appoint a dictator on the recommendation of the Senate. This dictator could exercise power for either six months or until the end of the consul's elected time.

The Roman dictatorship gave power to the Senate to declare a state of emergency, and the dictator was given authority to exercise special powers<sup>4</sup> such as resolving military issues and suppressing uprisings.<sup>5</sup> The dictator could suspend constitutional and ordinary law; their power was absolute and their sentences could not be appealed.<sup>6</sup> They could also declare war and rule over civil lawsuits. However, they depended on the Senate for budget issues.<sup>7</sup>

After the dictator finished their role and stepped down, the ordinary system of government returned to normal constitutional orders. For example, Lucius Quinctius Cincinnatus was made a dictator in 458 BC to save a Roman army headed by one of the consuls besieged by an enemy army.<sup>8</sup> When he finished his mission, Cincinnatus stepped down, relinquished his special power and returned to work on his farm.<sup>9</sup> However, things were different in the case of Gaius Julius Caesar, who was initially appointed as a dictator in 49 BC. At first, he held the position for only 11 days, and then was reappointed in 48 BC. After 45 BC, Caesar began being reappointed as

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<sup>3</sup> John Ferejohn and Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers* (Oxford University Press, 2004) 211–212.

<sup>4</sup> William Vazquez Irizarry, *Exception and Necessity: The Possibility of General Theory of Emergency* (Puerto Rico University) 10.  
<[https://www.law.yale.edu/system/files/documents/pdf/sela/VazquezIrizarry\\_Eng\\_CV.pdf](https://www.law.yale.edu/system/files/documents/pdf/sela/VazquezIrizarry_Eng_CV.pdf)>.

<sup>5</sup> Patricia Mindus, 'Sorting Out Modern Constitutional Provisions on Emergency: A Taxonomic Framework', Ernst Cassirer Summer School organised by the Swedish Collegium for Advanced Study in collaboration with Helsinki Collegium for Advanced Studies (20–22 August 2009) 112.

<sup>6</sup> Kim Lane Scheppele, *Legal and Extra-Legal Emergencies* (Oxford Handbook of Law and Politics, 2008) 2.

<sup>7</sup> Mindus, above n 5, 121.

<sup>8</sup> Gross and Ní Aoláin, above n 1, 25.

<sup>9</sup> Ibid 26.

dictator on an annual basis; this was then changed to every 10 years, and then became unlimited.<sup>10</sup>

In the final period of the Roman Republic, between 135 BC and 71 BC, Rome was affected by several slave disturbances, which reflected the centrality of the slave economy and society, with most land devoted to slave farming.<sup>11</sup> During the Roman Empire period, there were 12 civil wars and rebellions, including three servile wars.<sup>12</sup> Head concluded that:

Rather than providing a model for a constrained and delineated recourse to emergency power, the Roman Republic's descent into dictatorial rule points more to the increasing resort to authoritarian forms of rule to suppress the upheavals produced by the creation and threatening rise of an exploited class.<sup>13</sup>

### **2.2.2 Neo-Roman model**

The ancient Roman model has been resurrected in modern times and is referred to as the neo-Roman model. According to John Ferejohn and Pasquino, the neo-Roman dictatorship was rediscovered by Machiavelli, an Italian philosopher who is known as the father of political science. Machiavelli argues that a dictator is selected according to public order and that the responsibility is not in the dictatorship, but in its use by rulers who deviate from the real meaning of the institution.<sup>14</sup>

In addition, Harrington, an English political theorist, does not identify the power given to the president, but instead suggests that the power given should be necessary to protect the country, and it should be within the realm of emergency powers.<sup>15</sup>

The main difference between the ancient Roman dictatorship model and the neo-Roman model is that the neo-Roman model gave emergency powers to the elected president, while the ancient Roman dictatorship gave emergency powers to a non-government person who was deemed to have special virtues and capabilities.<sup>16</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Michael Head, *Emergency Powers in Theory and Practice* (Ashgate, 2016) 39.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Gross and Ní Aoláin, above n 1, 35.

<sup>15</sup> Justin P Deplato, *The Cavalier Presidency: Executive Power and Prerogative in Times of Crisis* (Lexington Books, 2014) 24.

<sup>16</sup> Ferejohn and Pasquino, above n 3, 213.



Rossiter, a US historian and political scientist, believes that the Roman dictatorship was a short-term authoritarian rule that was formed within the limitations of constitutional boundaries and directed to maintain the existence of the constitutional order so that a free and democratic society could protect itself and its constitutional order in extreme emergencies.<sup>17</sup>

Rossiter adds that three important factors need to be considered to justify the constitutional dictatorship: first, a democratic complex system; second, a constitutional state designed to function during times of peace and/or any exigencies; third, the government system should be altered to a necessary degree during times of crisis to deal with the threat and then restore ordinary situations. The main purpose of these steps is to preserve the state's independence, preserve the existing constitutional order and protect the social and political rights of the country.<sup>18</sup> In conclusion, Rossiter believes that a dictatorship should not be initiated unless it is necessary for the preservation of the state and its constitutional order. Additionally, the decision to institute a constitutional dictatorship should not be made by the person who will constitute the authoritarian rule.<sup>19</sup>

This thesis examines two examples of the neo-Roman model: Germany's Weimar Republic and the US constitution.

### **2.2.3 Germany's Weimar Republic**

The Weimar Republic is an example of the neo-Roman model that was established in Germany between late 1918 and 1933. It is an example of the irrelevance of any use of constitutional restraints on emergency power under capitalism, especially when the ruling elite feels fundamentally threatened.<sup>20</sup> Article 48 of the Weimar Republic constitution states that:

In the event of a state not fulfilling the duties imposed upon it by the Reich Constitution or by the laws of the Reich, the President of the Reich may make use of the armed forces to compel it to do so.

If public security and order are seriously disturbed or endangered within the German Reich, the President of the Reich may take measures necessary for their

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<sup>17</sup> Gross and Ní Aoláin, above n 1, 36.

<sup>18</sup> David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (Cambridge University Press, 2006) 35–36.

<sup>19</sup> Saskia Hufnagel and Kent Roach (eds), *Emergency Law: Volume II* (Ashgate, 2012) 10.

<sup>20</sup> Head, above n 11, 42.

restoration; intervening if need be with the assistance of the armed forces. For this purpose, he may suspend for a while, in whole or in part, the fundamental rights provided in Articles 114, 115, 117, 118, 123, 124 and 153.

The President of the Reich must inform the Reichstag without delay of all measures taken in accordance with paragraphs 1 or 2 of this Article. These measures are to be revoked on the demand of the Reichstag.

If danger is imminent, a state government may, for its own territory, take temporary measures as provided in paragraph 2. These measures are to be revoked on the demand of the President of the Reich or of the Reichstag.<sup>21</sup>

Article 48 of the Weimar Republic constitution gives the Reichstag president the power to invoke emergency powers without the prior consent of the Reichstag. The president has the power to take such measures with the aid of military forces if public order and security are seriously threatened. The president is only required to immediately inform the Reichstag.<sup>22</sup> Article 48 deliberately uses elastic concepts and vague definitions such as public security and order to justify calling upon the armed forces to restore a situation.

Article 48 institutes a modern version of the ancient Roman dictatorship. The Reichstag has the power to abolish the presidential emergency power decree via a simple majoritarian action. The constitution provides constitutional accountability for the overuse of power. The president can be prosecuted or removed from their office or be subject to criminal prosecution.<sup>23</sup>

Article 48 has become a constitutional mechanism for the declaration of an executive arrangement of executive decrees, mostly during times of economic disturbances. However, according to Article 25 of the Weimar Republic constitution, the president of the Reich can dissolve the parliament and call for a new election within 60 days.<sup>24</sup>

Between 1919 and 1932, Article 48 was invoked more than 250 times, mostly as a result of economic uprisings.<sup>25</sup> Ebert, the first president of the Weimar Republic,

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<sup>21</sup> Article 48 of the Weimar Republic, Key Provision of the Weimar Republic Constitution (11 August 1911) <[http://home.wlu.edu/~patchw/His\\_214/\\_handouts/Weimar%20constitution.htm](http://home.wlu.edu/~patchw/His_214/_handouts/Weimar%20constitution.htm)>.

<sup>22</sup> Head, above n 11, 44.

<sup>23</sup> Gross and Ní Aoláin, above n 1, 83–84.

<sup>24</sup> Article 25 of the Weimar Republic states that ‘the Reich President can dissolve the Reichstag, but only once for the same cause, new elections will take place at the latest on the sixtieth day after dissolution’, Béla Vitányi, Some Reflections on Article 25 of the Constitution of the German Federal Republic (December 1977) 24(3) *Netherland International Law Review* 578–588.

<sup>25</sup> Head, above n 11, 42.

used Article 48 on 136 occasions, which included overthrowing the elected governments in the states of Saxony and Thuringia. Ebert's regime, which was legitimised by the Weimar Republic constitution, relied on the military to consolidate his dictatorship.<sup>26</sup> On 30 January 1933, Hitler was appointed as a chancellor, and on 27 February 1933, a fire damaged the Reichstag building. The fire paved the way for Hitler's authoritarian rule, and the Nazis used the fire as an excuse to enable President Hindenburg to sign a presidential decree (the Reichstag Fire Decree), on the basis of Article 48 of the Weimar Republic, for the protection of people and the state. This paved the way for the establishment of the single-party dictatorship by abolishing and suppressing all other political parties.<sup>27</sup> Hitler used Article 48 to give legality to his authoritarian rule. Thousands of his decrees were based on the Reichstag Fire Decree.<sup>28</sup> Article 48 of the Weimar Republic gave the government the authority to suspend many rights, including the right to private communication, freedom of the press and freedom of assembly.<sup>29</sup>

This thesis suggests that the lessons drawn from the Weimar Republic show how regimes can use a constitution to enshrine dictatorial rule. This is done by using a state of emergency and preventing any real democracy.

#### **2.2.4 United States Constitution**

The American Revolution of 1776 was vital to the establishment of the US, which eventually replaced the UK as the ascendant capitalist power in the twentieth century. The revolution was based on the country's refusal of Britain's absolutism and monarchism. The US Declaration of Independence proclaimed the right of revolution to secure the rights to life and property.<sup>30</sup>

However, from this promising and egalitarian start, executive power in the US has increasingly expanded over time. During the civil war in the 1860s, President Lincoln suspended the writ of *habeas corpus* and allowed military tribunals to try, imprison and exile thousands of people accused of evasions, trading with enemies,

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<sup>26</sup> Ibid 44.

<sup>27</sup> Ibid 44–45.

<sup>28</sup> Ibid 45.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid 53.

burning bridges and other forms of damage.<sup>31</sup> These measures were temporary and were ratified by Congress. Thus, instead of suspending the constitution, Lincoln suspended *habeas corpus* and allowed military commissions to try people accused of being destructive to the war effort.<sup>32</sup> In 1917, Congress passed the *Espionage Act of 1917* against many of the anti-capitalist defenders of the 1917 Russian Revolution. In 1918, Congress passed the *Alien Act*, which authorised the US government to deport non-citizen and naturalised citizen members of anarchist groups.<sup>33</sup> In 1940, Congress approved the *Alien Registration Act 1940* (the *Smith Act*), which required all non-US citizens to register with the government. The Act allowed the deportation of any person who was accused of using force or causing harm or violence against any government in the US.<sup>34</sup> More than 900,000 Japanese, Italian and German people were classified as enemy aliens, and more than 9,000 of them were detained. Around 120,000 Japanese people were ordered to leave their West Coast homes and live in detention centres.<sup>35</sup>

In the US, the president's preeminent political position gives them the unique authority to define the nature of political reality. This often makes it difficult for Congress to challenge the president's decisions.<sup>36</sup> For example, in 2001, the Bush administration used far-reaching measures under the guise of the war on terrorism and protecting people from terrorism. These measures effectively allowed the use of indefinite detention without trial.<sup>37</sup> Head states that:

The post-9/11 practices were not simply the product of the Bush administration or the Republican Party ... the lawlessness assertions of executive powers and blockages of judicial review went further under Obama, who claimed the right to assassinate people, including US citizens via drone attacks.<sup>38</sup>

Over time, the US ruling elite have adopted measures to suppress the working class. These laws were designed especially against socialists, and particularly the Marxists, who strived for a further social uprising.<sup>39</sup> Successive US administrations have

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<sup>31</sup> Ibid 54–55.

<sup>32</sup> Ibid 55.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Jack M Balkin and Sanford Levinson, *Constitutional Dictatorship: Its Dangers and Its Design* (Yale University Press, 2010) 1844.

<sup>37</sup> Head, above n 11, 57–58.

<sup>38</sup> Ibid 59.

<sup>39</sup> Ibid 53–55.

asserted emergency or emergency-type powers that are potentially authoritarian. The US constitution has been deliberately interpreted in many ways to grant the president emergency powers that do not need to be granted by Congress, and in many cases where no other level of government even has to approve it.<sup>40</sup> Such measures continue to be carried out by the Trump administration in the name of fighting terrorist groups.

In conclusion, different political US administrations have used the constitution in ways that have given them significant powers. They have consistently interpreted articles of law using justifications based on vague and elastic concepts of protecting national security, which in turn leads to many cases of human rights violations.

### **2.2.5 French state of siege**

Another classical model of emergency power is France's state of siege, which was established in the midst of the French Revolution in 1791.<sup>41</sup> The 1791 decree of France's National Constituent Assembly distinguished between a state of peace and a state of siege to deal with social chaos and economic crises.<sup>42</sup> The state of siege meant that the government transferred its power to the military commander in any area under threat by the occurrence, and for as long as the threat persevered.<sup>43</sup> This was then codified by the Constituent Assembly.<sup>44</sup> It formed the statutory basis of the modern state of siege that established the rule of implementation and the continuation of a state of siege.<sup>45</sup>

France's state of siege model underwent many changes and can be divided into two parts:

1. Actual state of siege:

The actual state of siege applies when enemies take over any territories and/or current and ongoing military operations. These actions include suspending the law.

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<sup>40</sup> Ibid 175.

<sup>41</sup> Scheppele, above n 6, 6.

<sup>42</sup> Stephen Humphreys, 'Legalizing Lawlessness: On Giorgio Agamben's State of Exception' (2005) 17(3) *European Journal of International Law* 679.

<sup>43</sup> William Feldman, 'Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege' (2005) 38(3) *Cornell International Law Journal* 1024.

<sup>44</sup> John Reynolds, 'The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law' (Research Report No 19, York University, 2010) 5.

<sup>45</sup> Feldman, above n 43, 1024.

## 2. Constructive state of siege:

The constructive state of siege applies when civilian institutions are disrupted only to the extent necessary, and normal life is not fully disturbed, although there might be a danger to constitutional rights and obligations.<sup>46</sup>

The concept of declaring a state of siege gradually expanded to include foreign invasion and rebellion to combat political opposition, and expanding police powers to try, before military tribunals, civilians accused of any offence against the constitution, public order and safety of the republic.<sup>47</sup> For example, in the state of siege used during the suppression of the February 1848 Revolution in France, the masses deposed the Orleans monarchy of Louis Philippe, who ran away to Britain. Following this, an elected government called the Second Republic was announced. This government stood up with businesspeople and the bourgeoisie and closed the National Workshops.<sup>48</sup> On 23 June 1848, around 170,000 working-class people protested over the closure of the National Workshops.<sup>49</sup> General Cavaignac was appointed by the government to suppress the uprising using 120,000–125,000 soldiers. The battle resulted in the deaths of 5,000 people, with a further 15,000 arrested and 4,000 deported.<sup>50</sup> The French Constitution of 1852 gave the head of state (the president, and then the emperor) the authority to declare a state of siege after receiving confirmation from the Senate.<sup>51</sup>

Different political regimes in France have used the state of siege, enshrined in the constitution, to crush the working class and prevent demonstrations against the regime. Head suggests that ‘most depictions of this institution by legal scholars are also deprived of any examination of its historical role and repressive content’.<sup>52</sup> Head gives the following example of how regimes have used emergency powers to crush workers.

In March 1871, Paris workers opposed the efforts of the royalist majority of the National Assembly to restore the monarchy, as well as the provisional government’s

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<sup>46</sup> Ibid 1023–1024.

<sup>47</sup> Ibid 1025.

<sup>48</sup> Head, above n 11, 40.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Max Radin, ‘Martial Law and the State of Siege’ (1942) 39(6) *California Law Review* 638.

<sup>52</sup> Head, above n 11, 39.

decision to disarm the National Guard. At the time, the National Guard employed many workers who had fought the German military during an earlier state of siege.<sup>53</sup> After working-class representatives won a number of municipal elections, they formed the Paris Commune government,<sup>54</sup> which was subjected to oppression with help from German Chancellor Otto Bismarck. Bismarck was an aristocrat, a landlord and a member of the ruling business class, which used military operations to crush the working class, resulting in 20,000 deaths, 38,000 arrests and 7,000 deportations.<sup>55</sup>

On 16 May 1877, the executive issued a decree giving the legislature authority to declare a state of siege if it was in session. The declaration of the state of siege would be for a limited time, and then it would cease.<sup>56</sup> The constitution was amended again in 1878 to give the parliament authority to declare a state of siege only if there was imminent peril; again, the declaration would be for a limited time and in a limited physical territory.<sup>57</sup> According to Article 1 of the 1878 law, a state of siege could be declared in response to the events of an invasion or armed uprising.<sup>58</sup> Further, Articles 7–9 and 11 of the 1878 constitution gave authority for the civilian authority to be handed to the military when a state of siege was declared. The constitution also gave military tribunals jurisdiction over civilians in all crimes and offences against the safety of the republic and the constitution. The military had the right to search and suspend meetings and ban publications that were deemed to cause chaos.<sup>59</sup>

On 2 August 1914, a state of siege was imposed to cover all of France. Three days later, a law was declared that the state of siege would remain in force until the end of World War I.<sup>60</sup> On 27 April 1916, the ability of the military to hold tribunals over civilians in peacetime ended. However, in cases of threat, the military tribunal was still allowed to try civilians over specific offences found in the Code of Military

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<sup>53</sup> Ibid 41.

<sup>54</sup> Ibid.

<sup>55</sup> The Paris Commune, which was formed between 18 March and 28 May 1871, enacted numerous socialist decrees that suspended the sale of unredeemed pledges in pawn shops and the ‘relieving of all rents owed by tenants, specifically during the months of October 1870 and January through April 1871’, Katie Brunner, ‘Myth and the Paris Commune’ (2014/2015) 41/42 *Communication and Theater Association of Minnesota Journal* 49–66  
<<https://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=1083&context=ctamj>>.

<sup>56</sup> Ibid.

<sup>57</sup> Scheppele, above n 6, 6.

<sup>58</sup> Mindus, above n 5, 113–114.

<sup>59</sup> Radin, above n 51, 639.

<sup>60</sup> Head, above n 11, 41.

Justice.<sup>61</sup> During World War II, the Act of 8 December 1939 made an executive decree for a permanent state of siege.<sup>62</sup>

Article 16(1) of France's constitution of 1958 gave authority to the executive to declare a state of siege in the following cases:

1. when the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are under grave and immediate threat
2. when the proper function of the constitutional governmental authorities is interrupted.

Under this constitution, the president of the republic could declare a state of siege after formally consulting with the prime minister, the president of the Houses of Parliament and the Constitutional Council, and after informing the nation of such measures. When emergency powers were being exercised, the National Assembly could not be dissolved. After 30 days of exercising the emergency powers, the president of the National Assembly and the president of the Senate would refer the matter to the Constitutional Council. There, 120 members from both the National Assembly and the Senate would decide whether the conditions mentioned in Article 16 (1) still applied. They would then publicly announce their decision. If they decided to extend the state of siege, the 30 days mentioned above could be extended to 60 days, or any moment thereafter, to make a decision in the same manner.<sup>63</sup> Article 36 of the constitution stated that the 'state of siege shall be decreed by the Council of Ministers', and its extension over 12 days may only be approved by the parliament.<sup>64</sup>

Egypt and France were connected by France's occupation of Egypt from 1798 to 1801 under the leadership of Napoleon Bonaparte, who aimed to challenge Britain's expansion into the Middle East and protect France's interests. France claimed that it

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<sup>61</sup> Radin, above n 51, 639.

<sup>62</sup> Head, above n 11, 42.

<sup>63</sup> Feldman, above n 43, 1027–1028.

<sup>64</sup> Article 36 of 1958 of the French Constitution, 4 October 1958 <[https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/anglais/constiution\\_anglais\\_juillet2008.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_juillet2008.pdf)>.



wanted to liberate Egypt from tyranny and injustice, but instead it used force against Egypt under the guise of protecting security and order.<sup>65</sup>

As an example of a French state of siege declared outside France, France implemented a state of siege in Algeria in April 1955. French authorities did not want to declare martial law under a state of siege because the constitution of the French Republic did not contain emergency regulations and because of the domestic situation in North Africa.<sup>66</sup> Thus, French authorities established a new legal bill that was passed by the majority of France's National Assembly on 3 April 1955. The declaration of martial law was first limited for six months and then extended to cover all of Algeria after the Philippeville incident in August 1955. The declaration of martial law gave France's governor-general in Algeria absolute dictatorial power.<sup>67</sup>

There are several recent examples of a state of siege being invoked in France. President Jacques Chirac declared a state of emergency for three months in 2005 after there was rioting in the suburbs of Paris. In November 2015, President Holland declared a state of emergency after the Paris attack.<sup>68</sup> In May 2016, France's parliament extended the state of emergency for two months to protect two major sporting events from sabotage (Euro 2016 soccer and the Tour de France cycling race).<sup>69</sup> On 6 July 2017, the parliament extended the state of emergency for the sixth time, making it the longest state of emergency since the Algerian War in the 1960s.<sup>70</sup>

The lessons drawn from France's state of siege show that France has used it to crush working-class opponents of the regime. Elastic concepts such as protecting the country's independence and the integrity of its territory have been used to justify the ongoing use of emergency powers. Further, France's state of siege shows that even liberal democratic countries cannot function without the use of such emergency

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<sup>65</sup> Alain Silvera, 'Egypt and the French Revolution, 1798–1801' (1982) 257 *Outre-Mers: Revue d'histoire* 307–322 <[https://www.persee.fr/doc/outre\\_0300-9513\\_1982\\_num\\_69\\_257\\_2389](https://www.persee.fr/doc/outre_0300-9513_1982_num_69_257_2389)>.

<sup>66</sup> Fabian Klose, *Human Rights in the Shadow of the Colonial Violence: The War of the Independence in Kenya and Algeria* (University of Pennsylvania Press, 2013) 103.

<sup>67</sup> *Ibid.*

<sup>68</sup> 'What Does "a State of Emergency" Mean in France?', *France 24* (online), 15 November 2015 <<http://www.france24.com/en/20151115-what-does-france-state-emergency-mean>>.

<sup>69</sup> Aurelien Breden, 'French Parliament Votes to Extend State of Emergency', *New York Times* (online), 19 May 2016 <<https://www.nytimes.com/2016/05/20/world/europe/french-parliament-votes-to-extend-state-of-emergency.html>>.

<sup>70</sup> Yasmeen Sarhan, 'Will France's State of Emergency Become Permanent?', *The Atlantic* (online), 11 July 2017 <<https://www.theatlantic.com/international/archive/2017/07/will-frances-state-of-emergency-become-permanent/532848/>>.

powers. A state of siege in France is supposed to be declared for a limited time; however, in practice, France has remained under the state of siege declared in 2015 without interruption. Thus, it is under a nearly permanent state of emergency.

### **2.2.6 United Kingdom martial law**

The notion of martial law has its roots in medieval England, where it was designed to guarantee discipline and order in the armed forces. The concept of military law, or martial law, expanded from the fourteenth century. It was applied to both serving and discharged soldiers and sailors, as well as thieves, brigands, rioters and publishers of disloyal books.<sup>71</sup> During times of peace, the Crown can only suspend or dismiss soldiers and sailors, but during times of war, the Crown can subject them to military trials.<sup>72</sup> Martial law was used as the fundamental emergency tool of the common law system in Britain. According to Gross and Ní Aoláin, martial law has always been unclear in its functioning and implementation.<sup>73</sup> For example, the Stuart kings used the justice of martial law as a means to punish civilians with the death penalty, which was an irregular use of procedures.<sup>74</sup>

In 1628, the British parliament adopted the Petition of Right, which was a document that granted rights to citizens. It stated that martial law only applied to soldiers and only during wartime. The definition of when martial law could be invoked was then expanded to cover any territory occupied during an aggressive occupation, and to deal with special crises.<sup>75</sup> The king could declare martial law in peacetime, when the parliament tried to limit the king's rights. As a result, the English Revolution, or the English Civil War (1642–1660), was launched between parliament's supporters and the Crown. The outcome of the revolution was the abolition of the monarchy, and the parliament was granted more power in political matters, as well as limited checking power by a constitutional agreement.<sup>76</sup>

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<sup>71</sup> Reynolds, above n 44, 6.

<sup>72</sup> Sai Krishna Bangalore Prakash, *Imperial from the Beginning* (Yale University Press, 2015) 151–152.

<sup>73</sup> Gross and Ní Aoláin, above n 1, 30.

<sup>74</sup> *Ibid* 31.

<sup>75</sup> *Ibid*.

<sup>76</sup> Online Library of Liberty, *The English Revolution* <<http://oll.libertyfund.org/groups/68>>.

Martial law was a matter of discussion between 1865 and 1899 because it was related to the common law and the right to repel force with force, and martial law was an expression of the royal prerogative.<sup>77</sup>

Dicey was a British jurist who was opposed to martial law, stating that it is unknown to the law of England. However, he also distinguished between two uses of martial law. First, ordinary law can be suspended and replaced with military law, with all people having the potential to be placed under arrest, jailed or executed.<sup>78</sup> Second, martial law is used to maintain public order at whatever cost of blood or belongings. This has the following characteristics: its legal source is the common law right to meet force with force that is shared by both the regime and citizens; and the requirements of the circumstances determine which measure is used.<sup>79</sup> Martial law offers the authorisation of all means necessary for the repression of internal revolts or riots, and it is assumed to be preventative rather than punitive.<sup>80</sup> Dicey's views have been described as double standards because of his opposition to martial law. However, he still allowed martial law to be used in colonial states and permitted the use of force there.

Military tribunals and commanders were not authorised to try persons for their participation in the riots or invasion in Britain.<sup>81</sup> However, in contradiction to this, Britain used special military courts in Egypt to try Egyptian nationalists. The next chapters will present a wider discussion of this topic.

An example of British martial law can be found in Ireland, when Britain declared a state of martial law after the Easter Rising in 1916. This state lasted for five days. As a result, 124 members of the Crown forces were killed and 388 were injured. A further 180 civilians were killed and 614 were injured. The commander-in-chief of the British army issued martial law regulations to include a curfew and the power to fire upon any civilians carrying arms.<sup>82</sup> On the second day of the uprising, martial

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<sup>77</sup> Gross and Ní Aoláin, above n 1, 30–34.

<sup>78</sup> Ibid 31.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid 32.

<sup>81</sup> Ibid.

<sup>82</sup> Head, above n 11, 74.

law was extended to cover all of Ireland, and the Crown forces were given massive and sweeping powers to take any necessary action to end the uprising.<sup>83</sup>

Further, in 1919, Britain declared martial law in Amritsar, India, in response to the massacre of anti-British protesters. Brigadier-General Rex Dyer ordered his soldiers to open fire on 20,000 people, which resulted in 380 people killed and 15,000 injured. In later trials, 180 people were sentenced to death and 264 were sentenced to transportation for life.<sup>84</sup>

In Egypt's case, Britain declared the first state of martial law on 2 November 1914 and appointed a British governor who was given massive authority and the power to remove the military's authority from the jurisdiction of the courts.<sup>85</sup>

Britain used martial law to consolidate its power in Egypt because it was afraid that other superpowers might curtail its financial and political interests in Egypt and simultaneously use Egypt's resources for their own benefits.

Senior British advisers—the acting consulate-general and the foreign office in London—reported that it was important for Britain to declare a protectorate over Egypt to end Turkish sovereignty. The declaration of martial law was also used to protect Egyptian ministers and other Egyptians cooperating with Britain from prosecution for treason by national courts. In addition, martial law was used to replace Khedive Abbas, who rejected Britain's interference in Egypt, with Khedive Hussein.<sup>86</sup>

The assassination of Sir Lee Stack, the sirdar of Egypt and the governor-general of Sudan, gave Britain more excuses to stabilise its imperialist agenda and crush the enduring vestiges of independence in Egypt and Sudan.<sup>87</sup> The usefulness of martial law led Britain to use it to extend the scope of its power. Britain relied on the legal basis established in the 1923 Egyptian constitution and the Anglo–Egyptian Treaty of 1936, which gave Britain the right to call for a state of martial law. In 1939, after

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid 73.

<sup>85</sup> Nathan J Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press, 1997) 82.

<sup>86</sup> John Darwin and Beverley Nielsen, *Britain, Egypt and the Middle East: Imperial Policy in the Aftermath of the War, 1918–1922* (Macmillan Press, 1981) 60.

<sup>87</sup> Assa Okoth, *A History of Africa: African Nationalism and the De-Colonisation Process* (East African Educational Publishers, 2006) 205.

World War II was launched, the declaration named the prime minister as a military governor, rather than an army commander. This new role had dual political and military authority, which the prime minister could use against political opponents. Martial law enshrined the rule of a single person, without any real political opposition.<sup>88</sup> In addition, martial law gave the government strong powers (i.e., verdicts of military courts could not be appealed, but were submitted to the military governor for approval).<sup>89</sup>

This thesis argues that Britain's martial law in Egypt paved the way for Nasser to develop the Egyptian version of emergency law, which expanded to include different types of exceptional laws, with ever greater numbers of punishable crimes, to the present day.

### **2.2.7 Failure of classical models of accommodation**

Head critiques the classical models based around six fundamental flaws that they all share. They are as follows:

1. The classical models are all examples of how emergency powers paved the way to authoritarian regimes and used brutal methods to deal with uprisings. They show how the ruling elite used constitutional restraints whenever they felt fundamentally threatened by dissatisfaction from below.<sup>90</sup>
2. There are clear problems in these models in terms of defining what constitutes an emergency. Emergencies are an inherently elastic concept, as well as open-ended and politically controlled. An example of this is the false claim of weapons of mass destruction that was used to justify the invasion of Iraq in 2003 by the US and its elite.
3. These models are often based on the phenomenon of militant or intolerant democracies that claim to stand for the defence of core values of a democratic order. An example of this is Article 18 of the German Basic Law, which was issued after World War II. It allowed people to be stripped of their political rights to suppress the free democratic basic order.

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<sup>88</sup> Brown, above n 85, 82.

<sup>89</sup> Ibid 82–83.

<sup>90</sup> Head, above n 11, 93–94.

4. In these models, the reality that the executive claims to represent may be false, as may be their claims about defending democracy.
5. Models of accommodation may be quite accommodating towards models of semi-legality or extra-legality.
6. Under these models, the legislatures and courts become a rubber stamp for executive actions.<sup>91</sup>

In conclusion, the classical models of accommodation show how different political regimes interpret emergency rules based on ill-defined and vague concepts enshrined in the constitution. These regimes expand and develop the notion of emergency to suit their needs and to crush their opponents both inside and outside their countries. These models also show how the executive overrides the legislature and the judiciary to serve its own benefits, which has led to many cases of human rights abuses.

### **2.3 Modern Comparative Context Categories of Accommodation**

This section examines the modern comparative categories of accommodation, including constitutional accommodation, legislative accommodation and interpretive legislation. It shows how these modern comparative models fail to explain the continuous state of emergency in Egypt.

#### **2.3.1 Constitutional accommodation**

The constitutional accommodation approach has been adopted by most democratic countries. It was inspired in its basic outlines, if not its distinctive mechanism, by the Roman Republic's emergency institutional provisions.<sup>92</sup> Constitutional accommodation models are based on the assumption of temporal separation between emergency and normalcy by providing an ex ante constitutional framework.<sup>93</sup>

Constitutional accommodation provides a general framework that is required to address the essentials of specific crises and the measures needed to deal with them. However, this model is unsuccessful at anticipating all exigencies.<sup>94</sup> Some countries have explicit provisions in place for extraordinary measures used by the executive in

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<sup>91</sup> Ibid 93–97.

<sup>92</sup> Asanga Welikala, *A State of Permanent Crisis: Constitutional Government, Fundamental Rights, and States of Emergency in Sri Lanka* (Centre for Policy Alternatives, 2008) 48.

<sup>93</sup> Ibid 46.

<sup>94</sup> Ibid 47.

the case of an emergency. Examples of this model include the Netherlands, Portugal and some states of the US.<sup>95</sup>

### **2.3.2 Legislative accommodation**

The legislative accommodation approach contains provisions that consist of legislation giving exceptional power to the executive. Examples of countries that have used legislative provisions are the US and the UK. Canada also has legislation for emergencies.<sup>96</sup>

Emergencies can be vast and unpredictable, and the drafter of a constitution cannot attempt to predict all future exigencies or provide detailed and explicit arrangements for all occasions. Constitutional emergency provisions must necessarily use broad and elastic language that sets a general framework for emergency rule.<sup>97</sup> This can then be supplemented with legislative provisions. These types of legislative accommodations can be divided into two separate types, as outlined below.

#### *2.3.2.1 Legislation that can modify the existing law*

Legislation assists with dealing with specific challenges to facilitate the needs of security and state safety. Some modifications were introduced into the ordinary system, and any legislative provisions that were created out of the law to respond to an emergency situation became part of the ordinary legal system.<sup>98</sup> Gross and Ní Aoláin called this the emergency ordinary model, which focused on introducing emergency-driven legal provisions into existing ordinary rules.<sup>99</sup>

#### *2.3.2.2 Special emergency legislation*

Emergency legislation must always be enacted under the established procedures of the law. However, existing legislation may be inadequate for dealing with some emergencies. Thus, in cases of special emergencies, efforts must be made to create supplementary emergency norms. An example of this is the *USA PATRIOT Act* of 2001.<sup>100</sup>

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<sup>95</sup> Head, above n 11, 93.

<sup>96</sup> Ibid.

<sup>97</sup> Gross and Ní Aoláin, above n 1, 66.

<sup>98</sup> Ibid 67.

<sup>99</sup> Ibid.

<sup>100</sup> Welikala, above n 92, 47.

### **2.3.3 Interpretive legislation**

Interpretive models permit the judiciary to interpret legal powers in such ways as to authorise emergency measures and actions by the government.<sup>101</sup> This model gives constitutional provisions and normal laws a new understanding of legislation without any explicit amendment or replacement being exercised by judges. Interpretive legislation occurs when the judiciary responds by interpreting existing constitutions and legal provisions in such ways as to effectively address challenges and enable a response from the regime.<sup>102</sup> This allows a new understanding to be brought to the context without explicit alteration or replacement.<sup>103</sup>

The law is usually flexible enough to allow judges to accommodate an emergency within the framework of the existing legal system.<sup>104</sup> The model of interpretive accommodation applies ordinary rules during times of crisis but changes the scope.<sup>105</sup> This model focuses on judicial interpretation and the delicate act of balancing competing interests by courts.<sup>106</sup>

### **2.4 Business-as-usual model**

The business-as-usual model denies that any special accommodation or new understanding of law is required. It maintains that a good legal system is ready to deal with a crisis without any new additions or interpretations. This model rejects changes in the existing constitutional provisions, legislation and judicial interpretation. This model does not allow a departure from the normal legal system at any cost.<sup>107</sup>

The business-as-usual model embodies two theories. The first theory is constitutional absolutism, which means that the government cannot take action to reduce or suspend any fundamental rights protected by the constitution at any time, and the regime cannot exercise any special emergency powers that have not been clearly outlined by the constitution.<sup>108</sup> The second theory is constitutional perfection,<sup>109</sup>

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<sup>101</sup> Head, above n 11, 93.

<sup>102</sup> Welikala, above n 92, 48.

<sup>103</sup> Ibid.

<sup>104</sup> Gross and Ní Aoláin, above n 1, 73.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid 77.

<sup>107</sup> Ibid 10.

<sup>108</sup> Welikala, above n 92, 49.



which means that the constitution anticipates every exigency and provides within its framework all the powers that are necessary for the government to face any exigency.<sup>110</sup> The ordinary legal system is presumed to provide the necessary answers for any crisis without the need to resort to extraordinary governmental powers.<sup>111</sup>

## **2.5 Extra-legal model**

This model relies on maintaining the rule of law, which needs to be temporarily abandoned in serious situations. It allows any type of executive response to take any action to deal with emergency situations. However, it is up to the people to ratify or reject the executive action, either directly or indirectly.<sup>112</sup> This theory enables the executive to take any action to deal with emergency situations. Political realists believe that there is no room for a legalistic–moralistic approach when dealing with emergencies, especially when the existence of the state is threatened.<sup>113</sup>

## **2.6 Illegality model**

The illegality model allows the executive to do what it deems fit without the need for popular endorsement. Once again, the political realist argument is that when dealing with an emergency, there is no space for any kind of legalistic or moralistic approach. The executive can take vital action both during an emergency and when the survival of the state is disturbed. This model has been criticised because of the possibility of the executive using arbitrary measures.

Dicey suggests that the legislature should pass a law to give officials the authority they need to act in a spirit of legality. Further, he argues that in cases when there is no time to enact such a law, officials must do what they think is necessary and react with one of two options. First, officials can act in a way that does not take them outside the law, and they will be able to validate themselves with the defence of necessity to deal with an emergency, thus showing a judge that what they did was necessary to deal with the emergency.<sup>114</sup> Second, officials can act outside the law by

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<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Gross and Ní Aoláin, above n 1, 252.

<sup>112</sup> Ibid 111–112.

<sup>113</sup> Ibid 111.

<sup>114</sup> Victor V Ramraj, *Emergencies and the Limits of Legality* (Cambridge University Press, 2008) 46.

depending on the act of indemnity to bring them back within the law to legalise their illegality, as long as what they did was both sensible and not cruel.<sup>115</sup>

Carl Schmitt (1888–1985), a legal academic scholar who served the Nazi regime in Germany, justifies the use of the state of exception to suspend the rule of law and grant the executive exceptional power.<sup>116</sup> Article 48 of the Weimar Republic gives the president the power to issue decrees without obtaining consent from the parliament. Schmitt justifies the use of exceptions and emergencies as an excuse to increase dictatorial conceptions to protect the state and society from any threat.<sup>117</sup> Schmitt proposes a revolutionary dictatorship called a sovereign dictatorship whereby the dictator can change the entire existing order and transform it into something else, with the norms becoming subservient to the exception.<sup>118</sup> Schmitt claims that ‘the sovereign is he who decides on the state of exception’. Schmitt’s definition maintains the sovereign as someone standing outside the legal system, yet still belonging to it.<sup>119</sup> The sovereign can distinguish between friends and enemies, and the state can use decisive ways to protect itself from any danger or global threat or war.<sup>120</sup> This model argues that any failure to use a decisive tool to protect the state will leave the state in chaos;<sup>121</sup> thus, the judiciary and the parliament should allow the executive to be the only serious contestant and the main player.<sup>122</sup>

Agamben, an Italian philosopher who investigated the notion of the state of exception, notes that the state of exception becomes the paradigm of the government. It is not a simple generic term of martial law or emergency law, but a state of non-law whereby the law can be changed.<sup>123</sup> Agamben believes that theorists have failed to find a theory of the state of exception in public law but established a direct or indirect connection between the state of exception and the law. In doing so, they

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<sup>115</sup> Ibid 46–47.

<sup>116</sup> Head, above n 11, 14.

<sup>117</sup> Ibid 15.

<sup>118</sup> Gross and Ní Aoláin, above n 1, 164.

<sup>119</sup> Austin Sarat, *Sovereignty, Emergencies, Legality* (Cambridge University Press, 2010) 142.

<sup>120</sup> David Dyzenhaus, ‘Intimations of Legality Amid the Clash of Arms’ (2004) 2(2) *International Journal of Constitutional Law* 244–245.

<sup>121</sup> Michael McConkey, ‘Anarchy, Sovereignty, and the State of Exception’ (2013) 17(3) *Independent Review* 415–428.

<sup>122</sup> Dyzenhaus, above n 120, 245.

<sup>123</sup> Bas Schotel, ‘Defending Our Legal Practices: A Legal Critique of Giorgio Agamben’s State of Exception’ (2009) 1(2) *Amsterdam Law Forum* 114.

granted the state an exception.<sup>124</sup> Agamben's analysis of the state of exception differs from Schmitt's politically. Schmitt endorses exceptionalism as a political choice, but for Agamben, the exception becomes the rule because there is no relation between law and anomie, and law and politics.<sup>125</sup>

## **2.7 Realist model**

According to the realist model, when the state is under threat and the survival and fundamental interests of the nation are endangered, legal and ethical considerations are mostly irrelevant.<sup>126</sup> This model gives power to the executive to abuse its authority based on the concept of necessity.

There are two schools of thought on the realist model. The first one is the political realist school. According to this approach, as explored by Head, concerns of legality, morality and democracy, even if taken into account for political or tactical reasons, are secondary or subordinate to the quest for continued existence. This approach is more pervasive than generally acknowledged. Maxims such as 'necessity knows no law' give vent to this outlook.<sup>127</sup> The second school, developed by British and US courts, is used to justify anti-democratic and military coups. It does so as long as the new regime accommodates British and US interests or global capitalism. This approach has been used to justify the legality of a number of military-backed coups, including Pakistan in 1958 and Uganda in 1966.<sup>128</sup>

## **2.8 Testing the Models with Reference to the Egypt Case**

Different political regimes in Egypt have continued to use the state of exception based on the premise of fighting terrorism and protecting the country from chaos. However, in reality, the state of exception has been imposed for an extended time, and some would argue permanently, to protect the deep state's economic and political position in Egypt.

Few people have contributed to the discussion or been able to explain why Egypt has suffered from a permanent state of emergency. Liguori advocates for certain models

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<sup>124</sup> Ibid 115.

<sup>125</sup> Jef Huysmans, 'The Jargon of Exception—On Schmitt, Agamben and the Absence of Political Society' (14 May 2008) 2(2) *International Political Sociology* 165–183.

<sup>126</sup> Head, above n 11, 137.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid 138.

to be applied to Egypt but ignores its long history of emergency law. Liguori proposes a controversial model and assumes that it will suit Egypt's situation after the 2011 revolution. However, the model she suggests is not applicable and cannot explain what is happening in Egypt.

### **2.8.1 Liguori's proposed model and thesis criticism**

In the debate on the extended permanent state of emergency in Egypt, a number of new models have been suggested in an attempt to resolve the issues. Liguori states that:

Egypt should adopt two types of emergency powers in its new constitution: one based on the neo-Roman model, with a formal declaration of emergency and prescribed emergency measures that may restrict ordinary constitutional norms, and the other largely based on the legality model allowing the executive to take actions outside the normal constitutional procedures in the face of an emergency situation without declaring a state of emergency, provided that such actions are subject to immediate ratification by the legislature and judicial review for compliance with ordinary constitutional norms.<sup>129</sup>

Liguori divides her proposed emergency powers into five sections, as outlined below.

#### 1. State of emergency

Liguori proposes that:

Egypt's constitution should authorize the declaration of a state of emergency, in the event of a threat order that cannot be managed through the ordinary constitutional process, during which constitutional rights maybe temporarily restricted. However, it should categorically prohibit the restriction of rights deemed non-derogable under international law including the right to be free from torture and cruel, inhuman or degrading treatment or punishment.<sup>130</sup>

This thesis argues that Egypt has suffered from a longstanding state of emergency because emergency law is part of the problem and is not the solution for ending any threat to national security. Further, this thesis suggests that the Egyptian executive should use ordinary laws to tackle any threat to national interest and public order because emergency law is the main cause of human rights breaches in Egypt.

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<sup>129</sup> Michelle A Liguori, 'A New Emergency Law Model for Egypt' (2012) 19(3) *Human Rights Brief* 14–15.

<sup>130</sup> *Ibid* 15.

## 2. Extension and termination of the state of emergency

Liguori proposes that the Egyptian president should be able to declare a state of emergency for three months, and then request a renewal for a further three months. She states that:

The first renewal should be by a simple majority of the legislature, given that legislatures, in general, have relative competence in serving as a check on executive use of emergency powers. However, given Egypt's institutional history, the second renewal should require approval by the Supreme Constitutional Court, which should be given jurisdiction to determine whether the factual conditions for a state of emergency continue to exist. The Supreme Constitutional Court, which, as noted, has a history of serving as a check on Egypt's executive branch, will also serve as a counter-majoritarian check that will help to protect rights of minorities during emergencies. Also keeping in mind, the role of constitutional referenda in Egypt, the third and all subsequent extensions should require approval of the people in a referendum. While referenda may be costly, they are not novel in Egypt, and they would help to ensure that the president is accountable to the people in his or her use of emergency powers. The fact that the second extension requires the approval of the Supreme Constitutional Court also ensures that the people will have available to them a judicial determination that the state of emergency was appropriate before they are called on to vote to extend it.<sup>131</sup>

This thesis suggests that the state of emergency in Egypt and the exceptional laws should be abolished because Egypt has suffered from a continuous state of emergency for nearly 100 years. It also asserts that ending the continuous state of emergency was one of the main demands of the Egyptian people during the 2011 revolution.

## 3. Declaring the state of emergency

Liguori's model proposes that the president should have the authority to declare a state of emergency with the approval of the simple majority of the legislative branch within 14 days.<sup>132</sup>

This thesis argues that the declaration of emergency law should not be placed in the hands of only the president. The legislative and judiciary branches should have the chance to decide whether the conditions for invoking a state of emergency exist. That is, emergency law should be the last resort, and there should be strict conditions for declaring a state of emergency. Only then should emergency law be conditionally

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<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

approved with care to ensure that civilians are protected from the abuse of power that might be exercised by the regime.

#### 4. Oversight of emergency actions

Liguori proposes that the constitution and the supplementary legislation should provide the right to compensation for any action that violates the emergency powers. She states that:

Such provisions would ensure that, while the president may authorize actions consistent with the extraordinary Powers granted in emergency legislation his or her actions are limited and can be challenged in a court of law. In addition, the Constitution should provide that, should the executive branch choose to try defendants in military or security courts, convicted defendants have a right to appeal their convictions in an ordinary civilian court. Such a provision (similar to the right of habeas corpus in the American Constitution) would balance preserving the president's ability to use military or security courts, to the extent they may be necessary, with defendants' internationally recognized human right to a fair trial before an impartial tribunal.<sup>133</sup>

This thesis suggests that the constitution should prohibit trying civilians before military courts. Additionally, ordinary courts should have the ability to try civilians only with the right to compensation. Ordinary courts need to be neutral and impartial, and any political cases should be prohibited.

#### 5. Exceptional powers of the president

Liguori proposes that the Egyptian president should have the right to issue decrees that have the force of law. These decrees should be submitted to the legislature with the right of a judicial review.<sup>134</sup>

This thesis argues that granting the president the power to issue decrees violates the separation of powers. The legislative branch should be the only institution issuing laws because the constitution gives the president power to issue decrees. This results in expanding the president's authority, which assists in enshrining authoritarian rule.

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<sup>133</sup> Ibid 15–16.

<sup>134</sup> Ibid 16.

## **2.8.2 Failure of traditional emergency power theories**

This thesis criticises traditional emergency power theories and Liguori's proposed model for the following reasons:

1. Egypt has suffered from an extended and continuous state of emergency since the assassination of President Anwar Sadat in 1981. This state lasted until 2012. Since then, a state of emergency has been declared several times, and it continues until the present day.
2. The Egyptian regime's justification of the long and extended use of a state of emergency is as follows:
  - a. Egypt is not the only country in the world that has decided to extend the state of emergency. Other examples include Syria (1963), Algeria (1992) and Turkey (1971–2002).
  - b. Declaring a state of emergency is important in fighting terrorist organisations that have threatened Egypt's national security since the assassination of Sadat. Further, the Egyptian government claims that it is fighting against illegal smuggling in Sinai and at the Gaza border via hidden tunnels dug between the Egyptian border and the Gaza Strip. The history and development of emergency law in Egypt will be explored further in Chapter 4.
3. Traditional emergency power theories do not explain how or why emergency law has been the main cause of human rights violations in Egypt (explored further in Chapter 5). Efforts should be focused on how to minimise the power given to the executive, especially given the scope of powers that have been expanded and enshrined by the constitution and the laws.
4. Traditional emergency power theories have ignored the fact that emergency law has been used as a tool by the deep state authority to protect its political and economic interests. Further, traditional emergency power theories have ignored the military's political interference, which has prevented any real democracy. Egypt has been ruled by the military for nearly 64 years.
5. Any proposed model should define and specify the reasons for imposing special measures.
6. Any proposed model should consider external political and external interventions from Western powers.

7. Traditional emergency power theories neglect the presence of contemporary imperialism and its organisations that create pressure on developing countries, including Egypt.

### **2.8.3 Head's criticism of the model of emergency power**

Head criticises traditional models of emergency power theories, stating that:

A common problem with these works is that they take as their starting point the continuation or re-establishment of the existing political and legal order and discuss how to accommodate the resort to emergency rule. There is also little examination of the actual, often violent, measures adopted to restore order, why these extraordinary practices were employed, or the underlying implications for democracy. In particular, they lack an examination of the socio-economic foundations and class character of the relevant ruling elite.<sup>135</sup>

Head believes that traditional emergency power theories are not applicable to either the developed or the developing world. He further indicates that the emergency powers theory model makes the following assumptions:

- That the recourse to emergency or extra-legal powers is a temporary response to a particular perceived threat to the established order, rather than a more long-term and systemic tendency to turn to more authoritarian forms of rule.
- That the existing Western states are democratic, and ultimately subject to the will of ordinary people, rather than increasingly plutocratic states, scarred by a widening gulf between the rich and poor, and ultimately dominated by the interests and power of a wealthy corporate elite.
- That the state itself, and its apparatus of enforcement—police, intelligence, military and judicial agencies—is a neutral institution, dedicated to serving the needs of society as a whole, rather than an instrument of rule serving the interests of the most powerful class: the capitalist class.
- That the judiciary, in particular, functions as an independent arbiter, bound by law, even if it does not always acquit itself steadfastly or courageously, rather than being part of the mechanism of governing society in the interests of the ruling elite.
- That the executive too is a distinct legal entity, such as a president, prime minister or cabinet, with its own inherently institutional composition and interests; and that, while it may be susceptible to aggregation and abuse of

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<sup>135</sup> Head, above n 11, 5.



power, it is not also a vehicle for the financial and corporate interests that dominate the economic life of the planet.

- That ‘national security’ is a concept that, although subject to misuse, is likewise an expression of the needs and interests of society as a whole, rather than those of the prevailing economic powers that be.
- That the ‘rule of law’ is similarly a neutral phenomenon, rather than one that can not only accommodate and legitimise dictatorial measures, but also mask and magnify social inequality and the imbalance in power between those at the top and bottom of society.<sup>136</sup>

Head provides solid evidence and arguments to refute any general applicability of these assumptions. The present thesis shows that Head’s criticisms of the orthodox explanatory and justificatory models are directly relevant to Egypt’s situation. These models show their weakness, and irrelevance, in radically failing to give any logical answers as to why Egypt has suffered from such a long and permanent state of emergency and how emergency powers have developed from temporary into permanent law and from an exceptional law into an ordinary one.

It is important to examine history to uncover the sources of problems. To fully understand the underlying reasons, we must examine the period since the superpowers, including Britain, started to gain political and economic interest in Egypt. We must then examine the legal framework from the first declaration of emergency law in 1914 until the present day.

## **2.9 Conclusion**

The succeeding chapters will show that the orthodox theories fail to explain or justify the long and permanent state of emergency in Egypt for the following reasons:

1. Emergency power models have ignored the fact that one of Britain’s main roles in Egypt was to protect its economic and political interests. Britain used Egypt’s important strategic position to maintain its tight grip on African and Arabic countries. Britain also kept Egypt both as a source of raw materials and to control the Nile river upstream.
2. Emergency models have ignored the fact that Egyptian emergency law has developed from an exceptional temporary law into a permanent norm that

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<sup>136</sup> Ibid.

was then enshrined by the constitution and expanded into different exceptional laws.

3. Since the 1952 coup, successive Egyptian regimes have used elastic and vague concepts such as ‘national security’ and ‘fighting terrorism’ to justify imposing and extending the state of emergency to protect the country.
4. Dominant models have ignored the numerous human rights breaches during the state of emergency and the real motivations behind declaring and extending the state of emergency. These exceptional laws did not have any safeguard measures to prohibit restrictions on non-derogable rights, and the right of compensation made the situation worse.
5. Dominant models have ignored the use of the military and police. Instead of protecting the country’s borders and ensuring the safety of the nation, the military and police have used emergency law as a tool to protect the security of the regime and suppress its opponents.
6. Emergency power theories have failed to examine the deep state’s political and economic interests.

The next chapter will examine Britain’s occupation to show how Britain has used the concept of martial law to protect its interests in Egypt.

## Chapter 3: British Imperialism in Egypt

### 3.1 Introduction

The objective of this chapter is to conduct a detailed analytical and descriptive evaluation of British imperialism in Egypt from 1882 to 1952. The chapter also demonstrates how Britain employed martial law in Egypt to consolidate and protect its own political and economic interests.

### 3.2 European Imperialist Powers

Capitalist countries have used their military and economic powers to control most of the world. Latin America, Africa and Asia were victims of these powers. European powers seized these continents to use their raw materials and enslave their populations, and to prevent these continents from developing as industrial powers, thereby keeping them dependant on the colonisers. This chapter examines the origins of imperialism and explains how European powers have used the developing world to extract raw materials and generate profits.

#### 3.2.1 Origins of imperialism

Most of the world is subject to the developed capitalist world because of the latter's superiority in terms of economic, technological and military power.<sup>1</sup> Capitalists search for ways to expand their markets and increase their profits by reducing costs and expanding their sales.<sup>2</sup>

Europe started searching for minerals beyond its own borders in the sixteenth century. It discovered gold and silver in Potosi (Bolivia) between 1503 and 1660. In that time, 16 million kilograms of silver were shipped to Europe, while 185,000 kilograms of gold arrived at Spanish ports. By 1880, a total of 100 million kilograms of silver had been taken from Latin America and sent to Spain and other European countries. Most of this silver was extracted at little to no cost through the use of force against indigenous people and some small exchanges of goods. Europe used the

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<sup>1</sup> Eric Hobsbawm, *The Age of Capital: 1848–1875* (First Meridian Printing, 1984) 126.

<sup>2</sup> Victor D Lippit, *Capitalism* (Routledge, 2005) 4.

silver and gold to build its military capacity, which in turn secured its political advantage. Europe also exported silver to India and China.<sup>3</sup>

African and Latin American countries were used by Europe to source raw materials such as sugar and cotton, and they simultaneously became dependent on Europe's manufactured goods.<sup>4</sup> The gold, silver and slave trades<sup>5</sup> enabled the European powers to develop their industrial production and sell their manufactured goods to the rest of the world.<sup>6</sup> They used the Industrial Revolution to make new weapons, which in turn helped them to suppress any nationalist movements. Britain used the 'divide to rule' strategy in the colonies in Africa because it worked well in India.<sup>7</sup> This period of imperialism focused on gaining access to raw materials and flows of wealth such as gold and silver. It also focused on the slave trade for work in mines and plantations. Finally, it aimed at securing access to trade routes, as exemplified by France in Canada and the Dutch in South Africa.

John Locke (29 August 1632–28 October 1704) was an English philosopher known as the father of classical liberalism. Locke claims that legitimate government is based on the idea of power separation (executive, legislative and judiciary). Locke describes legislative power as supreme power to enforce the law. Locke's third power is called the 'federative power' and consists of the right to act according to the law of nature.<sup>8</sup>

In the late 1600s, Locke wrote the *Two Treatises of Government*. In the labour theory of property, which is developed in Chapter V of the Second Treatise, Locke justifies the homestead principle, which is based on the effort and labour that individuals expend to produce goods or allow the land to produce goods. Locke argues that the labour theory of private property is a theory of natural law, which means that all men

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<sup>3</sup> Jason Hickel, *The Divide: A Brief Guide to Global Inequality and its Solution* (Cornerstone Publisher, 2017) 71–72.

<sup>4</sup> Ibid 75.

<sup>5</sup> The slave trade was first started by the Spanish and Portuguese, and then dominated by the British, especially in West Africa. Slaves were exchanged for European goods. By 1853, 12–15 million Africans had been shipped across the Atlantic. Around 1.2–2.4 million died en route, and their bodies were cast into the sea. The US alone benefited from slave labour; see Hickel, above n 3, 73–74.

<sup>6</sup> Ibid 76.

<sup>7</sup> Chris Harman, *A People's History of the World* (Verso, 2017) 395.

<sup>8</sup> Vere Chappell, *The Cambridge Companion to Locke* (Cambridge University Press, 1994) 5–40.

have access to God's earthly resources and that each person has a natural right and duty to survive and establish private property.<sup>9</sup>

Locke's treatise justifies the conquest of the land in the Americas on the basis that the indigenous population was not engaged in agricultural production; therefore, only settlers could rightfully farm the land. Locke adds that what really counts for ownership is not only farming, but the use of the English farming style to increase productivity and profits.<sup>10</sup>

The colonisation of India began in 1600, led by the East India Company, which focused on controlling the trading routes east of the Cape of Good Hope. The company expanded by the 1800s and established direct administrative power over most of the subcontinent. It then handed the power to Britain, which forced the Indian people to adopt a new agricultural system and cultivate opium, indigo, cotton, wheat and rice for Britain's export system. Additionally, Britain imposed a tax on the farmers, enclosed the forests and used them to build ships and railways. Common water rights were also auctioned and privatised.<sup>11</sup> Britain also imposed a high tax on Egyptian farmers and forced them to grow cotton. A deeper analysis of the colonisation will be discussed later in this chapter.

In the later part of the seventeenth century, Britain's economy was developed and dominated by an elite group of bankers and shareholders who were shaping the manufacturing industries. This industrial capitalism arose in response to the rapid development of the industrial sector and the invention of machines as a result of the Industrial Revolution.<sup>12</sup> London and South East England were important to the capitalist system because of their vital geographic and cultural position. The eighteenth-century elite, comprising wealthy Londoners and investors from Southern England, played a crucial role in the growth of Britain's colonies overseas. During the nineteenth century, London became the growing centre of service and financial institutions. Combined with the Industrial Revolution, this meant that Britain had a

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<sup>9</sup> Karen I Vaughn, 'John Locke and the Labour Theory of Value' (1978) (2) 4 *Journal of Liberation Studies* 311–326.

<sup>10</sup> Hickel, above n 3, 83–84.

<sup>11</sup> *Ibid* 86.

<sup>12</sup> Andrew Porter, "'Gentlemanly Capitalism' and Empire: The British Experience Since 1750?' (1990) 18(3) *Journal of Imperial and Commonwealth History* 265.

strong presence overseas after 1850.<sup>13</sup> Two-thirds of the £6 billion in London's market between 1865 and 1912 was invested in other countries within the British Empire. Financial institutions made significant profits from investing their money in colonial endeavours. This money mostly came from lenders, investors, aristocrats, services and financial institutions.<sup>14</sup>

During the 1870s and 1880s, at the time of the Great Depression, markets were depressed and the prices of goods were falling. At this time, British investors invested their money in foreign stocks with fixed interest. These stocks were mainly in the construction of railways, bridges, harbours and docks, which provided more profits than they did in Britain.<sup>15</sup> To protect capitalist investments, Britain created military bases and used military forces to protect its investments outside Britain. By the end of the eighteenth century, investors and aristocrats occupied the main political and social seats in England, thereby controlling the policy-making.<sup>16</sup> The capitalist system shows how the financial sector of bankers and investors combined with politics to form an elite group whose personal interests were intrinsically linked to the national interests.<sup>17</sup>

Egypt was a victim of these Western European powers because of its strategic position, especially after the construction of the Suez Canal. Egypt was used as a source of raw materials—especially cotton—because of its agricultural wealth. Capitalist countries turned Egypt into an agricultural export economy, and from 1860, agricultural exports provided Egypt with 70% of its earnings.<sup>18</sup> The expansion of Egypt's trade attracted British businesspeople and bankers to invest their money in Egypt. They also made profits through loans provided to Khedive Ismael for the purpose of modernising Egypt. When Egypt could not pay the interest on these loans, Britain used it as justification to occupy Egypt.<sup>19</sup>

In 1876, around 10% of Africa was under European imperial occupation, and just 14 years later, 90% of Africa was colonised by Britain, France, Belgium, Germany and

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<sup>13</sup> Ibid.

<sup>14</sup> P J Cain and A G Hopkins, 'Gentlemanly Capitalism and British Expansion Overseas II: New Imperialism, 1850–1945' (February 1987) 40(1) *Economic History Review* 1–26.

<sup>15</sup> Harman, above n 7, 396.

<sup>16</sup> Cain and Hopkins, above n 14, 5.

<sup>17</sup> Jared Paulla Colucci, *Finance and Empire 'Gentlemanly Capitalism' in Britain's Occupation of Egypt* (Master thesis, City University of New York, 2014–present) 6.

<sup>18</sup> E J Hobsbawm, above n 1, 136–137.

<sup>19</sup> Ibid 137.

Italy.<sup>20</sup> The advanced capitalist countries developed a new age of imperialism between 1880 and 1914. During this time, most developing countries outside the US and Europe were under a formal or informal rule, mainly by Britain, France, Germany, Italy, the Netherlands, Belgium, the US and Japan.<sup>21</sup> Britain expanded its presence in Africa and India to protect important maritime trade routes from any threat.<sup>22</sup>

In conclusion, Europe used Africa as one of the major sources of raw materials for its industries and to create new, profitable markets for their products. Europe also used slaves to create more profits from its plantations and mining projects. The capitalist system played a crucial role in occupying most of the world. Europe produced more than it needed, but instead of reducing production and industry building, it simply exported its manufactured goods to the developing world. The success of the capitalist system in 1800 and 1900 in Latin America, India and Africa, led bankers and financial institutions to try to find new markets and new sources of raw materials to expand their investments and generate more profits.

### **3.2.2 United States imperialism in Latin America**

From the 1800s onwards, the US started pushing towards Latin American countries. The main aim of this was to prevent Europe from recolonising Latin America, and to use the resources found in Latin America for its own benefits.

In 1823, the US issued the Monroe Doctrine, which stated that any effort from European countries to recolonise Latin America would be considered an act of aggression against the US. In 1904, President Theodore Roosevelt issued the Roosevelt Corollary, which justified military intervention in any Latin American countries that declined to cooperate with the economic interests of the US. The Monroe Doctrine and the 1904 Roosevelt Corollary were issued to protect US interests and keep Latin America as a source of raw materials. They also ensured that new export markets would open up for US manufacturers.<sup>23</sup> At the same time, these acts prevented any European countries from recolonising the US or colonising Latin American countries. The US adopted the same policies as Europe to keep Latin

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<sup>20</sup> Harman, above n 7, 393.

<sup>21</sup> E J Hobsbawm, *The Age of Empire: 1875–1914* (Pantheon Books, 1987) 57.

<sup>22</sup> Ibid 68.

<sup>23</sup> Hickel, above n 3, 99–100.

American countries as sources of raw materials so it could then import manufactured goods back to those countries at higher prices. The Middle East became crucial for the US, particularly after discovering oil. This will be discussed further in Chapter 6.

### **3.3 European Imperialism in Egypt—Capitulation System**

One of the most dominant institutions that affected Egypt was the capitulation system, labelled by some as ‘a blatantly unequal legal regime’.<sup>24</sup> The capitulation system consisted of a group of treaties signed between certain European powers and the Ottoman Empire. It came into existence in the fifteenth century under pressure from the European powers.

The capitulation system treaty granted European powers the authority to protect religious minorities (i.e., Christians and Jewish people). It was then extended to protect foreigners living in the Ottoman Empire, providing them with an exemption from Ottoman laws, including civil, commercial and criminal laws, as well as all personal matters. The capitulation system gave jurisdiction in relation to foreigners to the consular tribunals of the respective European countries.<sup>25</sup> It also granted foreigners living in the Ottoman Empire the freedom to publish, as well as the ability to export and import free of tax and certain custom liabilities.<sup>26</sup> For example, Europeans living in Egypt were not subject to Egyptian laws but continued to be subject to the laws of their own country. They generally did not pay any tax in Egypt, but if they did, they paid very little.<sup>27</sup>

The European powers used the capitulation system for their own benefit and enjoyed immunity from Egyptian law. The Egyptian government did not have the authority to arrest foreigners who committed crimes unless they received consent from their consul. They had to be tried in their own consular courts, and most of the time they were released without proper trial.<sup>28</sup> In addition, the capitulation system prevented Egyptian authorities from searching ships belonging to foreign consuls and

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<sup>24</sup> Bardo Fassbender and Anne Peters, *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 53.

<sup>25</sup> Mumtaz M Qafisheh, *The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine Under Britain's Rule* (Martinus Nijhoff, 2008) 28.

<sup>26</sup> *Ibid* 28–29.

<sup>27</sup> Daniel Woodward, *Hats and Tarbooshes: Identity, Cosmopolitanism and Violence in 1920s Alexandria* (American University in Cairo Press, 2014) 22.

<sup>28</sup> Afaf Lutfi Al-Sayyid, *Egypt and Cromer Study in Anglo–Egyptian Relations* (John Murray, 1968) 6.



companies. As a result, smuggling increased in Egypt,<sup>29</sup> leading to an increase in crime and prohibited trading. Egyptian authorities were prevented from gaining any benefits or tax from these trades.

### 3.4 British Strategies Towards Controlling Egypt

Muhammad Ali, who assumed power in 1805–1848, ruled over Egypt through the Ottoman Empire's sponsored industrialisation. During this period, factories were constructed for military productions, agricultural processing and textiles.<sup>30</sup> Ali tried to make Egypt an independent power through modernisation<sup>31</sup> and planned to increase tourism in Egypt by encouraging Europeans to visit Egypt to take advantage of its significant historical culture.

In 1838, Britain and the Ottoman Empire signed the Treaty of Balta Liman. This commercial treaty focused on limiting the negative effects of Ottoman–Anglo trade caused by internal transit taxes on commerce within the Ottoman Empire.<sup>32</sup> The Treaty of Balta Liman gave Britain privileges with the Ottoman Empire by lifting all trade barriers and dissolving all commercial monopolies.<sup>33</sup> A 3% tariff was levied on British goods entering the Ottoman Empire, while Ottoman Empire exports were taxed at a rate of 60% upon entering the English market.<sup>34</sup>

The Treaty of Balta Liman was a significant benefit to Britain. Local Egyptian industries were shut down because they could not compete with cheap British goods. Egypt became a supplier of raw materials and became dependent on Western-manufactured goods.<sup>35</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> Andrew Gavin Marshall, *Egypt Under Empire, Part 1: Working Class Resistance and European Imperial Ambitions*, The Hampton Institute (11 July 2013) <<http://www.hamptoninstitute.org/egyptunderempire.html#.WrBxpE2KDIU>>.

<sup>31</sup> Ahmed B Suleiman Mohamed, 'Alexandria's Social Environment Impact on Public Spaces' (August 2014) 2(6) *Global Journal of Arts Humanities and Social Sciences* 29–43.

<sup>32</sup> Geoffrey Allen Pigman, *Trade Diplomacy Transformed: Why Trade Matters for Global Prosperity* (Palgrave Macmillan, 2016) 35.

<sup>33</sup> Banu Turnaoglu, *The Formation of Turkish Republicanism* (Princeton University Press, 2017) 48.

<sup>34</sup> Ibid 49.

<sup>35</sup> Derek Hopwood (ed), *Studies in Arab History: The Antonius Lectures 1978–1987* (Palgrave Macmillan, 1990) 71.

In the 1850s, trade between Egypt and Britain increased rapidly, especially in regard to Egyptian raw materials such as cotton.<sup>36</sup> In response, Britain offered to build a railroad from Alexandria to Cairo, and the khedive agreed. The construction of the railroad began in 1851 and finished in 1854. It was later extended to Suez, which meant that goods could be loaded and unloaded easily from Egypt to India and Britain. This helped Britain move one step closer to the occupation of Egypt, but in a diplomatic way.<sup>37</sup>

France also controlled Egypt through the famous strategic waterway connecting the East with the West. The main purpose was to bring Egypt even closer to Europe.<sup>38</sup> France received its chance when Said Pasha ruled from 1854 to 1863. He became the Ottoman viceroy of Egypt and signed an agreement with French engineer Ferdinand de Lesseps to construct the Suez Canal in 1854. The agreement was a joint enterprise with France to supply machinery and to build and operate the Suez Canal for 99 years. Egypt supplied the land and received a custom exemption. It also supplied labourers for the project, although many of them were forced labourers.<sup>39</sup> Britain initially opposed the construction of the Suez Canal because of its interests in Egyptian railways and ports. Fearing the increased influence and power of France, Britain started planning to seize the Suez Canal for itself.

As a result of the Crimean War between Russia and the Ottoman Empire in 1853–1856, the treasury of the Ottoman Empire was so exhausted that it was forced to take public loans from European bankers at an interest rate of 6% per annum. The Ottoman Empire needed £12 million per annum to service these loans,<sup>40</sup> and because Egypt was part of the Ottoman Empire, Egyptians could not pay the expenses required to continue constructing the Suez Canal.<sup>41</sup> In response, the Suez Canal Company issued 400,000 shares. France bought 200,000 and Khedive Said bought 64,000. To buy more shares in 1860, Said took loans with harsh terms from a French

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<sup>36</sup> Kenneth Pomeranz and Steven Topik, *The World That Trade Created: Society, Culture, and the World Economy, 1400 to the Present* (M E Sharpe, 2006) 231.

<sup>37</sup> Nazeer Ahmed, *Egypt and the Suez Canal*, History of Islam  
<<http://historyofislam.com/contents/onset-of-the-colonial-age/egypt-and-the-suez-canal/>>.

<sup>38</sup> Younan Labib Rizk, *Britain and Arab Unity: A Documentary History from the Treaty of Versailles to the End of World War II* (I B Tauris & Co, 2009) 13.

<sup>39</sup> Anthony Gorst and Lewis Johnman, *The Suez Crisis* (Routledge, 1997) 1.

<sup>40</sup> Ahmed, above n 37, 3.

<sup>41</sup> In 1857, construction began on the Suez Canal; see K Bell, 'British Policy Towards the Construction of the Suez Canal, 1859–65' (1965) 15 *Transactions of the Royal Historical Society* 121–143 <[www.jstor.org/stable/3678819](http://www.jstor.org/stable/3678819)>.

financier.<sup>42</sup> Egypt was forced to borrow money from European bankers to finish the Suez Canal project, and took three loans (in 1862, 1864 and 1866) to cover the expenses.<sup>43</sup> The Suez Canal opened in 1869, with France owning 55% of the shares and the Egyptian government owning 45%.

In 1873, Khedive Ismail, who ruled from 1863 to 1879, launched a program to create a strong, centralised state in Egypt. Within 12 years of his reign, many projects had been built, including the Suez Canal, railways, bridges, schools, telegraph lines, irrigation, harbours and docks.<sup>44</sup> These grand developments increased taxation, debt and interest, as well as the use of forced labour. Egypt increasingly relied on foreign loans, which led to a collapse resulting from excessive loan-taking. Eventually, Egypt owed half as much again as it had been lent.<sup>45</sup>

Egypt's agricultural wealth (especially in cotton), along with its strategic position after the construction of the Suez Canal, attracted capitalists from Western powers. Businesspeople and bankers continued to extend credit to Khedive Ismail to help bring to fruition his plan to reconstruct Cairo along the lines of Napoleon III's Paris. However, when the khedive could not pay the interest of the loans, the capitalists gained control of Egypt.<sup>46</sup> Egypt was £90 million in debt after efforts to modernise it and build the Suez Canal. This opened the door for France and Britain to interfere in the Egyptian administration.<sup>47</sup>

British capitalists suggested that the khedive sign new arrangements to allow contractors to continue carrying out their work, and they lent the khedive money to pay the contractors.<sup>48</sup> In 1875, British creditors forced Khedive Ismail to sell his shares (around 176,602 shares) in the Suez Canal Company. British Prime Minister Benjamin Disraeli bought them for 4 million with the assistance of the London house of Rothschild and without parliamentary approval. This meant that England owned around 44% of the Suez Canal Company.<sup>49</sup> The financial crisis forced Ismail Pasha to increase taxation to make the loan payments and to accept a commission on

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<sup>42</sup> Colucci, above n 17, 17–18.

<sup>43</sup> Elinor Burns, *British Imperialism in Egypt* (Labour Research Department, 1928) 5.

<sup>44</sup> *Ibid* 3–4.

<sup>45</sup> By 1875, Egypt had repaid \$29 million of its loan and still owed \$46 million. For more details, see Suleiman Mohamed, above n 31, 32.

<sup>46</sup> Eric Hobsbawm, *The Age of Capital: 1848–1875* (Vintage, 1996) 125–126.

<sup>47</sup> Al-Sayyid, above n 28, 1.

<sup>48</sup> Burns, above n 43, 3–4.

<sup>49</sup> Peter Mansfield, *The British in Egypt* (Weidenfield and Nicolson, 1973) 7.

Egyptian finances and public debt under dual control from British and French authorities. The commission had the power to confiscate revenue from Egyptian tobacco and railroads.<sup>50</sup>

In 1876, Britain arranged a financial mission, headed by Stephen Cave, to assist in resolving the confusion. The mission found that Egypt needed additional European direction, so the country was forced to launch a new financial scheme called 'Public Debt Commission'. Four commissioners were appointed to represent the bondholder's countries (Britain, France, Italy and Austria), and two foreign controllers (Britain and France) were appointed by the khedive as a form of dual control to work for the Egyptian government.<sup>51</sup> The British government used dual control as a tool to control the Egyptian treasury and diplomatic relations.<sup>52</sup> Britain did not agree that the khedive should have the power to dismiss the debt commissioner and decided to negotiate a new arrangement with France. This arrangement took the power from the khedive to dismiss the debt commissioner<sup>53</sup> and increased the interest rate from 5% to 7%.<sup>54</sup>

Britain forced Khedive Ismail to accept the new arrangement and to dismiss the Egyptian minister of finance, Ismail Sadiq, by ordering his arrest and exiling him to Sudan. Sadiq was dismissed because he rejected the new Anglo–French arrangement, which increased the level of interference in Egypt's finances and placed pressure on Egypt's revenue.<sup>55</sup> Under this new arrangement, Britain controlled Egypt's forces and the Ministry of Finance, and France controlled the public works ministry.<sup>56</sup> Ismail Pasha tried to replace the European ministers with Egyptian ministers, but in 1879, Britain forced him to abdicate in favour of his son Tawfik, who ruled from 1879 to 1892.

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<sup>50</sup> Ahmed, above n 37, 3.

<sup>51</sup> Al-Sayyid, above n 28, 3.

<sup>52</sup> Claire Cookson-Hills, 'Historical Perspectives on Whole-of-Government Approaches: The 1882 British Occupation of Egypt' (2013) 15(1) *Canadian Army Journal* 66.

<sup>53</sup> In 1863, Egypt's debt was \$3.8 million; at the end of Isma'il Pasha's reign, Egypt was \$100 million in debt. In total, Egypt received 50.5 million loans during Said, Isma'il and Tawfik's reigns, and 42 million loans during Isma'il's reign. For more details, see M G Mulhall (1 July 1882) 'Egyptian Finance', *The Contemporary Review* 525–536 <<https://search-proquest-com.ezproxy.uws.edu.au/docview/1294629483?accountid=36155>>.

<sup>54</sup> Mansfield, above n 49, 6.

<sup>55</sup> *Ibid* 9.

<sup>56</sup> *Ibid* 3.

Sir Evelyn Baring was the first British consul-general who was the ruler of Egypt. Both Khedive Tawfik and the prime minister of Egypt had to follow his advice. Each Egyptian minister had a British adviser, and each provincial governor had a British inspector.<sup>57</sup> Britain started hiring English people to assist in public service in Egypt at both the executive and administrative levels, with voting rights. In 1879, Britain forced the retirement, on half pay, of 1,600 Egyptian officers out of 2,600.<sup>58</sup> By 1880, Egypt was Britain's most important client, with 80% of Egypt's exports going to Britain and 44% of imports coming from Britain.<sup>59</sup> In addition, Britain owned half of Egypt's funded debt. For example, 37% of the personal investments of British Prime Minister Gladstone were in Egypt.<sup>60</sup> Britain enjoyed unrivalled influence over Egypt because it remained Egypt's principle creditor.<sup>61</sup>

The British–African policy was designed to prevent other European countries, especially France, from gaining control of the Nile valley.<sup>62</sup> Britain controlled the Nile upstream to control Egypt's cotton farms, which exported to textile industries around the world. Egyptian cotton was in high demand because of its good quality; however, the main profits did not go to Egyptian peasants, but to foreign merchants, who understood the European market.<sup>63</sup> Britain started placing too much pressure on the peasantry by increasing taxes to fulfil Egypt's debt obligations.<sup>64</sup>

Most of the time, Egyptian farmers just worked for food, and many farmers borrowed money from money lenders at high rates of around 20%. The lenders then seized their property for non-payment of their debts. Around this time, thousands of acres of Egyptian farmland were transferred to the British.<sup>65</sup> This was one reason that

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<sup>57</sup> Suleiman Mohamed, above n 31, 34.

<sup>58</sup> Arthur Goldschmidt Jr, *A Brief History of Egypt* (Infobase Publishing, 2008) 81.

<sup>59</sup> David J Mentiplay, *The British Invasion of Egypt, 1882*, University of Sheffield (23 March 2009) <<http://www.e-ir.info/2009/03/23/the-british-invasion-of-egypt-1882/>>.

<sup>60</sup> *Ibid.*

<sup>61</sup> John Darwin, 'Imperialism in Decline? Tendencies in British Imperial Policy Between the Wars' (September 1980) 23(3) *Historical Journal* 657–679.

<sup>62</sup> France occupied Egypt from 1798 to 1801.

<sup>63</sup> Woodward, above n 27, 25.

<sup>64</sup> Michael N Barnett, *Confronting the Costs of War: Military Power, State, and Society in Egypt and Israel* (Princeton University Press, 1992) 53.

<sup>65</sup> Robert Vitalis, *When Capitalists Collide: Business Conflict and the End of Empire in Egypt* (University of California Press, 1995) 22.

encouraged Egyptian farmers to support Egyptian nationalists to free their country from the foreigners.<sup>66</sup>

### **3.4.1 Britain's justification for colonising Egypt**

Egyptian nationalists soon became frustrated with Britain's interference in Egypt's finances and administration. The nationalist movement was led by an Egyptian officer named Ahmad Urabi. Colonel Urabi led a social political movement that expressed the dissatisfaction of army officials, the educated class and the peasantry against Britain's interference in their country,<sup>67</sup> and he called for the dismissal of the war ministry.<sup>68</sup>

In May 1882, Britain and France sent three warships each to protect their financial and geopolitical interests in the region.<sup>69</sup> They justified their actions on the grounds of safeguarding their own people. Britain forced the Egyptian khedive to dismiss the Egyptian nationalist ministry to banish Urabi. However, the nationalists and the police at Alexandria forced the khedive to return to the nationalist ministry.

Political factors arose as a result of the competition between European powers to control African countries. In June 1882, a conference was held between France, England, Italy, Germany, Austria and Russia, all of whom had interests in Egypt. They met in Constantinople and signed an agreement that none of the countries, except Britain in case of a special emergency, could take isolated action in Egypt. They also agreed that the sultan of the Ottoman Empire should be asked to send his armies to restore the situation in Egypt.<sup>70</sup> Britain wanted to keep Russia, Austria, Italy and Germany out of the Eastern Mediterranean. They maintained an alliance with France until 1882 to prevent Turkey from sending any troops into Egypt and staying there permanently. Britain found it difficult to control Egypt under the 1882 treaty. Its solution was to create a special emergency before the Ottoman Empire could take any action. Britain used Urabi as justification to save the Egyptian people

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<sup>66</sup> Al-Sayyid, above n 28, 6.

<sup>67</sup> Gebre Tsadik Degefu, *The Nile: Historical, Legal and Developmental Perspectives* (Trafford Publishing, 2003) 29.

<sup>68</sup> Dan Halvorson, *Prestige, Prudence and Public Opinion in the 1882 British Occupation of Egypt* (Griffith University Press, 2010) 17–30.

<sup>69</sup> Hall Gardner, *The Failure to Prevent World War I: The Unexpected Armageddon* (Routledge, 2016) 66.

<sup>70</sup> Burns, above n 43, 12.

and the Suez Canal from Egyptian nationalists,<sup>71</sup> and accused Urabi of having plans to disrupt the Suez Canal.<sup>72</sup> However, in reality, Urabi was one of the ultimate representatives of the Egyptian nationalists who refused to bow down to Britain's interference in Egypt.<sup>73</sup> Britain justified its actions in Egypt under the guise of protecting Europeans. In particular, this justification was based on Britain's accusation of Egyptians killing 50 Europeans in Alexandria on 11 June 1882. Britain conveniently ignored the fact that 3,000 Egyptians were killed or injured in these clashes.<sup>74</sup>

On 11 July 1882, a special emergency was created when British gunboats started attacking the Egyptian defence in Alexandria with the aim of destroying it. Britain had an army of 20,000 well-trained troops with strong weapons, while Urabi and his army were a force of 16,000 with poor training and a lack of modern arms and ammunition; thus, Britain defeated them easily.<sup>75</sup> It was estimated that 2,000–10,000 Egyptians died, while 57 British people died and 382 were seriously injured.<sup>76</sup> British troops defeated Urabi troops at Tel-el-Khber<sup>77</sup> and then occupied Cairo on 15 September 1882. Britain's occupation of Egypt was a *fait accompli*.<sup>78</sup>

The British government stated that its occupation of Egypt was only for a temporary period to restore order and was not an attempt to challenge the Ottoman Empire's sovereignty over Egypt. Britain also claimed that it wanted to help Egypt and maintained that British forces would operate under the khedive.<sup>79</sup> Given that Britain's occupation of Egypt occurred without the consent of the rest of the powers, the Constantinople conference was suspended. Further, the dual control over Egypt

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<sup>71</sup> Robert T Harrison, *Gladstone's Imperialism in Egypt: Techniques of Domination* (Greenwood Press, 1995) 1.

<sup>72</sup> Glenn E Perry, *The History of Egypt* (Greenwood Press, 2nd ed, 2004) 83.

<sup>73</sup> Shauna Huffaker, 'Representations of Ahmed Urabi: Hegemony, Imperialism, and the British Press, 1881–1882' (2012) 45(4) *Victorian Periodicals Review* 375–405.

<sup>74</sup> Goldschmidt Jr, above n 58, 88.

<sup>75</sup> Albert Adu Boahen (ed), *Africa Under Colonial Domination, 1880–1935* (United Nations Educational, Scientific and Cultural Organization, 1985) 67.

<sup>76</sup> John Newsinger, 'Liberal Imperialism and the Occupation of Egypt in 1882' (2008) 49(3) *Institute of Race Relations* 54–75.

<sup>77</sup> Urabi was referred to the British military court and sentenced to death, which was then changed to exile to Ceylon (Sri Lanka). He returned in 1901 and died in Cairo in 1911. For more details, see Degefu, above n 67, 29.

<sup>78</sup> Burns, above n 43, 12–13.

<sup>79</sup> Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012) 36.

by France and Britain was abolished.<sup>80</sup> Britain appointed a military governor to carry out British policy and protect British interests. The Egyptian constitution and assembly were replaced by councils with advisory.<sup>81</sup>

### 3.4.2 Growth of Egypt's opposition to Britain

Egypt's opposition to Britain's occupation grew over time; however, one event in particular made Egypt more determined to end Britain's occupation, namely the Dinshaway incident in 1906. Further, the 1919 revolution gave Egypt renewed hope with regard to its independence.

#### 3.4.2.1 Dinshaway incident in 1906

Dinshaway is a small Egyptian village situated in the Nile Delta. On 27 June 1906, several British officers went hunting for pigeons in Dinshaway village. In the process, they wounded a local woman and set fire to a barn. The peasants asked the British officers to stop killing their pigeons, which they raised for their food, but the British officers refused. This led to clashes in which one soldier and several Egyptians died. British authorities arrested 52 men and set up a special martial court, trying them in 30 minutes.<sup>82</sup> Four Egyptian peasants in Dinshaway were sentenced to death and hanged in the village, and the entire village was forced to watch the executions.<sup>83</sup> Two Egyptian men were sentenced to hard labour for life, one was sentenced to 15 years in prison and six were sentenced to seven years in prison. Five people received 50 lashes each, and three villagers were sentenced to one-year imprisonment and 50 lashes.<sup>84</sup> Dinshaway was also deprived of its headman and was attached to neighbouring villages.<sup>85</sup> The harsh punishments enraged Egyptian nationalists and sparked an upsurge of anti-British sentiment among Egyptians against the occupation. The events in Dinshaway forced Britain to reconsider its oppressive policy and instead draw more attention to preparing the country for self-

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<sup>80</sup> France and Britain were Egypt's largest creditors, with France controlling expenditure and Britain controlling revenue. This dual participation survived until 1882. See Helen Chapin Metz (ed), *Egypt: A Country Study* (GPO for the Library of the Congress, 1990) <<http://countrystudies.us/egypt/123.htm>>.

<sup>81</sup> Burns, above n 43, 13.

<sup>82</sup> Afaf Lutfi Al-Sayyid-Marsot, *A Short History of Modern Egypt* (Cambridge University Press, 1985) 79.

<sup>83</sup> Adu Boahen, above n 75, 38.

<sup>84</sup> Ziad Fahmy, *Ordinary Egyptians: Creating the Modern Nation Through Popular Culture* (Stanford University Press, 2011) 92.

<sup>85</sup> Kimberly Luke, 'Order or Justice: The Denshawai Incident and British Imperialism' (2007) 5(2) *History Compass* 279.



government.<sup>86</sup> Lastly, these events hastened the resignation of Lord Cromer in 1907.<sup>87</sup>

Egyptians felt that they were second-class citizens for various reasons. First, Egyptian farmers suffered most as a result of the Egyptian financial crisis, having been humiliated, beaten and tortured. They also had to pay four times more tax than before and were forced to sell their crops for half or one-third of their actual worth. Britain created administrative institutions, such as the agriculture commission, and exercised judicial functions, such as having the authority to penalise peasants. For example, when the price of cotton rose, Egyptian peasants were penalised if they did not maintain the irrigation system or if they cultivated crops other than cotton. When the price of cotton decreased because of World War I, the commission penalised the peasants if they grew cotton.<sup>88</sup> Second, Egyptian government officials and military officers were not paid for months.<sup>89</sup> Further, journalists and newspapers were suspended or suppressed under the 1909 law, which required all newspapers to be licensed.<sup>90</sup> This was implemented to prevent nationalists and anti-British protesters from criticising British policy in Egypt, and to prevent the spread of an uprising against Britain. Third, foreigners dominated in all key positions. For example, many Egyptians lost their jobs because most government jobs were occupied by European citizens. Even if Egyptians had a job, they often did not receive payment for it.<sup>91</sup> The Egyptian government did not have any power in relation to anything relating to foreigners.

In 1907, political parties were suppressed by British occupiers.<sup>92</sup> Britain established a prisons department within the Ministry of Interior.<sup>93</sup> The 1909 Law of Police Supervision, sometimes called the Relegation Law, gave the government the right to

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<sup>86</sup> Adu Boahen, above n 75, 38.

<sup>87</sup> Roger Allen (ed), *Essays in Arabic Literary Biography 1850–1950* (Harrassowitz Verlag, 2010) 156.

<sup>88</sup> Samera Esmeir, 'On the Coloniality of Modern Law' (2015) 2(1) *Critical Analysis of Law Journal* 21.

<sup>89</sup> Vladimir Borisovich Lutsky, *Chapter XVI: The National Liberation Movement in Egypt (1879–81)*, *Modern History of the Arabic Countries* (1969) <<https://www.marxists.org/subject/arab-world/lutsky/ch16.htm>>.

<sup>90</sup> Goldschmidt Jr, above n 58, 105.

<sup>91</sup> Donald Scott Buchanan, *The British Invasion of Egypt and the Political Press, 1882* (Master Thesis, Texas Tech University, 1997) 3.

<sup>92</sup> Manfred Halpem, *Politics of Social Change: In the Middle East and North Africa* (Princeton University Press, 1963) 304.

<sup>93</sup> In March 1895, Britain created the Ministry of the Interior.

detain or exile dangerous people without trying or convicting them. These forms of administrative detention could last for five years.<sup>94</sup> This meant that if the government suspected someone of being a political threat, it could place them under surveillance, infiltrate their organisation and imprison them if necessary. The suspect would be accused of affiliating with nationalists or stirring up Egyptians against the rule of the khedive.<sup>95</sup> In 1911, Britain created a special section for domestic surveillance and sent some officers to London, Paris and St Petersburg to gain more experience to improve and expand the role of the secret police apparatus as a tool to suppress Egyptian nationalists.<sup>96</sup>

In 1913, Britain established the Egyptian State Security Investigations Service under the name Political Security Service. Its main duty was to spy on, and collect information about, any opposition, even judges, who were working against the British occupation.<sup>97</sup>

This thesis argues that Egypt was under informal British martial law between 1882 and 1914 for the following reasons:

1. Britain used informal British martial law to appoint a British military governor. The sultan ruled in name only.
2. Britain abolished the Egyptian constitution, suppressed journalists, censored the media, suppressed nationalists, opened new prisons and established the hidden police, while also appointing British citizens to key positions.

One example that illustrates the state of Egypt under martial law is the 1906 Dinshaway incident, in which the British tried Egyptian farmers before British military courts.

Despite being in a de facto state of martial law, Britain did not want to declare formal British martial law because it wanted to show Egypt that its occupation aimed to protect Egyptians and European citizens until they could consolidate their power

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<sup>94</sup> Archie Hunter, *Power and Passion in Egypt: A Life of Sir Eldon Gorst 1861–1911* (I B Tauris & Co, 2007) 196.

<sup>95</sup> Anthony Gorman, *Historians, State and Politics in Twentieth Century Egypt: Contesting the Nation* (Routledge Curzon, 2003) 159–160.

<sup>96</sup> Hazem Kandil, *Soldiers, Spies and Statesmen: Egypt's Road to Revolt* (Verso, 2012) 18.

<sup>97</sup> 'State Security Investigation Service (SSI) or "Amn Dawla"', *The Cairo Post* (online), 18 September 2013 <<http://thecairopost.youm7.com/news/6867/wiki/state-security-investigations-service-ssi-or-amn-dawla>>.

in Egypt. Britain wanted to buy time to seize Egypt for itself, and received its chance when the Ottoman Empire stood with the central Europeans to declare martial law in 1914.

### **3.5 Martial Law of 1914**

On 5 August 1914, Britain issued a decree adopting defensive measures that made Egypt belligerent towards the British Empire.<sup>98</sup> Britain forced the Egyptian government to sever its relations with all of Britain's enemies.

Between 18 and 20 October 1914, Britain issued two decrees that contained a number of emergency political measures. The first decree ordered the Egyptian government to postpone the Legislative Assembly for two months. The assembly did not gather once during the time of war. The second decree prohibited Egyptians from gathering. Four or more people who gathered without government authority could be punished.<sup>99</sup>

On 28 October 1914, Turkey entered the war on the side of the central European powers. On 2 November 1914, Britain declared martial law in Egypt. On 18 December 1914, Britain placed Egypt under the British protectorate, terminating Turkey's suzerainty over Egypt and claiming that Britain would use all possible measures to defend Egypt.<sup>100</sup> Khedive Abbas Hilmi II, the Ottoman viceroy who ruled from 1892 to 1914, was forced to abdicate in favour of his Uncle Hussein Kamel, who ruled from 1914 to 1917.<sup>101</sup>

Britain declared a state of emergency for three reasons:

1. to secure British and allied forces and ensure that all Egyptian ports were under British control
2. to transfer the power from the existing government to a British military government

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<sup>98</sup> Joseph A Obieta and Richard A Baxter, *The International Status of the Suez Canal* (Martinus Nijhoff/The Hague, 1960) 13.

<sup>99</sup> Vladimir Borisovich Lutsky, *The Arab Countries in the First World War (1914–18)*, Modern History of the Arab Countries (1969) 6.

<sup>100</sup> Suzan Elalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (McGill-Queen's University Press, 2002) 82.

<sup>101</sup> Michael S Neiberg, *Fighting the Great War: Global History* (Harvard University Press, 2005) 140.

3. to counter Egyptian nationalists' demands for independence.<sup>102</sup>

The British forces' commander-in-chief, Maxwell, assumed power from the Egyptian government and used autocratic military authority to close nationalist newspapers and confiscate the remaining newspapers. Thousands of Egyptian nationalists were jailed.<sup>103</sup> Maxwell also deposed any remaining nationalists from the head of the government.<sup>104</sup> Further, Britain exiled around 400 German and Austro-Hungarian citizens, 49 Turks and 16 Egyptians to Malta.<sup>105</sup>

Maxwell announced that Britain had agreed to take on the sole burden of the war and would not call upon local Egyptians for assistance. However, in practice, British authorities used the Egyptian army to assist in defending the Suez Canal from the Ottoman soldiers who arrived from Palestine.<sup>106</sup> Every day, Britain used more Egyptian resources and labour corps for minimum wages. British recruiting agents then began conscripting Egyptian farmers,<sup>107</sup> who were used to dig trenches and build fortifications and railways.<sup>108</sup>

Egypt suffered from further economic crises because of World War I. The country was forced to supply camels and horses to serve British troops,<sup>109</sup> and the cost of bread, clothes and fuel increased. Moreover, Britain forced farmers to grow wheat and rice to feed the army, which meant that the farmers sold their grain, rice and wheat at low prices and received delayed payments. Further, their donkeys, camels and horses were confiscated for use in the war. In addition, corrupt government collectors used Egyptians by taking some of their products as a tax at a low price and selling them at a high price.<sup>110</sup> Britain introduced paper money and forced the

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<sup>102</sup> Sherif Omar Hassan, 'Emergency Powers of the Executive in the United Arab Republic' (1970) 3(1) *Cornell International Law Journal* 48.

<sup>103</sup> Lutsky, above n 99, 7.

<sup>104</sup> Khedive Abbas II was deposed on 19 December 1914 because he refused to be a colonial tool; he was replaced by Hussain Kamil.

<sup>105</sup> Donald M McKale, *War by Revolution: Germany and Great Britain in the Middle East in the Era of World War I* (Kent State University Press, 1998) 92.

<sup>106</sup> Mario M Ruiz, 'Manly Spectacles and Imperial Soldiers in War Time Egypt, 1914–19' (May 2009) 45(3) *Middle Eastern Studies* 351–371.

<sup>107</sup> The voluntary system was abolished in 1917. More than 30,000 people died as a result of hard work, illness or enemies attacking them.

<sup>108</sup> Lutsky, above n 99, 7–8.

<sup>109</sup> Omnia El Shakry, 'Egypt's Three Revolutions: The Force of History Behind the Uprising' (2011) *Arab Studies Journal* 1

<[http://www.transeuropeennes.eu/en/articles/247/Egypt\\_s\\_Three\\_Revolutions\\_The\\_Force\\_of\\_History\\_behind\\_the\\_Uprising](http://www.transeuropeennes.eu/en/articles/247/Egypt_s_Three_Revolutions_The_Force_of_History_behind_the_Uprising)>.

<sup>110</sup> Lutsky, above n 99, 9–10.

National Bank of Egypt to stop exchanging bank notes for gold and silver.<sup>111</sup> It withdrew all gold and silver from circulation and gave them to the British treasury.<sup>112</sup>

Not only did Egypt suffer from the declaration of martial law in November 1914, but British martial law also gave Britain the authority to confiscate German and Austrian assets and homes for use in military service. Britain dealt with them as enemies, and a number of foreigners, including Germans and Turks, were accused of spying.<sup>113</sup> Britain also prohibited German ships and goods from passing through Egyptian ports and permitted the arrest of German and Austrian ships.<sup>114</sup> British martial law gave more power to the British military over German and Austrian citizens living in Egypt, and German and Austrian judges were given an extended leave of absence over the summer of 1914, and then until the end of their contracts.<sup>115</sup>

Britain used martial law to end the capitulation system. On 19 December 1914, Britain informed the Egyptian sultan that the capitulation system was no longer in harmony with the development of Egypt. Thus, the system was postponed until the end of World War I.<sup>116</sup> Britain used martial law to impose taxes on European foreigners, which was not allowed under the interpretation of the capitulation system, and it was ultimately legalised for possible implementation under the 1923 constitution and the Anglo–Egyptian Treaty of 1936.<sup>117</sup>

In 1915, martial law gave Egyptian police the authority to enter places where alcohol was sold, and in 1916, drug smuggling was included under martial law.<sup>118</sup> Further, in September 1915, the commander-in-chief imposed new taxes on house properties. This tax was given to police officers. However, at the end of 1915, the military

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<sup>111</sup> The Egyptian pound was made dependant on the British pound.

<sup>112</sup> Lutsky, above n 99, 9.

<sup>113</sup> David French, *British Strategy and War Aims 1914–1916* (Routledge, 2014) 47.

<sup>114</sup> Lanver Mak, *The British in Egypt: Community, Crime and Crises 1882–1922* (Taures Academic Studies, 2011) 207.

<sup>115</sup> Mark S W Hoyle, ‘The Mixed Courts of Egypt 1916–1925’ (August 1987) 2(3) *Arab Law Quarterly* 292.

<sup>116</sup> Philip Marshall Brown, ‘The Egyptian Capitulations’ (October 1918) 12(4) *American Journal of International Law* 820.

<sup>117</sup> Nathan J Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press, 1997) 82.

<sup>118</sup> J C B Richmond, *Egypt 1798–1952: Her Advance Towards a Modern Identity* (Routledge, 2013) 172.

authority confiscated land from the Egyptians and used it to construct a railway that was intended for military use.<sup>119</sup>

On 24 March 1917, the Egyptian council of ministers authorised the appointment of a special commission to end the capitulation system. The commission consisted of three Egyptians (the ministers of justice, finance and instruction), three British representatives and two other foreigners.<sup>120</sup> In March 1918, after 57 sessions, the commission proposed ending the capitulation system and establishing unified tribunals. The commission also took over the jurisdiction of native, mixed and consular tribunals on commercial, civil and criminal matters (apart from personal status). Marriage, divorce inheritance and guardianship were to stay in the hands of the consular tribunals as long as the tribunals were well maintained.<sup>121</sup> The proposed system failed because of the Egyptian Revolution of 1919.<sup>122</sup>

### **3.5.1 Revolution of 1919**

In 1918, Saad Zaghlul founded the Wafd Party (Delegation Party),<sup>123</sup> which was a nationalist liberal political party that demanded Egypt's independence. The Wafd Party requested that the British high commissioner, Sir Reginald Wingate, meet with the British government in London to represent the Wafd Party's case and demand independence. However, Britain ignored the party's demands.<sup>124</sup>

The Egyptian Revolution of 1919 began when Britain arrested Zaghlul (the education minister), Ismail Sidqi (head of the Wafd Party) and Muhammad Mahmud and Hammad Albasil, who sought permission from the British commissioner to attend the Paris Peace Conference to discuss Egypt's situation because they wanted to end Britain's protectorate over the country. As a result, on 8 March 1919, Britain exiled Zaghlul to Malta.<sup>125</sup> The 1919 revolution was started by peasants in rural areas

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<sup>119</sup> Ibid 189.

<sup>120</sup> Marshall Brown, above n 116, 820.

<sup>121</sup> Ibid 821.

<sup>122</sup> Article 28 of the 1923 Treaty of Lausanne abolished the capitulation system in Turkey, but the system continued in Egypt until 18 May 1937. For more details, see Qafisheh, above n 25, 41.

<sup>123</sup> Mohammed El-Bendary, *The Egyptian Revolution: Between Hope and Despair: Mubarak to Morsi* (Algora Publishing, 2013) 29.

<sup>124</sup> Assa Okoth, *A History of Africa: African Nationalism and the De-Colonisation Process* (East African Educational Publishers, 2006) 196.

<sup>125</sup> Afaf Lutfi Al-Sayyid-Marsot, *Egypt's Liberal Experiment, 1922–1936* (University of California Press, 1977) 50.

and lawyers, teachers and students in urban areas.<sup>126</sup> Egyptian trade unions and labourers also demonstrated against Britain, calling for independence and freedom.<sup>127</sup>

On 9 March 1919, anti-British nationalists started demonstrating throughout Egypt, calling for independence. Strikes that included lawyers, railway employees and postal workers spread across Egypt. The British army suppressed the uprising and restored order by patrolling communication, distributing propaganda, delivering mail, relieving garrisons and attacking demonstrators.<sup>128</sup> The police used gunfire to kill six students and wound 22 people. General Balfi, the acting commander-in-chief, issued a warning that any further damage to the railways would lead to the nearest villages being burned in retaliation.<sup>129</sup>

On 25 May 1919, Britain appointed a new high commissioner, General Allenby. The demonstration in Egypt continued until Allenby ordered the release of Zaghlul and the rest of the Wafd Party. He allowed Zaghlul to return and then allowed him to join the Paris conference to discuss Egypt's aspirations for ending Britain's occupation.<sup>130</sup> In December 1919, Lord Milner was appointed as a commissioner in Egypt to frame recommendations for future policy in Egypt. He recommended that Britain end its protectorate over Egypt and recognise Egypt as an independent country. At the same time, he reinforced the need to protect Britain's interests and foreign communities in Egypt.<sup>131</sup>

Egyptian nationalists called for a stable treaty between Britain and Egypt to end Britain's occupation and ensure that Egypt achieved full independence. However, Britain wanted to stall to avoid more problems with the Egyptian nationalists. It wanted to be ready for the external war against Italy and Germany and to protect its interests in the Suez Canal.<sup>132</sup> Britain claimed that Egypt was incapable of governing itself and could not protect foreigners' and Britain's interests.

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<sup>126</sup> El Shakry, above n 109, 1.

<sup>127</sup> Ibid 2.

<sup>128</sup> David E Omissi, *Air Power and Colonial Control: The Royal Air Force, 1919–1939* (Manchester University Press, 1990) 11.

<sup>129</sup> Al-Sayyid-Marsot, above n 125, 51–52.

<sup>130</sup> Ibid 52.

<sup>131</sup> Ibid.

<sup>132</sup> Laila Morsy, 'The Military Clauses of the Anglo–Egyptian Treaty of Friendship and Alliance, 1936' (1984) 16(1) *International Journal of Middle East Studies* 67–68.

Egyptian nationalists had their own reasons for refusing Lord Milner's recommendations. First, the recommendations used indefinite measures relating to ending Britain's authority, especially the financial aspects, which gave the British commissioner wide authority on servicing the debt. Second, Britain retained the right to deploy its army in any area of Egypt for an indefinite period. Britain claimed that it was important for Egypt to keep the British army to provide security for Egyptians, arguing that Egypt did not have a strong army to protect itself from different foreign powers. Egypt refused the proposed recommendations, believing that they were an excuse for Britain to remain in, and control, Egypt. Given that the British had killed 800 Egyptians and wounded 400 by the end of 1919, the nationalists were perhaps right to be suspicious.<sup>133</sup>

In 1922, after years of demonstration and calling for freedom for Egypt, Britain agreed to end its protectorate and declared Egypt an independent country; however, it was still only partial independence. A unilateral British declaration was made on 28 February 1922, ending Britain's protectorate over Egypt. Martial law was withdrawn, and four matters were reserved for the discretion of the kingdom of Great Britain, including protecting foreigners' interests in Egypt, protecting British communications, protecting Egypt from external enemies, the Sudan situation and the security of the British Empire, including defending Egypt from all foreign interference.<sup>134</sup>

In Sudan, which was part of Egypt until 1898, when Britain conquered Sudan and declared joint rule between them and Egypt,<sup>135</sup> Britain accused an Egyptian nationalist of the assassination of the British governor-general in Sudan, Sir Lee Stack. Britain used this event to justify expelling all Egyptian officials and troops from Sudan. Britain then kept Sudan for itself.<sup>136</sup>

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<sup>133</sup> Al-Sayyid-Marsot, above n 125, 52.

<sup>134</sup> 'Bulletin of International News, Anglo-Egyptian Relations, Exclusive of the Sudan, 1922-1927' (September 1927) 4(1) *Royal Institute of International Affairs* 2-8.

<sup>135</sup> On 19 December 1955, Sudan declared its full independence from Britain, which accepted the declaration. For more details, see David D Newsom, *The Imperial Mantle: The United States, Decolonization, and the Third World* (Indiana University Press, 2001) 79.

<sup>136</sup> James P Hubbard, *The United States and the End of the British Colonial Rule in Africa, 1941-1968* (McFarland & Co, 2010) 42.



On 15 March 1922, Britain changed the title for the leader of Egypt from sultan to king. King Fouad was the first king of Egypt and ruled from 1922 to 1936.<sup>137</sup> Although Britain transferred power over domestic affairs to Egypt, in reality, Britain continued ruling the country.<sup>138</sup> This thesis argues that Egypt was under formal British martial law from 1914 to 1923. Britain appointed a British military governor and replaced Khedive Abbas Hilmi with Sultan Hussein Kamel for the following reasons:

1. Britain used formal British martial law to give it extra exceptional power to expand its authority.
2. Martial law was important for suppressing Egyptians because it prevented freedom of expression, closed nationalists' newspapers and arrested, detained and exiled Egyptian nationalists.
3. Britain used martial law to suppress German, Austrian and Turk citizens.
4. Britain wanted to seize Egypt for itself to prevent other Europeans from having any kind of authority that could pose a danger to Britain's interests in Egypt.
5. Britain wanted to use Egypt as a source of raw materials.

### **3.6 Egyptian Constitution of 1923**

The 1923 constitution was written after Britain declared Egypt an independent country. King Fouad established a committee consisting of a non-elected group of Egyptian legal scholars to write the 1923 constitution,<sup>139</sup> which was heavily modelled on the Belgian Constitution.<sup>140</sup> Article 32 states that:

The throne of the Egyptian Kingdom is hereditary in the dynasty of Muhammad Ali. Succession to the throne shall be as per the Royal Decree issued on 15 the Shaaban 1340 AH Corresponding to 13 April 1922.

Further, Article 33 states that 'the King is the highest Head of State whose person shall be immune and inviolable'. In theory, the 1923 constitution was a liberal

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<sup>137</sup> Laura Etheredge, *Middle East: Region in Transition: Egypt* (Britannica Educational Publishing, 2011) 148.

<sup>138</sup> Anthony F Lang Jr, *From Revolutions to Constitutions: The Case of Egypt* (Blackwell Publishing, 2013) 351.

<sup>139</sup> El-Bendary, above n 123, 116.

<sup>140</sup> Goldschmidt Jr, above n 58, 117.

constitution; however, in practice, it was not democratic because it granted the king wide power and enshrined martial law.

Articles 38, 49 and 74 of the 1923 constitution provide examples of the powers granted to the king. Article 38 gives the king the right to dissolve the House of Representatives without specifying the reason for doing so. Article 49 grants the king the power to appoint and dismiss his ministers. Article 74 grants the king the authority to appoint up to two-fifths of the Senate, as well as the power to dissolve the parliament. Thus, Articles 38, 49 and 74 violate the separation of powers between the three branches of government because the king retains the executive and legislative power through his ability to appoint the prime minister and the Senate. Article 124 states that ‘judges shall be independent and shall be subject to no authority in their judgement other than the law. No governmental authority may intervene in judicial cases.

In addition, Article 41 of the 1923 constitution grants the king the power to issue decrees that use the force of law in the case of an emergency that necessitates immediate measures to be taken during a parliamentary recess. However, Article 41 adds that the decree should not violate the constitution, and the parliament should be called for an extraordinary session to determine whether to approve the decree.

Article 45 of the 1923 constitution is concerned with martial law. It states that:

The King shall declare martial law; the declaration of martial law must be immediately presented to the parliament to decide on the continuation or repeal thereof. Should martial law be declared at a time when parliament is not in session, the parliament must be called for convention quickly.

The 1923 constitution gives the king the authority to declare martial law by himself, stating that the declaration should be presented to the parliament immediately. The constitution does not define ‘immediately’ in this context and does not specify the deadline (e.g., 24 hours, one week or one month) for submitting the declaration to the parliament. Further, the constitution does not discuss what should occur if the parliament is not in session, and it does not specify the time limit for implementing martial law, the justifiable reasons behind declaring a state of emergency or the time at which the state of emergency should end.

Article 155 of the 1923 constitution states that:

No provision of this constitution may be suspended, except temporarily during the period of a war or during a state of siege according to the manner provided for in law. However, the convening of parliament cannot be suspended if the conditions provided for in this constitution for its convening are fulfilled.

Article 155 allows the suspension of the provisions of the constitution in two cases: during a war and during a state of siege. It does not specify whether the war to which it refers is an external or internal war. Additionally, it uses the word ‘temporarily’, which is an elastic concept. Article 155 paved the way for establishing and enshrining the emergency rule in Egypt. As a result of the unlimited power given to the military without accountability, Articles 45 and 155 of the 1923 constitution enshrined the state of emergency and made it a normal law instead of an exceptional law.

### **3.7 Military Rule Law No 15 of 1923**

On 26 June 1923, Act No 15 of 1923, concerning the state of siege, was issued with a French legal structure, while the spirit of the style power followed British martial law.<sup>141</sup> Hassan argues that:

Two main features characterized this Act. First, it followed the pattern of continental Europe, as established in France and Italy, which adopts the idea of a legally anticipated device to be used in times of emergency. Second, the above-mentioned Act was closer to the military law than to the political state of siege as established in France. Britain had highly influenced the Act in this respect, motivated by her desire to protect her interests.<sup>142</sup>

The present thesis argues that Military Rule Act No 15 of 1923 followed British martial law for the following reasons:

1. Egypt was still a British protectorate, even though Britain claimed that Egypt was an independent country in 1922.
2. The British military governor was the real ruler of Egypt, and the king and the Egyptian government were used as tools to show that Egypt was an independent country.
3. Using its military presence in Egypt, Britain enforced martial law to protect its interests.

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<sup>141</sup> Eric Andrew Schewe, *State of Siege: The Development of the Security State in Egypt During the Second World War* (Doctor of Philosophy Thesis, University of Michigan, 2014) 77.

<sup>142</sup> Sherif Omar Hassan, *Emergency Powers of the Executive in France, the United Arab Republic, and the United States* (Master Thesis, Cornell University, 1968) 94–95.

4. Britain did not trust Egypt's national courts, so it continued trying Egyptian nationalists before British military courts.

Article 1 of Law No 15 of 1923 gives the king the authority to declare martial law if security and public order was endangered as a result of national unrest or an armed attack from outside.<sup>143</sup> Article 2 states that martial law must be declared by a royal decree, and that the decree should include the declaring body, the date of enforcement and the name of the person authorised to implement emergency measures.<sup>144</sup> Article 2 also indicates that the prime minister, as a general military commander of Egypt, is responsible for exercising extraordinary powers granted by the king's declaration of a state of siege.<sup>145</sup> Article 3 gives the military governor the power to:

- withdraw licenses and confiscate arms
- search houses and persons and censor newspapers
- impose curfews
- control any means of transportation
- take measures to safeguard public security
- order the arrest of vagrants and suspects and keep them in custody in a safe place
- prevent and disperse any assembly, club or meeting by force if necessary.<sup>146</sup>

These restrictions of rights were justified as protecting the stability and national security of the state.<sup>147</sup> After being pressured by Egyptian nationalists, Britain promised to end the state of martial law, but only after the enforcement of the peace treaty and issuing of the indemnity act to cover the measures taken during World War I.<sup>148</sup> Britain wanted to protect its troops from any future prosecution or compensation. In March 1923, the Egyptian cabinet, after negotiating with the British government, agreed to issue the act of indemnity under the following declaration:

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<sup>143</sup> The Center for Human Rights Legal Aid, *Egypt and Martial Law* (6 June 1996) 6.

<sup>144</sup> *Ibid.*

<sup>145</sup> Hassan, above n 142, 97.

<sup>146</sup> Center for Human Rights Legal Aid, above n 143, 6–7.

<sup>147</sup> Fatemah Alzubairi, *The Role of Colonialism and Neo-Colonialism in Shaping Anti-Terrorism Law in Comparative and International Perspectives: Case Studies of Egypt and Tunisia* (Doctor of Philosophy Thesis, York University, 2017) 180.

<sup>148</sup> Al-Sayyid-Marsot, above n 125, 68.

- Any measures taken under the martial law to control enemy property, and the application of certain provisions of the treaties of peace concerning such property, shall continue as in the past until full effect shall have been given to these measures under the control of the British.
- With regard to all real estate requisitioned or occupied by the British military authorities, the settlement for these properties will be reserved for future negotiations.<sup>149</sup>

Further, for persons condemned by the military courts, the British government instructed the minister of justice to issue a ministerial order requiring the vice president of the Native Court of Appeal and two Egyptian judges of the Native Court of Appeal to prepare proposals for the remission or commutations of sentences to be enacted with the recommendation of the minister of justice and a majority vote.<sup>150</sup> The indemnity act was issued in July, and on 5 July 1923, martial law was lifted.<sup>151</sup>

In conclusion, martial law was enshrined in the 1923 constitution and in Act No 15 of 1923. These documents granted the king the power to declare martial law and granted the prime minister the authority to exercise emergency rule. Through these documents, Britain enshrined martial law for future implementation. In 1930, the king abolished the 1923 constitution and issued a new constitution, which expanded his power and weakened the parliament's power. In 1934, the king suspended the 1930 constitution, but reinstated the 1923 constitution after pressure from the Egyptian people and Britain. A new election was held and won by the Wafd Party.

From November 1935 to January 1936, massive demonstrations were held to demand an end to autocratic rule and to pressure Britain to start negotiations that would lead to full independence.<sup>152</sup> In addition to the 1923 constitution and Law No 15 of 1923, Britain wanted to enshrine martial law through the Anglo–Egyptian Treaty of 1936.

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<sup>149</sup> Notes Exchanged Between the British and Egyptian Governments Regarding the Egyptian Indemnity Act and Termination of Martial Law in Egypt (League of Nations Treaty, Cairo, 5 July 1923) 313–321.

<sup>150</sup> International Court of Justice, Article One the Provisions of Law Act, No 15/1923, Amended by Law No 23 of 1940, 21 of 1941 and 81 of 1944, Franco–Egyptian Case Concerning the Protection of French Nationals and Protected Persons in Egypt, Order of March 1950 13.

<sup>151</sup> Richmond, above n 118, 189.

<sup>152</sup> James P Jankowski, 'The Egyptian Blue Shirts and the Egyptian Wafd, 1935–1938' (January 1970) 6(1) *Middle Eastern Studies* 77–95.

### 3.8 Anglo–Egyptian Treaty of 1936

In 1936, Britain and Egypt signed an agreement to give Britain locomotive freedom and the right to use rail and communication devices that belonged to Egyptians.<sup>153</sup> The agreement gave British civilians, soldiers and their families immunity from civil and criminal trials by Egyptian courts. The agreement formed between the two countries extended assistance in war and included the use of Egypt's infrastructure, such as ports, for 20 years.<sup>154</sup>

The Anglo–Egyptian Treaty, which was signed on 26 August 1936, terminated the occupation of Egypt and resulted in the withdrawal of British troops, except from the Suez Canal. Egypt was finally recognised as an independent country. Further, according to the 1936 agreement, if the two countries could not agree on extending the agreement 20 years after signing it, the matter could be presented to the League of Nations Council.

In addition, the agreement gave Britain the authority, in times of peace, to base 10,000 British troops, 400 pilots and various civilian support staff in Egypt, and this number could be increased in times of war.<sup>155</sup> Britain justified having its troops garrisoned in Egypt to protect the Suez Canal and the Royal Navy.

According to the Anglo–Egyptian Treaty, Egypt had to enact emergency measures and war censorship across the whole Egyptian territory if Britain became involved in war, was in imminent danger of war or apprehended an international emergency.<sup>156</sup> The important strategic position of Egypt, along with its significant natural and labour resources, explains the importance of the Anglo–Egyptian Treaty of 1936 for Britain, which required Egypt to offer assistance and use its resources to help Britain in times of war.

The Anglo–Egyptian Treaty did not give full independence to Egypt because Britain was still responsible for defending Egypt and it still occupied the Suez Canal. However, the treaty allowed native Egyptians to join the Egyptian Military

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<sup>153</sup> Edward R Kantowicz, *Coming Apart, Coming Together* (William B Eerdmans, 2000) 191.

<sup>154</sup> Charles B Selak Jr, 'The Suez Canal Agreement 1936' (1955) 49(4) *American Journal of International Law* 487–505.

<sup>155</sup> Yoav Di Capua, *Liberal Era Politics, 1919–52: The Anglo–Egyptian Alliance Treaty 1936* (University of Texas, 2007) <[http://laits.utexas.edu/modern\\_me/egypt/3/treaty](http://laits.utexas.edu/modern_me/egypt/3/treaty)>.

<sup>156</sup> Keith Kyle, *Suez: Britain's End of Empire in the Middle East* (I B Tauris & Co, 2011) 18.

Academy. The group of Free Officers who graduated in the late 1930s included Gamal Abdul Nasser and Anwar Al-Sadat.<sup>157</sup> On 26 May 1937, Egypt joined the League of Nations,<sup>158</sup> however, this did not mean that Egypt had achieved full independence.

In August 1939, the British ambassador to Egypt warned the prime minister that war was imminent and that Egypt should be ready to declare martial law and take any necessary measures, including inspecting ships arriving into Egyptian ports.<sup>159</sup>

On 3 September 1939, Egypt ended diplomatic relations with Germany and imposed martial law.<sup>160</sup> The country was placed on alert, port facilities became military bases and censorship was imposed.<sup>161</sup> Ali Maher was appointed as the military governor and prime minister and used his authority in different areas, including surveillance and censorship, to try thousands of people without giving them a chance to appeal.<sup>162</sup>

Britain redefined political crimes to cover any expression of disrespect against the government, and detention of political prisoners used as systemic standards against opponents.<sup>163</sup> The increase in the number of political prisoners forced Britain to build and expand prisons. For example, in the late 1930s, Britain expanded prisons and built detention camps in deserts and cities such as Tura and Abu Zaabal. Around 4,000 political prisoners were held in these camps.<sup>164</sup> The increase in the number of political prisoners and the expansion of the prison system show how much Britain feared Egyptian nationalists. Britain wanted to avoid internal disruptions while preparing for war against Germany and Italy. When Italy joined the war, Britain warned King Farouk that there had been insufficient support and a lack of cooperation from Prime Minister Ali Maher, who then resigned on 23 June 1940.<sup>165</sup>

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<sup>157</sup> Kantowicz, above n 153, 192.

<sup>158</sup> Tareq Y Ismail and Jacqueline Isamil, *Politics and Government in the Middle East and North Africa* (Florida International University Press, 1991) 323.

<sup>159</sup> Heike Liebau, *The World in World Wars: Experiences, Perceptions and Perspectives from Africa and Asia* (Koninklijke Brill, 2010) 218.

<sup>160</sup> Norman Polmar and Thomas B Allen, *World War II: The Encyclopedia of the War Years, 1941–1945* (Random House, 1996) 267.

<sup>161</sup> Jason Thompson, *A History of Egypt: From Earliest Times to the Present* (American University in Cairo Press, 2008) 281.

<sup>162</sup> Eric Schewe, 'Seventy-Two Years of Martial Law in Egypt', *Word Press* (online), 9 April 2011 <<https://ericshewe.wordpress.com/2011/04/09/seventy-two-years-of-martial-law-in-egypt/>>.

<sup>163</sup> Gorman, above n 95, 159–160.

<sup>164</sup> By the early 1950s, the camps held up to 25,000 political prisoners. See Kandil, above n 96, 18–19.

<sup>165</sup> Liebau, above n 159, 219.

In February 1942, Britain ordered King Farouk to appoint a pro-British prime minister, Al-Nahhas. After two days of failed negotiations to appoint Al-Nahhas, British ambassador Miles Lampson sent an ultimatum to King Farouk on 4 February 1942, stating that: ‘unless I hear by 6:00 p.m. today that al-Nahhas has been asked to form a government, His Majesty ... must accept the consequences’.<sup>166</sup>

In case of King Farouk’s failure to return to the British by 6:00 pm, the British surrounded his palace and gave him two choices: abdicate or accept Britain’s proposal to appoint Al-Nahhas. Finally, King Farouk accepted and appointed Al-Nahhas.<sup>167</sup> This incident increased anger in Egypt, which once again called on Britain to free the country. On 4 October 1945, martial law was ended by a ministerial decree.<sup>168</sup> In the spring of 1946, Egyptian nationalists, students and workers staged a strike against Britain’s occupation, resulting in 23 deaths (referred to as the ‘canal martyrs’).<sup>169</sup>

In conclusion, the Anglo–Egyptian Treaty of 1936 and Military Rule Law No 15 of 1923 were used to enshrine British martial law in Egypt. The 1936 treaty and 1923 military rule law expanded the exceptional British martial law to protect Britain’s interests in Egypt up to the 1952 coup. Schewe argues that:

This long-term exceptional use of state power by the Egyptian government allowed the shared British and Egyptian objective of public security and order to become a defining characteristic of Egyptian sovereignty in the final years of its nationalist’s movement for independence.<sup>170</sup>

This thesis argues that using elastic and vague definitions helped Britain to expand its exceptional laws to protect its political and economic interests in Egypt. Further, in reality, the Egyptian executive, the legislature and the judiciary did not have any real power, because the main power remained in the hands of Britain. The next section will examine the war that was launched between Arabs and Israelis on 15 May 1948.<sup>171</sup>

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<sup>166</sup> Kantowicz, above n 153, 191.

<sup>167</sup> Ibid.

<sup>168</sup> Center for Human Rights Legal Aid, above n 143, 7.

<sup>169</sup> Kantowicz, above n 153, 191.

<sup>170</sup> Schewe, above n 141, 75.

<sup>171</sup> Mike Berry and Greg Philo, *Israel and Palestine: Competing Histories* (Pluto Press, 2006) 30–36.



### 3.9 Martial Law in 1948—The Sykes–Picot and Balfour Declaration

This section examines the origin of the 1948 war by discussing the Sykes–Picot Agreement and the Balfour Declaration, and it shows how the Egyptian regime used the 1948 Arab–Israeli War to justify its declaration of martial law.

In 1916, Britain and France signed a secret agreement known as the Sykes–Picot Agreement. In theory, the agreement pledged to recognise an independent Arab state or a confederate state in Palestine;<sup>172</sup> however, in reality, it aimed to divide the Arabic countries between European powers—mainly Britain and France. At the same time, Britain promised that it would help establish a Jewish homeland in Palestine. Many Zionist leaders had established a good relationship with some of Britain’s most prominent political leaders, including Lloyd George, Arthur Balfour, Herbert Samuel and Mark Sykes.<sup>173</sup> In 1917, the Balfour Declaration was made, which clarified Britain’s support for a Jewish homeland in Palestine:

His Majesty’s Government views with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.<sup>174</sup>

Between 1917 and 1948, the Jewish people increased their landholdings in Palestine. In May 1948, David Ben-Gurion declared the birth of the state of Israel. On 15 May 1948, the Arab–Israeli War began, and the Arab states lost 78% of Palestine.<sup>175</sup>

Egyptian Prime Minister Fahmi al-Nuqrashi declared martial law on 31 May 1948 throughout the entire kingdom of Egypt. It was based on Decree No 26, 13 May 1948, which proclaimed the need to protect Egyptian troops in Palestine and secure their supplies and all means of communication.<sup>176</sup> The declaration of martial law gave the military the power to administer property belonging to individuals and to place individuals under surveillance or in jail.<sup>177</sup> Further, under the declaration of martial law, urgent measures could be applied to different categories of people in the

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<sup>172</sup> Ibid 6–7.

<sup>173</sup> Ibid 7.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid 36.

<sup>176</sup> International Court of Justice, above n 150, 10.

<sup>177</sup> Ibid.

name of protecting the country from dangerous activities. In the first category, all persons of interest were placed under surveillance or jailed. In the second category, measures could be applied to any non-resident who might pose a danger.<sup>178</sup> Under martial law, many communists were arrested and jailed for their criticism of capitalism and the decision to enter the war. Communist activities were prohibited.<sup>179</sup>

After the assassination of Prime Minister Fahmi al-Nuqrashi on 28 December 1948, the Egyptian government dissolved the Muslim Brotherhood, which had been formed in Egypt in 1928 by Hassan al-Banna. The Muslim Brotherhood was a revivalist Islamic movement whose ideology revolved around strengthening the Quran and Islamic teachings as a way of life, reviving the caliphate and ending colonial rule.<sup>180</sup>

The Egyptian government arrested many of the Muslim Brotherhood leaders,<sup>181</sup> froze their assets and seized their records.<sup>182</sup> They were accused of demonstrations attempting to overthrow the Egyptian government. The activists blamed the government for the 1948 Arab–Israeli War. The war ended on 7 January 1949 with UN Resolution 181, which recommended that the Jewish state be established over 57% of Palestine.<sup>183</sup> This recommendation was rejected by the Arabs.

In 1950, martial law was lifted in Egypt, permitting the Muslim Brotherhood to function again, but as a religious body. Although Egypt was recognised as an independent country, Britain still occupied part of the country, and Egyptians carried out demonstrations calling for Britain to end its occupation. On 25 January 1952, British forces attacked the Egyptian auxiliary police in Ismailia, accused them of supporting guerrillas and killed 50 people.<sup>184</sup> On 26 January 1952, hundreds of police joined with the Egyptian nationalists to start a demonstration in Cairo. As a result, Britain placed Egyptian villages in the Suez Canal Zone under martial law.<sup>185</sup> Egyptians felt that they were not free from imperialism and started more

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<sup>178</sup> Ibid.

<sup>179</sup> Rami Ginat, *The Soviet Union and Egypt, 1945–1955* (Frank Cass, 1993) 35–37.

<sup>180</sup> ‘Profile: Egypt’s Muslim Brotherhood’, *Al Jazeera News* (online), 7 February 2011 <<http://www.aljazeera.com/indepth/2011/02/201126101349142168.html>>.

<sup>181</sup> Frank A Clements, *Historical Dictionary of Arab and Islamic Organization* (Scarecrow Press, 2001) 187.

<sup>182</sup> Eugene Rogan, *The Arabs: A History* (Basic Books, 2009) 271.

<sup>183</sup> Berry and Philo, above n 171, 36.

<sup>184</sup> Perry, above n 72, 87.

<sup>185</sup> Don Peretz, *The Middle East Today* (Greenwood Press, 6th ed, 1994) 233.

demonstrations, setting fire to 400 buildings that symbolised foreign economic and cultural influence. More than 30 people died and hundreds were injured.<sup>186</sup>

King Farouk called on the army to restore order and appointed Ali Maher as prime minister. They promised to create a national front and a strong national youth army.<sup>187</sup> Ali Maher was dismissed because he refused to suspend the parliament. el-Hilaly Pasha formed a new government, but parliament was dissolved on 23 March 1952 and el-Hilaly resigned as well. Husayn Sirri was then appointed, but he resigned over the issue of exiling Muhammad Najuib, the president of the army officers. Alhillai returned and formed a new government.<sup>188</sup> In 1952, the Egyptian Free Officers overthrew the monarchy and proclaimed Egypt as a republic.

### 3.10 Conclusion

Traditional emergency power theories have ignored and failed to examine the role of British imperialism in Egypt's history of emergency law. It is important to understand how Britain introduced martial law in Egypt to protect its political and economic interests. The historical development of this reality can be summarised as follows:

1. Traditional theories of emergency law have ignored and failed to discuss the history of the Egyptian emergency powers used during Britain's colonial rule and how Britain enshrined martial law in the 1923 constitution, in Military Rule Law No 15 of 1923 and in the Anglo–Egyptian Treaty of 1936.
2. Britain colonised Egypt for itself because of the country's strategic position. The importance of the Suez Canal motivated Britain to ensure that the rest of the European powers, especially France, were restricted from seizing any power in Egypt again. Egypt was considered a key and strategic post in Africa because East Africa was a shortcut to India.
3. Britain wanted to end the capitulation system, which had prevented it from implementing its rules and authority on the citizens of other European powers. Britain feared the influence of the European powers through the

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<sup>186</sup> Susan Muddai Darraj, *Hosni Mubarak* (Infobase Publishing, 2007) 40.

<sup>187</sup> Peretz, above n 185, 234.

<sup>188</sup> Ritchard Paul Mitchell, *The Society of the Muslim Brotherhood* (Oxford University Press, 1993) 93–96.

capitulation system, and martial law gave Britain the best tool to abolish the system.

4. Controlling the Nile river basin and its main resources gave Britain the power to control the rest of the African countries.
5. Britain used Egypt as a base for its military in times of war and peace because of its strategic position, especially in relation to the Suez Canal.
6. Britain used Egypt's resources and raw materials to generate profits by buying Egyptian cotton at low prices and imposing heavy taxes on Egyptian farmers. Britain then exported manufactured products back to Egypt at high prices.
7. Britain used martial law against Egyptian nationalists and activists who opposed British rule and occupation. Further, the British military and administrators enacted a number of repressive measures, such as declaring that five or more people gathering without prior authorisation was a penal offence. Britain also exiled hundreds of Egyptian nationalists and activists.
8. The British military had the authority to run the country and appoint a British governor-general with full authority and actual power to control the executive, the legislature and the judiciary. When Britain changed the title of the Egyptian ruler from khedive to sultan and then king, Egyptians still ruled in name only and did not have full power over their government. Britain used the Egyptian ruler (khedive, sultan, king) as a tool to serve its interests using particular policies:
  - Britain appointed a British adviser and consultant in each Egyptian ministry who retained full authority and decision-making powers. Egyptian ministers had no authority in their ministry, and if they refused to follow British advisers' opinions and advice, they would be deposed from their position and replaced with another loyal Egyptian.
  - Britain argued that its military was only used to protect and defend Egypt from external enemies and internal rebellions (e.g., Egyptian nationalists).
  - Britain interfered in the Egyptian judiciary because of its lack of trust in Egyptian judges. Britain accused Egyptian judges of affiliations with Egyptian nationalists, and it created the military courts instead to try Egyptian nationalists.
9. Britain forced the khedive to dismiss Egyptian ministers and appoint pro-British ministers. For example, Britain forced Khedive Ismail to dismiss the finance minister because he rejected Britain and France's financial

interference. Further, Britain forced King Farouk to appoint Al-Nahhas to form a new government. Egyptian ministers did not have any authority because Britain appointed British advisers in each ministry and a British inspector to each governor to carry out British policy.

10. The Dinshaway incident and the 1919 revolution led to uprisings among Egyptians who felt that they were second-class citizens. They called for Egypt's independence, an end to financial and political interference in their country and freedom from British occupation.
11. Egypt obtained partial independence in 1922; however, the 1922 declaration did not end the occupation of Britain, which was still responsible for protecting Egypt from foreign powers.
12. The 1923 constitution, Law No 15 of 1923 and the Anglo–Egyptian Treaty of 1936 enshrined martial law in Egypt for possible future use to protect the British deep state in Egypt.

The next chapter critically examines the Egyptian emergency law legal framework from 1952 until the present day.

## Chapter 4: Egyptian Legal Framework

### 4.1 Introduction

The objective of this chapter is to conduct a detailed discussion of Egyptian emergency law from 1952 to the present day. This chapter analyses the 1958 emergency law and shows how the postcolonial regime used the notion of British martial law and changed the name to emergency law. Further, this chapter discusses how emergency law evolved from a temporary measure to a permanent one. In addition, it uncovers how emergency power theories have failed to examine the long and permanent state of emergency in Egypt. The chapter then focuses on the period from 1952 to the present day.

### 4.2 Coup of 1952

On 23 July 1952, the Egyptian Free Officers seized power. On 27 July 1952, they forced King Farouk to abdicate in favour of his son, Ahmad, asked Farouk to leave Egypt and gave him permission to seek exile in Italy.<sup>1</sup> The Free Officers' guiding principles were to:

- end British occupation, feudalism and capitalism
- establish social equality
- build a strong army
- establish a democratic state.<sup>2</sup>

The Free Officers postponed elections in Egypt from October 1952 to February 1953.<sup>3</sup> They abolished the 1923 constitution and then abolished the monarchy in 1953.<sup>4</sup> The Free Officers issued Law No 179 of 1953 to prevent any political parties from challenging their power. In Nasser's view, political parties were simply a tool in the hands of the capitalist democracy, used by bankers and pashas to serve their interests.<sup>5</sup> In addition, the Free Officers believed that the pluralism of parties would undermine and disorientate Egyptian society and prevent the regime from achieving

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<sup>1</sup> Joel Gordon, *Nasser's Blessed Movement: Egypt's Free Officers and the July Revolution* (Oxford University Press, 1992) 4.

<sup>2</sup> Arthur Goldschmidt Jr, *A Brief History of Egypt* (Infobase Publishing, 2008) 144.

<sup>3</sup> Samuel Edward Finer, *The Man on Horseback: The Role of the Military in Politics* (Transaction Publishers, 2002) 37.

<sup>4</sup> Edward R Kantowicz, *Coming Apart, Coming Together* (William B Eerdmans, 2000) 192.

<sup>5</sup> Amos Perlmutter, *Political Rules and Military Rules* (Routledge, 2013).

its objective of gaining stability and national unity. Further, it would provide excuses for foreign interventions to delay national development.<sup>6</sup> The Free Officers created the Revolutionary Command Council as a political instrument and depended on the military as the main basis for government jobs recruitment.<sup>7</sup>

The Revolutionary Command Council was used to abolish student unions, eliminate all opposition parties and establish the legitimacy of, and support for, Nasserite ideas. This was one of the steps towards building a dictatorship in Egypt.<sup>8</sup>

On 23 January 1953, Nasser announced the formation of a new Egyptian political organisation called the Liberation Rally, which had a motto of ‘unity, discipline and work’.<sup>9</sup> According to Naguib, the Liberation Rally was a temporary one-party system,<sup>10</sup> which he called a united front. The purpose of the Liberation Rally was to ensure that people prepared, on a national scale, to form new political parties within the coming three years to facilitate the complete withdrawal of British troops from Egypt without any conditions. The organisation also wanted self-determination for Sudan; a social and economic system that protected Egyptians and encouraged the fair distribution of wealth; a political system that granted the freedom of speech, assembly and press within the limitations of the law; an educational system that implemented social responsibility; the maintenance of good relationships with all Arab states and world powers; and an increase in the influence of the Arab league.<sup>11</sup>

The Liberation Rally became the government’s party. Nasser argued that it was not a political party, but merely a body that organised people and forces and repaired the social system.<sup>12</sup> However, others argued that the main purpose of the Liberation Rally was to prevent labour movements from organising demonstrations against the new regime.<sup>13</sup> Such demonstrations could have prevented Nasser from gaining more power.

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<sup>6</sup> Gamal M Selim, *The International Dimensions of Democratization in Egypt: The Limit of Externally-Induced Changes* (Springer, 2015) 30.

<sup>7</sup> Amos Perlmutter, *Egypt: The Praetorian State* (Transaction Publishers, 1974) 143.

<sup>8</sup> Ibid.

<sup>9</sup> James B Mayfield, *Rural Politics in Nasser’s Egypt: A Quest for Legitimacy* (University of Texas Press, 1971) 102–103.

<sup>10</sup> Ibid 103.

<sup>11</sup> Ibid 104.

<sup>12</sup> Ibid 105.

<sup>13</sup> Ibid 106.

After two years, the Liberation Rally failed for several reasons. Nasser claimed that opponents such as the Muslim Brotherhood, leftists and rightists joined the organisation to subvert it.<sup>14</sup> In addition, there was a lack of qualified units and a lack of legitimacy and commitment. Many believe that Nasser made the mistake of creating a party without the symbols, mythologies and understandings connected with the liberation movement.<sup>15</sup>

#### **4.2.1 Development of the military state**

Successive Egyptian regimes after 1952 prevented any meaningful efforts being made towards political change. If changes occurred, they were minor and mostly undertaken by the military.<sup>16</sup> Egyptian regimes from Nasser to Mubarak used three different strategies for survival to rule over Egypt, as outlined below.<sup>17</sup>

1. Containment: This is based on controlling and absorbing all opposition, maintaining a central power and establishing different institutions and parties to control the mobilisation of the population to gain more popularity and make it easy to pass policies and tactics without any disturbances.<sup>18</sup>
2. Repression: This involves the use of force against political opponents using all available tools, including job dismissal, arrest, torture, detention for an unknown time, confiscation of possessions, monitoring people and preventing people from gathering.<sup>19</sup>
3. External diversion: When regimes faced socioeconomic and political problems, they would buy time by redirecting people's attention to an international affair to gain more legitimacy.<sup>20</sup>

The next section discusses how successive regimes in Egypt used different political and economic strategies to consolidate their authority and protect the deep state empire.

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Steven A Cook, 'The Unspoken Power: Civil–Military Relations and the Prospects for Reform' (Analysis Paper No 7, Brookings Institute, September 2004) IV.

<sup>17</sup> Ryan Curtis, 'Political Strategies and Regime Survival in Egypt' (4 January 2011) 18(2) *Journal of the Third World Studies* 4.

<sup>18</sup> Ibid 4.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid 25–46.



#### 4.2.1.1 Nasser's containment of his potential opponents

After the 1952 coup, Nasser was in charge of the Ministry of Interior for some time. His authority significantly helped his ambitious plan to be the president and to establish the rule of man. Nasser promised to end the secret police, which Britain had established to suppress Egyptian nationalists; however, he instead inherited the City Eye security regime from Britain and used it against his opponents. The main duty of the City Eye was to monitor people and collect information about any suspicious activities.<sup>21</sup> The regime was used as a tool in domestic repression to monitor Egyptian civilians and the military.<sup>22</sup> The secret police expanded the regime's secret security measures, controlled Egyptians and suppressed the regime's political opponents. Nasser used a vast network of intelligence agents and police forces to suppress reactionary feudal elements, communists and factory workers. On 12 August 1952, at Kafr El Dawwar in Alexandria, a group of workers went on strike. In response, the regime, worried that the uprising would spread throughout the country, used military forces to control the situation,<sup>23</sup> arresting 545 workers and killing 12. On 7 September 1952, the regime executed two of the strike leaders:<sup>24</sup> Mostafa Khamis (aged 18) and Hasan el Bakary (aged 19). These executions took place after a quick military court trial headed by members of the Free Officers.<sup>25</sup>

In one of his speeches, Nasser stated that:

We did not interfere in the judiciary since 1952 ... however, if there is a political case, we create a political court, in which, we ourselves were the judges, hence, kept the judges away from politics and kept us away from the judiciary. This starts with the people's court, where members of the revolutionary command council were the judges. This arrangement denoted to the public the political nature of the case, about which we have an opinion, therefore, we keep it away from judiciary, and we personally take responsibility for it.<sup>26</sup>

Nasser's intention, which was to try his opponents in exceptional courts, was mostly based on his personal political ambitions. He did not trust ordinary courts, so he used

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<sup>21</sup> Molefi K Asante, *Culture and Customs of Egypt* (Greenwood Press, 2002) 30.

<sup>22</sup> Hazem Kandil, *Soldiers, Spies and Statesmen: Egypt's Road to Revolt* (Verso, 2012) 18.

<sup>23</sup> Ian Birchall, 'Background to the Middle East Crisis: Part Two: The Arab States' (November 1973) 63 *International Socialism* 21–24.

<sup>24</sup> Stephen J King, *The New Authoritarianism in the Middle East and North Africa* (Indiana University Press, 2009) 58.

<sup>25</sup> Josep Puig Montada, 'Oppositional Movements in Egypt, from 1952 to Mubarak's Downfall' (2013) 39(3) *Nómadas: Critical Journal of Social and Juridical Sciences* 1–17.

<sup>26</sup> Mahmoud Hamad, *When the Gavel Speaks: Judicial Politics in Modern Egypt* (University of Utah, 2008) 111.

biased courts formed by members of the Revolutionary Command Council to punish his opponents without giving them any right to appeal or compensation. After the 1952 revolution, President Nasser created a number of exceptional courts, as outlined below:

### 1. Court of Treason

This court was established by Decree Law No 344 of 1952 to hear cases of corruption and abuse of power<sup>27</sup> by the old regime, including prime ministers, ministers and high-ranking officers, for any offence committed since 1 September 1939. The court was established to consolidate the power of the Free Officers Revolutionary Command Council and to silence opponents.<sup>28</sup>

### 2. Court of the Revolution

The Court of the Revolution was established in September 1953 to target anyone who was accused of acting against the country and the revolution, or who might harm the interests of the new regime. The court mostly targeted the Wafd Party and its leaders and aimed to harm their credibility and influence, thereby preventing them from playing any future political role in Egypt. On 14 July 1954, the Muslim Brotherhood was banned, and journalists who did not agree with Nasser's new policies and strategies were jailed and banned.<sup>29</sup> The Court of the Revolution targeted the Muslim Brotherhood after accusing the group of failed assassination attempts on Nasser. One of the Muslim Brotherhood fired six shots at Nasser on 26 October 1954 while he was speaking in Alexandria. Nasser was not harmed, but two men next to him were injured. On 1 November 1954, the new regime created a special court because the Revolutionary Command Council did not trust the ordinary courts.<sup>30</sup> The special court comprised three members of the Revolutionary Command Council (Gamal Salem, Sadat and Hussein Al-Shafi), who executed six people.<sup>31</sup>

### 3. People's Courts

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<sup>27</sup> Ibid 119.

<sup>28</sup> Ibid 120.

<sup>29</sup> Montada, above n 25.

<sup>30</sup> Hamad, above n 26, 120–121.

<sup>31</sup> Montada, above n 25.

The Revolutionary Command Council established people's courts in November 1954 to cover all jurisdictions and all crimes (even those committed before the establishment of the courts) committed against the country, the revolution, the regime or any cases transferred to them by the Revolutionary Command Council.<sup>32</sup>

The main aim of these exceptional courts was to give the new regime revolutionary legitimacy based on a single respected narrative relating to Egypt's long struggle for independence.<sup>33</sup> Further, the regime used these courts to serve its interests and to destroy the voices of opponents who could harm its interests in controlling the country. The courts could rule on any cases, especially those related to anyone accused of acting against the revolution. People's courts were given wide-ranging powers and had no appeal process, and they were composed of military judges and loyal supporters of the regime. Justice Hisham El-Bastawisi, a leading figure in the reform camp, stated that:

The reason behind establishing any exceptional courts is the inability of the dictatorial state to control the judiciary; hence, it creates exceptional courts. Had it managed to control the judiciary and make it malleable to its will, it would not need to establish military judiciary. But because the judiciary in Egypt strives to keep its independence and does not yield to the executive branch attempts to manipulate it or contain it, the founding of exceptional judiciary was the solution that the government found free itself from the judicial rulings it does not like.<sup>34</sup>

Opposition leaders were persecuted, jailed and tortured, while political parties, including the Wafd Party, were banned.<sup>35</sup> In addition, at the beginning of 1955, Nasser ordered the trials of 867 members of the Muslim Brotherhood in the people's tribunal. In October 1955, around 254 people were tried before military courts. In 1965, 27,000 people were arrested. The justification for these arrests was to protect the gains of the revolution and to maintain national security and unity.<sup>36</sup> Police

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<sup>32</sup> Reza Sadiq, 'Endless Emergency: The Case of Egypt' (Working Paper No 08–11, Boston University, 2007) 540; Hamad, above n 26, 121.

<sup>33</sup> Roger Owen, *The Rise and Fall of Arab Presidents for Life* (Harvard University Press, 2012) 17.

<sup>34</sup> *Ibid* 257.

<sup>35</sup> Mohamed El-Bendary, *The Egyptian Press and Coverage of Local and International Events* (Lexington Books, 2010) 29.

<sup>36</sup> Ahmad Hashim, 'The Egyptian Military, Part Two: From Mubarak Onward' (Winter 2011) XVIII(4), *Middle East Policy Council* <<http://www.mepc.org/journal/middle-east-policy-archives/egyptian-military-part-two-mubarak-onward>>.

surveillance and arbitrary arrests were pervasive features of Nasser's repressive regime.<sup>37</sup>

Naguib was a potential opponent of Nasser, so Nasser removed him to consolidate his power and prevent any potential opponents from being on the Revolutionary Command Council. Clashes began between Nasser and Naguib over how to achieve the goals of the revolution. On 22 February 1954, Naguib submitted his resignation to the Revolutionary Command Council. Three days after Naguib's resignation, Nasser accused him of being a Muslim Brotherhood supporter and aiming to overthrow the Revolutionary Command Council to increase his presidential power.<sup>38</sup> On 23 February 1954, Naguib's supporters protested in the streets, calling for Naguib to be reinstated as the president. As a result, President Naguib became more of a figurehead who had many supporters among the Egyptian population.<sup>39</sup>

Nasser's strategy was to remove Naguib at any cost, and he received this opportunity on 5 March 1954, when Naguib called on the National Constituent Assembly to draft a new democratic constitution. Nasser organised a large protest in front of the parliament to show that Naguib no longer had the Egyptian people's support, and that Naguib was a dictator.<sup>40</sup> As a result, Naguib was removed from his presidency and, on 14 November 1954, he was placed under house arrest for 30 years, until he died in 1984.<sup>41</sup>

While Naguib was under house arrest, he wrote that he wished he had not returned to public life:

Everyone was in a state of bitterness because of defeat and occupation. All they talked of was pain and lack of hope at expelling the Israeli occupation. In addition to that there were the victims of the revolution, those who were just released from prisons and suffered torture. And even those who were not imprisoned felt fear and humiliation. I then realised how much of a crime the revolution committed against the Egyptian citizen, who lost his freedom, dignity, land, his troubles

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<sup>37</sup> Montada, above n 25.

<sup>38</sup> Jean Krasno and Sean LaPides (eds), *Personality, Political Leadership, and Decision Making: A Global Perspective* (Praeger, 2015) 90–91.

<sup>39</sup> Ibid.

<sup>40</sup> Ahmed Aboulenein, 'Naguib: The Sidelined General President', *Daily News Egypt* (online), 24 July 2012 <<http://www.dailynewsegyp.com/2012/07/24/naguib-the-sidelined-general-President-2/>>.

<sup>41</sup> Ibid.

doubled, sanitation was a mess, water was scarce, morals decayed, and the people were lost.<sup>42</sup>

By the spring of 1954, Nasser was the unchallenged leader and had cultivated a strong support base among Egyptians.<sup>43</sup> In April 1954, he dissolved the bar association and appointed a new one. He also changed the law of the bar association because it had supported Naguib and called for the military to be returned to its barracks.<sup>44</sup>

In October 1954, Nasser introduced a new law to strengthen the military governors by transferring to them some of the authority previously held by the ministers and cabinet.<sup>45</sup> On 19 October 1954, Egypt and Britain signed another treaty that terminated the 1936 agreement. The new agreement gave Britain the authority to stay in the Suez Canal and use it as a military base for 20 months until 18 June 1956.

The new regime continued with these arbitrary procedures and dismissed dozens of judges<sup>46</sup> in what became known as the massacre of the judiciary.<sup>47</sup> Egyptian legal institutions were also restricted. For example, Abed El-Razzak El-Sanhuri, an Egyptian scholar and the architect of the Egyptian Civil Code, was forced to resign and was beaten by thugs.<sup>48</sup> For four years, Egypt was without a constitution after the Free Officers abolished the 1923 constitution. To show Egyptians that Egypt was a democratic republic, Nasser issued a new constitution in 1956.

### **4.3 Constitution of 1956**

The 1956 constitution, issued by Nasser, gave the president the authority to resume executive and legislative power, which affected the separation of powers. An example of a controversial article that strengthened the power of the president was Article 136, which gave the president the authority to issue ordinances that had the

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<sup>42</sup> Ibid.

<sup>43</sup> Risa Brooks, *Shaping Strategy: The Civil–Military Politics of Strategic Assessment* (Princeton University Press, 2008) 71.

<sup>44</sup> Bruce K Rutherford, *Egypt After Mubarak: Liberalism, Islam, and Democracy in the Arab World* (Princeton University Press, 2008) 42.

<sup>45</sup> Nathan J Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press, 1997) 83.

<sup>46</sup> Tamir Moustafa, *Rule of Law Quick Scan Egypt: Prospects and Challenges*, The Hague Institute for Innovation of Law (April 2012) 9 <<https://www.hiil.org/projects/rule-of-law-quick-scan-egypt/>>.

<sup>47</sup> Nathalie Bernard Mougiron, *Judges and Political Reform in Egypt* (American University in Cairo Press, 2008) 167.

<sup>48</sup> Tamir Moustafa, 'Law versus the State: The Judicialization of Politics in Egypt' (Autumn 2003) 28(40) *Law & Social Inquiry* 888.

force of law in cases of urgent measure while the assembly was not in session or had been dissolved. It was used by the president to consolidate his power and issue laws without the need for parliamentary attendance or approval.

Another example was Article 144 of the 1956 constitution, which gave the president the power to declare a state of emergency. The declaration had to be submitted to the National Assembly within 15 days from the day of its announcement. However, if the National Assembly had been dissolved, the declaration had to be submitted to the first meeting of the new National Assembly. Article 144 did not state what should happen if the parliament was not in session. However, the 1956 constitution gave the president the authority to dissolve the assembly at any time. Thus, Nasser attempted to weaken the parliament to stabilise his regime and build a military state.

The new changes in laws introduced a stronger president with a weaker parliament.<sup>49</sup> The 1956 constitution was the beginning of the authoritarian regime in Egypt, enshrined as the rule of man. Instead of establishing a real democracy, the regime abolished all parties that could challenge its rule. However, Nasser knew that he needed the Egyptian people to support his rule. For this reason, Nasser nationalised the Suez Canal, causing Egypt to go to war for the first time since the 1952 coup.

#### **4.4 War of 1956**

The crisis started when the US and Britain did not fulfil their promise to finance the construction of the high dam after Nasser declared that the Canal Zone would be nationalised. Nasser assumed that the \$100 million annual income collected from the Suez Canal would construct the dam within five years. However, Britain, France and Israel all had interests in the Suez Canal, so Britain and France decided to launch a military action against Nasser to remove him as president and regain control over the Suez Canal.

On 30 October 1956, Britain and France asked Egypt and Israel to withdraw from the Suez Canal, but Nasser refused the terms of their plan. On 31 October 1956, Britain destroyed the Egyptian Air Force, and French paratroopers descended into Port Said and Port Fuad and attacked Egypt. In the battle of Port Said, 2,700 Egyptian soldiers

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<sup>49</sup> Anthony F Lang Jr, *From Revolutions to Constitutions: The Case of Egypt* (Blackwell Publishing, 2013) 353.

and civilians were killed.<sup>50</sup> The US refused to back Britain; Eisenhower opposed the use of force against Egypt, and he applied pressure on Britain and France to end their aggression.<sup>51</sup> The US wanted to prevent the former Soviet Union from making inroads with Arabic countries.<sup>52</sup> The Soviet Union threatened to respond to the attack on the side of the Egyptians, and the UN called for an end to the war. British and French troops were evacuated by 22 December 1956.<sup>53</sup>

In Egyptian and Arabic eyes, Nasser was considered a saviour because he supported and elevated peasants and the rural and crushed societies. He gained popularity by marketing his ideas against capitalism and imperialism and looking towards Arab unity. After the 1956 Suez Canal war, Nasser was deemed to have finally ended Britain's colonisation of Egypt. He was returned as the president after he won the first Egyptian election in 1956 with 99.9% of the votes, although it is important to note that he was the only one on the ballot.<sup>54</sup>

In July 1958, the shareholders of the Suez Canal Company accepted \$28 million in compensation. The instalments were paid in full by January 1963. The company changed its name to the Suez Financial Company and continues to work as an investment trust.<sup>55</sup>

#### **4.5 Nasser's Institutions to Control Political Parties and 1958 Emergency Law**

This section examines Nasser's strategy for establishing different institutions and the 1958 emergency law to control Egyptian mobilisation and prevent other political

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<sup>50</sup> Sham Eldin Osama, *A Military History of Modern Egypt: From the Ottoman Conquest to the Ramadan War* (United States Army Command and General Staff College, 2007) 37.

<sup>51</sup> Peter L Hahn, *The United States, Great Britain, and Egypt, 1945–1956: Strategy and Diplomacy in the Early Cold War* (University of North Carolina Press, 1991) 224.

<sup>52</sup> R Catley and David Mosler, *The American Challenge: The World Resists US Liberalism* (Ashgate Publishing, 2007) 78.

<sup>53</sup> Karl R Derouen, *Defense and Security: A Compendium of National Armed Forces and Security* (Library of Congress, 2005) 868.

<sup>54</sup> Ehab Zahriyeh, 'Egypt's Presidential History: Military's Tight Grip on Power', *Al Jazeera America* (online), 29 January 2014 <<http://america.aljazeera.com/multimedia/2014/1/egypt-s-presidentialhistorymilitarystightgriponpower.html>>.

<sup>55</sup> S Steinberg (ed), *The Statesman's Year-Book: Statistical and Historical Annual of the States of the World for the Year 1966–1967* (Macmillan, 1966) 1586.

parties from gaining power. Nasser struggled for a brief period before he assumed complete power in 1956.<sup>56</sup>

Nasser's strategy consisted of dissolving all political parties and national unions to prevent popular demands for participation in decision-making and building a corporatist Arab Socialist Union. In addition, Nasser used the armed forces to consolidate his power by placing loyal supporters as military officers in top positions.<sup>57</sup>

#### **4.5.1 United Arab Republic (1957–1961)**

To strengthen his power and weaken the Revolutionary Command Council, Nasser established a new political structure called the National Union. The main principles of the National Union were:

1. to remove imperialists and their agents from political parties because they were divisive instruments
2. to oblige Arabs to unite
3. to give Egypt the responsibility for defending the Arab world from imperialism.<sup>58</sup>

The National Union was established in May 1957. In February 1958, Nasser and Shukri al-Quwatli announced the establishment of the United Arab Republic between Syria and Egypt.<sup>59</sup> A supreme executive committee was formed to prepare for the creation of a National Union organisation in both Syria and Egypt. In July 1959, an election was held to create popular provincial support for the National Union based on its anti-imperialism and social revolution principles.<sup>60</sup> The National Union was divided into the southern region (Egypt) and the northern region (Syria), headed by Nasser.<sup>61</sup>

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<sup>56</sup> Andrew Gavin Marshall, *Egypt under Empire, Part 3: From Nasser to Mubarak*, The Hampton Institute (24 July 2013)

<<http://www.hamptoninstitution.org/egyptunderempirepartthree.html#.VYFBD1KWtc4>>.

<sup>57</sup> Ibid.

<sup>58</sup> Perlmutter, above n 7, 143–147.

<sup>59</sup> Ibid 149.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid 150.



In 1958, a new constitution was issued because of the union between Syria and Egypt. It was similar to the 1956 constitution and lasted until 1961.<sup>62</sup> To consolidate his power, Nasser asked Syria to dissolve all political parties, and for the Syrian army to withdraw from political life.<sup>63</sup> Three and a half years later, unity between Syria and Egypt had failed for a number of reasons, including:

1. Heavy-handed restrictions of Egyptians in Syria: The dictatorial procedures of the dominating power of the Egyptians created a large gap between Nasser and the Syrian Ba'athists.<sup>64</sup>
2. There were clashes between Nasser socialists and Syrian economists, and Nasser used coercion to save the union.<sup>65</sup>

Others have argued that unity failed for geopolitical reasons. For example, Egypt and Syria do not share a border, so there was physical distance between them. There were also clashes between the political parties. For example, the communists in Syria rejected unity with Egypt and refused Nasser's social reforms against the Syrian bourgeoisie, while Nasser used propaganda and police measures to minimise the communists' influence.<sup>66</sup>

In conclusion, this thesis argues that unity succeeded in the beginning because the Arab people were sentimental about it. However, unity ultimately failed because Nasser attempted to consolidate and expand his power by depriving Syria from having any power. Unity benefited the Egyptian bourgeoisie because advantages were given to them. Namely, their businesses expanded and their profits increased.

#### **4.5.2 Emergency Law of 1958**

The new regime inherited Britain's martial law and used it to gain more power.<sup>67</sup> Act No 15 of 1923 was replaced by the State of Siege Act No 533 of 1954. This was then

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<sup>62</sup> Nathan J Brown, *Constitutions in a Non-Constitutional World: Arab Basic Laws and the Prospects for Accountable Government* (State University of New York Press, 2002) 79.

<sup>63</sup> James P Jankowski, *Nasser's Egypt, Arab Nationalism and the United Arab Republic* (Lynne Rienner Publishers, 2002) 109.

<sup>64</sup> *Ibid.*

<sup>65</sup> Tareq Y Ismael and Jacqueline S Ismael, *Politics and Government in the Middle East and North Africa* (Florida International University Press, 1991) 196.

<sup>66</sup> A Sadi, 'Arab Socialism and the Nasserite National Movement' (1963) 24(2) *International Socialist Review* 48–51.

<sup>67</sup> Brown, above n 45, 82–83.

replaced by Emergency Law No 162 of 1958.<sup>68</sup> The Free Officers used martial law to control the executive and legislative branches. In this way, they established a form of authoritarian socialism.<sup>69</sup> They also dissolved the multi-party system and introduced the one-party system.<sup>70</sup> Emergency Law No 162 of 1958 was a comprehensive law under which the term ‘martial law’ was changed to ‘state of emergency’.<sup>71</sup>

Emergency Law No 162 of 1958 was controversial because it imposed restrictions on fundamental rights. Further, it gave the president the authority to establish special courts, or state security courts, to refer civilians who had been accused of ordinary crimes or of violating emergency orders. Military judges were allowed to reside over these courts alongside judges of the ordinary judiciary. Further, Emergency Law No 162 of 1958 established military courts to which the president could refer civilians for crimes such as demonstrating against the military.

The emergency law declaration in 1958 was not submitted to the parliament until June 1964, which contradicted the legal requirement to notify the parliament in its next session.<sup>72</sup>

The main difference between the 1923 martial law and 1958 emergency law was that the 1923 constitution was issued while Egypt was under Britain’s control. Egypt was declared an independent country, but in reality, Britain still ruled the country and the Egyptian government had no real control. Britain forced the Egyptian government to declare a state of emergency to protect Britain’s interests in Egypt. Act 162 of 1958 was issued by the new Egyptian republic government and adopted the same features as British martial law to consolidate the government’s power under the justification of protecting the revolution and ending imperialism.

According to the 1923 constitution, anyone who violated the king’s orders was given a sentence not exceeding eight years imprisonment. According to Emergency Law No 162 of 1958, the executive was granted the authority to punish people who

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<sup>68</sup> Sherif Omar Hassan, ‘Emergency Powers of the Executive in the United Arab Republic’ (1970) 3(1) *Cornell International Law Journal* 49.

<sup>69</sup> Denis J Galligan and Mila Versteeg, *Social and Political Foundations of Constitutions* (Cambridge University Press, 2013) 406.

<sup>70</sup> Nathan J Brown, *Egypt’s Constitutional Ghosts: Deciding the Terms of Cairo’s Democratic Transition*, *Foreign Affairs* (15 February 2011) <<https://www.foreignaffairs.com/articles/north-africa/2011-02-15/egypts-constitutional-ghosts>>.

<sup>71</sup> *Ibid.*

<sup>72</sup> Brown, above n 45, 83.

violated the president's orders with up to 15 years imprisonment of hard labour or £4,000.<sup>73</sup>

The law in 1958 used vague and ill-defined concepts to increase the president's power to protect the public's interests in the form of punishment lengths. The president assumed judicial authority to carry out the punishment of anyone who violated his orders. The president was granted the authority to establish new crimes in the name of protecting the public's interests. This violated the rights and freedoms of citizens,<sup>74</sup> as well as the separation of powers.

Act No 162 of the 1958 law became a permanent fixture of the system in Egyptian law.<sup>75</sup> It regulated the manner in which a state of emergency could be declared, the exceptional measures and the procedure for lodging complaints. For example, Article 1 of the 1958 emergency law gave the president the power to declare a state of emergency 'whenever security or public order in the territory of the republic or area is at risk, due to war or a state threatening the eruption of war, unrest at home, public disaster, or the spread of an epidemic'.<sup>76</sup> Thus, when compared with Act No 15 of 1923, Act No 162 of 1958 increased the cases for declaring a state of emergency by adding the threat of war.<sup>77</sup> Many argue that the imminent threat of war should not be a reason for declaring a state of emergency because an 'imminent' war could take years to develop into a war, or it may never develop into a war. An example of this is the Cold War between the US and the Soviet Union. Thus, the term 'threat of war' is a vague and flexible concept.<sup>78</sup>

The president had the power to declare a state of emergency as a result of an internal war, an overwhelming disaster or the spread of an epidemic. However, in the case of the threat of war or an overwhelming disaster such as a flood, earthquake, volcano or the spread of an epidemic, it is not necessary to declare a state of emergency. Instead, the regime could use normal laws and emergency management procedures.

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<sup>73</sup> Hassan, above n 68, 52–53.

<sup>74</sup> Ibid.

<sup>75</sup> Kandil, above n 22, 199.

<sup>76</sup> Article 1 of Act No 162 of 1958 (issued on 27 September 1958) (enacted in June 1967) translation provided by Panda Unite Organization <<http://pandaunite.org/act-162-of-1958>>.

<sup>77</sup> Hassan, above n 68, 50.

<sup>78</sup> Ibid.

The European Court of Human Rights defined the term ‘public emergency’ ‘as an exceptional situation of crisis or emergency which affects the whole population’.<sup>79</sup>

Thus, a public emergency should meet the following criteria:

1. It must be actual or imminent.
2. Its effects must involve the whole nation.
3. The continuance of the organised life of the community must be threatened.
4. The crisis or danger must be exceptional, in that the normal measures or restrictions permitted by the convention for the maintenance of public safety, health and order are plainly inadequate.<sup>80</sup>

At the 61st Conference of the International Law Association held in Paris from 26 August to 1 September 1984, the Committee on the Enforcement of Human Rights Law approved, by consensus, a set of standards regarding the declaration and administration of states of emergency that threaten the life of a nation. These standards are known as the Paris Minimum Standards of Human Rights Norms in a State of Emergency and contain 16 articles that determine non-derogable rights and freedoms during states of emergency.<sup>81</sup>

In Section (a), the Paris Minimum Standards provide details regarding the existence of a public emergency. The definition of a public emergency, and the procedure for declaring a state of emergency, is stated as follows:

1. (a) The existence of a public emergency which threatens the life of the nation, and which is officially proclaimed, will justify the declaration of a state of emergency.  
(b) The expression ‘public emergency’ means an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the state is composed.
2. The constitution of every state shall define the procedure for declaring a state of emergency; whenever the executive authority is competent to declare a state

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<sup>79</sup> *Guide on Article 15 of the European Convention on Human Rights*, European Court of Human Rights (31 August 2018) 6 <[https://www.echr.coe.int/Documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf)>.

<sup>80</sup> *Ibid.*

<sup>81</sup> Richard B Lillich, ‘The Paris Minimum Standards of Human Rights Norms in a State of Emergency’ (October 1985) *American Journal of International Law* <<http://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/ParisMinimumStandards.pdf>>.

of emergency, such official declaration shall always be subject to confirmation by the legislature, within the shortest possible time.

3. (a) The declaration of a state of emergency shall never exceed the period strictly required to restore normal conditions.
- (b) The duration of emergency (save in the case of war or external aggression) shall be for a period of fixed term established by the constitution.
- (c) Every extension of the initial period of emergency shall be supported by a new declaration made before the expiration of each term for another period to be established by the constitution.
- (d) Every extension of the period of emergency shall be subject to the prior approval of the legislature.<sup>82</sup>

The next section explores the declaration and the effects of the state of emergency in Egypt.

### **4.5.3 Declaring a state of emergency**

Article 45 of the 1923 constitution gave the king the power to declare a state of emergency; however, the prime minister exercised this power because he was the general military commander.<sup>83</sup> In contrast, Articles 144 and 148 of the 1971 constitution gave the president the authority to declare a state of emergency and exercise the power. The president was the military general commander according to Article 2 of Act No 162 of 1958. This changed again when Article 148 of the banned 2012 constitution gave the president the power to declare a state of emergency after consulting with the government. This was followed by Article 154 of the 2014 constitution, which gave the president the power to declare a state of emergency after consulting with the cabinet.

According to the 1958 emergency law, the declaration of a state of emergency can be either oral or written. It should always be only in writing to prevent the overuse of power and the misuse of authority. When a state declares a state of emergency, it affects the whole population. Thus, the declaration should be only in the written format to make it easy for the legislative and judiciary branches to check the executive's actions.

A statement declaring a state of emergency should first contain the reason for the declaration. In Egypt, emergency law can be declared because of war, threat of war, civil disturbance, public disaster or epidemic. For example, since the first martial law

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<sup>82</sup> Ibid.

<sup>83</sup> Hassan, above n 68, 51.

was declared in 1914, a state of emergency has been declared six times because of war (World War I, World War II and the Arab–Israeli wars of 1948, 1956, 1967 and 1973), once because of civil unrest (the Black Saturday uprising in 1952), once in 2012 (in three cities) and once because of a coup (in 2013). Finally, a state of emergency was declared in 2017 and remains in place. Emergency laws have never been used in Egypt as a result of a disaster or the spread of an epidemic. Thus, up to May 1980, war was the main reason for declaring a state of emergency. After the assassination of President Sadat in October 1981, and until the present day, the main reasons for declaring and extending a state of emergency have been to fight terrorists, protect the country from thugs and drug traffickers, protect democracy and protect the gains made during the revolution.

Second, the statement declaring a state of emergency must determine the area covered. In Egypt’s case, it is noted that:

- a. From 1914 to 2012, emergency law was declared to cover the entire Egyptian territory. In August 2013, following the ousting of civilian President Morsi, a state of emergency was declared for one month and then extended for two months, which affected all cities. In 2017, after the attack on Egyptian churches, a state of emergency was declared, which has remained in place until the present day.
- b. Emergency law is declared over some aspects of Egypt’s governance. In January 2013, emergency law was declared for one month in three cities (Port Said, Ismailia and Suez Canal) because of civil unrest. A state of emergency was then declared in the North Sinai Peninsula for three months and was extended in October 2014, April 2015 and April 2016.

Third, the statement declaring a state of emergency must include the date of entry into force. However, in the case of Egypt, the date of terminating the state of emergency was not included in Article 2 of Emergency Law No 162 of 1958. This is one reason behind the continuous use of a permanent state of emergency. The Egyptian Constitution of 2012 and the current Constitution of 2014 state that emergency law can be declared for three months and extended after approval has been obtained from the parliament.

#### **4.5.4 Effects of the state of emergency**

A state of emergency has many side effects on civilians’ lives, including restrictions on the freedom of movement, arresting and searching people and places, and

establishing state security courts to try civilians. Article 3 of Emergency Law No 162 of 1958 gave power to the president in the following areas:

1. Set restrictions on the freedom of persons to meet, move, reside or pass in certain places or times, arrest the suspected persons or those representing danger to the security and the public order, detain them, permit the inspection of persons and places without abidance by the provisions of the procedural law as well as assigning any person to perform any task.
2. Order monitoring letters whatever their type may be, monitoring newspapers, publications, editions, drawings and all means of expression, advertisement and announcement before dissemination and to control, expropriate them and close the places of printing them.
3. Schedule opening and closure of the public shops as well as ordering the closure of all or some of these places.
4. Seize any movable property, real estate, order imposing receivership on companies and corporations as well as postponement of payment of debts and due liabilities payable on the seized properties or those on which receivership is imposed.
5. Withdraw permits of arms, ammunitions, explosives or fireworks of different types and order delivery and control of the same and closure of the arms stores.
6. Evacuate or isolate certain areas, organise transport means, restrict and limit transport between different areas.<sup>84</sup>
7. Control communications, newspapers, publications and all means of expression prior to publication, and seize and shut down places of printing. The Ministry of Culture has the authority to censorship books, films, music, theatres and arts; the Ministry of Interior has the authority to censorship any newspaper criticises Egyptian government, also the Ministry of Defence has the authority to censorship anything related to security.<sup>85</sup>
8. Seize any property and impose security on companies and institutions and postpone debts and obligations for what is seized or imposed by the government.<sup>86</sup>
9. Article 4 of Law No 162 of 1958 gave the power to the president to transfer the authority from civilian authority to military authority. The 1958 emergency law established an exceptional court to try civilians called the courts of security in which it was given the authority to refer civilians accused of crimes that violated the ordinary laws.<sup>87</sup>

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<sup>84</sup> Article 3 of Law No 162 of 1958 <<http://www.icnl.org/research/library/files/Egypt/162-1958-en.pdf>>.

<sup>85</sup> Frank Caso, *Global Issues: Censorship* (Infobase Publishing, 2008) 82.

<sup>86</sup> Article 3 of Law No 162 of 1958, above n 84.

<sup>87</sup> Article 4 of Law No 162 of 1958 <<http://www.icnl.org/research/library/files/Egypt/162-1958-en.pdf>>.

#### 4.5.5 State security courts

The state security courts, established by Law No 105 of 1980, later acquired a permanent status. The decisions of these courts were confirmed after the approval of the president, without any right for appeal.<sup>88</sup> State security courts were responsible for hearing cases related to economic crimes, certain political crimes, terrorism, theft of public money, espionage and possession of explosives.<sup>89</sup> Appeals made to the Egypt Court of Cassation could be classified as review or cassation (the Supreme Court of Egypt's common court system).<sup>90</sup> If an appeal by review was upheld, the Court of Cassation could nullify the verdict or order a retrial.<sup>91</sup> If an appeal by cassation was upheld, the cassation court could order a retrial of the case, but with different judges following the same procedures.<sup>92</sup> If the retrial resulted in a conviction with an appeal over the verdict, the Court of Cassation could rule on the substance of the case.<sup>93</sup>

The state security courts' procedures were different from those of the ordinary courts, and the legal procedures were different from the procedures for civil cases. The Egyptian president could keep the action before transferring someone to the state security courts or order a temporary release of the accused person who had been arrested before transferring their case to the state security courts. The president also had objection authority of the court's decision to reduce sanctions, replace it with lesser sanctions, invalidate all sanctions or some of them, and suspend executions.<sup>94</sup> On 17 June 2008, the Egyptian parliament approved the abolishment of the state security courts.<sup>95</sup>

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<sup>88</sup> Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dar al-ifta* (EJ Brill, 1997) 203–204.

<sup>89</sup> Carnegie Endowment for International Peace, *Egypt's State Security Courts to be Abolished* (26 August 2008) <<http://carnegieendowment.org/2008/08/26/egypt-s-state-security-courts-to-be-abolished-pub-21593>>.

<sup>90</sup> Human Rights Watch, *The State of Emergency and the Supreme State Security Court* (January 2002) <[https://www.hrw.org/reports/2002/egypt/egypt0102-05.htm#P168\\_25334](https://www.hrw.org/reports/2002/egypt/egypt0102-05.htm#P168_25334)>.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Mohamed Nour Farhat and Ali Sadek, *Promoting the Rule of Law and Integrity in the Arab Countries Project: Report on the State of the Judiciary in Egypt* (Arab Center for the Development of the Rule of Law and Integrity) 14–15.

<sup>95</sup> Carnegie Endowment for International Peace, above n 89.



#### 4.5.6 Emergency courts

The president of the republic has the authority to transfer civilians to exceptional courts, where military court judges are officers appointed by the minister of defence.<sup>96</sup> As established in Emergency Law No 162 of 1958, there are two levels in exceptional courts:

- Level class courts, which are composed of a high court judge to whom the president can assign two military judges.
- Higher-level emergency courts, which are composed of three appeal court judges. The president has the authority to replace two of them with military judges.<sup>97</sup>

#### 4.5.7 Military courts

The Code of Military Justice Law No 25 of 1966, amended by Law No 138 of 2010, divided the military courts into three levels:

- First level: The central military court has one judge.
- Second level: The central military court with supreme authority has one judge, but in special cases it can have three judges.
- Third level: The supreme military court has three judges, but in special cases it might increase to five officers.<sup>98</sup>

Article 5 of the Code of Military Justice Law No 25 of 1966 gave the military courts the authority to try anyone who had committed crimes in camps, barracks and factories, as well as crimes on equipment in relation to supplies and weapons, and for revealing the secrets of the armed forces. Further, Article 6 gave the president the authority to try any civilians who had committed any crimes set forth in Sections I and II of the Penal Code—for example, terrorism or cooperating with a foreign state. Article 6 also gave authority to the president during a state of emergency to try civilians in military courts for any crimes punishable under any other law.<sup>99</sup> Article 6 violates the Egyptian constitution, ICCPR, the independence of the judiciary and the right of the accused to have civilian judges.<sup>100</sup> Further, Article 48 of the Code of

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<sup>96</sup> Hatem Elliesie, 'Rule of Law in Egypt' (Working Paper No 5, Berlin, 2010) 11.

<sup>97</sup> International Bar Association, Human Rights Institute, *Panel Discussion—Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, 2011* (28 November 2011).

<sup>98</sup> Arab Center for the Rule of Law and Integrity and International Foundation for Electoral Systems (IFES) (eds), *State of the Judiciary Report: Egypt 2003* (April 2004) 20 <[https://www.ifes.org/sites/default/files/soj\\_egypt.pdf](https://www.ifes.org/sites/default/files/soj_egypt.pdf)>.

<sup>99</sup> International Bar Association, Human Rights Institute, above n 97, 20.

<sup>100</sup> Arab Center for the Rule of Law and Integrity and IFES, above n 98, 14.

Military Justice gave military judges the authority, according to their discretion, over any cases that came under their jurisdiction. This was criticised because it violated the guarantee of a fair trial.<sup>101</sup>

Egypt's constitutions came to enshrine the military courts. For instance, Article 183 of the 1971 constitution stated that the law would organise the military courts and determine their competencies within the framework of the principles of the constitution. However, many argued that the military courts should deal with military issues only.<sup>102</sup> Article 183 granted the military courts authority that affected the right to a fair trial. Article 183 of the 1971 constitution enshrined the military judiciary but did not identify it as an independent judiciary.

In contrast, Article 204 of the 2012 constitution and the 2014 constitution made the military courts independent judicial bodies and granted them the authority to try civilians, giving the members of these courts immunity from dismissal. Enshrining military courts into Egypt's constitution and granting wider authority to try civilians affected the character of natural justice and the right to a fair trial. The military courts did not have an appeal system. Expanding the authority of the military courts was one of the reasons behind the widespread practice of trying civilians.

#### **4.5.8 Arab Socialist Union (1962–1977)**

When the United Arab Republic between Syria and Egypt collapsed, Nasser made another attempt to gain more support and power, without any sharing of the power, by creating an organisation.<sup>103</sup> He aimed to become more popular and establish legitimacy through a corporatist organisation<sup>104</sup> that he used as a tool to build a coalition of support to control the masses and prevent other parties from having any rule in political life.<sup>105</sup> Nasser built solid political institutions to mobilise popular

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<sup>101</sup> Ahmed Zaki Osman, 'Court to Decide if Military Trials for Civilians Constitutional', *Almasry Alyoum* (online), 10 September 2011 <<http://www.masress.com/en/almasryalyoumen/494297>>.

<sup>102</sup> Farhat and Sadek, above n 94, 17–18.

<sup>103</sup> Robin Bidwell, *Dictionary of Modern Arab History: An A to Z of Over 2,000 Entries from 1798 to the Present Day* (Kegan Paul International, 1998) 46.

<sup>104</sup> King, above n 24, 58.

<sup>105</sup> *Ibid* 49.

support,<sup>106</sup> and he created the Socialist Union to protect the gains of the 1952 revolution and to construct a socialist economy in the new republic.<sup>107</sup>

In a strategic emotional ploy, the new regime renamed the 1952 coup to the Egyptian Revolution to gain more support from the Egyptian people. The regime represented the Free Officers as the main guard of the Egyptians, and their duty was to encourage Egyptians to follow the regime.<sup>108</sup>

The new ruling party had democratic, cooperative and socialist principles that mobilised all Egyptians to follow Nasser's ideas and beliefs. In one of Nasser's socialism speeches, he stated that:

I want a society in which class distinctions are dissolved, through equality of opportunities to all citizens. I want a society in which the free individual can determine his position by himself, on the basis of efficiency, capacity and character.<sup>109</sup>

Nasser meant that everyone should live in unity and harmony, and that class division should be performed without domination<sup>110</sup> via the melting of class differences between Egyptians.<sup>111</sup> In another speech, Nasser said:

We are pledged to the establishment of a new socialist experience in our country, based on love and brotherhood and not on the domination of only one class, whatever name it may take ... if we declare that we will not allow capitalism or feudalism to return, because they represent the rule of the minority, the rule of one class, we also declare that we will not allow the dictatorship of the proletariat, as envisaged by communism, because that too means the domination of a particular group over all ... Our socialism, which rejects the rule of one class, shall not fall under the domination of any class ... a small group of people cannot be allowed to monopolise the political scene, whether in the present or in the future: political action belongs to all people.<sup>112</sup>

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<sup>106</sup> Kandil, above n 22, 23.

<sup>107</sup> Barrie Gunter and Roger Dickinson (eds), *News Media in the Arab World: A Study of 10 Arab and Muslim Countries* (Bloomsbury Academic, 2013) 87.

<sup>108</sup> Kandil, above n 22, 17.

<sup>109</sup> Sami A Hanna and George H Gardner, *Arab Socialism: A Documentary Survey* (EJ Brill, 1969) 113.

<sup>110</sup> Ibid.

<sup>111</sup> Dieter Nohlen, Michael Krennerich and Bernard Thibaut (eds), *Elections in Africa: A Data Handbook* (Oxford University Press, 1999) 330.

<sup>112</sup> Hanna and Gardner, above n 109, 114–115.

Nasser planned to establish a social contract policy, which meant that the government would provide goods and services; in return, the Egyptian people were expected to support and follow the regime's policies and strategies.<sup>113</sup>

These policies aimed to control Egypt's political and economic freedom and prevent opponents from sharing the power and creating autocratic rules. Nasser used the external threat of Israel and the internal threat of the Islamist and Muslim Brotherhood as justification for delaying democracy and suppressing his opponents. Democracy was not Nasser's first priority.<sup>114</sup> Ordinary Egyptians supported Nasser emotionally because he was a true Egyptian, a son of the Nile river and the first to rule Egypt in 2,000 years.<sup>115</sup> Nasser used this emotional support to increase his power.<sup>116</sup>

When Syria withdrew from the United Arab Republic in 1961, Nasser responded in 1962 by banning the 1958 constitution and issuing a presidential constitutional declaration that gave the president significant authority.<sup>117</sup> In 1964, he issued a new constitution that consolidated his executive power and reinforced the official commitment to Arab socialism.<sup>118</sup>

From 1956 to 1967, Egypt received \$1.5 billion from the Soviet Union to build and rebuild its military.<sup>119</sup> On 16 May 1967, Egypt declared a state of emergency, demanding the withdrawal of UN emergency forces, and the blockade of the Straits of Tiran.<sup>120</sup> On 5 June 1967, Israel destroyed the Egyptian Air Force. By 8 June, Israel occupied Sinai and the Gaza Strip. On 10 June 1967, fighting stopped; Israel had captured the Sinai Peninsula, Golan Heights, the West Bank, the Gaza Strip and East Jerusalem.<sup>121</sup> The Egyptian government declared a state of emergency because of the 1967 Arab–Israeli War and the Israeli occupation of the Sinai. Declaring a state of emergency at this time was important for the Egyptian government to justify

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<sup>113</sup> Carrie Rosefsky Wickham, *Mobilizing Islam: Religion, Activism and Political Changes in Egypt* (Columbia University Press, 2002) 23.

<sup>114</sup> Alaa Al-Din Arafat, *Egypt in Crisis: The Fall of Islamism and Prospects of Democratization* (Palgrave Macmillan, 2017) 8.

<sup>115</sup> Mayfield, above n 9, 95.

<sup>116</sup> Antony McDermott, *Egypt from Nasser to Mubarak (Egypt): A Flawed Revolution* (Routledge, 2013) 23.

<sup>117</sup> Brown, above n 45, 79.

<sup>118</sup> *Ibid* 79–80.

<sup>119</sup> Paul E Lenze Jr, *Civil–Military Relations in the Islamic World* (Lexington Books, 2016) 73.

<sup>120</sup> Amos Yoder, *The Evolution of the United Nations System* (Taylor & Francis, 3rd ed, 1997) 56–58.

<sup>121</sup> Mike Berry and Greg Philo, *Israel and Palestine: Competing Histories* (Pluto Press, 2016) 44.

its use of military rule and to suspend the rights of Egyptians, which had been granted by the 1964 constitution.<sup>122</sup>

After deposing Naguib from the presidency, Nasser used the same policy with his best friend, Abdel Hakim Amer (1919–1967). Field Marshall Amer was the commander-in-chief of the Egyptian army. He was accused of negligence in Syria, dealing with Syrians as second-class citizens and using Syria as his own personal fiefdom.<sup>123</sup> This accusation of mismanagement led to the breakup of the United Arab Republic in 1961. In addition, after the 1967 defeat, Nasser accused Amer of cowardice, although Amer refused to be held accountable for the 1967 defeat. Amer wanted Nasser to acknowledge his own involvement, and he also wanted to protect the honour of the Egyptian army after the defeat.<sup>124</sup> Amer decided to withdraw the United Nation Emergency Force troops (UNEF) and replace them with Egyptian troops in the Sinai, and he ordered a blockade of Aqaba and the Straits of Tiran.<sup>125</sup>

Amer could not be held solely responsible for the 1967 defeat. According to Heikal, one of Egypt's most famous journalists, editors and commentators, Nasser made mistakes that led to the 1967 defeat. First, he did not dismiss Amer as the commander-in-chief of the Egyptian army after his poor performance in the 1956 war. Second, Egypt could not undertake another war with Israel because it had become involved in the Yemen War (1962–1967). Third, Nasser did not listen to King Hussein of Jordan, who warned him of a conspiracy to draw Egypt into a war with Israel, and the Egyptian army was not ready for war.<sup>126</sup>

Nasser attempted to remove Amer from his position, but he failed because Amer built up his own military political centrality and power with loyal officers.<sup>127</sup> Thus, Amer was a potential opponent for Nasser, who then used security surveillance and

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<sup>122</sup> Steven A Cook, *The Struggle for Egypt: From Nasser to Tahir Square* (Oxford University Press, 2012) 106.

<sup>123</sup> Youssef Aboul-Enein, *The Heikal Papers: A Discourse on Politics and the 1967 Arab–Israeli War with Egyptian President Gamal Abdel Nasser*, Strategic Insights Centre for Contemporary Conflict (April 2005) IV(4) <<http://www.dtic.mil/dtic/tr/fulltext/u2/a521546.pdf>>.

<sup>124</sup> Samer Soliman, 'The Death of the Field Marshal and Us', *Ahram Online* (Cairo), 26 September 2012 <<http://english.ahram.org.eg/NewsContent/4/0/53858/Opinion/The-death-of-the-field-marshal-and-us.aspx>>.

<sup>125</sup> Elli Lieberman, *Reconceptualising Deterrence: Nudging Toward Rationality in Middle Eastern Rivalries* (Routledge, 2013) 120.

<sup>126</sup> Aboul-Enein, above n 123.

<sup>127</sup> Ahmed S Hashim, 'The Egyptian Military, Part One: From the Ottomans Through Sadat' (2011) XVIII(3) *Middle East Policy Council* <<http://www.mepc.org/egyptian-military-part-one-ottomans-through-sadat>>.

the vetting of officers to minimise Amer's control over the officers.<sup>128</sup> On 14 September 1967, Amer died in mysterious circumstances. In 1970, Nasser died and Vice President Sadat assumed power.

#### **4.5.9 Sadat's political strategies (1971–1981)**

Sadat used the same general strategy of containment as Nasser had done. Sadat had never been a centralised power and had never been a threat to Nasser.<sup>129</sup> Sadat faced many challenges from the central power during Nasser's era, including Ali Sabri as the vice president and former secretary general of the Arab Socialist Union, Muhammad Fawzi from the armed forces, Sami Sharaf as the minister of the state for ministerial affairs and Sha'rawi Gum'h as the minister of the interior and the head of intelligence.<sup>130</sup>

Sadat ordered the arrest of Sabri<sup>131</sup> and 90 of Nasser's old guards who supported Sabri.<sup>132</sup> After he accused them of leading a public mobilisation against the new president, on 14 May 1971, Sadat addressed Sabri's plan to conduct a coup against him. He argued that the old guard was responsible for the Arab–Israeli defeat. This was the first step to abandoning Nasser's inheritance.<sup>133</sup> Sadat launched a corrective revolution to install his own loyal followers. He purged all key figures and their followers from important organisations and removed all leadership from the military, police and security forces.<sup>134</sup> Sadat established a strong relationship with the military forces, security forces and the opposition to consolidate his power, especially after accusing Sabri and others of trying to overthrow his regime. Sadat abolished Nasser's constitution and issued his own constitution in 1971.

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<sup>128</sup> Ibid.

<sup>129</sup> Curtis, above n 17, 25–46.

<sup>130</sup> Edward R F Sheehan, 'The Real Sadat and the Demythologized Nasser', *New York Times* (online), 18 July 1971 <<http://www.nytimes.com/1971/07/18/archives/the-real-sadat-and-the-demythologized-nasser-sadat-demythologizes.html>>.

<sup>131</sup> Albert B Wolf, 'Peacemaking and Political Survival in Sadat's Egypt' (2014) XXI(2) *Middle East Policy* <<http://www.mepc.org/journal/middle-east-policy-archives/peacemaking-and-political-survival-sadats-egypt?print>>.

<sup>132</sup> Scott W Hibbard, *Religious Politics and Secular States: Egypt, India and the United States* (Johns Hopkins University Press, 2010) 67.

<sup>133</sup> Laurie Brand, *Official Stories: Politics and National Narratives in Egypt and Algeria* (Stanford University Press, 2014) 70.

<sup>134</sup> Curtis, above n 17, 4.

#### *4.5.9.1 Constitution of 1971*

The 1971 constitution consisted of some articles that enshrined the president's authority and gave him the power to declare a state of emergency.

Article 108 granted authority to the president to issue a decree having the force of law, but with three conditions. First, it could only be declared in cases of necessity or in exceptional circumstances. Second, the declaration had to have the approval of two-thirds of the parliament. Third, the authorisation could only be for a limited time. The article used vague and ill-defined concepts such as 'necessity', 'exception' and 'limited time'. These needed to be further defined to minimise the abuse of power. Further, Article 108 used vague words such as 'limited period', so it was difficult to understand the time limit to end the president's authority and who had the authority to end the authority to issue decrees if the president was not willing to do so.

Article 108 of the 1971 constitution requested that decrees be submitted to the People's Assembly at the first meeting after the end of the authorisation. If the declaration was not submitted, or if it was submitted but not approved by the assembly, it would cease to have the force of the law. Article 108 did not discuss cases in which the parliament had been dissolved. Further, it did not discuss the judicial review process and compensation in cases in which the decree was against the law or breached human rights.

Article 148 of the 1971 constitution gave power to the president to declare a state of emergency for a limited time with parliamentary approval. Further, the key language for every extension should be in the manner prescribed by law, the declaration should be submitted to the assembly within 15 days and in cases in which the parliament had been dissolved, the matter should be submitted to the new assembly at its first meeting. Article 148 did not discuss what would occur if the assembly was not in session, and it did not require the president to call the parliament to discuss whether to declare a state of emergency. In addition, the declaration of emergency law requires the assembly's approval without specifying whether the vote to extend the state of emergency needs to be approved by a simple or absolute majority of the assembly. In addition, Article 148 gave the president authority to extend the state of emergency as many times as he desired, without limitation.

Further, Article 148 specified that the time of the declaration of emergency law should be for a limited period; however, the word 'limited' is flexible and elastic. Egypt was under a state of emergency from 1967 to May 1980, except for an 18-month period from May 1980 to 6 October 1981. From 1981 to May 2012, Egypt was under a continuous, permanent state of emergency.

Sadat restructured the Egyptian political sphere by allowing the opposition to speak with limitations. He argued that it was time for the democratic sphere and the end of arbitrary arrests. Sadat burned all surveillance tapes used by Nasser's interior ministry against his opposition,<sup>135</sup> and he abolished the police state to show that he respected civilians' rights.<sup>136</sup>

Sadat used another strategy to consolidate his power and to counterbalance his relationship with the left group. He considered himself a father of the Egyptian family<sup>137</sup> and represented himself as a believer and a pious president. He employed religious expression in his political tactics for different reasons.<sup>138</sup> First, it gave limited freedom to the people so that he appeared different to the late Nasser, who was accused of repressing his opponents. Second, Sadat wanted to counterbalance the Nasserites and communists. Third, Sadat's regime believed that the more religious people were, the more obedient they would be. Fourth, Sadat's regime aimed to control the Muslim Brotherhood and ensure that they did not engage in any anti-government activities. Sadat gave them the freedom of peaceful activity and released thousands of political prisoners between 1971 and 1975.<sup>139</sup>

Sadat used the victory against Israel in 1973 to consolidate his power by pronouncing himself the 'hero of the crossing' when the Egyptian military destroyed the Bar Lev Line and pushed the Israeli troops back from the East Bank of the Suez Canal to the Sinai Peninsula. This was significant after the 1967 defeat during

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<sup>135</sup> Wolf, above n 131.

<sup>136</sup> Hibbard, above n 132, 67.

<sup>137</sup> Denis Joseph Sullivan and Sana Abed-Kotob, *Islam in Contemporary Egypt: Civil Society vs the State* (Lynne Rienner Publishers, 1999) 72.

<sup>138</sup> Anthony Gorman, *Historians, State and Politics in Twentieth Century Egypt: Contesting the Nation* (Routledge Curzon, 2003) 149.

<sup>139</sup> Hibbard, above n 132, 68.



Nasser's era.<sup>140</sup> Sadat adopted a new political strategy based on the rule of law and the institutions.<sup>141</sup> In March 1976, he declared three political organisations:<sup>142</sup>

- National Progressive Unionist Party (left-wing)
- Liberal Socialists Party (right-wing)
- Arab Socialist Union (middle-wing).

Sadat permitted opposing political parties, but they had to serve within the Arab Socialist Union, which was the government party. After 27 June 1977, political parties were authorised to function without being part of the Arab Socialist Union.<sup>143</sup> In 1976, Sadat established the National Democratic Party, which the regime used to exercise control over national politics, most of the elected assembly and the partially elected Shura (Consultative Council). The National Democratic Party remained the country's dominant party until 2011, when the revolution began against Mubarak.<sup>144</sup>

Sadat established an active Islamic legitimacy for Egypt, but without an active Islamic base for opponents.<sup>145</sup> His strategy was to establish alliances with his opponents—especially the Muslim Brotherhood—to strengthen his political situation. Sadat released all members of the Muslim Brotherhood as a counterweight to the leftists and Nasserites.<sup>146</sup> Mistrust arose between the opposition and Sadat when the economy started to decline, increasing the gap between the rich and the poor. Sadat's opponent criticised him for visiting Jerusalem in November 1977. To tackle the criticism,<sup>147</sup> Sadat called for a referendum and asked Egyptians to vote to ban atheist leftist communism (i.e., the Tagammu Party) from political life based on accusations of shameful conduct<sup>148</sup> for inciting a bloodbath and class warfare.<sup>149</sup> The government also froze the production of the Tagammu newspaper, *Al-Ahali*.<sup>150</sup>

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<sup>140</sup> Ibid 1.

<sup>141</sup> State Information Service: Your Gateway to Egypt, Political Parties (February 2013).

<sup>142</sup> Ibid.

<sup>143</sup> Joel Krieger and Margaret E Crahan, *The Oxford Companion to Politics of the World* (Oxford University Press, 2nd ed, 2001) 236.

<sup>144</sup> Carnegie Endowment for International Peace, 'Egypt Elections: National Democratic Party', *The Cairo Review of Global Affairs* (online) (13 November 2011) <<http://www.aucegypt.edu/gapp/cairoreview/pages/articleDetails.aspx?aid=122>>.

<sup>145</sup> Martin E Marty and R Scott Appleby (ed), *Fundamentalisms Observed* (University of Chicago Press, 1991) 378.

<sup>146</sup> Ibid 377.

<sup>147</sup> Mamoun Fandy, *(Un)Civil War of Words: Media and Politics in the Arab World* (Praeger, 2007) 31.

<sup>148</sup> Ibid.

The referendum was won by a majority of 98.2%, with the opposition describing it as a tool for punishing opposition to the government.<sup>151</sup> The opposition argued that the shameful conduct would curtail the freedom of speech and expression of national interests, while simultaneously acting as a tool for repression instead of lifting the state of emergency.<sup>152</sup> On 26 March 1979, Sadat and Israeli Prime Minister Menachem Begin signed a peace treaty. The US expanded its military and economic aid to Egypt and helped to organise a peacekeeping mission and the Multinational Force and Observers along the border.<sup>153</sup> After signing the peace treaty, the regime justified the extension of Egypt's emergency law as being important in the fight against terrorism and drug trafficking; however, in reality, it was used to protect the regime's political and economic interests and stifle its opponents.

Sadat successfully obtained more support from Western countries, especially the US, which issued an economic policy to reverse the socialism policy from Nasser's era. On 6 October 1981, Sadat was attending an annual victory parade when a military truck stopped and soldiers started shooting. Within minutes, Sadat was assassinated, eight others were killed and 27 were wounded.<sup>154</sup> Vice President Mubarak escaped with only a minor hand injury.<sup>155</sup> Mubarak assumed power in 1981 and stayed until 2011.

#### **4.5.10 Mubarak's political strategies**

Mubarak used emergency law to stabilise his rule, control the country and expand military and police powers.<sup>156</sup> He maintained the same structure, used the same political and economic strategies for survival and relied on military authority to control the country. Mubarak also used the constitution to gain more power, and he depended on his National Democratic Party to win the majority of the seats in the

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<sup>149</sup> J Brownlee, 'Peace Before Freedom: Diplomacy and Repression in Sadat's Egypt' (2012) 126(4) *Political Science Quarterly* 641–668.

<sup>150</sup> Ibid 654.

<sup>151</sup> Fandy, above n 147.

<sup>152</sup> Raymond William Baker, *Sadat and After: Struggles for Egypt's Political Soul* (I B Tauris & Co, 1990) 47.

<sup>153</sup> Jeremy Sharp, *Egypt: Background and US Relations*, Congressional Research Service (12 August 2008) 5–6 <<https://fas.org/sgp/crs/mideast/RL33003.pdf>>.

<sup>154</sup> Reid Meloy, Lorraine Sheridan and Jens Hoffmann, *Stalking and Attacking Public Figures: A Psychological and Behavioural Analysis* (Oxford University Press, 2008) 153.

<sup>155</sup> 'Hosni Mubarak's Rules and Downfall Timeline', *The Guardian* (online), 2 June 2012 <<http://www.theguardian.com/world/2012/jun/02/hosni-mubarak-rule-downfall-timeline>>.

<sup>156</sup> Ibid.

Egyptian assembly to prevent any opponents from sharing power. His aim was to avoid establishing a real democratic country.

This section explores Mubarak's political and economic strategies for survival and for stabilising his rule. It provides a better understanding of his bureaucratic system and how the regime used the single-party system and military rule to retain control over the country.

#### *4.5.10.1 Containment of potential opponents*

Mubarak used the policy of 'divide and rule' in combination with a balancing strategy. This means that, at the beginning of his rule, Mubarak used constrained democratic strategies by permitting his opponents to participate in the election and establish their party. However, at the same time, he prevented them from being a threat to his regime. This enabled Mubarak's regime to reduce political pressure on the regime and control its opponents at the same time. The regime used this strategy to achieve the following goals:

1. The regime wanted its opponents to show their policies and programs.
2. This strategy gave the regime the opportunity to identify its opponents, as well as the supporters of those opponents, and their agenda.
3. This strategy gave the regime legitimacy inside and outside Egypt.
4. The approach divided opponents between moderates and extremists.<sup>157</sup>
5. To control Egypt and consolidate his power, Mubarak's regime used a number of direct and indirect strategies based on reserve and protective plans to build a virtual wall around the regime. The goal was to prevent freedom, or at least minimise it, and plant fear among Egyptians.<sup>158</sup>

#### *4.5.10.2 Direct strategies*

The National Democratic Party was the ruling party from 1976 to 2011. It was established by Sadat in 1976 and has dominated the political scene in Egypt since then. It has won all elections with a majority of 75–97% of the vote. This was one

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<sup>157</sup> Curtis, above n 17, 7.

<sup>158</sup> Khaled Wahba, 'The Egyptian Revolution 2011: The Fall of the Virtual Wall—The Revolution Systems Thinking Archetype' (Paper presented at the 29th International System Dynamics Conference, Washington, DC, July 2011) 15–16.

reason behind the executive's domination over parliament's two chambers,<sup>159</sup> the People's Assembly (Majlis Al-Sha'b) and the Consultative Assembly (Majlis Al-Shura). The centralised presidential system strengthened the National Democratic Party and falsified elections to gain the majority in the parliament. It gave the regime the power to pass any laws. The minor presence of the opposition was just a decoration in the Egyptian parliament.<sup>160</sup>

Mubarak's regime used emergency law to strengthen state security and give investigation services the ability to use sweeping powers to suppress its opponents and minimise interference in political life.<sup>161</sup> The regime depended heavily on security forces and the military to stabilise it, using brutal and at times excessive force against opponents and arresting and detaining them for uncertain periods.<sup>162</sup> Mubarak said, 'I refuse to allow human rights to become a slogan to protect terrorists'.<sup>163</sup> Under the notion of fighting terrorism, many human rights were violated. The regime arrested and detained thousands of opponents because of their political opinions.

#### 4.5.10.3 Indirect strategies

Mubarak also used external diversion strategies that involved turning Egyptians' attention away from Egypt's socioeconomic problems using the strategies outlined below:

1. The regime spread corruption across all Egyptian sectors, with a lack of transparency. Mubarak's regime used favouritism and corruption to monopolise power through his ruling party. All benefits flowed to a group of the regime's elite and excluded most Egyptian people. For example, the Egyptian budget contained additional figures reflecting the government's economic strategies, which were used as a source of corruption and money

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<sup>159</sup> 'Egypt Elections: National Democratic Party' (Cairo Review of the Global Affairs) (November 2011) <<https://www.thecaireview.com/tahrir-forum/egypt-elections-national-democratic-party/>>.

<sup>160</sup> Ferran Izquierdo Brichs (ed), *Political Regimes in the Arab World: Society and the Exercise of Power* (Routledge, 2013) 126–127.

<sup>161</sup> Patrick Kingsley, 'Egypt Restores Feared Secret Police Units', *The Guardian* (online), 29 July 2013 <<https://www.theguardian.com/world/2013/jul/29/egypt-restores-secret-police-units>>.

<sup>162</sup> Dina El-Khawaga, *A New Authoritarian Regime in Egypt? Controlling Power and Eliminating Dissent*, Arab Reform Initiative (November 2014) <<http://www.arab-reform.net/new-authoritarian-regime-egypt-controlling-power-and-eliminating-dissent>>.

<sup>163</sup> Mahmud A Faksh, *The Future of Islam in the Middle East: Fundamentalism in Egypt, Algeria, and Saudi Arabia* (Praeger, 1997) 51.

wasting, benefiting a narrow group of people.<sup>164</sup> This was one of the main causes of the 2011 revolution.<sup>165</sup>

2. The regime kept Egyptians busy with socioeconomic problems and thinking of their personal problems rather than thinking about politics.
3. The media was controlled through state ownership. Television, newspapers and the radio were used to influence people to adapt the regime's opinions by spreading incorrect news and information. Large amounts of entertainment, especially soccer, were used to drive people's attention away from important issues.<sup>166</sup>
4. During the election campaign, the regime promised to create jobs for unemployed youth and build hospitals and schools. However, at the same time, it ignored any discussions regarding economic and free market policy.<sup>167</sup>
5. The regime interfered in the recruitment of managers and staff, especially relating to syndicates, universities and newspapers.
6. The regime amended constitution articles to consolidate its power. For example, in 2005, the regime allowed multiple candidates to run for the presidential election. The new changes made no real differences; Mubarak always won the presidency because there was no real competition.
7. The regime falsified the election in 2010, and the opposition accused the regime of fraud, intimidation and buying votes.

#### *4.5.10.4 Mubarak and the continuous state of emergency*

In May 2000, the state of emergency was renewed for three years. This was criticised by opponents, non-governmental bodies and political parties. The government had promised several times to lift the law, but it failed to do so because it claimed it was important to the government in its fight against terrorism. Emergency law was renewed by temporary resolution No 560/1981. The law was due to expire in May

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<sup>164</sup> *The Absence of Transparency: An Economic Cost and an Infringement on Citizens' Constitutional Rights*, Egyptian Initiative for Personal Rights (15 December 2014) <<http://www.eipr.org/en/pressrelease/2014/12/15/2304>>.

<sup>165</sup> Daron Acemoglu, Tarek A Hassan and Ahmed Tahoun, 'The Power of the Street: Evidence from Egypt's Arab Spring' (Working Paper No 20665, National Bureau of Economic Research, October 2014) 1 <<http://economics.mit.edu/files/10154>>.

<sup>166</sup> *Ibid* 165.

<sup>167</sup> Rick Kelly, *Egypt: President Mubarak Dominates Fake Election Campaign*, International Committee of the Fourth International (3 September 2005) <<https://www.wsws.org/en/articles/2005/09/egyp-s03.html>>.

2003;<sup>168</sup> however, as a result of political instability, the law was extended to 2006.<sup>169</sup> The government justified the extension on the grounds of protecting Egypt from future terror attacks.

By 2005, the government had promised many times that it would not renew the emergency law but would replace it with new counterterrorism legislation.<sup>170</sup> The judicial and parliamentary affairs minister promised to end the state of emergency even if the new terrorism laws had not been enforced. However, the emergency law was extended simply because the terrorism law had not been gazetted.<sup>171</sup> During Mubarak's election campaign, he promised to abandon the state of emergency law, but after winning the presidency, the government announced that it would only lift the emergency law upon the establishment of a committee to draft an anti-terrorism law.<sup>172</sup>

On 30 April 2006, the Egyptian parliament voted by a large majority to renew the state of emergency law for a two-year period. The president was granted extraordinary powers to detain and arrest people, prohibit public gatherings<sup>173</sup> and issue decrees with only minor accountability to the parliament. This created a rift between the government and the opposition. However, the government justified the extension of the state of emergency for two reasons. First, it claimed that terminating the state of emergency would lead to a legislative vacuum, which could pose a significant threat because the government needed at least 2–2½ years to draft a new anti-terrorism law. Second, extending the state of emergency law was necessary to support the army's efforts in fighting terrorist cells and operations.<sup>174</sup>

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<sup>168</sup> *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, Commission on Human Rights: Fifty-Ninth Session Item 9 of the Provisional Agenda*, United Nations High Commissioner for Human Rights (3 March 2003)  
<<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/fda8c19f8d15755bc1256cf40033b7d9?Opendocument>>.

<sup>169</sup> *The Emergency Law in Egypt*, International Federation for Human Rights (November 2001)  
<<https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/egypt/the-emergency-law-in-egypt>>.

<sup>170</sup> Human Rights Watch, *Egypt: Extending State of Emergency Violates Rights* (27 May 2008)  
<<https://www.hrw.org/news/2008/05/27/egypt-extending-state-emergency-violates-rights>>.

<sup>171</sup> 'Egypt Extends State of Emergency', *Al Jazeera News* (online), May 2008  
<<http://www.aljazeera.com/news/middleeast/2008/05/20086150918611420.html>>.

<sup>172</sup> Amnesty International, *Time for Justice: Egypt's Corrosive System of Detention* (20 April 2011)  
<<https://www.amnesty.org/en/documents/mde12/029/2011/en/>>.

<sup>173</sup> Rutherford, above n 44, 1.

<sup>174</sup> International Federation for Human Rights, *Egypt: Counter-Terrorism Against the Background of an Endless State of Emergency* (10 March 2010) 12.

#### 4.5.10.5 2007 amendments to the 1971 constitution

In 2007, 34 of the 211 articles of the 1971 constitution were amended. The regime's justifications for these amendments were to strengthen the president's emergency powers and expand the council of ministers' cooperation with the president in exercising executive power.<sup>175</sup> The regime claimed that it was an attempt to modernise the constitution and re-establish the separation of powers, but the main amendments were alleged to reinforce the dictatorial spirit of the regime.<sup>176</sup>

Article 179 of the 2007 amendments gave power to the president to refer terrorism offences to military courts. The broad definition of terrorism opened the door for breaches to human rights. It gave the government the authority to issue a counterterrorism law that could suspend constitutional protections relating to arrests, detention, searching houses and people's communications. This went beyond the limitations under international human rights law.<sup>177</sup>

Article 179 gave the executive the authority to suspend the rights mentioned in Articles 41, 44 and 45 of the 1971 constitution. These articles guaranteed people the right of freedom and movement, regulated home searches and protected the lives and privacy of people. However, these rights were removed under the guise of fighting terrorism, which signals a totalitarian spirit.<sup>178</sup> In addition, Article 179 violated the natural justice principles mentioned in Article 68 of the 1971 constitution.<sup>179</sup> Article 68 granted every citizen the right to submit their case to a competent judge. The state also guaranteed free access to the court. However, in the case of a military court, the citizen's rights would be violated, and accused people would have fewer opportunities to lodge legal appeals, all in the name of fighting terrorism.<sup>180</sup>

In conclusion, the new amendments constrained the opposition and made it weaker because it had no voice. At the same time, the amendments strengthened the power of the National Democratic Party, which remained the ruling party until 2011. By

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<sup>175</sup> Elliesie, above n 96, 6.

<sup>176</sup> Nathalie Bernard Maugiron, 'The 2007 Constitutional Amendments in Egypt and Their Implications on the Balance of Power' (2008) *Arab Law Quarterly* 397–417.

<sup>177</sup> International Federation for Human Rights, above n 174, 11.

<sup>178</sup> Nathan J Brown, Michele Dunne and Amr Hamzawy, *Egypt's Controversial Constitutional Amendments*, Carnegie Endowment for International Peace (March 2007) 8.

<sup>179</sup> *Ibid* 2.

<sup>180</sup> Jason Brownlee, 'A New Generation of Autocracy in Egypt' (Winter 2007) 14(1) *Brown Journal of World Affairs* 81.

May 2008, emergency law continued to serve an extension of another two years, although once again, the government promised to stop renewing it. The Egyptian government justified declaring a state of emergency to protect the public's safety and national security, and to combat terrorism. However, in reality, the extension and the permanent state of emergency gave power to the regime to combat political violence and criminalise forms of non-violent opposition.<sup>181</sup> In 2010, the government extended the emergency law for a further two years through Presidential Decree No 193. This was mainly justified because of drug trafficking and terrorism. Meanwhile, the decree specified that only Article 3(1) and Article 3(2) could be applied.<sup>182</sup> However, these two articles were highly criticised because they entailed broader meanings of the word terrorism.<sup>183</sup> It was also feared that these two sections of the emergency law would further restrict citizens from freedom of assembly and association. Emergency law provisions gave the government the authority to arrest people and keep them in administrative detention for long periods. In May 2010, the Egyptian parliament approved the extension of the state of emergency for two years, with the majority of members of parliament (MPs; 308 members) voting for the bill and 103 MPs voting against it (43 MPs were not available during the voting process). The total number of MPs was 454.<sup>184</sup>

#### *4.5.10.6 Collapse of Mubarak*

On 25 January 2011, the Egyptian revolution was launched, with the main aim of abolishing the state of emergency law and overthrowing President Mubarak. On 28 January 2011, angry protesters against Mubarak and his regime set fire to the main headquarters of the National Democratic Party, which was viewed as a symbol of the regime's control in Egypt, as well as the symbol of an autocratic regime. For example, the same building was used in 1966, during Nasser's regime, as a house for the Arab Socialist Union. Sadat and Mubarak then used it as the National Democratic

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<sup>181</sup> Human Rights Watch, *False Freedom—Online Censorship in the Middle East and North Africa* (November 2005) <<https://www.hrw.org/reports/2005/mena1105/>>.

<sup>182</sup> Amnesty International, above n 172, 5.

<sup>183</sup> Michael Slackman, 'Egyptian Emergency Law is Extended for 2 Years', *New York Times* (online), 11 May 2010 <[http://www.nytimes.com/2010/05/12/world/middleeast/12egypt.html?\\_r=0](http://www.nytimes.com/2010/05/12/world/middleeast/12egypt.html?_r=0)>.

<sup>184</sup> 'Cairo Extends Emergency Law for Two Years', *Al-Arabiya News* (online), 11 May 2010 <<http://www.alarabiya.net/articles/2010/05/11/108272.html>>.



Party building.<sup>185</sup> Under Law No 144 of 2006, the building was deemed to have architectural heritage value; however, after many objections from the Ministry of Culture, the government decided in 2015 to demolish the building because the cost of repair would be greater than demolishing it.<sup>186</sup>

On 11 February 2011, Mubarak resigned after 18 days of clashes between demonstrators and police, in which 850 people died and 6,500 were injured. Ultimately, the National Democratic Party was banned from political life in April 2011.<sup>187</sup> A state of emergency was declared, and the military forces assumed power.<sup>188</sup> To control the country, the military issued a number of constitutional declarations to consolidate its power. Under pressure from angry Egyptians, the military agreed to form the first constitution after 2011.

## **4.6 Constitutional Declarations of 2011–2013 and Constitution of 2012**

It is important to examine the constitutional declarations from 2011 onwards to show how the military overrode the executive, the legislature and the judiciary and prevented the new president from performing his authority.

### **4.6.1 Constitutional declaration of 30 March 2011**

When President Mubarak resigned, Vice President Omar Suliman transferred the power to the minister of the defence as the head of the SCAF. The military, as the main power in Egypt, granted itself massive power, suspending the 1971 constitution and appointing a legal expert committee to draft amendments to the 1971 constitution.<sup>189</sup> On 30 March 2011, the military issued a constitutional declaration<sup>190</sup>

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<sup>185</sup> Ahmed Ateyya, 'Egypt Demolishes Mubarak's Party Headquarters', *Al-Monitor* (online), 11 June 2011 <<http://www.al-monitor.com/pulse/originals/2015/06/egypt-cairo-building-mubarak-demolition-architecture.html>>.

<sup>186</sup> Ibid.

<sup>187</sup> 'Egypt's National Democratic Party Members Can Stand for Office, Says Supreme Court', *The Guardian* (online), 16 November 2011 <<http://www.theguardian.com/world/2011/nov/16/egypt-national-democratic-party-members>>.

<sup>188</sup> Wahba, above n 158, 1.

<sup>189</sup> Tamer Moustafa, 'Drafting Egypt's Constitution: Can a Legal Framework Revive a Flawed Transition?' (Working Paper No 1, Brookings Doha Center, March 2012) 3 <<https://ssrn.com/abstract=2026954>>.

<sup>190</sup> Kristen A Stilt, 'The End of "One Hand": The Egyptian Constitutional Declaration and the Rift Between the "People" and the Supreme Council of the Armed Forces' (Working Paper No 208, Northwestern University School of Law, 2012) 3.

that contained 63 articles. The most controversial articles were Articles 56 and 59, which extended the military's authority and strengthened its position.

Article 56 of the constitutional declaration gave authority to the SCAF to make legislation, appoint the People's Assembly and appoint cabinet administrators. It also had the ability to reduce or pardon punishment according to the law. In short, the SCAF retained all executive, legislative and judicial power.

Article 59 gave authority to the future president to declare a state of emergency. Taking into consideration the opinions of the cabinet, the declaration of a state of emergency should be submitted to the assembly within seven days. If the assembly was not in its regular session, it should be called immediately to discuss the matter. If the assembly had been dissolved, the matter should be reviewed by the new assembly at its first meeting, whereby the assembly would need to vote, and the declaration would need approval from the majority of the People's Assembly. Further, Article 59 specified that the state of emergency should not exceed six months, and it could be extended only with a public referendum and the people's agreement.

Thus, Articles 56 and 59 of the constitutional declaration violated the 1971 constitution in relation to the separation of powers and the independence of the judiciary. The main purpose of these articles was to weaken and minimise the power of future democratic presidents, weaken elected democratic parliaments and interfere with the judicial branch.

#### **4.6.2 Military expanded the scope of emergency**

The military, as the head of the country, expanded the scope of emergency law to maintain its tight grip and protect its interests, as follows:

1. After resuming full power, the military promised to abandon emergency law; however, instead of doing so, it expanded the scope of emergency and added thuggery as a justification for retaining the state of emergency. The military amended the Egyptian Penal Code through its legislative power, defining 'thuggery' as 'displaying force or threatening to use force against victim

with the intention to intimidate or cause harm to him or his property'.<sup>191</sup> Many revolutionaries consider themselves victims not protected from the government.<sup>192</sup> The military used vague and elastic definitions such as 'thuggery' to crack down on peaceful civilians and constrain the opposition.

2. In September 2011, the SCAF issued a constitutional declaration, No 193 of September 2011, and inserted other clauses into the law. Some of the clauses included aggression against freedom of work, offences for sabotaging factories and holding up transport, blocking roads, and spreading false news.<sup>193</sup> Some of these strategies had been successful in paralysing the government during the 18-day uprising against Mubarak. For that reason, the military felt that there was a need to prohibit such offences. However, it made the situation worse, and the unrest continued.<sup>194</sup>
3. On 4 June 2012, the minister of justice issued Decree No 4991, which gave authority to the military to arrest civilians. The decree stated that:

without prejudice to the mandate set out in the code of military justice law 25 of 1966, military police and military intelligence officers granted a law enforcement role by the minister of defence shall have judicial arresting authority for crimes committed by non-military personnel.<sup>195</sup>

Decree No 4991 constituted the use of military courts to try civilians and perform the function of normal courts. It also granted the military amnesties to safeguard itself from accountability.<sup>196</sup>

The Egyptian government justified its extraordinary measures that suspended normal rules, claiming that it was necessary to fight terrorism. However, in reality, the

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<sup>191</sup> Human Rights Watch, *Egypt: Military Trials Usurp Justice System: At Least 76 Protesters Among Those in Prison After Unfair Proceedings* (29 April 2011)

<<https://www.hrw.org/news/2011/04/29/egypt-military-trials-usurp-justice-system>>.

<sup>192</sup> Marc Lynch, *Ending Egypt's State of Emergency (Sort of)*, Foreign Policy (24 January 2012) <<http://foreignpolicy.com/2012/01/24/ending-egypts-state-of-emergency-sort-of/>>.

<sup>193</sup> Sharif Abedl Kouddous, *Egyptian Military Council Enforces Hated Emergency Law*, Pulitzer Center on Crisis Reporting (September 2011) <<http://pulitzercenter.org/reporting/egypt-emergency-law-mubarak-cairo-revolution-journalism>>.

<sup>194</sup> Amnesty International, *Egypt: Emergency Law Biggest Threat to Rights Since '25 January Revolution'* (15 September 2011) <<https://www.amnesty.org/en/latest/news/2011/09/egypt-emergency-law-biggest-threat-rights-january-revolution/>>.

<sup>195</sup> Human Rights Watch, *Egypt: Military Power Grab Creates Conditions of Abuse* (21 June 2012) <<https://www.hrw.org/news/2012/06/21/egypt-military-power-grab-creates-conditions-abuse>>.

<sup>196</sup> Michael R Gibson, 'International Human Rights Law and the Administration of Justice Through Military Tribunals: Preserving Utility While Precluding Impunity' (2008) 4(1) *Journal of International Law and International Relations* <[http://www.jilir.org/docs/issues/volume\\_4-1/4-1\\_1\\_GIBSON\\_FINAL.pdf](http://www.jilir.org/docs/issues/volume_4-1/4-1_1_GIBSON_FINAL.pdf)>.

measures were designed to give the executive the ability to tackle domestic problems.<sup>197</sup>

The military used its legislative and judicial powers to control the country and protect its members from any actions against the law under the guise of fighting terrorism or thugs. This resulted in widespread breaches of human rights. In January 2012, the military authority announced a partial lifting of the state of emergency law, except in cases of thuggery.<sup>198</sup> The concept was highly criticised because of its vague and ill-defined notion. Many peaceful demonstrators and members of the opposition were dealt with as thugs during this period. In May 2012, the emergency law had expired and was expected to be nonoperational. Meanwhile, Law No 162 of 1958 had not been abolished. In May 2012, the Egyptian assembly approved amendments to the Code of Military Justice, which ended the right of the president to refer civilians to military courts under a state of emergency but failed to end the military's authority to try civilians.<sup>199</sup>

#### **4.6.3 Constitutional declaration of 17 June 2012**

The SCAF made a controversial declaration to remove a significant amount of power from the democratically elected president by limiting his power and expanding the role of the military. The 17 June constitutional declaration made the military unaccountable and wrenched back oversight of the political system.<sup>200</sup>

The constitutional declaration granted the military a self-governing authority without any external oversight, and the military tried to control the country before the civilian-elected president resumed power. The constitutional declaration granted the military the authority to issue legislative bills, regulations and decisions.

Articles 53 and 60 of the constitutional declaration of 17 June 2012 were controversial. Article 53 granted the military the responsibility for all issues related

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<sup>197</sup> Michelle Pace and Peter Seeberg, *The European Union's Democratization Agenda in the Mediterranean* (Routledge, 2009) 104.

<sup>198</sup> 'ICJ Position Paper on the Situation in Egypt' (Paper presented at the International Commission of Jurists, Geneva, 5 July 2012) 8 <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/07/Egypt-Position-Paper-05.07.12-FINAL.pdf>>.

<sup>199</sup> Human Rights Watch, *Egypt: New Law Keeps Military Trials of Civilians* (7 May 2012) <<https://www.hrw.org/news/2012/05/07/egypt-new-law-keeps-military-trials-civilians>>.

<sup>200</sup> Nathan J Brown, *An Instant Analysis of Egypt's New Constitution*, Carnegie Endowment for International Peace (18 June 2012) <<http://carnegieendowment.org/2012/06/18/instant-analysis-of-egypt-s-new-constitution>>.

to the armed forces. If the president wanted to declare a war, he first had to seek the SCAF's approval.<sup>201</sup> Article 60 granted power to the military authority to assign the Egyptian Constituent Assembly to write the next constitution if the current assembly failed to complete the current constitution.<sup>202</sup> The constitutional declarations showed that the military would not give up any of its power to a civilian president who might pose a danger to the military's political and economic empire.

Although the parliament tried to prevent the violation of the right to a fair trial, it failed to limit the broad discretion of the military,<sup>203</sup> and it failed to end the emergency state security courts.<sup>204</sup> The military used its tight grip on legislative and judicial power to again minimise the rule of the democratic parliament.

In June 2012, the Egyptian parliament (November 2011–January 2012) was dissolved by the administrative court, which decided that the election of 50 parliamentarians and 50 non-parliamentarians violated the constitutional declaration issued by the SCAF in March 2011,<sup>205</sup> which prohibited party candidates from running for individual seats.<sup>206</sup> On 15 June 2012, the SCAF issued Decree No 350, which demanded that the Supreme Constitutional Court, in response to appeal No 20/2012J/C, declare the parliament null and void as of Friday 15 June 2012.<sup>207</sup>

On 30 June 2012, Morsi was elected as president, and on 8 July 2012, under Decree No 11 of 2012, he recalled the parliament. However, the Supreme Constitutional Court decided on 9 July 2012 that its decisions were final and not subject to appeal.<sup>208</sup> Dissolving the Egyptian parliament was the first step towards the military regaining power after 2011, without any constraints. The aim was to prevent the

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<sup>201</sup> Zaid Al-Ali, Christopher Roberts and Amos Toh, *The Egyptian Constitutional Declaration*, International Institute for Democracy and Electoral Assistance (17 June 2012) 2–8.

<sup>202</sup> 'SCAF Expands its Power with Constitutional Amendments', *Egypt Independent* (online), 17 June 2012 <<http://www.egyptindependent.com/news/scaf-expands-its-power-constitutional-amendments>>.

<sup>203</sup> Human Rights Watch, *Egypt: New Law Keeps Military Trials of Civilians* (7 May 2012) 1 <[http://www.law.yale.edu/documents/pdf/conference/Egypt\\_New Law Keeps Military Trials of Civilians.pdf](http://www.law.yale.edu/documents/pdf/conference/Egypt_New_Law_Keeps_Military_Trials_of_Civilians.pdf)>.

<sup>204</sup> Anahita Ferasat and Marya Farah, 'The Year in Review: An Annual Publication of the ABA/Section of International Law: Middle East and North Africa' (2013) 47 *SMU Dedman School of Law* 647–648.

<sup>205</sup> *Ibid* 649.

<sup>206</sup> Daniel Pipes and Cynthia Farahat, 'Egypt's Real Ruler: Mohamed Tantawi', *The Washington Times* (online), 11 July 2012 <<http://www.danielpipes.org/11584/mohamed-tantawi>>.

<sup>207</sup> Mohamed Kandil, 'The Role of Parliament in the Egyptian Constitution' (Paper presented at Global Partners and Associates) 19 <<https://www.gpgovernance.net/wp-content/uploads/2013/08/Publication-1-Full-EN.pdf>>.

<sup>208</sup> Australian Government Refugee Review Tribunal, *Egypt Political Update* (13 July 2012) 5–7.

civilian president from practicing his full power. On 22 November 2012, Morsi issued a constitutional declaration in an attempt to minimise the power given to the military by assuming supreme power over the procedure of drafting a new constitution and assigning a new public prosecutor.<sup>209</sup>

#### **4.6.4 Constitutional declaration of 22 November 2012**

On 22 November 2012, Morsi issued a constitutional declaration to minimise the rule of the military and to build new legitimacy based on a constitution to promote the principles of legitimacy, freedom and justice.<sup>210</sup> The declaration came in seven articles, as follows:

Article I: Reopen the investigations and prosecutions in the cases of the murder, the attempted murder and the wounding of protesters as well as the crimes of terror committed against the revolutionaries by anyone who held a political or executive position under the former regime, according to the Law of the Protection of the Revolution and other laws.<sup>211</sup>

Morsi established a committee to review all cases referred to the military courts between January 2011 and 30 June 2012 and ordered all political prisoners to be released.<sup>212</sup>

Article II: Previous constitutional declarations, laws, and decrees made by the president since he took office on 30 June 2012, until the constitution is approved and a new People's Assembly [lower house of parliament] is elected, are final and binding and cannot be appealed by any way or to any entity. Nor shall they be suspended or cancelled and all lawsuits related to them and brought before any judicial body against these decisions are annulled.<sup>213</sup>

Article III: The prosecutor-general is to be appointed from among the members of the judiciary by the President of the Republic for a period of four years commencing from the date of office and is subject to the general conditions of being appointed as a judge and should not be under the age of 40. This provision applies to the one currently holding the position with immediate effect.<sup>214</sup>

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<sup>209</sup> Reem Abou-El-Fadl (ed), *Revolutionary Egypt: Connecting Domestic and International Struggles* (Routledge Studies in Middle Eastern Democratization and Government, 2015) 124.

<sup>210</sup> 'English Text of Morsi's Constitutional Declaration', *Ahram Online* (online), 22 November 2012 <<http://english.ahram.org.eg/News/58947.aspx>>.

<sup>211</sup> *Ibid.*

<sup>212</sup> International Commission of Jurists, *Egypt's New Constitution: A Flawed Process; Uncertain Outcomes* (5 November 2012) 44 <<http://www.refworld.org/pdfid/530ef8a34.pdf>>.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

Article IV: The text of the article on the formation of the Constituent Assembly in the 30 March 2011 Constitutional Declaration that reads, ‘it shall prepare a draft of a new constitution in a period of six months from the date it was formed’ is to be amended to ‘it shall prepare the draft of a new constitution for the country no later than eight months from the date of its formation’.<sup>215</sup>

Article V: No judicial body can dissolve the Shura Council (upper house of parliament) or the Constituent Assembly.<sup>216</sup>

Article VI: The President may take the necessary actions and measures to protect the country and the goals of the revolution.<sup>217</sup>

Article VII: This Constitutional Declaration is valid from the date of its publication in the official gazette.<sup>218</sup>

Morsi annulled the SCAF’s supplementary constitutional declaration, retired Field Marshal Tantawi, the defence minister and the army chief of staff Sami Anan. In addition, he deprived the courts of the right to dissolve the upper house of the assembly and the constitutional assembly, and made the Egyptian Constituent Assembly immune from judicial review.<sup>219</sup> Morsi was granted the right to issue any decrees to protect the Egyptian revolution.<sup>220</sup> His justification behind the new declaration was to protect the January 25 Revolution from the remnants and the thugs of the old regime, and to facilitate the retrial of Mubarak and his entire corrupt regime.

The deep state opponents (including secular and liberal parties) and judicial bodies criticised Morsi’s declaration because it granted him absolute power and put him above the courts.<sup>221</sup> Morsi’s opponents criticised the use of vague statements and standby emergency rules that used phrases such as ‘necessary procedures and measures’, ‘the life of the nation’, ‘national unity’, ‘safety of the nation’ and ‘a danger threatening the January 25 Revolution, 2011’ to grant himself absolute

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<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> Mehran Kamrava, *Beyond the Arab Spring: The Evolving Ruling Bargain in the Middle East* (Oxford University Press, 2014) 177.

<sup>220</sup> Mahmoud N Musa and Yana Korobko, *The Shifting Global Balance of Power: Perils of a World War and Preventive Measures* (Xlibris Corporation, 2014) 141.

<sup>221</sup> David D Kirkpatrick and Mayy El Sheikh, ‘Citing Deadlock, Egypt’s Leader Seizes New Power and Plans Mubarak Retrial’, *New York Times* (online), 23 November 2012 <[http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html?\\_r=0](http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html?_r=0)>.

power.<sup>222</sup> On 8 December 2012, Morsi withdrew his declaration but kept the referendum on the new constitution.<sup>223</sup>

#### 4.6.5 Egyptian Constitution of 2012

Morsi signed a new constitution on 26 December 2012. It was approved by the Constituent Assembly on 30 November 2012 and passed by a referendum held on 15–22 December 2012, with 68.3% of the population voting yes. This constitution was controversial because it granted the military the right to try civilians for any offence that harmed the military. Further, it stated that the defence minister should be from a military background, which showed that the military was still in control. The constitution also granted workers and farmers at least 50% of the seats in parliament.

In terms of emergency law, Article 148 of the 2012 constitution gave authority to the president to declare a state of emergency after consulting with the cabinet. The declaration had to be submitted to the House of Representatives within seven days. If the House of Representatives was not in session, it should be called back to session immediately, and if it had been dissolved, the declaration had to be submitted to the Shura Council within seven days. The declaration should be approved by the majority of the members of the House of Representatives.<sup>224</sup>

Article 148 specified that the time limit for the state of emergency should not exceed six months. It could be extended for a longer period at the end of those six months, but only with the approval of a public referendum. Article 148 did not specify whether a simple majority or a majority vote was needed to approve the extension of the state of emergency by public referendum. Article 148 protected the House of Representatives from being dissolved during a state of emergency.

In January 2013, a state of emergency was declared by Morsi for one month in three cities—Port Said, Suez and Ismailia—with a curfew between 9 pm until 6 am.<sup>225</sup>

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<sup>222</sup> Bassem Sabry, 'Absolute Power: Morsi Decree Stuns Egyptians', *Al-Monitor* (online), 22 November 2012 <<http://www.al-monitor.com/pulse/originals/2012/al-monitor/morsi-decree-constitution-power.html>>.

<sup>223</sup> 'Q&A: Egypt Constitutional Crisis' *BBC News* (online), 24 December 2012 <<http://www.bbc.com/news/world-middle-east-20554079>>.

<sup>224</sup> Article 148 of 2012 Constitution <[http://www.constitutionnet.org/files/final\\_constitution\\_30\\_nov\\_2012\\_-english-\\_idea.pdf](http://www.constitutionnet.org/files/final_constitution_30_nov_2012_-english-_idea.pdf)>.

<sup>225</sup> 'Morsy Declares 30-Day State of Emergency in Port Said, Suez and Ismailia', *Egypt Independent* (online), 27 January 2013 <<http://www.egyptindependent.com/news/morsy-declares-30-day-state-emergency-port-said-suez-and-ismailia>>.



Morsi took this step after four days of clashes between police and protesters, who were protesting against Morsi and police brutality. The clashes started in Port Said after a court handed down death sentences to 21 local soccer players. Most of the 30 people who died in the protests were shot by police using live ammunition and tear gas.<sup>226</sup> The state of emergency declaration gave the police the authority to detain civilians for up to 30 days without having the right to a trial and judicial review. Moreover, the law also gave the police the authority to transfer civilians to military courts.<sup>227</sup> On 3 July 2013, the military resumed power after successfully overthrowing Morsi.

#### **4.6.6 Constitutional declaration of 8 July 2013**

On 3 July 2013, the Egyptian military deposed Morsi and suspended the 2012 constitution.<sup>228</sup> The military issued a constitutional declaration that set out the process of drafting a new constitution and structured the authority of the country during the interim period.<sup>229</sup> The military appointed interim President Adly Mansour to administrate the transition period, starting from the day of issuing the constitutional declaration until the presidential election.<sup>230</sup>

The most controversial articles in the 2013 constitutional declaration were Articles 9, 22 and 27. Article 9 allowed for civilians to be tried before military courts.<sup>231</sup> Article 22 enshrined the military forces' authority, giving them exclusive authority in any cases relating to state security. This article established the National Defence Council to control all aspects of state security, seizing both legislative and judicial power. Article 27 of the 2013 constitutional declaration gave power to the president of the

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<sup>226</sup> David D Kirkpatrick, 'Egypt's Leader Declares State of Emergency in Three Cities', *New York Times* (online), 27 January 2013 <<http://www.nytimes.com/2013/01/28/world/middleeast/morsi-declares-emergency-in-3-egypt-cities-as-unrest-spreads.html>>.

<sup>227</sup> Human Rights Watch, *Egypt: Emergency Powers Excessive—Detention Without Judicial Review; Trials Lacking Appeal Rights* (30 January 2013) <<https://www.hrw.org/news/2013/01/30/egypt-emergency-powers-excessive>>.

<sup>228</sup> Andrej Zwitter, *Egypt's State of Emergency Revisited* (University of Groningen, 6 March 2014) <<http://constitutional-change.com/egypts-state-of-emergency-revisited/>>.

<sup>229</sup> Jorg Fedtke, *Comparative Analysis Between the Constitutional Processes in Egypt and Tunisia—Lessons Learnt—Overview of the Constitutional Situation in Libya*, European Parliament's Committee on Foreign Affairs (15 April 2014) 5.

<sup>230</sup> 'Egypt's Constitutional Declaration Issued, Defines Transitional Period', *Ahram Online* (online), 8 July 2013 <<http://english.ahram.org.eg/NewsContent/1/64/76065/Egypt/Politics-/Egypts-constitutional-declaration-issued,-defines-.aspx>>.

<sup>231</sup> Bassem Sabry, 'First Look at Egypt's Constitutional Declaration', *Al-Monitor* (online), 8 July 2013 <<http://www.al-monitor.com/pulse/originals/2013/07/egyptian-constitutional-declaration-post-morsi-transition.html>>.

republic to declare a state of emergency after obtaining approval from the cabinet rather than the National Defence Council. Article 27 did not require the approval of the assembly for a state of emergency because it had already been dissolved. In addition, Article 27 did not require the president to submit the emergency declaration to the newly elected parliament. Further, Article 27 specified a state of emergency period not exceeding three months, and the second extension could be approved by a public referendum. In summary, Article 27 gave the president the authority to declare a state of emergency with the approval of the executive branch, but without the need for parliamentary approval. The president resumed executive and legislative authority without any real authority for the judiciary branch to check on his actions. This violated the checks and balances and the separation of powers.

After the 2013 coup and the overthrow of Morsi, interim President Mansour declared a state of emergency in August 2013 for one month. He then extended it for two months and granted power to the security officers for use against anti-coup supporters.<sup>232</sup>

#### **4.6.7 Egyptian Constitution of 2014**

After overthrowing Morsi, the new regime suspended the 2012 constitution and introduced the 2014 constitution, which is still in place today.

Article 154 of the 2014 constitution gave authority to the president to declare a state of emergency after consulting with the cabinet. The declaration must be presented to the House of Representatives within seven days. If the House of Representatives is not in session, it must be called immediately to discuss the declaration. The declaration must be approved by the majority of the House of Representatives, with a specified time limit not to exceed three months to declare a state of emergency.

A state of emergency can be extended once, but only after obtaining approval from two-thirds of the house members. If the House of Representatives has not been elected, the cabinet has the authority to approve it until a new House of Representatives is elected. The declaration should be submitted to the newly elected House of Representatives in its first session. In addition, while the state of emergency is in place, the House of Representatives may not be dissolved.

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<sup>232</sup> Sarah El Deeb, 'Egypt Extends State of Emergency Laws as Security Forces Expand Military Crack Down', *The World Post* (online), December 2013.

Article 156 of the 2014 constitution gives authority to the president to issue decrees that have the full force of law if the House of Representatives is not elected and whenever the House of Representatives is not in session. Article 101 of the 2014 constitution states that the House of Representatives is a legislative authority that approves general policy, general economic and social development, and the state budget. Its main function is to oversee and monitor the executive authority's actions.

According to Article 102 of the 2014 constitution, the House of Representatives should be composed of 450 members who are elected directly via a secret public ballot for a period of five years. However, the executive branch has found ways to weaken the Legislative Assembly by interfering in its work and reducing the checks and balance. The most controversial component of Article 102 grants the president the authority to appoint 5% of the House of Representatives, which means that the president can interfere in the legislative body, which is supposed to be an independent branch. Appointing some of the House of Representatives should be prohibited because the checks and balances on government actions will be violated.

On 25 October 2014, the National Defence Council declared a state of emergency in North Sinai for three months, including a curfew from 5 pm to 7 am, giving the prime minister and law enforcers the necessary power to protect civilians.<sup>233</sup> On 26 April 2015, President El-Sisi declared a state of emergency in North Sinai for three months following an attack on the Egyptian army in the province.<sup>234</sup> However, the new declaration did not extend the previous declaration of the state of emergency in October in North Sinai. It was a separate decision that encompassed different areas in the state (El-Arish, Rafah and Sheikh Zuwied).<sup>235</sup> In April 2017, President El-Sisi declared a state of emergency to cover the entire country for a period of three months after a meeting with the National Defence Council following an attack on Coptic churches in Alexandria and Tanta on 9 April 2017. The president also created the Supreme Council to counter terrorism and extremism and to fight the growing

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<sup>233</sup> 'State of Emergency Declared in Part of Sinai After Attack Kills 31 Soldiers', *Ahram Online* (online), 24 October 2014 <<http://english.ahram.org.eg/News/113857.aspx>>.

<sup>234</sup> Mohamed Hassan Shaban, 'Egypt Declares "New" State of Emergency in North Sinai', *Asharq Al-Awsat* (online), 26 April 2015 <<https://eng-archive.aawsat.com/mohamed-hassan-shaban/news-middle-east/egypt-declares-new-state-of-emergency-in-north-sinai>>.

<sup>235</sup> *Ibid.*

numbers of militant insurgencies in Egypt.<sup>236</sup> On 13 October 2017, the president extended the state of emergency to cover the entire country for another three months to combat acts of terrorism.

#### **4.7 Legal Framework for Combating Terrorism and the State of Emergency in Egypt**

Countering terrorism has been one of the government's regular justifications for extending a state of emergency. Egypt has been governed by a continuous renewal of successive states of emergency, effectively making it a permanent state. Authorities have issued a number of orders giving power to the police to arrest and detain anyone who has evidence of, or who is suspected of, subversive activity. Vague concepts such as 'securing the public security', 'public order', 'threatening the national unity' and 'social stability' are commonly used to justify the actions of the police. In reality, regimes in Egypt have used emergency laws to heavily suppress peaceful civilian opponents. Such laws have granted regimes the power to arrest and detain people and impose heavy sentences, including the death penalty.

To expand and enshrine its authority, the government amended the Penal Code and the Code of Criminal Procedure and introduced terrorism as a crime via Law No 97 of 1992.<sup>237</sup> This anti-terrorism law has been used to arrest peaceful political opponents and detain people without referral to the Public Prosecution Office.<sup>238</sup> A broad definition of terrorism has been used to detain suspects under indefinite surveillance without a judicial review or a court order.<sup>239</sup> In 2006, President Mubarak promised to establish a committee to prepare anti-terrorism legislation and replace emergency laws with anti-terrorism laws. However, the committee did not produce a

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<sup>236</sup> 'Egypt Declares State of Emergency After Deadly Church Attack', *BBC News* (online), 10 April 2017 <<http://www.bbc.com/news/world-middle-east-39548645>>.

<sup>237</sup> Mai El-Sadany, *Legislating Terror in Egypt*, The Tahrir Institute for Middle East Policy (19 July 2014) <<https://timep.org/esw/articles-analysis/legislating-terror-in-egypt/>>.

<sup>238</sup> Human Rights Watch, *Egypt: Mass Arrests and Torture in Sinai* (21 February 2005) <<https://www.hrw.org/sites/default/files/reports/egypt0205.pdf>>.

<sup>239</sup> Human Rights Watch, *Egypt: Counterterrorism Law Erodes Basic Rights—Broad 'Terrorist Acts' List May Criminalize Civil Disobedience* (August 2015) <<https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>>.

separate anti-terrorism legislation,<sup>240</sup> and emergency law was renewed several times after that.<sup>241</sup>

In 2013, the interim government introduced a new anti-terrorism law and new amendments to the Egyptian Penal Code, which were approved by the Cabinet of Egypt. However, they were not ratified by interim President Mansour and were sent back to the Ministry of Justice. This drafted law was heavily criticised by human rights organisations and non-governmental organisations because of its broad definition of terrorism, which gave the regime the power to establish a special terrorist crimes prosecution unit and a separate criminal court for any crimes related to terrorism.<sup>242</sup>

The military authority's power continues to be enshrined in the 2014 constitution under the concept of fighting terrorism. Article 237 states that:

The state commits to fighting all types and forms of terrorism and tracking its sources of funding within a specific time frame in light of the threat it represents to the nation and citizens, with guarantees for public rights and freedoms. The law organises the provisions and procedures of fighting terrorism, and fair compensation for the damages resulting from it and because of it.<sup>243</sup>

Article 237 gives power to the government to fight all types of terrorism and track its resources without defining terrorism or the scope of power given to the government.<sup>244</sup> In addition, Article 86 in the Egyptian Penal Code provides a vague and broad definition of terrorism:

terrorism, in applying the provisions of this law, shall mean all use of force, violence, threatening, or frightening, to which a felon resorts in execution of an individual or collective criminal scheme, with the aim of disturbing public order, or exposing the safety and security of society to danger, if this is liable to harm the persons, or throw horror among them, expose their life, freedom or security to danger, damage the environment, causes detriments to communications, transport, property and funds, buildings, public or private properties, occupying or taking possession of them, preventing or obstructing the work of public authorities,

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<sup>240</sup> Human Rights Watch, above n 238.

<sup>241</sup> Jeannie Sowers and Chris Toensing, *The Journey to Tahir: Revolution, Protest, and Social Change in Egypt* (Verso, 2012) 166.

<sup>242</sup> Ibid.

<sup>243</sup> Article 237 of the 2014 constitution.

<sup>244</sup> Mara Revkin, 'Worse Than Mubarak: Egypt's New Constitution and the Police State' *Foreign Affairs* (11 February 2014) <<https://www.foreignaffairs.com/articles/egypt/2014-02-11/worse-mubarak>>.

worship houses, or educational institutions, or interrupting the application of the constitution, laws, or statutes.<sup>245</sup>

Article 86A of the Egyptian Penal Code provides that for anyone caught supplying terrorist groups with weapons, ammunitions, explosives or information, the penalty will be execution or life imprisonment with hard labour. Article 86 bis A provides for harsh punishments, including the death penalty or permanent hard labour, for any group, association, corporation, organisation or band using terrorism as one of its methods. The abovementioned punishments can be applied to any persons involved in providing these groups with arms, ammunitions, explosives, materials, machines, funds, property or information while being aware of their purpose.

Human rights organisations have criticised Article 86 because the definition of terrorism is ambiguous and contains a variety of different punishable acts. The article also violates the ICCPR by increasing the number of crimes punishable with capital sentences. It prohibits the ability to punish an act with the death penalty after the signature of the covenants.<sup>246</sup> The expansion of the acts punishable in the name of fighting terrorism affects peaceful opponents and their freedom of expression, including peaceful activities and protesting. This expansion means that the government will now deem any peaceful political activities to be a threat and a disturbance to the peace and safety of society. Therefore, any peaceful protest, strike or demonstration will be considered a terrorist act, regardless of whether violence is used.<sup>247</sup> Article 86 increases the duration of detention before the defendant is transferred to court to six months for misdemeanours, 18 months for felonies and two years for felonies punishable by the death sentence.<sup>248</sup>

The extension of emergency law will not end acts of terrorism. Thus, to protect the country from any terrorist acts, there should be a balance between respecting civilians' rights and protecting public order by offering neutral courts.

On 24 February 2015, President El-Sisi issued a new decision concerning Law No 8 of 2015, on the organisation of terrorist entities. The law consists of 10 articles with

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<sup>245</sup> Article 86 of Law No 58 of 1937 Issuing the Penal Code (as Amended up to Law No 95 of 2003) (15 October 1937) <<http://www.wipo.int/wipolex/en/details.jsp?id=13573>>.

<sup>246</sup> International Federation for Human Rights, *Egypt: Counter-Terrorism Against the Background of an Endless State of Emergency* (January 2010) 12–13.

<sup>247</sup> *Ibid* 13.

<sup>248</sup> *Ibid*.

vague definitions of terrorist entities and terrorist persons.<sup>249</sup> The law applies to anyone who threatens public order by any means, giving the authorities the power to freeze their property and prevent them from travelling. The process involves obtaining approval from a panel of judges without a real trial.<sup>250</sup> Article 1 of Law No 8 defines a terrorist entity as:

Any group practicing or intending to advocate by any means to disturb public order or endanger the safety of the community and its interests or risk its security or harm national unity ... Groups and individuals can appeal their listing through the Court of Cassation within 60 days of being listed.<sup>251</sup>

This law has been criticised because of the violation of constitutional rights affecting the right of the defendant to appeal. It also uses vague and elastic concepts, which makes it difficult to differentiate between terrorist and non-terrorist groups.<sup>252</sup> According to Amnesty International, the new law will be yet another tool for the regime to crush all forms of opposition.<sup>253</sup> It enshrines the permanent state of emergency, but in an unofficial way.<sup>254</sup> Thus, under the terrorism law, journalists, bloggers, human rights activists and peaceful demonstrators can be arrested and detained.<sup>255</sup> Nadim Houry, the director of the terrorism and counterterrorism programs of Human Rights Watch, stated that:

With this sweeping new decree, Egypt's President has taken a big step toward enshrining a permanent state of emergency as the law of the land. The government

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<sup>249</sup> Enas Hamed, 'Egypt's Terrorism Law Whittles Down Opposition', *Al-Monitor* (online), 2 March 2015 <<http://www.al-monitor.com/pulse/originals/2015/03/egypt-sisi-anti-terrorism-law-opposition.html>>.

<sup>250</sup> Associated Press, 'Egyptian President Issues New Anti-Terrorism Law', *Daily Mail Australia* (online), 25 February 2015 <<http://www.dailymail.co.uk/wires/ap/article-2966525/Egyptian-court-clears-Mubarak-era-officials-corruption.html>>.

<sup>251</sup> Nourhan Fahmy, 'President Approves "Terrorist Entities" Law', *Daily News Egypt* (online), 24 February 2015 <<http://www.dailynewsegypt.com/2015/02/24/president-approves-terrorist-entities-law/>>.

<sup>252</sup> Amira El-Fekki, 'Anti-Terror Draft Law is "Unofficial State of Emergency": Civil Societies', *Daily News Egypt* (online), 7 July 2015 <<http://www.dailynewsegypt.com/2015/07/07/anti-terror-draft-law-is-unofficial-state-of-emergency-civil-societies/>>.

<sup>253</sup> Amnesty International, *Egypt's President to Sign Draconian Counterterrorism Law Today* (13 August 2015) <<https://www.amnesty.org/en/press-releases/2015/08/egypt-s-president-to-sign-draconian-counterterrorism-law-today/>>.

<sup>254</sup> 'Egypt Terrorism Law "Enshrines Permanent Emergency"', *The New Arab* (online), 20 August 2015 <<http://www.alaraby.co.uk/english/news/2015/8/20/egypt-terrorism-law-enshrines-permanent-emergency>>.

<sup>255</sup> Amnesty International, *Egypt: Draconian Counterterrorism Law Latest Tool to Muzzle Peaceful Activists* (15 July 2015) <<https://www.amnesty.org/en/latest/news/2015/07/egypt-draconian-counterterrorism-law/>>.

has equipped itself with even greater powers to continue stamping out its critics and opponents under its vague and ever-expanding war on terrorism.<sup>256</sup>

The law makes it a crime to publish any news related to terrorism if it is against the statement issued by the defence ministry official. This allows the court to forbid journalists from performing their job.<sup>257</sup> Journalists need to take statements from different impartial resources; therefore, taking statements from one side only disrupts the freedom of expression. In conclusion, anti-terrorism and emergency laws have expanded the scope of crimes through exceptional laws that are used to crush the regime's opponents and by being enshrined in a permanent state of emergency.

#### **4.8 Unconstitutional Emergency Law**

Some Egyptian courts have ruled in some cases that the use of emergency law, or the extension of the state of emergency, is unconstitutional. Examples of these rulings are as follows:

1. The high state security court of Alexandria ruled that Law No 162 of 1958 was unconstitutional because it was approved by a presidential decree and not submitted to the National Assembly at its first meeting as required by law, thereby violating Article 53 of the 1956 constitution, under which the law was issued.<sup>258</sup>
2. In addition, the same court ruled that the extension of the state of emergency from 1988 to 31 May 1991 was unconstitutional because some assembly members had an invalid membership. These members did not enjoy the parliamentary capacity; therefore, the extension of the state of emergency violated Article 148 of the 1971 constitution.<sup>259</sup>
3. On 4 November 2012, the Supreme Constitutional Court decided that Article 99 of the Police Law No 109 of 1971, which gave authority to the military court to try non-officer members of the police in military courts, was unconstitutional.<sup>260</sup>

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<sup>256</sup> Human Rights Watch, above n 238.

<sup>257</sup> Ibid.

<sup>258</sup> Maugiron, above n 47, 85.

<sup>259</sup> Ibid.

<sup>260</sup> Sherif Mohy El Deen, *Fair Trials for All: To End Military Trials in Egypt and Restore Civil Justice*, Arab Reform Initiative (June 2015) 6.



4. The Supreme Constitutional Court prohibited the president from using emergency law to assert the government's control over private property in non-emergency situations, and it admonished the prime minister for applying it in a way that ignored the constitutional rights of Egyptians.<sup>261</sup>

Successive regimes have ignored these court rulings, which violates the independency of the judiciary branch and enshrines executive interference in the judiciary.

#### **4.9 Conclusion**

Egypt has suffered from a long and extended permanent state of emergency since 1914. and traditional emergency power theories have failed to examine the long history of Egypt under a state of emergency. Further, traditional emergency power theories have ignored successive regimes' justifications for extending the state of emergency.

In 1952, the Free Officers seized power, abolished the monarchy, declared Egypt a republic and abolished political parties. Nasser used different political and economic strategies to consolidate his power, and he used exceptional laws to create exceptional courts to try his opponents. These courts were not impartial because they were created for political reasons. Nasser effectively installed British martial law, changing the name from martial law to emergency law. Emergency law was enshrined in the 1956 Egyptian constitution. In 1958, Nasser issued Act No 162 of 1958 regarding emergency law. This law gave the regime the power to arrest, detain, search and try civilians in exceptional courts.

Sadat depended on the military to stabilise his regime, and he justified the continuous use of a state of emergency because of the war against Israel. Sadat introduced an open-door policy and relied on the US for support. However, the open-door policy failed because it increased poverty and the gap between the rich and the poor.

The 1956, 1967 and 1973 wars between the Arabs and the Israelis were the main reason for declaring a state of emergency, except for the period 1980–1981. A state

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<sup>261</sup> Rutherford, above n 44, 1.

of emergency was declared in 1981, without disruption, after the assassination of Sadat.

Mubarak's regime depended on the military and extended the state of emergency every 2–3 years using the justification of combating terrorism. Mubarak's regime introduced the neoliberal economy to increase privatisation. The regime relied on aid from the US to stabilise the regime and to increase and consolidate the military's control over Egypt.

A revolution was launched on 25 January 2011, calling for the abolition of the continuous state of emergency. The military assumed power and promised to abolish the state of emergency, but instead expanded its authority and made many constitutional declarations to consolidate its power. The state of emergency gave power to the military and police to use force against their opponents. The regime benefited from the continuous extensions of the state of emergency because the state of emergency enabled them to:

- suppress the opposition and commit numerous human violations to ensure the population lived in fear of the regime
- stabilise the regime's political and economic interests by using different political and economic strategies to maintain its power over the country and depend on military power to safeguard its interests
- prevent any future civilian democratic presidents from assuming power
- maintain the military as the main and unchallengeable power to protect its economic and military powers.

The next chapter examines human rights violations during the state of emergency.

## **Chapter 5: Human Rights Violations During the State of Emergency**

### **5.1 Introduction**

Ending the state of emergency in Egypt was one of the main demands of Egyptian activists, civil society and human rights organisations. Extending a state of emergency violates the basic rights guaranteed in the Egyptian constitution and international covenants. This chapter examines the major human rights breaches caused by the extended use of emergency law. It examines these violations in light of the ICCPR, conventions against torture and other cruelty and the US, European and African conventions on human rights, along with the Arab Charter on Human Rights. This chapter shows that the international covenants include some exemptions to restrict some freedoms. They often use elastic and vague concepts such as ‘respect democratic society’, ‘national security’ and ‘public order’. These terms give autocratic regimes loopholes to justify their arbitrary measures. In addition, this chapter shows how traditional emergency power theories have failed to explain that the use of emergency law is the main cause of human rights violations in Egypt.

### **5.2 Background**

On 14 January 1982, Egypt signed the UN’s ICCPR (Articles 18 and 19 of the UN Covenant), which emphasises freedom of opinion and expression.<sup>1</sup> On 25 January 1986, Egypt ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and on 14 January 1982, Egypt ratified the International Covenant on Economic, Social and Cultural Rights. On 6 July 1990, Egypt ratified the Convention on the Rights of the Child. Finally, on 25 January 1986, Egypt ratified the inquiry procedure under the Convention against Torture.<sup>2</sup>

However, despite being a signatory to all of these covenants and conventions, successive Egyptian regimes have committed numerous violations against human rights and have ignored the demand for social justice and freedom. Many

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<sup>1</sup> The Arabic Network for Human Rights Information, *Laws and the Freedom of Expression in Egypt* (Annual Report, 2007) <<http://old.openarab.net/en/node/277>>.

<sup>2</sup> United Nations Human Rights Office of the High Commissioner <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=54&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=54&Lang=EN)>.

demonstrators have been violently dispersed using rubber bullets and shotguns, and approximately 12,000 opponents have been tried in military courts without any legal rights for appeal.<sup>3</sup> In the name of ensuring security and democracy, civilians have suffered from arbitrary arrests, been detained without trial for long periods, suffered forced disappearance and torture, and been denied medical assistance.<sup>4</sup> Political activists, journalists and peaceful civilians have suffered inhumane treatment, intimidation and harassment from police authorities,<sup>5</sup> and security forces have been granted immunity for using lethal force against civilians.

### **5.3 Restrictions on People's Movements and Freedom of Gatherings**

The freedom of peaceful assembly serves as a vehicle for the exercise of civil, cultural, economic and political views and is an essential component of democracy.<sup>6</sup>

Successive regimes in Egypt have used protests and demonstrations as an excuse to use lethal force against activists, arrest and torture them, and try them before military courts. The regimes have preserved their right to use force against civilians to punish unwanted political parties.<sup>7</sup>

The Egyptian regime continued to use the illegal Assembly Law 10/1914 during gatherings to prevent and limit the public from gathering. They charged demonstrators using vague definitions such as 'disturbing public order and the peace'. The use of such ill-defined concepts violates the rights of protesters and

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<sup>3</sup> Amnesty International, *Egypt: President Must Go Beyond Decree and Carry Out Greater Human Rights Reform* (18 October 2012) <<https://www.amnesty.org.uk/press-releases/egypt-president-must-go-beyond-decree-and-carry-out-greater-human-rights-reform>>.

<sup>4</sup> Middle East Monitor, *Egypt's Prison Death Trap: 71 Detainees Have Died in Custody Since January* (5 August 2015) <<https://www.middleeastmonitor.com/news/africa/20241-egypts-prison-death-trap-71-detainees-have-died-in-custody-since-january>>.

<sup>5</sup> Mohamed Lotfy, 'Egypt's Courageous Few Fighting for Human Rights', Amnesty International (22 January 2016) <<https://www.amnesty.org/en/latest/news/2016/01/egypts-courageous-few-fighting-for-human-rights/>>.

<sup>6</sup> United Nations General Assembly, *Reports of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai* (21 May 2012) <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)>.

<sup>7</sup> Jessica L Glover, *The Role of Protest in Egyptian Politics* (The George Washington University, 2010) 4.

restricts their ability to assemble and demonstrate.<sup>8</sup> The regime has also used Public Assembly Act No 14 of 1923 to restrict and allow the police to ban any protests.<sup>9</sup>

Freedom of movement and freedom of gathering have been guaranteed in all Egyptian constitutions, but with some restrictions. Article 20 of the 1923 constitution stated that Egyptians had the right to gather in calmness and serenity, and police did not need to be informed. But in cases of public gatherings, the law required that they be subject to the provisions of laws that protect social order. Ill-defined phrases such as ‘social order’ were used by the 1923 constitution to prevent public gatherings and restrict people’s movements. Article 54 of the 1971 constitution allowed the right to peaceful assembly in private meetings without the approval of the security authority, as long as it was an unarmed assembly. Public meetings were allowed, but only within the limits of the law.

After the Egyptian revolution in 2011, the SCAF resumed control in Egypt and issued a constitutional declaration (Article 16 of the 2011 constitutional declaration) that gave citizens the right to conduct a private assembly without the need to give prior notice to the security authority. Security forces were not allowed to attend these meetings. Public meetings continued to be permitted only within the confines of the law. Article 50 of the 2012 constitution guaranteed the right to private assembly but, in the case of a public gathering, people needed a notification as stipulated by the law. While Article 10 of the 8 July 2013 constitutional declaration permitted the right to private assembly, public assembly was restricted and regulated by law. Article 74 of the 2014 constitution guaranteed the right to public meetings, marches, demonstrations and all forms of peaceful protest, as long as the citizens did not carry weapons and as long as notification had been given as regulated by the law. Therefore, all articles from the 1923 constitution to the 2014 constitution granted the right to private assembly, but restricted public assembly and demonstrations without prior notification to the law and without carrying weapons.

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<sup>8</sup> Cairo Institute for Human Rights Studies, *The Right to Freedom of Assembly in Egypt*, 20th Session of the UPR (October–November 2014) <[http://afteegypt.org/wp-content/uploads/2014/11/UPR-Joint-report-on-freedom-of-Assembly-AFTE-EIPR-CIHR.S.EN\\_.pdf](http://afteegypt.org/wp-content/uploads/2014/11/UPR-Joint-report-on-freedom-of-Assembly-AFTE-EIPR-CIHR.S.EN_.pdf)>.

<sup>9</sup> Human Rights Watch, *Egypt: Draft Law Would Effectively Ban Protests—Amend Repressive Draft Assembly Law* (30 October 2013) <<https://www.hrw.org/news/2013/10/30/egypt-draft-law-would-effectively-ban-protests>>.

The 2014 constitution used terms such as ‘prior notification’ to give the regime an instrument to prevent people from gathering and protesting. Protesters became a target for the armed forces, which used excessive force to suppress the opposition. In addition to using tear gas and rubber bullets, they allowed thugs to attack protesters using sticks and swords. Police and military forces used excessive force and torture on peaceful protesters, bloggers and journalists.<sup>10</sup>

### 5.3.1 Protest law

On 24 November 2013, interim President Mansour issued Law No 107 on the right to public meetings, processions and peaceful demonstrations. The 8 July 2013 constitutional declaration gave the president the authority to issue such decrees.<sup>11</sup> Law No 107 of 2013, which became known as the Protest Law, was controversial because it was used as an exceptional law to prevent civilians from protesting and conducting peaceful gatherings. The Protest Law limited a citizen’s ability to protest, either by restricting freedom of assembly or via broad definitions of ‘terrorism’, ‘sabotage’ and ‘inciting of violence’. The Protest Law gave the Ministry of Interior wide-ranging powers against protesters, as outlined below:

1. It gave security forces a legal framework to use excessive force to disperse peaceful protests. The Ministry of Interior was granted wide-ranging powers to ban any protests under the justification of protecting security, peace and public order.
2. The law prohibits protests and public gatherings in places of worship, such as mosques and churches.
3. It prohibits demonstrations in public places such as parliament, ministries, diplomatic missions, court buildings, hospitals, prisons, military zones and presidential palaces.<sup>12</sup>

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<sup>10</sup> Human Rights Watch, *The Road Ahead: A Human Rights Agenda for Egypt’s New Parliament* (16 January 2012) <<https://www.hrw.org/report/2012/01/16/road-ahead/human-rights-agenda-egypts-new-parliament>>.

<sup>11</sup> Human Rights Watch, *Egypt: Deeply Restrictive New Assembly Law—Will Enable Further Crackdown, Stifle Electoral Campaigning* (26 November 2013) <<https://www.hrw.org/news/2013/11/26/egypt-deeply-restrictive-new-assembly-law>>.

<sup>12</sup> Amnesty International, *Egypt: New Protest Law Gives Security Forces Free Rein* (25 November 2013) <<https://www.amnesty.org/en/latest/news/2013/11/egypt-new-protest-law-gives-security-forces-free-rein/>>.

4. The law gives the interior minister the right to ban any meeting of a public nature involving more than 10 people by requiring the attendees to give three days' prior notification.

In addition, Article 22 of the Protest Law gave authority to the court to confiscate any materials, tools and money used in any crimes. Thus, any civilians who wanted to exercise their right to conduct a peaceful protest could be defined as criminals.<sup>13</sup>

Under pressure from the regime, Egyptian universities dissolved elected students' unions and clubs. The universities were given the power to annul any student's election and to oust any student for engaging in any political activity or insulting the president. They also had the power to force the student and the student's family to write a statement pledging not to participate in any protest. The lecturer at a university could be sacked without any judicial review if they participated or engaged in any protest.

This thesis criticises the Protest Law of 2013 for many reasons, namely:

1. It was used as another exceptional law to suppress opponents of the regime.
2. The law included vague concepts such as disturbing public interests or general security or public order. The use of ill-defined notions increased the crimes punished by law and caused the widespread arrest and detention of civilians.
3. The law gave the police and military forces immense prosecutorial discretion<sup>14</sup> and authority to ban any public meetings and use excessive force.
4. Harsh punishments were imposed to prevent civilians from exercising their freedom to protest. The law increased the number of civilian arrests. Anyone violating Article 7 of the Protest Law faced being imprisoned for 2–5 years. For example, on 7 April 2014, the courts rejected an appeal from the 6 April

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<sup>13</sup> Article 22 of Law No 107 of 2013 (Presidential Decree issued on 8 July 2013 for organizing the right to peaceful public meetings, processions and protests)

<[http://www.constitutionnet.org/sites/default/files/protest\\_law\\_issued\\_nov\\_24.pdf](http://www.constitutionnet.org/sites/default/files/protest_law_issued_nov_24.pdf)>.

<sup>14</sup> Nathan J Brown and Katie Bentivoglio, *'Egypt's Resurgent Authoritarianism: It's a Way of Life'*, Carnegie Endowment for International Peace (9 October 2014)

<<http://carnegieendowment.org/2014/10/09/egypt-s-resurgent-authoritarianism-it-s-way-of-life>>; Amnesty International, above n 12; Human Rights Watch, above n 11.

youth movement against several activists who broke the Protest Law and were charged with three years' imprisonment.<sup>15</sup>

5. Prior notification requirements were unreasonable. Such requirements should only apply to large gatherings of more than 1,000 people to protect demonstrators from thugs or anyone who wanted to interrupt a peaceful assembly. For example, it is excessive to expect people who are celebrating their wedding, birthday or graduation to notify the police if they invite more than 10 people, or face a fine or jail if they do not notify the police.
6. Article 8 of the Protest Law requires, in writing, the names of individuals who are attending protests or meetings. The article gives power to the police and military forces to arrest civilians because they could pose a danger to public order.
7. Article 10 of the Protest Law gives the Ministry of Interior the power to ban, cancel or modify the route of a protest if they receive information that the protest could threaten national peace or security. On 3 December 2013, the Supreme Constitutional Court ruled that Article 10 is unconstitutional because it violates Article 73 of the 2014 constitution, which grants individuals the right to protest without interference.<sup>16</sup>

Prohibiting people from exercising their freedom to protest violates Article 21 of the ICCPR, which gives people the freedom of peaceful assembly. However, the article includes several exemptions on peaceful assembly; namely, any peaceful assembly should respect the democratic society, national security, public safety and order, protection of health and morals, and rights and freedoms of others.<sup>17</sup> Article 21 uses vague and ill-defined concepts such as 'national security' and 'public safety', which can be interpreted by any state to prevent any peaceful assembly. This highlights a major flaw of international covenants and shows how such flaws can be used against civilians accused of violating the freedom of peaceful assembly. This thesis believes that these exemptions should be removed from Article 21 to protect the freedom of

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<sup>15</sup> Human Rights Watch, *World Report 2015: Egypt—Events of 2014* <<https://www.hrw.org/world-report/2015/country-chapters/egypt>>.

<sup>16</sup> Sara El-Sheikh, 'Constitutional Court Annuls Interior Ministry's Right to Ban Protests', *Daily Egypt News* (online), 3 December 2016 <<https://dailynewsegypt.com/2016/12/03/constitutional-court-annuls-interior-ministrys-right-ban-protests/>>.

<sup>17</sup> *Ibid.*



peaceful protesting and prevent any state from using these exemptions to legalise its actions.

### 5.3.2 Restrictions on striking and sit-ins

The regime has criminalised striking and sit-ins on the grounds that the country is experiencing a critical time in its history and needs to protect its security and economy from conspiracy. However, the real purpose of these laws is to re-introduce exceptional laws used by successive Egyptian regimes to control the country.<sup>18</sup> The law prevents workers from protesting for better pay, terms and conditions of employment.

The Egyptian Supreme Administrative Court issued a ruling on 28 April 2015 criminalising and penalising striking by public workers. This forced some workers to retire and others to postpone their promotion for a period of two years.<sup>19</sup> This verdict was based on legislative Decree No 34/2011, which was issued by the SCAF to criminalise strikes and sit-ins, as well as any individuals who obstructed work in a private or public facility.<sup>20</sup> Any workers who violated the anti-striking law could receive a prison sentence and a fine of £20,000–£50,000.<sup>21</sup>

Restrictions on labour strikes violated Article 23 of the Universal Declaration of Human Rights,<sup>22</sup> which Egypt signed on 10 December 1948 to provide freedom of association. The Protest Law also violated Article 8 of the International Covenant for Economic, Social and Cultural Rights, which provided the right to free formation and the functioning of trade unions and various International Labour Organization (ILO) conventions,<sup>23</sup> including ILO Convention 87, which was ratified by Egypt in 1957. Article 3 stated that: ‘Workers’ and employers’ organisations shall have the right to

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<sup>18</sup> Mohamed Elansary and Mohamed Ahmed Zaree, *Summary of the Report Criminalizing the Egyptian Revolution* (Cairo Institute for Human Rights Studies, 24 April 2014) 14.

<sup>19</sup> Rami Galal, ‘Egypt Outlaws Workers’ Right to Strike’, *Al-Monitor* (online), 12 May 2015 <<http://www.al-monitor.com/pulse/originals/2015/05/egypt-court-ruling-strike-right-sharia-law-sisi-badawi-labor.html>>.

<sup>20</sup> Maha Abdelrahman, *Egypt’s Long Revolution: Protest Movements and Uprisings* (Routledge, 2015) 89.

<sup>21</sup> ‘Court Forces Striking Workers into Early Retirement for Opposing Islamic Sharia’, *Mada Masr* (online), 28 April 2015 <<http://www.madamasr.com/news/court-forces-striking-workers-early-retirement-opposing-islamic-sharia>>.

<sup>22</sup> Article 23 of the *Universal Declaration of Human Rights* (adopted by the United Nations General Assembly on 10 December 1948) <<http://www.un.org/en/documents/udhr/>>.

<sup>23</sup> Article 8 of the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>.

draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes'.<sup>24</sup>

### 5.3.3 Freedom of the press

Emergency laws have been heavily used to restrict and ban publications in Egypt. The government has justified these restrictions for the protection of national security and public order. Article 15 of the 1923 constitution guaranteed the freedom of the press but used the phrase 'within the limits of law'. It also prohibited the censorship of newspapers, including warnings, suspensions and cancellations of papers via administrative means. The government used phrases such as 'protecting the social order' to justify its censorship of the press. The regime used this type of unclear definition to expand its authority to control the public by limiting the freedom of the press.

Article 48 of the 1971 constitution guaranteed the freedom of the press, including printing, publication and mass media, and it prohibited the censorship of newspapers. However, under a state of emergency, the regime could apply limited censorship to newspapers, publications and mass media to protect public safety or for the purpose of national security. The terms 'national security' and 'public safety' were widely used to limit and restrict the freedom of the press.

Article 13 of the March 2011 constitutional declaration also granted freedom of the press, including printing, publication and media. However, it also gave authority to the executive to restrict the freedom of the press. The declaration allowed limited censorship on matters related to general safety, for the purposes of national security, in times of national emergency or in times of war. It used vague terms without clarification, leaving it to the discretion of the executive to decide which matters could harm national security and general safety. A state of emergency can be declared in the case of war or the threat of war; thus, to declare a state of emergency, the war should be imminent or actually occurring. However, this article classified the

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<sup>24</sup> Article 3 of the *International Labour Organization, Convention concerning Freedom of Association and Protection of the Right to Organise* (entered into force: 04 Jul 1950) San Francisco, 31st ILC (9 July 1948) <  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232).

national emergency and war as two separate entities. This enabled a doubling-up effect of the regime's ability to confiscate or stop publications.<sup>25</sup>

Article 48 of the 2012 constitution guaranteed the freedom of the press, journalism, the publishing industry, broadcasting and other media. However, several restrictions were included that used vague definitions, as follows:

1. The framework included essential elements regarding the state and society and the requirements of national security. The requirement of national security is vague and difficult to define.
2. A court warrant should be issued to institute censorship of the media.
3. In the case of war or public mobilisation, the regime was allowed to censor the media without the need for a court warrant. The executive was granted authority to terminate and confiscate all media publications.

Morsi's opponents claimed that Article 48 prevented freedom of the press because it contained elastic and vague concepts that could be used to violate human rights and prevent freedom of expression. The opposition protested, calling for a new constitution and a new election.

After suspending the 2012 constitution and ousting President Morsi, the armed forces issued a constitutional declaration on 3 July 2013 that guaranteed the press freedom from censorship, except in case of emergency or in a time of war. Censorship would then be limited to matters related to national security; however, the article used undefined words and could be used by the executive to censor any publications to constrain opponents to the regime under the guise of protecting national security.

Lastly, in the current Egyptian constitution, issued in 2014, Article 70 grants the freedom of the press and printing, and permits Egyptians to issue and own newspapers regulated by law. Further, Article 71 of the 2014 constitution prohibits censoring, confiscating, suspending and shutting down Egyptian newspapers and media outlets, and allows limited censorship 'in the time of war and general mobilization', but it does not use national emergencies as an exemption to allow

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<sup>25</sup> Freedom House, *Freedom of the Press: Egypt* (2013) <<https://freedomhouse.org/report/freedom-press/2013/egypt#.VeJQZ33xFc4>>.

ensorship. The 2014 constitution did not discuss publishing or confiscating foreign newspapers operating inside Egypt during times of war or general mobilisation.

### 5.3.3.1 *Restrictions on the freedom of the press*

Successive Egyptian regimes have used many laws to restrict and control the freedom of the press. For example, Imprints Law No 20/1936 gave authority to the ministerial council to ban any publication from being sold inside or outside the country.<sup>26</sup> The regime also used the restrictions in the Penal Code law to restrict the freedom of the press.<sup>27</sup> Penal Code Law No 58 of 1937 (amended by Law No 95 of 2003) in Article 102 bis punished whoever intentionally broadcast news or released false news that would disturb the public order, intimidate people or damage the public interest. Offences were punishable with imprisonment and a fine of £50–£200.<sup>28</sup>

In 1975, the government created the Supreme Press Council,<sup>29</sup> which owned 49% of the shares in major publishing houses.<sup>30</sup> The Supreme Press Council was responsible for press affairs, permitting licenses and drawing up a code of ethics. Successive regimes used the council as a tool to prevent opponents from receiving permission to obtain a licence to open a newspaper.

Law No 148 of 1980 recognised the press as an independent authority but simultaneously prohibited any news that could harm Egypt's reputation. Journalists who reported and published such news could face exile or restrictions upon leaving Egypt.<sup>31</sup> President Mubarak also issued Decree No 4/1982, which authorised the interior minister to take any necessary measures under Law No 162 of 1958 to

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<sup>26</sup> The Arabic Network for Human Rights Information, above n 1.

<sup>27</sup> Fatima Elissawi, *Egyptian Media Under Transition: In the Name of the Regime ... In the Name of the People?* (London School of Economics Department of Media and Communication, 2014) 18 <<http://www.lse.ac.uk/media@lse/Polis/documents/Polis%20papers/Egyptian-Media-Under-Transition.PDF>>.

<sup>28</sup> The Arabic Network for Human Rights Information, *Articles That Restrict the Freedom of Expression in Egyptian Laws: Proposed Amendments* (October 2012) <<http://www.anhri.net/en/wp-content/uploads/2013/01/articles-that-restrict-the-freedom-of-expression-in-the-egyptian-laws.pdf>>.

<sup>29</sup> The Supreme Press Council lasted until 1977 and was re-established in 1981.

<sup>30</sup> Elissawi, above n 27, 19.

<sup>31</sup> Elizabeth Iskandar, *Sectarian Conflict in Egypt: Coptic Media, Identity and Representation* (Routledge, 2012) 35.

restrict freedom of expression.<sup>32</sup> Article 3 para 2 of Law No 162 of 1958 gave the president the right to supervise, confiscate newspapers, publications, newsletters, drawings and all means of expression,<sup>33</sup> thereby censoring newspapers, publications and advertisements before they were published, and the right to confiscate media premises and close them down was permitted by law.<sup>34</sup> Further, Article 4 of the Press Law No 96 of 1996 gave authority to the regime to impose limited control on the press in case of emergency or in times of war to protect the public's safety and national security. Journalists could be jailed for one year under Article 22 for violating Articles 20 and 21 of the above law—for example, by attacking the private life or religious faith of citizens.<sup>35</sup>

After the 2011 revolution, the SCAF issued a warning to journalists and editors regarding publishing news, complaints, topics, advertisements or pictures before consulting with the Department of Morale Affairs and the Directorate of Military Intelligence and Information Gathering.<sup>36</sup> The military used these mechanisms to violate journalists' rights to freely express their ideas.

All Egyptian constitutions granted freedom of expression while expanding the scope of crimes using vague terms such as 'incitement', 'defamation' and 'rumour' to silence and suppress any journalists writing about torture and the rule of the military.<sup>37</sup> Military topics are taboo topics, and self-censorship has become deeply entrenched in the media.<sup>38</sup> Many human rights activists and journalists who protested against police cruelty and the draconian protest laws were accused of violating the

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<sup>32</sup> The Arabic Network for Human Rights Information, *Press Freedom in Egypt, Chapter Two: Press and Publishing Legislation in Egypt: Restricting Freedoms Through Legislation* (2007) <<http://www.anhri.net/en/reports/pressfreedom/06.shtml>>.

<sup>33</sup> Article 3 para 2 of Emergency Law No 162 of 1958.

<sup>34</sup> The Arabic Network for Human Rights Information Laws, above n 32.

<sup>35</sup> *Ibid.*

<sup>36</sup> Rasha Abdulla, *Egypt's Media in the Midst of Revolution*, Carnegie Endowment for International Peace (July 2014) 15 <<http://carnegieendowment.org/2014/07/16/egypt-s-media-in-midst-of-revolution-pub-56164>>.

<sup>37</sup> Thomas Hughes and Emad Mubarak, 'Censorship in Egypt: Online and Offline', *Mada Masr* (online), 30 November 2014 <<http://www.madamasr.com/opinion/politics/censorship-egypt-online-and-offline>>.

<sup>38</sup> Toby Mendel, 'Political and Media Transitions in Egypt: A Snapshot of Media Policy and Regulatory Environment', *Internews* (August 2011) 2.

Protest Law, damaging public property and attacking the police, and many of them were sentenced to 15 months' imprisonment.<sup>39</sup>

Successive Egyptian regimes have used emergency law in Egypt and the global war on terrorism to suppress their opponents and deal with them as traitors.<sup>40</sup> Emergency law has increased the number of journalists and bloggers in prison. They were accused of criticising the military forces for using lethal force against peaceful protesters. Foreign and local journalists were targeted by the police, had their cameras broken or seized and photographs confiscated, and several journalists were killed.<sup>41</sup> Newspapers were confiscated because they contained materials that were considered politically sensitive and a threat to national security.<sup>42</sup>

The Egyptian public prosecutor stated that 20 journalists have been accused of joining terrorist groups or spreading false news and sentenced to 3–15 years in jail.<sup>43</sup> For example, Al Jazeera journalists have been sentenced to up to 10 years in prison for defaming the country and supporting the blacklisted Muslim Brotherhood.<sup>44</sup> In addition, foreign and Egyptian media have been targeted for being affiliated with the opposition. In the second half of 2013, five journalists were killed and 80 were detained.<sup>45</sup> Reporters Without Borders claimed that plainclothes police officers raided the offices of Al Jazeera Live, detained a journalist for a few hours and

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<sup>39</sup> Megan O'Toole, 'Letter Decries "Atrocious" Prison Conditions in Egypt', *Al Jazeera News* (online), 3 November 2015 <<http://www.aljazeera.com/news/2015/11/letter-decries-atrocious-prison-conditions-egypt-151103072833216.html>>.

<sup>40</sup> Amira EL-Fekki, 'Terrorism Empowers "Military Dictatorship": Political Opposition', *Egypt Daily News* (online), 20 July 2015 <<https://www.dailynewsegypt.com/2015/07/20/terrorism-empowers-military-dictatorship-political-opposition/>>.

<sup>41</sup> 'Journalists Under Threat in Egypt', *The Guardian* (online), 21 August 2013 <<https://www.theguardian.com/media/datablog/2013/aug/21/journalists-under-threat-egypt-arrest-detention>>.

<sup>42</sup> 'Egypt's Al-Bawabah Newspaper Surprised at Confiscation of Monday Edition', *Ahram Online* (online), 10 April 2017 <<http://english.ahram.org.eg/NewsContent/1/64/262643/Egypt/Politics-/Egypt%E2%80%99s-AlBawabah-newspaper-surprised-at-confiscat.aspx>>.

<sup>43</sup> 'Journalists Under Siege, A Report on IPI's Emergency Visit to Egypt', *International Press Institute* (online), February 2014, 2 <[http://ipi.media/wp-content/uploads/2016/10/IPI\\_Report\\_Egypt\\_Journalists\\_under\\_siege\\_Feb\\_2014.pdf](http://ipi.media/wp-content/uploads/2016/10/IPI_Report_Egypt_Journalists_under_siege_Feb_2014.pdf)>.

<sup>44</sup> 'Egypt Imposes Anti-Terror Law That Punishes "False" Reporting of Attacks', *The Guardian* (online), 17 August 2015 <<http://www.theguardian.com/world/2015/aug/17/egyptian-President-ratifies-law-to-punish-false-reporting-of-terror-attacks>>.

<sup>45</sup> Reporters Without Borders, *World Press Freedom Index* (2014) <<https://rsf.org/index2014/en-middle-east.php>>.

confiscated material without a warrant.<sup>46</sup> Many cases have been reported of threats against journalists, censored articles and the removal of print copies of newspapers.<sup>47</sup>

Other press-related acts that are punishable with imprisonment include spreading false news, data, rumours and fabricated or forged papers, undermining public order, frightening people or causing harm and damaging public interests. Those who are accused can face imprisonment for a period not exceeding one year and a fine of £5,000–£20,000. Any one of these penalties can be the penalty on whoever publishes with ‘ill will’, the legislature again using broad and vague provisions.<sup>48</sup>

Restrictions on freedom of expression violated Article 19(2) of the ICCPR, as well as Article 9 clauses 1 and 2 of the African Charter on Human and Peoples’ Rights, Article 13 of the American Convention on Human Rights and Article 10 of the European Convention on Human Rights. All of these conventions granted freedom of protection for the press and freedom of expression. It is one of a group of non-derogable rights that cannot be violated even during a state of emergency. Any state should respect these non-derogable rights.

## **5.4 Emergency Law and Non-Derogable Rights**

Countries prioritise national security at all times, followed by individuals’ rights. To minimise the abuse of power by the executive during a state of emergency, the following limitations should be put in place:

- The reason for declaring the state of emergency needs to be genuine.
- The regime should be transparent by informing the public or at least the parliament.
- The state should only derogate from certain rights, which must be necessary to counter the threat.<sup>49</sup>

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<sup>46</sup> Reporters Without Borders, *Respect for Freedom of Expression Worsening in Egypt* (5 October 2011) <<http://en.rsf.org/egypt-respect-for-freedom-of-expression-05-10-2011,41126.html>>.

<sup>47</sup> Mohamed El-Shinnawi, ‘Media Restrictions, Other Free Speech Issues Remain in Egypt’, *Voice of America News* (online), 15 November 2014 <<http://www.voanews.com/content/media-srestrictions-other-free-speech-issues-remain-in-egypt/2521004.html>>.

<sup>48</sup> Cairo Institute for Human Rights Studies, *Freedom of Expression in Egypt and Tunisia* (May 2013) <<http://www.cihhrs.org/wp-content/uploads/2013/05/Freedom-of-Expression-in-Egypt-and-Tunisia.pdf>>.

<sup>49</sup> Silvia Borelli and Lutz Oette, *Extraordinary Measures, Predictable Consequences: Security Legislation and the Prohibition of Torture* (REDRESS, September 2012) 21 <[http://www.eidhr.eu/files/dmfile/REDRESS.security\\_report.pdf](http://www.eidhr.eu/files/dmfile/REDRESS.security_report.pdf)>.

Non-derogable rights means that certain rights cannot be suspended even during a state of emergency. Article 4 of the ICCPR states that any state can derogate from a number of rights when there is a public emergency that threatens the life of the nation. To do this, the state should fulfil some legal requirements<sup>50</sup> as outlined below.

#### **5.4.1 Existence of a public emergency threatening the life of the nation**

The ICCPR gives authority to the state to derogate from numbers of rights if a public emergency threatens the life of the nation. The American Convention on Human Rights uses the phrase ‘public danger, or any other emergency that threatens the independence or the security of the state’ as justification to derogate from its obligations, while the European Convention on Human Rights uses the phrase ‘the case of war and public emergency’ to allow derogation from obligation.

Article 15 of the European Convention on Human Rights allows the state to breach the civil rights and the rule of law and simultaneously protect human rights.<sup>51</sup> Article 15 is subject to judicial scrutiny and needs to be justified in cases involving the detention of suspects without trials.<sup>52</sup> Head argues that:

the listed civil and legal rights are mostly subject to far-reaching exemptions or derogations, including for ‘national security’, ‘public safety’ and ‘public emergency’. This leaves considerable leeway for draconian measures, including seemingly permanent ones such as detention without trial and other provisions imposed in the name of fighting the endless ‘war on terrorism.’<sup>53</sup>

The term ‘public emergency’ is a vague notion that could be used by any state for different reasons, resulting in human rights violations. Therefore, the state can use it as a tool at any time, such as during internal disturbances, terrorism activities, economic crises, natural disasters or peaceful strikes and assembly. The UN Human Rights Committee, in its General Comment No 29, emphasised that not every disturbance, catastrophe or armed conflict can be dealt with as a threat to the nation’s

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<sup>50</sup> Diane A Desierto, *Necessity and National Emergency Clauses: Sovereignty in Modern Treaty Interpretation* (Martinus Nijhoff Publishers, 2012) 246.

<sup>51</sup> Alan Greene, ‘Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights’ (2011) 12(10) *German Law Journal* 764–1785.

<sup>52</sup> Mark Elliot, ‘United Kingdom: Detention Without Trial’ (1 July 2006) 4(3) *International Journal of Constitutional Law* 553–566.

<sup>53</sup> Michael Head, *Emergency Powers in Theory and Practice* (Ashgate, 2016) 227–229.



life.<sup>54</sup> Further, not all emergencies could be considered a threat to national security because an emergency could be fabricated or misused to protect the security of the regime. Head argues that:

The international law reserves to the national state the power to override the most basic legal and democratic rights in alleged emergencies or dire challenges to the stability of the state ... under the European Convention, however, even the right to life is carefully circumscribed to permit killing by state forces in order to make arrests, prevent escapes from detention and quell riots and insurrections (Article 2). As with the ICCPR, governments can derogate from most obligations under the European convention in times of war or other public emergency threatening the life of the nation (Article 15). Particularly since the declaration of the 'war on terrorism' in 2001, courts have tended to give executive governments much leeway to use these provisions.<sup>55</sup>

The UK House of Lords granted the executive leeway to allow indefinite detention without trial in 2004 in *A v Secretary of State for the Home Department* ([2004] UKHL 56), which concerned counterterrorism legislation. The British government derogated from Article 5 of the European Convention, which provides the right to liberty and security of person. The British government invoked Article 15 of the European Convention, which allowed derogation in times of war or other public emergencies threatening the life of the nation after the 9/11 attacks in the US.<sup>56</sup>

The majority eventually declared particular circumstances to be discriminatory and inconsistent with the exigencies of the public emergency. However, the 8–1 majority view was that the courts had to defer heavily to the executive assessment of national security.<sup>57</sup> According to the Baroness Hale: 'Assessing the strength of a general threat to the life of the nation is, or should be, within the expertise of the Government and its advisers'.<sup>58</sup>

The Arab Charter on Human Rights gives authority to the state to derogate from its obligation in case of public emergency to protect national security and the economy, public order, health and morals, or the rights and freedom of others, and to prevent

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<sup>54</sup> UN Human Rights Committee, CCPR General Comments No 29: Article 4: Derogations During a State of Emergency (August 2001) <<http://www.refworld.org/docid/453883fd1f.html>>.

<sup>55</sup> Head, above n 53, 227.

<sup>56</sup> House of Lords, Session 2004–05[2004] UKHL 56 on Appeal from: [2002] EWCA Civ 1502 (16 December 2004) <<https://publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&oth-1.htm>>.

<sup>57</sup> Head, above 53, 229.

<sup>58</sup> Ibid.

any measure that violates non-derogable rights.<sup>59</sup> In the African Charter on Human and Peoples' Rights, there is no explicit provision that means that African countries have to protect human rights at all times without any exceptions.<sup>60</sup>

#### 5.4.2 Official declaration of a state of emergency

Respecting human rights should be unconditional. International law provides some exceptions for the state to derogate from its obligations, except for non-derogable rights, with the provision of several rules and regulations that need to be followed by all member states of the UN. However, in many cases, declaring a state of emergency has obviously been used for the sake of preserving authoritarian regimes.<sup>61</sup>

In autocratic regimes with a weak society, the ratification of any treaties will have no effect, and in many cases will be associated with more human rights breaches.<sup>62</sup> The view of human rights in autocratic regimes is highly inspirational, but the probability of political action ending in accomplishment is remote.<sup>63</sup>

Authoritarian regimes have used the Global War on Terror to justify their violation of the law and to support their rule. They have placed many obstacles in their opponents' way to limit the need to share power. When a public emergency threatens the life of the nation, the state should declare that it exists, with the prior notification designed to force derogating states to perform explicitly. This is essential for the maintenance of the rule of law and to minimise the violation of human rights. Any state that wishes to derogate from its obligations should respect the fact that the derogation should be limited in scope and temporary in application.<sup>64</sup>

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<sup>59</sup> Article 4(A, B, C) of the *Arab Charter on Human Rights*, 22 May 2004 (entered into force on 15 March 2008) League of Arab States.

<sup>60</sup> Rachel Murray, 'Reading the African Charter on Human and Peoples' Rights' (2000) 37(227) *Texas International Law Journal* 228.

<sup>61</sup> Noura Erakat, *Emergency Laws, the Arab Spring, and the Struggle Against 'Human Rights'* (Arab Studies Institute, 5 July 2011) <<http://www.jadaliyya.com/pages/index/2051/emergency-laws-the-arab-spring-and-the-struggle-ag>>.

<sup>62</sup> Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49(6) *Journal of Conflict Resolution* 925–953.

<sup>63</sup> Beth Simmons, 'Reflections on Mobilization for Human Right' (2010) 44 *International Law and Politics* 727–748 <[http://nyujilp.org/wp-content/uploads/2010/06/44-3\\_Simmons\\_Web.pdf](http://nyujilp.org/wp-content/uploads/2010/06/44-3_Simmons_Web.pdf)>.

<sup>64</sup> David L Richards and K Chad Clay, *An Umbrella With Holes: Respect for Non-Derogable Human Rights During Declared States of Emergency, 1996–2004* (2012) 13(4) *Human Rights Review* 446.

### 5.4.3 Duty of notification via the secretary general

Articles 4(2), 7, 8(1, 2), 11, 15, 16 and 18 list some non-derogable rights. Further, Article 4/3 of ICCPR requires that any state wishing to derogate from its obligations should immediately inform, via the secretary general, the other states that are party to the agreement, and the notification should include a clear explanation of the full measures that will be taken and the reasons behind the derogation. Limits to derogation measures under Article 4 of the ICCPR are outlined below.

1. Non-derogable rights:<sup>65</sup>
  - A. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. [Article 6]
  - B. No one shall be subjected to torture or to cruelty, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. [Article 7]
  - C. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. [Article 8(1)] No one shall be held in servitude. [Article 8(2)]
  - D. No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. [Article 11]
  - E. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it is committed. [Article 15]
  - F. Everyone shall have the right to recognition everywhere as a person before the law. [Article 16]
  - G. Everyone shall have the right to freedom of thought, conscience and religion. [Article 18]
2. Proportionality.
3. Compatibility with other obligations under Article 4 of the ICCPR.
4. Prohibition of discriminatory measures.

The general principles of the Paris Minimum Standards of Human Rights Norms in a State of Emergency in Section B (Emergency Powers and the Protection of Individuals) gave authority to the state during a public emergency to take measures to derogate from its obligations. However, some non-derogable, or non-suspendable,

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<sup>65</sup> Article 4(2) of the International Covenant on Civil and Political Rights, UN, drafted in 1954, signed on 19 December 1966 (entered into force on 3 January 1976).

rights cannot be derogated at any time, during a public emergency.<sup>66</sup> Thus, for a state to derogate from its obligations, it should follow these principles:

1. Every state should comply with the principles of notification.
2. Such measures must be strictly impartial.
3. Such measures must not be inconsistent with other obligations of the state under international law.
4. No discrimination measures can be based on race, colour, sex, language, religion, nationality or social origin.

The state can derogate from its obligations under international law treaties when it faces a public emergency that threatens the life of the nation under the following conditions:

1. Where it affects the whole of the population and either the whole or part of the state.
2. Where it threatens the physical integrity of the population.
3. Any internal disturbance or unrest in the state should be a grave and imminent threat to the life of the nation. If it is not grave or imminent, the state cannot derogate from its obligations.
4. The state cannot derogate from its obligations based on economic justifications.<sup>67</sup>

However, international law treaties have used vague concepts such as ‘physical integrity of the population’, which regimes can use to derogate from their international commitments. Andrej Zwitter, in his research on the state of emergency mapping database, concluded that Egypt did not report its declaration of the state of emergency. This indicates that either Egypt did not want the international community to know that it wished to derogate from its human rights obligations, or that Egypt did not intend to derogate from human rights during the declaration of the state of

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<sup>66</sup> Section B: Emergency Powers and the Protection of Individuals: General Principles of the Paris Minimum Standards of Human Rights Norms in a State of Emergency. At the 61st Conference of the International Law Association held in Paris in 1984, the Committee on the Enforcement of Human Rights Law approved a set of standards regarding the declaration and administration of states of emergency that threaten the life of a nation.

<sup>67</sup> *UN Commission on Human Rights, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* (28 September 1984) Annex, UN Doc E/CN.4/1985/4 <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>>.

emergency.<sup>68</sup> Either way, Egypt did not fulfil its obligation according to Article 4(3), which states that:

Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.<sup>69</sup>

## **5.5 Common Human Rights Violations in Egypt During a State of Emergency**

Successive regimes in Egypt have used emergency powers to consolidate their rule and suppress their opponents. Their justification has consistently been to maintain national security and protect democracy. The long and permanent state of emergency has led to many cases of human rights breaches, including police brutality, mass arrests, administrative detention, forced disappearance, torture, military trials and the death penalty. This section examines the common human rights breaches that occur during a state of emergency in Egypt. This is important to show how successive regimes have used emergency law to violate human rights.

### **5.5.1 Police brutality**

The Egyptian population has long suffered from police brutality, which was one of the reasons behind the 2011 revolution. Egyptian regimes have relied heavily on the police to consolidate their power through the use of excessive force against opponents.

The Central Security Forces was established in 1977 during Sadat's era. One of the tasks of these paramilitary forces was to assist the Egyptian National Police to secure the state sites and embassies. However, its main duty was to maintain crowd control at demonstrations and issue arrests where required. During the 2011 Egyptian revolution, the Central Security Forces was blamed for using tear gas and live ammunition, which led to the deaths and injuries of many Egyptians.<sup>70</sup> The Egyptian

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<sup>68</sup> Andrej Zwitter, Annajorien Prins and Hannah Pannwitz, *State of Emergency Mapping Database* (University of Groningen Faculty of Law, 2014) 11.

<sup>69</sup> Article 4(3) of the International Covenant on Civil and Political Rights, above n 65.

<sup>70</sup> 'Central Security Forces (CSF)', *The Cairo Post* (online), 19 September 2013 <<http://thecairopost.youm7.com/news/7125/wiki/central-security-forces-csf>>.

Ministry of Interior controlled the Central Security Forces,<sup>71</sup> which operated with impunity provided via emergency law. The Egyptian constitution granted Egyptians protection; however, the laws on paper were different to what occurred in practice.<sup>72</sup>

After the 2011 Egyptian revolution, human rights organisations and Egyptian activists called for the police force to be held accountable for the deaths of approximately 846 Egyptians who were killed during the revolution. A total of 172 police officers faced trial for killing 83 demonstrators; however, most of them were released without punishment, and only six faced court. On 22 February 2014, these six police officers were also released, with no charges being laid.<sup>73</sup> The government's justification for using such force was that the demonstrators used weapons, but in reality, the government simply wanted to prevent any further uprisings against it.<sup>74</sup> Egyptian police made a concentrated effort to remove the Egyptian activists, with thousands placed in prisons and hundreds being killed.<sup>75</sup>

On 29 July 2013, the interior minister used secret police to undertake state security investigations, which resulted in the arrest of many innocent civilians.<sup>76</sup> Security forces used excessive force on different occasions.<sup>77</sup> For example, Egyptian police used birdshot and tear gas against peaceful demonstrators, resulting in many casualties.<sup>78</sup> In one case, around 800 demonstrators were shot in the head and chest and died during clashes between Morsi's supporters and the police during a sit-in in

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<sup>71</sup> Asma Al Sharif and Yasmine Saleh, 'Special Report—The Real Force Behind Egypt's "Revolution of the State"', *Reuters* (online), 10 October 2013 <<http://uk.reuters.com/article/uk-egypt-interior-special-report-idUKBRE99908720131010>>.

<sup>72</sup> Michael Slackman, 'Egypt's Critics Have a Voice, But Never the Last Word', *New York Times* (online), 17 February 2009 <<http://www.nytimes.com/2009/02/18/world/middleeast/18egypt.html>>.

<sup>73</sup> Alex Delmar Morgan, 'Six Egyptian Police Officers Cleared of Killing 83 Protesters During 2011 Uprising', *The Independent* (online), 23 February 2014 <<http://www.independent.co.uk/news/world/africa/six-egyptian-police-officers-cleared-of-killing-83-protesters-during-2011-uprising-9146874.html>>.

<sup>74</sup> Heba Morayef, *Re-Examining Human Rights Change in Egypt*, Middle East Research and Information Project (2015) <<http://www.merip.org/mer/mer274/reexamining-human-rights-change-egypt>>.

<sup>75</sup> Louisa Loveluck, 'The Price of Egypt's Economic Recovery: Police Brutality, Torture and Strangled Press', *The Spectator* (online), 4 February 2015 <<http://blogs.spectator.co.uk/coffeehouse/2015/02/egypt/>>.

<sup>76</sup> Freedom House, *Timeline of Human Rights Violations in Egypt Since the Fall of Mubarak* (9 August 2013) <<https://freedomhouse.org/article/timeline-human-rights-violations-egypt-fall-mubarak#.VePbfZfUe0c>>.

<sup>77</sup> Sona Movsisyan, 'Major Human Rights Crisis in Egypt as New Leader Takes Command', *Grievoski Global Strategies* (online), 10 June 2014 <<http://grievoski.com/major-human-rights-crisis-in-egypt-as-new-leader-takes-command/>>.

<sup>78</sup> Human Rights Watch, *Egypt: Protesters Killed Marking Revolution—Prosecutors Should Investigate Excessive Use of Force* (26 January 2015) <<https://www.hrw.org/news/2015/01/26/egypt-protesters-killed-marking-revolution>>.

Rabaa al-Adawiya and al-Nahda Squares in Cairo. No members of the Central Security Forces were held accountable for the deaths,<sup>79</sup> and the government justified the use of lethal force because it deemed the protesters to be a threat to national security.<sup>80</sup> On 18 August 2013, approximately 37 prisoners died in a police van outside the Abu Zaabal prison. The only repercussions from these deaths were that one police captain was sentenced to 10 years in prison and three officers were given one-year suspended sentences for using tear gas causing suffocation.<sup>81</sup>

According to a Human Rights Watch report and Amnesty International, police have used force and firearms on numerous occasions, resulting in the deaths of many protesters between July 2013 and January 2014, as follows:<sup>82</sup>

- 46 people were killed in Port Said in January 2013
- 54 people were killed across Egypt between 30 June and 5 July 2013<sup>83</sup>
- 61 demonstrators were killed in the Republican Guard Headquarters on 8 July 2013
- 82 people were killed at the Manassa Memorial on 27 July 2013
- 121 demonstrators were killed at Ramses Square on 16 August 2013
- 57 Morsi supporter protesters were killed in Egypt on 6 October 2013
- at least 64 demonstrators died on 25 January 2014.

Using lethal force is against basic human rights to life. In addition, the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials prohibits the use of lethal force to minimise the risk of endangering the life of civilians. It states that:

1. Whenever the lawful use of force and fire arms is unavoidable, law enforcement officials shall:
  - (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved
  - (b) minimise damage and injury, and respect and preserve human life

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<sup>79</sup> Human Rights Watch, *Year of Abuses Under Al-Sisi—President Gets Western Support While Erasing Human Rights Gains* (8 June 2015) <<https://www.hrw.org/news/2015/06/08/egypt-year-abuses-under-al-sisi>>.

<sup>80</sup> Michael Mansfield and Tayab Ali, 'Egypt's Military Will Not Get Away With Human Rights Abuses', *The Guardian* (online), 14 August 2013 <<http://www.theguardian.com/commentisfree/2013/aug/14/egypt-military-human-rights-abuses>>.

<sup>81</sup> Ibid.

<sup>82</sup> Human Rights Watch, *Egypt: New Leader Faces Rights Crisis—Should Not Ignore Worst Situation in Decades* (9 June 2014) <<https://www.hrw.org/news/2014/06/09/egypt-new-leader-faces-rights-crisis>>.

<sup>83</sup> Human Rights Watch, *World Report 2014: Egypt—Events of 2013* <<https://www.hrw.org/world-report/2014/country-chapters/egypt>>.

- (c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment
  - (d) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.<sup>84</sup>
2. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
  3. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
  4. Exceptional circumstances, such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Thus, lethal force is not allowed, even under the public emergency law or in circumstances of internal political instability. All law enforcement officials are bound by this, including all officers who are appointed or elected and who have the authority to arrest or detain, as well as military authorities (whether uniformed or not) and the state security forces.<sup>85</sup>

Law enforcement officers should not use excessive force except in limited cases, such as for self-defence or to protect others, in which case it can be used as a last resort. However, Article 6 of the 2015 Egyptian Counter Terrorism Law<sup>86</sup> gave law enforcement officers immunity from being charged over using excessive force when carrying out their duties. This violates the right to life and the security of the person under Articles 6 and 9 of the ICCPR.<sup>87</sup>

In conclusion, the regime failed to conduct a fair and independent investigation into the use of lethal force against students, peaceful protesters and opponents. Instead, the public prosecutors focused on what the regime called ‘abuse by opponents.’<sup>88</sup> Emergency law gave the military forces and police significant power and established

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<sup>84</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ( adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990)

<<https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>>.

<sup>85</sup> Compendium of United Nations Standards and Norms, *Good Governance, the Independence of the Judiciary and the Integrity of Criminal Justice Personnel* (2006)

<[https://www.unodc.org/pdf/compendium/compendium\\_2006\\_part\\_04\\_01.pdf](https://www.unodc.org/pdf/compendium/compendium_2006_part_04_01.pdf)>.

<sup>86</sup> Article 6 of the 2015 Egyptian Counter Terrorism Law.

<sup>87</sup> Articles 6 and 9 of the International Covenant on Civil and Political Rights, above n 65.

<sup>88</sup> Amnesty International, *Annual Report (Egypt 2015/2016)*

<<https://www.amnesty.org/en/countries/middle-east-and-north-africa/egypt/report-egypt/>>.



immunity for security personnel via loopholes that permitted police to act with protection under the guise of self-defence, fighting terrorism and protecting national security.<sup>89</sup> The broad definition of terrorism resulted in criminalising the rights of the freedom of assembly and expression in Egypt. In reality, police should respect human rights at all times to comply with the international human rights law standards.<sup>90</sup> Police should be trained to respect human rights, and they should be suspended without pay or terminated if any misconduct occurs, with the possibility of being sent to court if the seriousness of the misconduct deems it appropriate.<sup>91</sup> Misusing lethal force should be prohibited, and the right to compensation for victims should be considered. Emergency laws in Egypt gave the police authority to arrest and detain anyone who could be considered a threat to national security or public order.

### 5.5.2 Mass arrests

The persistence of emergency legislation established the right for police to be able to arrest and detain anyone believed to be a threat to national security and public order. As a result, Egyptian prisons became full of political prisoners. According to the Ministry of Interior and Wiki Thawra (an independent Egyptian website), approximately 22,000 people were arrested after President Morsi was ousted. Of this number, approximately 16,387 were arrested under political circumstances—1,431 for violating curfews, 89 for committing terrorist acts and 80 for sectarian violence—and approximately 740 were referred to military courts.<sup>92</sup>

The Human Rights Council of Australia has indicated that approximately 41,000 people have been arrested and sentenced in Egypt, with thousands more charged with violating Egypt's Protest Law of 2013.<sup>93</sup> Many activists who assisted in the 2011 revolution were arrested. For example, two of the founders of the April 6 Revolution were arrested for violating Law No 107 of 2013 because they organised peaceful public meetings, processions and protests. Several peaceful civilians who

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<sup>89</sup> Elansary and Zaree, above n 18, 3.

<sup>90</sup> Amnesty International, above n 88.

<sup>91</sup> Robert M Bohm, *The Death Penalty Today* (Taylor & Francis Group, 2008) 18.

<sup>92</sup> Rana Muhammad Taha, '21,317 Arrested Since Morsi's Ouster: Independent Count', *Egypt Daily News* (online), 13 January 2014 <<http://www.dailynewsegypt.com/2014/01/13/21317-arrested-since-morsis-ouster-independent-count/>>.

<sup>93</sup> The Human Rights Council of Australia, *Australian Government: Works for UN Resolution in Human Rights Situation in Egypt* (9 July 2015) <<http://www.hrc.org.au/australian-government-work-for-un-resolution-on-human-rights-situation-in-egypt/>>.

demonstrated were arrested and dealt with as thugs and accused of assaulting police officers.<sup>94</sup> Many civilians have been detained for possessing flyers with anti-military slogans or displaying signs remembering the Rabaa dispersal.<sup>95</sup> Many of those who were arrested suffered from harsh and inhuman conditions in the prisons and detention centres. Arbitrary arrest and humiliation violate Article 9(1,2) of the ICCPR, which provides that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.<sup>96</sup>

Administrative detention was also used by successive regimes to detain civilians for an unlimited time without the right to a proper trial.

### **5.5.3 Prison and detention centre conditions and administrative detention**

Categories of Egyptian prisoners include sentenced prisoners, prisoners under investigation, prisoners charged with offences, detainees awaiting trial or in trial proceedings, and detainees without charge being held because of the state of emergency law.<sup>97</sup> A large number of detainees suffered from medical negligence, which resulted in death and the spread of dangerous diseases. There were poor conditions at detention centres, with most detainees subjected to cruel beatings and forced to sign false confessions for terrorism offences or committing crimes against public security.

Prison administrators used torture against activists and political prisoners, including electric shock treatment on sensitive areas, hanging them by their limbs or tying their hands behind their backs while beating them, and preventing prisoners from having

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<sup>94</sup> Joe Stork, *Egypt's Political Prisoners*, Human Rights Watch (6 March 2015) <<https://www.hrw.org/news/2015/03/06/egypts-political-prisoners>>.

<sup>95</sup> Human Rights Watch, *World Report 2015: Egypt—Events of 2014* <<https://www.hrw.org/world-report/2015/country-chapters/egypt>>.

<sup>96</sup> Article 9(1,2) of the International Covenant on Civil and Political Rights, above n 65.

<sup>97</sup> Human Rights Watch, *Prison Conditions in Egypt: A Filthy System* (1993) 24.

food or warm clothes, especially in winter.<sup>98</sup> A number of detainees were sexually harassed and threatened with rape.<sup>99</sup> In some cases, the families of the victims filed complaints against the police officers, saying that the torture caused the death of the detainee, and the prosecutor-general ordered an investigation. For example, when two prisoners died in police stations, the Ministry of Interior stated that their deaths resulted from health issues. However, the families did not agree with the findings, so the prosecutor-general ordered an autopsy to find the real reasons for their deaths.<sup>100</sup> Some detainees paid the officers to stop torturing them on every visit, but when the money ran out, the torture continued. Other detainees were forced to drink mixtures of water, oil, salt, washing powder, milk and tobacco, which caused the death of some detainees as a result of vomiting<sup>101</sup> and loss of fluid combined with medical negligence. Some detainees were beaten badly and were not allowed to access toilets or enough food.<sup>102</sup> Other detainees who had health issues such as cancer, heart problems, diabetes and high blood pressure were held in overcrowded police cells and denied medical treatment.

In 2014, at least 90 detainees died in custody over a period of 10 ½ months.<sup>103</sup> The overcrowded conditions, with 27–30 prisoners in a space of 5 x 6 metres, meant that the prisoners slept on top of each other. Further, they shared one bathroom and had limited access to water, which affected their cleanliness.<sup>104</sup> The lack of proper sanitation and ventilation led to many diseases.<sup>105</sup>

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<sup>98</sup> Safiaa Munir, 'Egypt Still Struggles to Improve Human Rights', *Al-Monitor* (online), 2 March 2016 <<http://www.al-monitor.com/pulse/originals/2016/03/egypt-human-rights-situation-decline-sisi-hrw-amnesty.html>>.

<sup>99</sup> Orla Guerin, 'Egypt Crisis: Young Detainees Alleged Torture', *BBC News* (online), 28 March 2014 <<http://www.bbc.com/news/world-middle-east-26790381>>.

<sup>100</sup> Adham Youssef, 'Deaths in Detention Centres Rise', *Egypt Daily News* (online), 10 May 2015 <<http://www.dailynewsegypt.com/2015/05/10/deaths-in-detention-centres-rise/>>.

<sup>101</sup> Emir Nader, 'Torture, Abuse, Death Daily Occurrences in Egypt's Detention Centres', *Egypt Daily News* (online), 16 March 2015 <<http://www.dailynewsegypt.com/2015/03/16/torture-abuse-death-daily-occurrences-in-egypts-detention-centres/>>.

<sup>102</sup> 'Egypt Prosecutor Orders Inquiry into Detention Centres After Torture Reports', *Ahram Online* (online), 8 April 2015 <<http://english.ahram.org.eg/WriterArticles/NewsContentP/1/127229/Egypt/Top-prosecutor-orders-ongoing-investigations-into-.aspx>>.

<sup>103</sup> Human Rights Watch, *Egypt: Rash of Deaths in Custody—Holding Police Accountable Key to Saving Lives* (21 January 2015) <<https://www.hrw.org/news/2015/01/21/egypt-rash-deaths-custody>>.

<sup>104</sup> Megan O'Toole, above n 39.

<sup>105</sup> The Egyptian Organization for Human Rights, *Tuberculosis—The Slow Death of the Prisons of El Wadi El Gadeed and Damanhour* (23 January 2002) <<http://www.derechos.org/human-rights/mena/eohr/tbr.html>>.

In addition, most detainees did not have the opportunity to engage in work and educational activities.<sup>106</sup> Families only received half an hour every week for visitation purposes, although the prison director had discretionary power to increase the length of visits. However, in many cases, families were not allowed to visit or bring food or medication unless they paid the security officers; even then, the food did not go to the prisoners most of the time.<sup>107</sup>

### 5.5.3.1 Administrative detention

Administrative detention is a temporary exceptional measure used under a state of emergency to detain any person who is considered or suspected to be a threat to public security and public order. Article 3(1) of Law No 162 of 1958 gave the president or his deputies (mainly the interior minister) the authority to detain civilians without judicial review.<sup>108</sup> Judicial review gives people the power to challenge the executive decision if they believe that their rights have been infringed. It means that the individual's rights are protected not only by the constitution, but also in practice.

Further, any person arrested under Article 3(1) of the emergency law is supposed to be notified in writing of the reason for their arrest and given the right to contact anyone or seek legal advice. In practice, the Ministry of Interior informed the detainee verbally, which violated the law and human rights. The ministry's excuse was that it was not important for the detainee to be informed in writing.<sup>109</sup> Under the state of emergency law, a person under administrative detention has no right to access a court for the first 30 days, which violates the right to a fair trial.<sup>110</sup> After 30 days, the detainee can request a court to review the detention order and can resubmit another request to see the court after another month has passed.<sup>111</sup>

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<sup>106</sup> Graeme R Newman, *Crime and Punishment Around the World* (ABC-CLIO, 2010) 266.

<sup>107</sup> Mohammad Mohsen, 'Paying More Than Your Debt in Egypt's Prisons', *The New Arab* (online), 10 April 2010 <<http://www.alaraby.co.uk/english/features/2015/4/10/paying-more-than-your-debt-in-egypts-prisons>>.

<sup>108</sup> Amnesty International, *Egypt's Corrosive System of Detention* (4 April 2011) 14 <[http://www.univie.ac.at/bimtor/dateien/egypt\\_ai\\_2011\\_time\\_for\\_justice.pdf](http://www.univie.ac.at/bimtor/dateien/egypt_ai_2011_time_for_justice.pdf)>.

<sup>109</sup> Human Rights Watch, *Behind Closed Doors: Torture and Detention in Egypt* (1 July 1992) <<https://www.hrw.org/report/1992/07/01/behind-closed-doors/torture-and-detention-egypt>>.

<sup>110</sup> Human Rights Watch, *Egypt: Extending State of Emergency Violates Rights* (27 May 2008) <<https://www.hrw.org/news/2008/05/27/egypt-extending-state-emergency-violates-rights>>.

<sup>111</sup> *Country Assessment Reports: The Arab Republic of Egypt* (International Rehabilitation Council for Torture Victims, 2006).

Under Article 3, Law No 162 of 1958 gave the president the right to arrest and detain, for uncertain detention without charge or trial, whoever they believed was suspicious or might pose a danger to security and public order.<sup>112</sup> The president could do this without a judicial order. Thus, the judicial review system needs to be maintained to ensure the separation of powers and the independence of the judiciary. The emergency measures affected the judicial review system because it gave authority to the military and police to use lethal force, arrest and detain, and search without a judicial warrant. The extensive emergency powers restrained the judicial review process and made it powerless, causing a breach of human rights.

Article 75 of the 2012 Egyptian constitution stated that:

The right to litigation is inalienable and guaranteed for all. The state commits to make judicial institutions accessible to encourage a rapid decision-making process. It is prohibited to isolate any act or administrative decision from judicial oversight. No person can be tried except before his natural judge, and exceptional courts are prohibited.<sup>113</sup>

This article was banned by the regime. In reality, thousands of Egyptians have been detained in jail for a period exceeding the legal limit while awaiting their trial. Article 143 of the Egyptian criminal code specified that pre-trial detention can be from 18 months to two years in criminal cases. Many detainees suffered because their extended detention exceeded the limit. This procedure was used as a political instrument and as punishment for activists and opponents of the regime, placing the regime in violation of the right to a trial and defence.<sup>114</sup>

There is a set of pre-trial detention conditions that were not followed by judges or prosecutors under the regime. These conditions were set as preventive actions and include whether the person poses a high risk, whether there is any risk of the evidence being tampered with and whether there has been a comprised investigation.<sup>115</sup> Several of Egypt's courts ignored the right to a fair trial. For

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<sup>112</sup> Hussein Ali Agrama, *Questioning Secularism, Islam Sovereignty, and the Rule of Law in Modern Egypt* (University of Chicago Press, 2012) 195.

<sup>113</sup> Article 75 right to litigate, 2012 Egyptian constitution, 2012, unofficial translation prepared by International IDEA <<http://constitutionaltransitions.org/wp-content/uploads/2013/05/Egypt-Constitution-26-December-2012.pdf>>.

<sup>114</sup> Egyptian Initiative for Personal Rights, *The New Emergency Law: Endless Pretrial Detention as Political Punishment: At Least 1,464 People in Four Governorates Held in Pretrial Detention Longer Than the Two Year Legal Limit* (10 May 2016) <<http://eipr.org/en/pressrelease/2016/05/10/2600>>.

<sup>115</sup> Ibid.

example, when former President Mubarak ended his detention time limit, the court ordered his release, but it ignored the requests of other detainees' lawyers to release their clients.<sup>116</sup> These double standards should not exist in courts because every person has the right to be tried before an impartial court based on evidence rather than political beliefs. In addition, on 2 June 2013, the Egyptian Supreme Constitutional Court ruled that paragraph 1 of Article 3 of the Egyptian emergency law, which gave the president the power to arrest, detain and search people without following the provisions of the criminal code, was unconstitutional<sup>117</sup> because it turns the president into a dictator.<sup>118</sup> Although Article 143 of the criminal code is clear on setting the maximum limit of detention, some courts hold detainees beyond the limit because they relied on Article 380 of the criminal code, which did not specify a time limit. The constitution gave the Supreme Constitutional Court the right to interpret any disputed laws. However, only certain petitions are considered—namely, those from people such as the prime minister, the speaker of the Egyptian parliament and the president of the judicial body council.<sup>119</sup>

Emergency law includes vague concepts that are used by the executive to expand the terms of the definition. For example, President Sadat used Law No 110 of 1980 to increase the crimes punishable under Law No 98 of 1945 in an effort to consolidate the exceptional authority of the president after lifting the state of emergency.<sup>120</sup> In Law No 98 of 1945, on 'vagrants and suspects', Article 5:

identifies a suspect as one who has been subject to irrevocable conviction for one or more of a number of crimes set forth by that law, or who has a reputation for habitually committing such crimes even if he or she has not been so convicted.<sup>121</sup>

In 1993, the Supreme Constitutional Court ruled that Article 5 of Law No 98 of 1945 was unconstitutional.<sup>122</sup>

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<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Hend Kortam, 'SCC: President's Ordering of Arbitrary Arrests as Part of Emergency Law Unconstitutional', *Daily News Egypt* (online), 2 June 2013 <<http://www.dailynewsegypt.com/2013/06/02/scc-Presidents-ordering-of-arbitrary-arrests-as-part-of-emergency-law-unconstitutional/>>.

<sup>119</sup> Egyptian Initiative for Personal Rights, above n 114.

<sup>120</sup> Agrama, above n 112.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid 196.

In conclusion, administrative detention has been used by regimes as another tool in the criminal justice system to impose additional punishments on detainees along with the court sentence. Further, administrative detention has been used as a tool to suppress political opponents and activists and, in the process, it has violated human rights.<sup>123</sup> It has been widely used by successive regimes for political reasons and has prevented people from having the right to a fair trial. Many detainees have also suffered from forced disappearance in secret prisons without having the right to be referred to ordinary courts, or at least to have access to seek legal advice.

#### **5.5.4 Forced disappearance**

Even in times of emergency law, international law prohibits the forced disappearance of citizens. However, according to Amnesty International, some detainees have been held in a secret prison called Azouly within the Al-Galaa Military Camp. Some were held for 90 days and tortured by military intelligence and the National Security Agency.<sup>124</sup> Many detainees have suffered from unofficial detention in centres belonging to the National Security Agency, located in military and police stations. They have been kept there to obtain confessions or to accuse others.<sup>125</sup> Of the 16,000 political prisoners, hundreds were forcibly disappeared into a secret military prison without judicial oversight.<sup>126</sup> According to Amnesty International, more than 1,000 people have been forcibly disappeared since the 2011 Egyptian revolution. A number of detainees have been held in secret prisons without charge and have been prevented from having access to their family, lawyers or the court.<sup>127</sup> Between April and June 2015, the National Council of Human Rights received approximately 50 cases of forced disappearances. Another organisation called Freedom for the Brave

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<sup>123</sup> Amnesty International, above n 108, 21.

<sup>124</sup> Amnesty International, *Hundreds Disappeared and Tortured Amid Wave of Brutal Repression* (13 July 2016) <<https://www.amnesty.org/en/latest/news/2016/07/egypt-hundreds-disappeared-and-tortured-amid-wave-of-brutal-repression/>>.

<sup>125</sup> Amnesty International, *Egypt: Rampant Torture, Arbitrary Arrest and Detention Signals Catastrophic Decline in Human Rights One Year After Ousting Morsi* (3 July 2014) <<https://www.amnesty.org/en/latest/news/2014/07/egypt-anniversary-morsi-ousting/>>.

<sup>126</sup> Patrick Kingsley, 'Egypt's Secret Prison: "Disappeared" Face Torture in Azouli Military Jail', *The Guardian* (online), 22 June 2014 <<http://www.theguardian.com/world/2014/jun/22/disappeared-egyptians-torture-secret-military-prison>>.

<sup>127</sup> US Department of State, *Country Reports on Human Rights Practices for 2014—Egypt* (June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dld=236596&year=2014>>.

documented 163 of cases of forced disappearance in Egypt.<sup>128</sup> Two of these people were found dead.<sup>129</sup>

Human Rights Watch describes forced disappearances in Egypt as a systemic policy and a crime that violates human rights.<sup>130</sup> Some children have also been forcibly disappeared and tortured. For example, three teenagers aged 16–17 were accused of vandalism and joining a banned group. They disappeared for a few days and were tortured by police security,<sup>131</sup> and their arrest records were faked to cover it up. Authorities have ignored these reports of abuse and refused to investigate.<sup>132</sup>

According to Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance:<sup>133</sup>

1. No one should be subjected to enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 1 stipulates that forced disappearances are non-derogable rights violations that cannot be justified at any time, even during a state of emergency or other exceptional circumstances.<sup>134</sup> Article 5 of the convention states that forced disappearance is a crime against humanity and on par with murder, rape and torture.<sup>135</sup> In conclusion, forced disappearance is prohibited by law, but successive Egyptian regimes have systematically used it, thereby breaching human rights.

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<sup>128</sup> Sonia Farid, 'Egypt's "Forced Disappearances": Between Fact and Hearsay', *Al-Arabia News* (online), 6 July 2015 <<http://english.alarabiya.net/en/perspective/analysis/2015/07/06/Egypt-s-forced-disappearances-Between-fact-and-hearsay.html>>.

<sup>129</sup> Mohamed Hashim, 'Egypt's Human Rights Groups Decry Forced Disappearances', *Al Jazeera News* (online), June 2015 <<http://www.aljazeera.com/news/2015/06/egypt-human-rights-groups-decry-forced-disappearances-150617091242563.html>>.

<sup>130</sup> Human Rights Watch, *Egypt: Dozens Detained Secretly—National Security Officers Operating Outside the Law* (20 July 2015) <<https://www.hrw.org/news/2015/07/20/egypt-dozens-detained-secretly>>.

<sup>131</sup> *Ibid.*

<sup>132</sup> Human Rights Watch, *Egypt: Children Reported Tortured, 'Disappeared'—Alexandria Arrests Emblematic of Security Abuses* (21 April 2016) <<https://www.hrw.org/news/2016/04/21/egypt-children-reported-tortured-disappeared>>.

<sup>133</sup> Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance, UN, drafted on 29 June 2006, signed on 6 February 2007 (entered into force on 23 December 2010).

<sup>134</sup> Nikolas Kyriakou, 'The International Convention for the Protection of All Persons from Enforced Disappearance and its Contributions to International Human Rights Law, with Specific Reference to Extraordinary Rendition' (2012) 13 *Melbourne Journal of International Law* 28.

<sup>135</sup> Brian Finucane, 'Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War' (2006) 35(171) *Yale Journal of International Law* 172.



Torture has also been widely used by successive regimes in Egypt to suppress their opponents.

### 5.5.5 Torture

The Egyptian government has been criticised for the widespread use of torture, including prohibition torture and degrading treatment and punishment, against its opponents. These forms of torture are part of the non-derogable rights that cannot be violated at any time.<sup>136</sup> They have been specifically mentioned in Articles 51 and 52 of the 2014 Egyptian constitution, as well as Articles 1 and 2 of the Convention against Torture and Cruelty.<sup>137</sup>

The state of emergency in Egypt unofficially facilitates the widespread use of torture because of the power given to the military and police to arrest and detain civilians. In addition, the criminal law restricts the ability of victims and their families to investigate or pursue any litigation of torture. The general prosecution has the power to investigate any unlawful torture.<sup>138</sup>

Torture has been carried out by the Egyptian military and police and the National Security Agency for many years to obtain confessions or force detainees to accuse others.<sup>139</sup> Many detainees have been forced to film their confessions under torture, and their family members have consistently claimed that these confessions are fabricated.<sup>140</sup> Many detainees who have been subjected to torture have gone on hunger strikes to criticise the inhumane treatment they received while in prison.<sup>141</sup> Torture has become a routine police procedure in Egypt and is most commonly used against political enemies. The use of torture spread throughout Egypt for various reasons. First, the police were given impunity and were not held accountable.

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<sup>136</sup> Geneva Academy of International Humanitarian Law and Human Rights, *Rule of Law in Armed Conflicts Project* <[http://www.geneva-academy.ch/RULAC/derogation\\_from\\_human\\_rights\\_treaties\\_in\\_situations\\_of\\_emergency.php](http://www.geneva-academy.ch/RULAC/derogation_from_human_rights_treaties_in_situations_of_emergency.php)>.

<sup>137</sup> United Nations Human Rights, '*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment Punishment*', ratification and accession by General Assembly Resolution 39/46 of 10 December 1984 ( entered into force 26 June 1987 in accordance with article 27(1) ) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>>.

<sup>138</sup> UN Commission on Human Rights, Question of the Violation Human Rights and Fundamental Freedoms in Any Part of the World, Fifty-Ninth Session, Item 9 of the Provisional Agenda (March 2003).

<sup>139</sup> Amnesty International, above n 125.

<sup>140</sup> International Coalition for Freedom and Rights, *Detainees of Burg Al-Arab Prison Declare Open Hunger Strike as Torture Continues* (2015) <<http://www.icfr.info/en/>>.

<sup>141</sup> Ibid.

Second, the continuous state of emergency gave the police sweeping powers to terrorise opponents and neutralise dissent.<sup>142</sup>

Detainees in Egypt have suffered from brutal physical torture in prisons and police stations,<sup>143</sup> where police and military authorities continue to use torture during investigations. Human Rights Watch stated that police torture has led to at least 11 deaths in custody as a result of torture and beatings during arrests.<sup>144</sup> Human Rights Watch described torture in Egypt as an epidemic<sup>145</sup> in which police and armed forces use excessive force against civilians, including the use of rubber bullets.<sup>146</sup> Some victims have been tortured with knives, while others have been taken to the second floor of the custody building and raped by security officers because they denied that they were linked to the Muslim Brotherhood.<sup>147</sup> To obtain confessions at any cost from detainees, security forces use the grill method for torture, which begins with handcuffing the detainee's hands and legs to an iron bar and placing the iron bar between two opposite chairs until the person's legs are distressed. They then begin torturing the detainee using electric shocks in his legs.<sup>148</sup> In addition, after handcuffing the detainee and beating his face, chest and sensitive parts with a whip, the security forces would place two wires on his left and right fingers and apply electric shocks.<sup>149</sup>

According to government statistics, most torture cases never reach court, with only six police officers sentenced between 2006 and 2009.<sup>150</sup> One example of police brutality was the case of 28-year-old Khalid Said, who was beaten and tortured while

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<sup>142</sup> Yasmine Fathi, 'Torture in Egypt: Never Again?' *Ahram Online* (online), 25 June 2011 <<http://english.ahram.org/News/14972.aspx>>.

<sup>143</sup> Tom Stevenson, 'New Accounts Suggest Severe Torture in Egypt is Ongoing', *Middle East Eye* (online), 23 March 2015 <<http://www.middleeasteye.net/in-depth/features/new-accounts-suggest-severe-torture-egypt-ongoing-not-decreasing-92831992>>.

<sup>144</sup> Human Rights Watch, *World Report 2013: Egypt—Events of 2012* <<https://www.hrw.org/world-report/2013/country-chapters/egypt>>.

<sup>145</sup> Human Rights Watch, 'Work on Him Until He Confesses'—*Impunity for Torture in Egypt* (30 January 2011) <<http://www.hrw.org/zh-hans/node/95968/section/5>>.

<sup>146</sup> Shahira Amin, 'Egypt's Epidemic of Police Violence and Impunity', *Middle East Eye* (online), 12 June 2015 <<http://www.middleeasteye.net/columns/egypt-s-epidemic-police-violence-and-impunity-1922576631>>.

<sup>147</sup> 'Egyptian Detainees "Tortured and Raped"', *Al Jazeera News* (online), 2 April 2014 <<http://www.aljazeera.com/humanrights/2014/04/egyptian-detainees-tortured-raped-201441165823978172.html>>.

<sup>148</sup> Amnesty International, above n 125.

<sup>149</sup> *Ibid.*

<sup>150</sup> Human Rights Watch, *Egypt: Impunity for Torture Fuels Days of Rage—New Government Should Prosecute Police Abuses, Make Clean Break With Torture* (31 January 2011) <<https://www.hrw.org/news/2011/01/31/egypt-impunity-torture-fuels-days-rage>>.

in police custody in 2010. Two police officers were accused and sentenced for up to seven years, but after a retrial was ordered, their sentences were increased to 10 years.<sup>151</sup> In this case, Khalid was sitting at an internet café when two plainclothes police officers entered and began beating him. Khalid was dragged outside and beaten for 20 minutes, which resulted in his jaw and nose being broken, his head being opened up and bruises all over his body. The two officers prevented anyone from saving his life, and he soon passed away. The torture of Khalid revealed the full extent of police brutality, injustice and cruelty. The case became public and led to protests that culminated in the 2011 revolution.<sup>152</sup> Local authorities tried to cover up the incident and reported it as being drug-related.<sup>153</sup> After Khalid died, his family were told that their son had died after choking on a packet of drugs. The case became a sign of routine police cruelty against civilians.<sup>154</sup>

Even underaged civilians have been tortured by security forces. For example, Amnesty International reported that security forces arrested a 14-year-old boy, who was blindfolded and raped with a wooden stick and then tortured and beaten to obtain a fabricated confession.<sup>155</sup> The duty of the government is to protect the lives and physical integrity of all citizens,<sup>156</sup> and torture is prohibited in the Egyptian constitution and international conventions. Any physical and moral harm used to obtain confessions render such confessions invalid. For example, Article 4 of the 1923 constitution granted personal freedom, including freedom from torture, and the right to be treated with dignity and respect. Further, Article 42 of the 1971 constitution prohibited physical and moral harm to any person arrested or detained, and it prevented their freedom from being restricted. All people should be dealt with in a way that preserves their dignity. Any confession obtained using physical or

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<sup>151</sup> 'Egypt Police Jailed Over Death of Khaled Said', *BBC News* (online), 3 March 2014 <<http://www.bbc.com/news/world-middle-east-26416964>>.

<sup>152</sup> 'Khaled Said: The Face That Launched a Revolution', *Ahram Online* (online), 6 June 2012 <<http://english.ahram.org.eg/NewsContent/1/64/43995/Egypt/Politics-/Khaled-Said-The-face-that-launched-a-revolution.aspx>>.

<sup>153</sup> Ernesto Londono, 'Egyptian Man's Death Became Symbol of Callous State', *The Washington Post* (online), 8 February 2011 <<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/08/AR2011020806421.html>>.

<sup>154</sup> Nahed Eltantawy and Julie B Wiest, 'Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory' (2011) 5 *International Journal of Communication* 1207–1224.

<sup>155</sup> Christine Kearney, 'Egypt Regime Using Kidnapping, Rape to Crush Dissent', *ABC News* (online), 13 July 2016 <<http://www.abc.net.au/news/2016-07-13/egyptian-regime-using-kidnapping-rape-to-crush-dissent-amnesty/7626886>>.

<sup>156</sup> Esther D Rees and Michael Dumper, *Civil Liberties, National Security and Prospects for Consensus: Legal Philosophical and Religious Perspectives* (Cambridge University Press, 2012) 144.

moral harm would be considered invalid. Article 9 of the March 2011 constitutional declaration stated that any citizen arrested or detained must be dealt with while preserving their human dignity. The article prohibited the abuse of body and mind and stated that any confession taken from a citizen under duress or threat would not be counted and would be deemed unreliable.

Article 36 of the banned 2012 constitution mentioned the word ‘tortured’ for the first time. In addition, the constitution considered that any violation of the instructions would be a crime and that any confession would be null and void. Articles 51, 52 and 55 of the current 2014 constitution are similar to the 2012 constitution, but they use the word ‘terrorised’ in addition to ‘tortured’, and also give the person the right to be silent. In addition to being specifically named in the Egyptian constitution, torture has been prohibited in international covenants, including Article 5(2) of the American Convention on Human Rights, Article 5 of the African Charter on Human Rights, Article 13 of the Arab Charter on Human Rights and Article 3 of the European Convention on Human Rights. All of these conventions prohibit torture and degrading treatments and punishments of humans.

In conclusion, the Egyptian constitution and international covenants prohibit torture, and any confessions that are coerced by physical or mental harm will be considered illegitimate. However, in practice, torture is a widespread practice in Egypt, and there is no right to compensation for the person who has been tortured. Emergency laws and the Egyptian constitution have enshrined military trials, leading to many cases of human rights violations. Unfortunately, international treaties use vague and elastic concepts that create loopholes that have been used by different political regimes to justify breaching human rights under the guise of protecting national security and public order.

### **5.5.6 Military trials**

Military trials have been one of the major causes of human rights violations in Egypt. With no legal representation or access to case files to examine evidence, any civilians can be arrested, transferred to a military court and sent to jail or given the

death penalty. Egyptian military courts have been the most efficient instrument for depriving thousands of Egyptian civilians of their rights.<sup>157</sup>

Article 7 of Emergency Law No 162 of 1958 allowed the establishment of exceptional courts to try civilians, including state security courts and the Supreme State Security Emergency Court, which might include a military judge. These courts do not have the right of appeal, and decisions become final after they are ratified by the president. In addition, Article 9 of the emergency law gave power to the president to refer civilians accused of ordinary criminal offences to military courts, which violates the Egyptian constitution's requirements for a fair trial.

Egyptian authorities used the Global War on Terror to justify arresting thousands of civilians and trying them before military courts, which violated their human rights and civil liberties.<sup>158</sup> The regime used military trials to try political civilians, thereby guaranteeing a quick guilty verdict.<sup>159</sup> Civilians received harsh sentences, including the death penalty and life imprisonment.<sup>160</sup> Military courts continued to try civilians, without integrity or transparency,<sup>161</sup> which raised several concerns. Some experts believe that the harsh punishments are politically motivated and aim to place pressure on the regime's opponents to make them accept some form of reconciliation.<sup>162</sup> Article 198 of the 2012 constitution stated that the military judiciary is an independent judiciary that deals with all crimes related to armed forces, its officers and personnel in relation to crimes belonging to the military service that occur within military facilities and crimes relating to armed forces' facilities, equipment and secrets. Therefore, civilians could be tried for any crimes considered to harm the armed forces. The word 'harm' is elastic and vague in

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<sup>157</sup> William J Dobson, *The Dictator's Learning Curve: Inside the Global Battle for Democracy* (Harvill Secker, 2012) 211.

<sup>158</sup> Egyptian Solidarity Initiative, *International Initiative Against Repression in Egypt, Solidarity With Egyptian Political Prisoners* (20–21 June 2015) <<http://egyptsolidarityinitiative.org/prisonersolidarity/>>.

<sup>159</sup> Nathan J Brown and Michele Dunne, *Egypt's Draft Constitution Rewards the Military and Judiciary*, Carnegie Endowment for International Peace (4 December 2013) <<http://carnegieendowment.org/2013/12/04/egypt-s-draft-constitution-rewards-military-and-judiciary-pub-53806>>.

<sup>160</sup> Middle East Watch, *Egypt: Trials of Civilians in Military Courts Violate International Law—Executions Continue, No Appeal of Death Sentences to Higher Court* (July 1993) <<https://www.hrw.org/reports/1993/egypt/>>.

<sup>161</sup> Human Rights Monitor, *HRM Calls for Retrial of Civilians Sentence in Military Courts in Case 'Military 507'* (2013) <<http://humanrights-monitor.org/Posts/ViewLocale/15270#.VeINfpfUe0c>>.

<sup>162</sup> Mohamed Gamal Arafa, *Mass Executions and the Absence of Justice in Egypt*, Middle East Monitor (13 April 2015) <<https://www.middleeastmonitor.com/blogs/politics/18020-mass-executions-and-the-absence-of-justice-in-egypt>>.

definition because harm can be physical or written. Further, journalists could be tried before military courts, because any statement written about the army could be considered harmful. Article 148 of the 2012 constitution gave military judges immunity from being dismissed. Military judges have the same rights and duties that are stipulated for members of other ordinary judiciaries. Article 204 of the 2014 constitution stated that:

The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the armed forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service. Civilians cannot stand trial before military courts except for crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties. The law defines such crimes and determines the other competencies of the Military Judiciary. Members of the Military Judiciary are autonomous and cannot be dismissed. They share the securities, rights and duties stipulated for members of other judiciaries.<sup>163</sup>

Thus, military courts could try civilians for any crimes related to the armed forces, its officers, personnel and their equals, including crimes committed by general intelligence personnel. Further, it expanded the scope of military trials to include any crimes that represented a direct assault against military facilities, military barracks and whatever falls under their authority, including a military or border zone, its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds and military factories. It also includes any crimes related to conscription and crimes that represent a direct assault against officers or personnel because of the performance of their duties. The scope of the military courts has regularly been expanded to cover the military and border zones. These areas of jurisdiction can include 72% of Egypt.<sup>164</sup> It even includes jurisdiction over students in military schools, wedding receptions and any accidents that befall civilians within the jurisdiction of a military court.<sup>165</sup>

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<sup>163</sup> Article 204 of the 2014 Egyptian constitution.

<sup>164</sup> Egyptian borders including the governorates of South and North Sinai, Aswan, Matruh and New Valley.

<sup>165</sup> Sherif Mohy El Deen, *Fair Trials for All: To End Military Trials in Egypt and Restore Civil Justice*, Arab Reform Initiative (2 June 2015) 3.

On 27 October 2014, President Al-Sisi issued Decree No 136 after an attack in the Sinai Peninsula that killed dozens of soldiers. The decree stated that the military forces ‘shall offer assistance to the police and fully coordinate with them in securing and protecting public and vital facilities, and that included the electricity stations, gas pipelines, railroads, bridges, roads’.<sup>166</sup> The decree further increased the use of military justice by expanding the scope of the crimes to include attacking public bodies and a wide range of facilities.<sup>167</sup> Based on this decree, many more civilians were tried before military courts for engaging in peaceful protests, and any direct state prosecutors could refer any crimes that occurred at the abovementioned places to military courts, including student demonstrations. For example, five students from Al-Azhar University were sent by a Cairo criminal court to the military court for setting fire to part of the engineering faculty at the university.<sup>168</sup>

Since October 2014, the military courts have tried approximately 7,420 civilians. The reason for this large number is the continual expansion of the military courts’ jurisdiction as a parallel system.<sup>169</sup> The government’s justification was that Egypt was facing a large amount of violence and terrorism that needed to be confronted by the military judiciary. This showed a lack of confidence in ordinary Egyptian courts. Additionally, some jurists argued that Decree No 136 of 2014 was unconstitutional because of the expanding authority given to the military judiciary. They suggested that this violates Article 204 of the 2014 constitution, which gave authority to the military judiciary to try civilians only in cases when military facilities were attacked.<sup>170</sup>

Human Rights Watch stated that increasing military authority over law implementation enables the possibility of constant misuse from an unaccountable

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<sup>166</sup> Human Rights Watch, *Egypt: Unprecedented Expansion of Military Courts—Decree Broadens Jurisdiction Over Civilians* (17 November 2014) <<https://www.hrw.org/news/2014/11/17/egypt-unprecedented-expansion-military-courts>>.

<sup>167</sup> El Deen, above n 165, 2.

<sup>168</sup> Arwa Ibrahim, ‘Five Students Referred to Egypt Military Court’, *Middle East Eye News* (online), 17 November 2014 <<http://www.middleeasteye.net/news/five-students-referred-military-court-1983892808>>.

<sup>169</sup> Human Rights Watch, *Egypt: 7,400 Civilians Tried in Military Courts—Torture, Disappearances Used to Elicit Confessions* (13 April 2016) <<https://www.hrw.org/news/2016/04/13/egypt-7400-civilians-tried-military-courts>>.

<sup>170</sup> Yusef Auf, ‘A Legal Analysis of Egypt’s Military Judiciary’, *Atlantic Council* (online), 15 April 2015 <<http://www.atlanticcouncil.org/blogs/egyptsource/a-legal-analysis-of-egypt-s-military-judiciary>>.

military.<sup>171</sup> The use of military courts represents a parallel legal system that is used to criminalise non-violent political opposition.<sup>172</sup> Trying civilians in military courts violates Article 14 clause 1 of the ICCPR, which states that:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The military courts in Egypt do not conform to this definition. In conclusion, the right to a fair trial is a standard of international human rights to protect people from arbitrary and unlawful curtailment.<sup>173</sup> The right to a fair trial should be protected at all times from state abuses. Detainees have the right to be tried before competent, independent and impartial courts by ensuring judicial independence and impartial judges who operate without any control or pressure from the government.<sup>174</sup>

Further, detainees have the right to appeal and to receive compensation for wrongful detention.<sup>175</sup> Detainees should have the opportunity to present their case, as well as the right to a public hearing. Civilians who are forced to wait to be tried before a military court are deprived of their right to be informed of their charges. They are also commonly denied access to their lawyer or family members, thereby violating the constitutional principles and the Code of Criminal Procedure.<sup>176</sup> It also violates Article 9 of the ICCPR, which states that everyone arrested has the right to be informed of the reasons for their arrest and should be informed of any charges against them. The expanded crimes falling under the jurisdiction of the military courts have resulted in thousands of harsh sentences, including the death penalty.

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<sup>171</sup> Human Rights Watch, *Egypt: Military Power Grab Creates Conditions for Abuse—Decrees Embed Armed Forces' Role in Law Enforcement* (21 June 2012) <<https://www.hrw.org/news/2012/06/21/egypt-military-power-grab-creates-conditions-abuse>>.

<sup>172</sup> Ray Bush, 'Market Violence in Egypt's Countryside' (2007) 19, *Peace Review* 15–21.

<sup>173</sup> Lawyers Committee for Human Rights, *What is a Fair Trial? A Basic Guide to Legal Standards and Practice*, Human Rights First Organization (March 2010) <[https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair\\_trial.pdf](https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf)>.

<sup>174</sup> Australian Government Attorney-General Department <<https://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx>>.

<sup>175</sup> Richard Clayton and Hugh Tomlinson, *Fair Trial Rights* (Oxford University Press, 2001) 2–3.

<sup>176</sup> Cairo Institute for Human Rights Studies, *The State of Right to Free and Fair Trial*, 20th Session of the UPR (October–November 2014) <[https://www.cihrs.org/wp-content/uploads/2014/10/UPR-report-on-the-right-to-free-and-fair-trial.EN\\_.pdf](https://www.cihrs.org/wp-content/uploads/2014/10/UPR-report-on-the-right-to-free-and-fair-trial.EN_.pdf)>.



### 5.5.7 Harsh sentences including the death penalty

Since the military coup in July 2013, thousands of academics, liberal and secular protesters, and journalists (both Egyptian citizens and foreigners) have been arrested and detained.<sup>177</sup> Thousands of Egyptians have been arrested and detained, with some facing life imprisonment and hundreds waiting on death row to be executed, with the majority being Morsi supporters. One court in El-Minya, Upper Egypt, ruled that 683 Egyptians should be sentenced to death, and later confirmed death sentences for 37 people and condemned 491 people to life imprisonment.<sup>178</sup> Some of these detainees were convicted after just two court sessions, while some were absent from proceedings and others did not have a proper defence. In 2013, a total of 109 Egyptians were sentenced to the death penalty. In 2014, the number of people sentenced to the death penalty increased to 509.<sup>179</sup>

On 16 June 2015, an Egyptian court confirmed a death sentence for ousted President Morsi as punishment for escaping from Wadi al-Natrun prison on 30 January 2011. Five leaders of the Muslim Brotherhood also faced the death penalty for their participation.<sup>180</sup> The opposition described the sentences as null and void. In another case, Morsi faced imprisonment for 25 years for conspiring with foreign groups.<sup>181</sup>

After a judge sentences someone to the death penalty, the judge is required by law to seek the opinion of the Grand Mufti to determine whether the death penalty is compliant with sharia law, even though the Grand Mufti's opinion is non-binding.<sup>182</sup> Most death penalty sentences are implemented for political reasons, and mainly

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<sup>177</sup> Sophia Jones, 'Human Rights Watch Slams Rampant Torture and Abuse in Egyptian Prisons', *The Huffington Post* (online), 21 January 2015 <[http://www.huffingtonpost.com.au/2015/01/21/human-rights-watch-egypt\\_n\\_6514682.html?ir=Australia](http://www.huffingtonpost.com.au/2015/01/21/human-rights-watch-egypt_n_6514682.html?ir=Australia)>.

<sup>178</sup> Amnesty International, *Egypt Unfair Trial, Death Sentences Make Mockery of Justice* (28 April 2014) <<https://www.amnesty.org/en/latest/news/2014/04/egypt-unfair-trial-death-sentences-make-mockery-justice/>>.

<sup>179</sup> Worldwide Movement for Human Rights, *Two Years Since Rabaa Massacre, Impunity Still Reigns in Egypt* (14 August 2015) <<https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/egypt/two-years-since-rabaa-massacre-impunity-still-reigns-in-egypt>>.

<sup>180</sup> Louisa Loveluck, 'Mohamed Morsi Death Sentence Confirmed by Egyptian Court Over Jailbreak During Revolution', *The Telegraph* (online), 16 June 2015 <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/11678532/Mohamed-Morsi-death-sentence-confirmed-by-Egyptian-court-over-jailbreak-during-revolution.html>>.

<sup>181</sup> Mahmoud Mourad and Omar Fahmy, 'Egypt Court Hands Morsi Death Sentence in Blow to Muslim Brotherhood', *Reuters* (online), 16 June 2015 <<http://www.reuters.com/article/2015/06/16-us-egypt-mursi-idUSKBN0OW0XC20150616>>.

<sup>182</sup> US Department of State, above n 127.

against opponents who demonstrated against the military's tight grip after it ousted Morsi.

Implementing the death penalty for political offences violates Article 6 of the ICCPR, which states that:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life, and in countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes.<sup>183</sup>

The definition of 'serious crimes' is a vague concept and is defined in different ways by countries according to their national values, religion and political perspective.

The widespread use of the death penalty in Egypt also violates the American Convention on Human Rights. Article 4(1) states that 'every person has the right to have his life respected.'<sup>184</sup> Article 4(4) states that in no case should capital punishment be inflicted for political offences or related common crimes. Further, Egypt's overuse of the death penalty violates the African Charter on Human and Peoples' Rights. Article 4 states that 'human beings are inviolable, and every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'.<sup>185</sup> Article 10 of the African charter states that the death penalty shall under no circumstances be imposed for a political right.<sup>186</sup> In addition, the expansive use of the death penalty in Egypt violates Article 2(1) of the European Convention on Human Rights, which states that the life of everyone is protected by the law. However, Article 2(2) provides an exemption for the deprivation of life in three absolute cases:

1. in defence of any person from unlawful violence
2. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained in action

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<sup>183</sup> International Commission against the Death Penalty, *The Death Penalty and the 'Most Serious Crimes': A Country-by-Country Overview of the Death Penalty in Law and Practice in Retentionist States* (6 February 2013) <[http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes\\_final\\_6Feb2013.pdf](http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf)>.

<sup>184</sup> Article 4(1) *American Convention on Human Rights*, adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, signed on 22 November 1969( entered into force on 18 July 1978).

<sup>185</sup> Article 4 *African Charter on Human Rights and Peoples' Rights*, adopted by the African Union( entered into force on 25 January 2004).

<sup>186</sup> Article 10, above n 185.

3. in action lawfully taken for the purpose of quelling a riot or insurrection.<sup>187</sup>

Article 1 of protocol 13 to the European Convention on Human Rights states that ‘The death penalty shall be abolished. No one shall be condemned to such penalty or executed’.<sup>188</sup> The death penalty is now abolished in most European countries by virtue of this protocol.

In conclusion, harsh sentences such as the death penalty have been widely used against civilians, especially since the coup of 3 July 2013. Most harsh sentences have been imposed for political views rather than genuine legal transgressions.

## **5.6 Conclusion**

The climate of free expression in Egypt has gradually worsened because of restrictions that violate media freedom. Journalists have been brutally beaten by the police and armed forces, which use excessive force to prevent them from reporting on certain topics. The state of emergency has allowed the regime to police and censor political activities and political expression. The regime has also been empowered to arrest people under suspicion of political crimes and prevent them from gathering or distributing any political brochures without prior permission. Police brutality was the main reason behind the 2011 revolution. Military and police forces are supposed to defend the country from external enemies and ensure the safety of its people; however, the regime has used the military to serve its own interests. Military and police forces have used emergency laws to justify using coercive force against their own people, thereby breaching human rights laws. The regime has used exceptional laws, such as the Protest Law and the terrorist law, to stifle its opponents and consolidate its power. Mass arrests, torture, forced disappearances and detention of people for an unlimited time are widespread practices in Egypt because the use of emergency law unofficially allows it to occur. Military trials have become enshrined in the Egyptian constitution as a parallel system, without the right to appeal. The law has expanded the military’s authority and increased the number of crimes considered harmful to the military, thereby

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<sup>187</sup> Article 2(2) of the European Convention on Human Rights, adopted by the European Union, signed on 4 November 1950( entered into force on 3 September 1953).

<sup>188</sup> Article 1 of *Protocol No.13 to the Convention for the Protection and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in all Circumstances*, opened for signature 3May 2002((entered into force on 1July 2003).

causing more human rights breaches. In particular, military courts have sentenced hundreds of Egyptians to life imprisonment or death.

This chapter shows how traditional emergency power theories have failed to explain the use of emergency law and exceptional laws. Emergency law has been the main cause of human rights violations in Egypt. Emergency law gives security forces the right to arrest, detain and refer civilians to military courts to face harsh sentences. Traditional emergency power theories have ignored the fact that emergency law is used to suppress regimes' opponents. In theory, the Egyptian constitution protects freedom of expression and the right to life. However, in practice, different political regimes have used vague and elastic concepts under the guise of fighting terrorism and protecting the gains of the revolution to justify the use of force and mass arrests. Exemptions found in international human rights treaties have helped different political regimes to justify their actions under the guise of protecting national security and public order, thereby causing more human rights violations.

The next chapter examines contemporary imperialism, which has also played a crucial role in the situation in Egypt and the ongoing abuse of power.

## Chapter 6: Contemporary Imperialism

### 6.1 Introduction

This chapter examines the driving forces behind emergency rule in the post-independence period, when the country was no longer directly or indirectly in the grip of British rule. Although Egypt gained formal independence after World War II, the pressures of Western domination continued in new forms, and this is a key to understanding the inability of each successive Egyptian regime to provide basic democratic rights. For a period, Nasser's administration could exploit the Cold War between the US and the USSR to balance somewhat between them and gain a degree of freedom from the pressures of the global financial markets. However, increasingly, and especially after the dissolution of the Soviet Union in 1991, those pressures were re-asserted and intensified, requiring each government to impose on the population the austerity measures dictated by financial institutions such as the World Bank and the IMF.

Britain has long used Egypt's debt to control its economy. When Egypt failed to pay its debt, Britain took military action and occupied Egypt in 1882. In 1914, Britain declared martial law and enshrined martial law in the 1923 constitution. The 1923 Military Rule Law No 15 and the Anglo-Egyptian Treaty of 1936 were introduced to protect Britain's political and economic interests in Egypt. When World War II began, Britain forced the Egyptian regime to declare martial law to use its resources for the benefit of Britain.

As a result of Egypt's important strategic position, it remained under increasing pressure from global powers and capitalists after 1952. After the victories of the US in World War II, the US replaced Britain and became one of the major powers in the world and, in particular, the Middle East because of its oil.

The neo-colonial IMF, World Bank and World Trade Organization (WTO) have used debt to force some countries to privatise their private sectors, encourage foreign investment and decrease state rule in health and education. These programs have placed pressure on low-income citizens and affected their lives. They have also prevented democracy by consolidating authoritarian regimes, which have in turn

used a continuous state of emergency to protect their own interests and control the majority of low-income citizens. Egypt is not the only country in the world that has suffered from contemporary imperialism. Other countries have lost their sovereignty because of debt pressure from the IMF and the World Bank. In addition, US aid has been used as another tool to place pressure on Egypt. Traditional emergency power theories have neglected to examine the role of contemporary imperialist organisations that use debt pressure to justify interfering in the developing world. Structural programs enforced by these organisations have resulted in an increase in poverty and benefited a minority of people.

The important question that needs to be asked is: Why has Egypt never been able to escape the domination of external powers? This chapter is divided into two parts. The first part presents the historical background of the establishment of contemporary imperialism around the world. It shows that the goals of contemporary imperialist organisations—which were supposed to help poor countries—changed so that they became tools to control developing countries. The second part examines the effects of contemporary imperialism and its organisations—the IMF and the World Bank—from postcolonial Egypt until the present day.

## **6.2 Establishment of Contemporary Imperialism**

### **6.2.1 Introduction**

The Great Depression began in 1929, when Wall Street (the biggest financial centre in the world) collapsed because of toxic debt. This occurred because stockbrokers allowed investors to buy stocks with little payment during the economic boom of the 1920s. As investors bought more stocks, prices increased until the economy collapsed and confidence in the market dropped.<sup>1</sup>

The Great Depression continued throughout the 1930s. One reason for this was that capitalists wanted to increase their profits and decrease the cost of production by lowering wages. Goods lost their value because no one could afford to buy them. British economist John Maynard Keynes argued that instead of decreasing wages and cutting spending, the government needed to increase spending and encourage higher

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<sup>1</sup> Jason Hickel, *The Divide: A Brief Guide to Global Inequality and its Solution* (William Heinemann, 2017) 105.

wages so people could afford to buy goods.<sup>2</sup> The positive aspect of Keynesian thought was implemented in the US in 1933 during the presidential term of Franklin Delano Roosevelt through large government-funded projects, higher wages for the poor and higher taxes for the rich.<sup>3</sup> Eventually, in the post-World War II period, Keynesian views spread throughout Western countries, which resulted in a decrease in poverty, high growth and increased wages and state welfare.

In Germany, which was particularly badly hit by the financial crisis, overseas investment funds were rapidly withdrawn and big businesses—particularly iron and steel corporations—financed Hitler's rise to power, promising state intervention to destroy the forces of organised labour and fund a new militarisation as a basis for imperial expansion. Hitler's program can be considered a negative kind of Keynesianism. The Nazi party launched a militarisation of the state, which in turn drove militarisation in other states, including Russia, the US and the UK. The Nazis invaded other countries to obtain more resources to solve their financial crisis and build up their expanded military. World War II began when Germany invaded Poland, and France and Britain declared war on Germany in response. In 1945, Germany lost the war.<sup>4</sup>

When World War II ended, countries began thinking about peace and cooperation and respecting human rights. As a result, Western countries created the UN after the League of Nations failed to achieve peace. Next, they created economic organisations such as the IMF and the World Bank, which were supposed to help countries develop their economies; however, instead, these organisations played a major role in placing pressure on developing countries.

In much of the developing world, the postcolonial period involved a mixture of nationalisation, modernisation and increasing hostility towards the developing world. Variations of Keynesian planning were applied with capital and trade controls, import substituting industrialisation with protection for infant industries, agricultural supports and subsidies. During the 1950s and 1960s, the former colonial powers were unhappy with the new policies and strategies of nationalist governments, such

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<sup>2</sup> Ibid 107–108.

<sup>3</sup> Ibid 108.

<sup>4</sup> Ian Buckley, *Australian Foreign Wars: Origins, Cost and Future?*  
<<http://www.britishempire.co.uk/article/australiaswars9.htm>>.

as nationalisation, land reform and capital controls. These strategies threatened the interests of Western powers by threatening their access to cheap raw materials and labour and markets for their manufactured goods.

During the 1970s and 1980s, Western countries had a chance to regain control of the developing world. The debt crisis of 1973 enabled the developed world to use this debt as an excuse to use neo-colonialist organisations to regain control of the developing world and implement policies that served their own interests. The next section examines the rise of contemporary imperialism after World War II, the Golden Age, the Cold War, postcolonialism, the end of Keynesian thought and the rise of neoliberalism.<sup>5</sup>

### **6.2.2 World War II**

When Germany lost World War I, the victorious countries imposed a number of articles to restrain Germany. Article 231 of the Treaty of Versailles (the War Guilt Clause) blamed Germany for World War I and forced Germany to pay reparations. The US helped Germany pay the reparations through loans. When the Great Depression struck Wall Street, the US asked Germany to repay its loans, which sent Germany into a financial crisis and increased the country's poverty and unemployment. The financial crisis and the Treaty of Versailles paved the way for the Nazi party to gain popularity and take power from the liberal democratic regime. In 1933, Hitler became the chancellor of Germany. With the financial support of iron and steel magnates, Hitler used propaganda about the Treaty of Versailles to gain power and blame Britain and France for Germany's financial difficulties. Instead of building a welfare state, Hitler launched a militarisation project. He planned to invade other countries to take control of their raw materials, industries and labour forces, and to obtain revenge on those he saw as enemies.

On 31 August 1939, Germany invaded Poland. In response, Britain and France declared war on Germany. World War II was fought between the Axis powers—Germany, Italy and Japan—and the Allies—France, Britain, the Soviet Union and the US. Between 40,000,000 and 50,000,000 people died during World War II. After their victory over Germany and Japan, the US, Britain and France established a new

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<sup>5</sup> Ashley Grimshaw, *The Treaty of Versailles: The Major Cause of World War II* (17 April 2008) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.517.5246&rep=rep1&type=pdf>>.



organisation, the UN, in May 1945 in San Francisco. The main organs of the UN (General Assembly, Security Council, Trusteeship Council, Economic and Social Council, International Court of Justice and Secretariat) pledged a commitment to peace and cooperation. The countries claimed that this new organisation would be different to the League of the Nations, which was founded after 1918 as part of the Treaty of Versailles and failed to stop World War II. Britain, France, the US and Russia controlled and dominated the Security Council of the UN.<sup>6</sup>

### **6.2.3 Golden Age**

After the end of World War II, worldwide capitalism experienced an unprecedented boom, at least in part because of the application of Keynesian economic policies. In the early 1950s, unemployment decreased to 3% in the US and 1.5% in Britain. By 1960, unemployment had decreased to 1% in West Germany. Wages increased, living standards improved and the working week decreased from five and a half to five days per week. States transformed into welfare states, intent on improving health and education.<sup>7</sup> Life expectancy increased as a result of improvements in medical research and nutrition.

The Golden Age, as it is commonly known, saw the application of Keynesian ideology and the involvement of governments in the economy through:

- regulation of basic industries
- regulation of the financial sector
- strong anti-trust enforcement
- the welfare state
- progressive income tax
- regulation of occupational health and safety and consumer products.<sup>8</sup>

### **6.2.4 Cold War**

The notion of the Cold War began in the summer of 1948 and continued throughout the 1950s, 1960s and 1970s. Although it never escalated into a world war, the period was known for a number of conflicts and standoffs that saw the capitalist ‘West’ pitted against the communist ‘East’.

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<sup>6</sup> UN, *Main Organs* <<http://www.un.org/en/sections/about-un/main-organs/>>.

<sup>7</sup> Chris Harman, *A People’s History of the World* (Verso, 2017) 548–550.

<sup>8</sup> David M Kotz, *The Rise and Fall of Neoliberal Capitalism* (Harvard University Press, 2015) 51.

At the end of World War II, Germany was divided into four occupied zones. Britain, France and the US made Berlin the capital and introduced a new currency, which affected the Russian zone. Russia responded by imposing a blockade on the movement of food and goods by rail and road to West Berlin. The US and Britain kept supplies flowing to West Berlin.<sup>9</sup>

During this period, Anglo–US propaganda against communists and the left-wing called for the ‘defence of freedom’. The US purged communist officials in trade unions, as well as teachers and writers. Britain’s major union banned communists from holding office. Stalinist thought was imposed in Eastern Europe. People who opposed these ideologies were sent to prison or labour camps.<sup>10</sup>

The Russian bloc organised the Warsaw Pact, and the US established the North Atlantic Treaty Organization Pact. Military expenditure reached 20% of the US’ national output. In contrast, Russia spent 40% of its output on the military. Russia built secret cities to develop an atom bomb, and the US developed the hydrogen bomb, which was 100 times more destructive than the atom bombs used on Japan at the end of World War II. In June 1950, the Korean War began between North Korea (headed by Kim Il Sung) and South Korea (headed by Syngman Rhee). North Korea was supported by China and the Soviet Union, and South Korea was supported by the US. The war ended after three years, resulting in 500,000 Western casualties and 2,000,000 Korean civilian deaths.<sup>11</sup>

The Cold War was used by the US and its allies as an excuse to interfere with, and destroy, developing world regimes that had managed to overthrow authoritarian predecessors installed by colonial powers and end colonial interference in their countries. These indigenous regimes began a number of modernisations, including nationalisation projects, which were deemed to be a threat to the interests of the former colonial powers.

For example, when Salvador Allende was democratically elected in Chile in 1970, he launched socialist reforms (e.g., raising wages), land reforms and nationalised US and Chilean firms that threatened US interests in Chile. In 1973, a military coup

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<sup>9</sup> Harman, above n 7, 543–545.

<sup>10</sup> Ibid 545.

<sup>11</sup> Ibid 546–547.

backed by the US overthrew Salvador Allende and installed a pro-US regime that reversed Salvador's policies.<sup>12</sup>

### **6.2.5 Nationalisation**

When the colonial powers withdrew from Africa and Asia, a democratic movement began that called for fairer political systems and economic independence. This movement adapted state-led development by increasing social spending, granting fair wages to workers and, most importantly, building national economies for their own benefit rather than the benefit of the European powers. This was called the era of developmentalism.<sup>13</sup>

Latin America is an example of a success story. In 1948, Latin America established the UN Economic Commission for Latin America and the Caribbean, which was based in Chile and headed by the Argentinean economist Raul Prebisch. Prebisch helped create the theory of dependency and equality. He argued that the European powers organised the world system, which limited developing countries to exporting primary commodities and prohibited them from developing their own industries.

Latin America's attempt to establish a program of industrialisation limited its dependence on Western powers. For example, Juan Peron (the president of Argentina from 1945 to 1955) nationalised oil companies, encouraged heavy industry and increased state investment in education, healthcare, social security and housing.<sup>14</sup>

Developmentalist strategies succeeded at first in reducing the gap between the rich and the poor. Life expectancy and literacy increased, and national economies were built.<sup>15</sup> The newly independent countries established a new movement to build economies through collaboration. One of the main examples of this collaboration was the Non-Aligned Movement.

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<sup>12</sup> Shayda Sabet, *US Foreign Policy in Latin America: An Ideological Perspective*, University of British Columbia (14 June 2013) <<http://www.e-ir.info/2013/06/14/us-foreign-policy-in-latin-america>>.

<sup>13</sup> Hickel, above n 1, 110–111.

<sup>14</sup> Ibid 111.

<sup>15</sup> Ibid 112–113.

#### 6.2.5.1 *Non-Aligned Movement*

In 1955, a group of newly independent countries met in Bandung, Indonesia, to form a coalition committed to building economies through cooperation and by resisting the colonialism and neo-colonialism of Western powers. They established a third way to defend their interests from the US and the Soviet Union, and they refused to take a side in the Cold War. In 1961, President Nasser of Egypt, President Tito of Yugoslavia, President Nehru of India and President Nkrumah of Ghana met in Belgrade to establish the Non-Aligned Movement, which aimed to achieve peace, non-intervention, sovereignty, anti-racism and economic justice. Further, they established the UN Conference on Trade and Development to strengthen the principles of a fairer world economy.<sup>16</sup>

The developing world worked together to improve the price of goods. OPEC was formed in 1960 by Iraq, Saudi Arabia, Kuwait, Venezuela and Iran as another mechanism for developing nations to protect their natural resources and prevent them from being exploited by imperialist powers.<sup>17</sup>

On 15 June 1964, the developing countries formed a coalition called the Group of 77 (G77), which proposed to make the rules of the international economy fair for most of the world. The G77 established the New International Economic Order, which was passed by the UN General Assembly in 1973. The main aims of this neo-coalition were to give the developing world the right to nationalise foreign investment, impose tariffs to protect their economies and regulate multinational companies, and protect them from interference by Western powers.<sup>18</sup>

#### 6.2.6 **Counter-revolutionary measures**

The Western powers were unhappy with the policies established by the newly independent countries because they posed the following threats to their own interests:

1. The policies introduced new strategies such as nationalisation, land reform and capital controls.

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<sup>16</sup> Ibid 113.

<sup>17</sup> OPEC, *Brief History* <[http://www.opec.org/opec\\_web/en/about\\_us/24.htm](http://www.opec.org/opec_web/en/about_us/24.htm)>.

<sup>18</sup> Hickel, above n 1, 146.

2. The strategies threatened the access of Western countries to raw materials and cheap labour and prevented them from exporting manufactured goods.
3. Nationalist governments prevented products from Western countries from entering their country by setting high tariffs to protect local products.

Thus, Western countries decided to use counter-revolutionary measures to protect their interests. They used the legacy of the Cold War and the spread of communist ideas to justify their interference. A powerful example of this behaviour is the case of Ghana. Nkrumah became the first elected president of Ghana after the country regained its independence in 1957. Nkrumah strengthened a number of policies, including decreasing Ghana's dependence on European imports, nationalising mines, regulating foreign companies and introducing free healthcare and free education.

Nkrumah became the leading voice for liberation in Africa and called for a Pan-African vision and united political and economic cooperation between African countries. These actions made Nkrumah a target for Britain and the US, which backed a coup in 1966 and installed a military junta to reverse Nkrumah's policies. Further, they brought in the IMF and the World Bank, privatised Ghana's assets and forced Ghana to become a source of raw materials again. Nkrumah spent his life in exile in Guinea.<sup>19</sup>

After years of military interventions, coups and ousted national democratic regimes, Western countries ultimately used the debt crisis to control developing countries by pressuring them to adopt certain programs to pay their debts. The debt crisis ended the Golden Age and Keynesian thought and established the neoliberal economy.

### **6.2.7 Debt crisis**

In the 1973 Arab–Israeli War, the Arabs used an oil embargo to pressure the US. OPEC increased the price of petrol by 70% and imposed a total embargo on petrol shipments to the US and a partial embargo on petrol shipments to Europe. By the end of March 1974, the price of oil had increased from \$3 to \$12 per barrel.<sup>20</sup>

OPEC made more than \$450 billion as a result of the 1973 embargo. The US forced OPEC countries to invest this money in Wall Street banks. The US banks then

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<sup>19</sup> Ibid 114–121.

<sup>20</sup> Ibid 149.

invested this money in southern countries whose economies had suffered financial hardship from the rising oil prices. The banks offered loans to Latin America to cover the rising price of petrol rather than to fund productive projects.<sup>21</sup>

The US banks did not evaluate the loan requests or monitor how and where the money would be spent. The developing countries did not use the loans for productive investment; rather, they spent the money on immediate consumption. The loans benefited government officials and the business elite; however, many developing countries were left with large amounts of debt, and as a result, they could no longer obtain loans. Thus, these developing countries relied heavily on the World Bank and the IMF. The IMF required structural adjustment programs (SAPs) in these countries, which had to agree to impose strict economic programs on their countries to reschedule their debts and borrow more money. Most countries had to cut spending in education, healthcare and social services to decrease their debt and stabilise their currency.<sup>22</sup>

Many developing countries amassed large debts with a high risk of default for the following reasons:

1. They could not repay their debt because they imported expensive manufactured products from Western countries.
2. The developing countries export raw materials such as iron, wood and raw diamond with low prices without adding any value to the materials. However, the developed countries export complex products to the developing countries, after adding value to the raw materials such as cars, furniture and jewellery.
3. The loans were in US dollars and the interest rates were variable; thus, if the interest rate increased in the US, the interest on the loan increased, thereby continually increasing the debt.<sup>23</sup>

All of this was no accident; in fact, it was a targeted and coordinated strategy devised by seven of the most powerful Western nations. The Western powers feared that the new G77 coalition would put their interests at risk. Therefore, in 1975, the leaders of

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<sup>21</sup> Ibid 150–151.

<sup>22</sup> Gregory Ruggiero, *Latin American Debt Crisis: What Were its Causes and is it Over?* (15 March 1999) <<http://www.angelfire.com/nj/GregoryRuggiero/latinamericancrisis.html>>.

<sup>23</sup> Ibid 152.

the US, Britain, France, Italy, Japan, West Germany and Canada<sup>24</sup> met at Château de Rambouillet in Northern France to form a new coalition, the Group of 7 (G7). The main purpose of establishing this group was to prevent developing countries from cooperating with each other and threatening Western interests by increasing the price of raw materials.<sup>25</sup> Western countries did not want developing countries to modernise; they wanted them to remain poor and dependant on Western countries. The US secretary of state, Henry Kissinger, suggested that the UN Security Council rather than the General Assembly should be responsible for the most important decisions and that it should limit the power of the G77 through the provision of financial aid by the richest countries to the poorest.<sup>26</sup>

In conclusion, after the end of the 1973 war, the US forced OPEC countries to invest their money in Wall Street banks. This money was used to control and divide the developing countries, leading to more poverty and increasing the gap between the rich and the poor. To repay their loans, developing countries were forced to decrease their expenses, which in turn increased illiteracy, disease and infant mortality rates.

### **6.2.8 Neoliberalism and the end of Keynesian thought**

It was not just the governments of powerful Western nations that feared the counter-revolutionary measures being undertaken in the developing world, but the business elite were also unhappy to be paying higher taxes and higher wages. Milton Friedman, a US economist, was inspired by Friedrich Hayek, an economist at the London School of Economics, who argued that ‘any intervention in the economy would inevitably lead to the kind of totalitarianism that characterised fascist Germany and Communist Russia’.<sup>27</sup> In 1947, Friedman and Hayek established the Mont Pelerin Society<sup>28</sup> as a club for free market economists. They were then appointed to the University of Chicago, which became a hub for liberal economists. Friedman connected the free market and individual liberty. In 1962, he wrote *Capitalism and Freedom* to compete with the Keynesian ideology of increasing

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<sup>24</sup> Canada joined in 1976 and Russia joined in 1998. After the Russian annexation of Crimea, the G7 countries decided in March 2014 to meet for further notice. For more details, see The Federal Government, *The History of the G7*

<[https://www.g7germany.de/Content/EN/StatischeSeiten/G7\\_elmau\\_en/texte\\_en/2014-11-05-geschichte-g8.html](https://www.g7germany.de/Content/EN/StatischeSeiten/G7_elmau_en/texte_en/2014-11-05-geschichte-g8.html)>.

<sup>25</sup> Hickel, above n 1, 147.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid 125–126.

<sup>28</sup> The elite Swiss resort town.

wages and fixing the price of goods to be affordable. In contrast, Friedman claimed that the policy adapted by Keynesian economists to improve living standards was:

doing hidden harm by disrupting the equilibrium of the market. Price controls, subsidies and minimum wage laws should all be abandoned, and the state should sell off any services that corporations could run at a profit, including education, healthcare, pensions and national parks. Government should cut back social spending so as not to interfere with the labour market. Taxes should be at a flat rate. And corporations should be free to sell their products anywhere in the world.<sup>29</sup>

Friedman and Hayek's ideology helped to create the theory of neoliberalism. This theory was 'neo' in the sense that it revived classical market liberalism, which had declined after the Great Depression in 1929. The connection of the free market to individual liberty was a new and unique feature of the ideology, which became central to its political success in the West. Neoliberal theory opposed subsidies and protection for the working class but provided subsidies and protection for large and rich corporations.<sup>30</sup>

The end of the 1970s and the 1980s onwards saw the end of Keynesian thought as the directing political principle. The neo-colonial organisations (IMF and the World Bank) succeeded in abolishing Keynesian ideology and began a new age of neo-colonial organisations. Neoliberal economic policies damaged people's lives by privatising state companies, lifting price controls, decreasing wages and banning strikes. Further, neoliberal regimes were prepared to use torture and mass imprisonment against anyone who disturbed their interests. These policies were used against poor people who demanded fair wages, labour unions, universal healthcare and education, and fair access to land.<sup>31</sup> Neoliberal economic strategies protected big business, including transnational corporations based in the US and Europe. A minority of businesspeople controlled the majority of the wealth. Most people worked hard just to survive, and they had no quality of life. The main principles of neoliberal policies were to:

1. increase the gap between the rich and the poor, and increase unemployment by favouring a small minority of businesspeople

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<sup>29</sup> Hickel, above n 1, 128.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid 134–139.



2. deregulate basic industries
3. deregulate the financial sector
4. weaken job safety and health and safety policies
5. weaken anti-trust enforcement
6. privatise public goods and services
7. make cutbacks in social welfare
8. provide tax cuts for businesses and the rich
9. casual jobs.<sup>32</sup>

In theory, the IMF and the World Bank aimed to help decrease poverty and develop economic growth around the world. In practice, they increased poverty, increased unemployment and did not help improve the economic growth of the developing world. Developing countries were forced to repay loans at high interest rates and spend a large amount of their budget on debt repayment. They were forced to take out new loans to repay the old ones.<sup>33</sup>

## **6.3 Establishment of the International Monetary Fund and the World Bank**

### **6.3.1 Introduction**

From 1 to 22 July 1944, 44 countries, led by the US and the UK, met in New Hampshire in the US to discuss world economic plans for post-World War II peace. The aim was to increase economic cooperation to secure world peace and prosperity based on a world market.

In response to these post-war arrangements, three international regulatory institutions were established:

1. IMF
2. International Bank for Reconstruction and Development, now called the World Bank

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<sup>32</sup> Kotz, above n 8, 42.

<sup>33</sup> Hickel, above n 1, 162.

3. International Trade Organization and General Agreement on Tariffs and Trade, which became the WTO.<sup>34</sup>

This section explains how the IMF and the World Bank controlled the world through debts and how countries lost their sovereignty. This thesis suggests that the privileges and immunity granted to these international organisations should be abolished because they cause poverty and discriminate against the poor by supporting the rich.

### **6.3.2 Rule of the International Monetary Fund**

The IMF was established on 27 December 1945 and began work in 1947, when 29 countries signed the articles of agreement resulting from the 1944 conference at in New Hampshire.<sup>35</sup> According to Article 1 of the agreement, the objectives of the IMF were:

- (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
- (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
- (v) To give confidence to members by making the general resources of the fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
- (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.<sup>36</sup>

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<sup>34</sup> Richard Peet, *Unholy Trinity: The IMF, World Bank and WTO* (Zed Books, 2nd ed, 2009) 36.

<sup>35</sup> *Ibid* 67.

<sup>36</sup> International Monetary Fund, *Article 1 of the Agreement of the International Monetary Fund* (April 2016) <<http://www.imf.org/external/pubs/ft/aa/index.htm>>.

However, while these were the intentions of the IMF in theory, things worked quite differently in practice. This was largely because a number of safeguards and mechanisms were built into organisations such as the IMF to protect the interests of Western powers. For example, the IMF (and the World Bank) cannot be sued because they enjoy special privileges and immunity under the *International Organizations Immunities Act* of 1945. The US controls 10% of the IMF and World Bank shares and has voting rights. France, Germany, Japan and the UK also have shares in the two organisations, which means that Western powers control 60% of the organisations. Thus, 85% of the world's population controls only 40% of the vote. That is, developing countries have no actual power in these organisations. In addition, the leaders of the two organisations are not elected, but are appointed by the US and Europe.<sup>37</sup> Thus, while the organisations' intentions may have been to ensure equilibrium in the international economy, there is in fact a huge disparity in control. The mechanisms for doing this are explained below.

### **6.3.3 International monetary funding: remote-control power**

In 1981, Paul Volcker, the chairman of the US Federal Reserve, increased the interest rate by 21%. As a result, in 1982, Mexico defaulted on its loans worth \$80 billion, and Brazil and Argentina also defaulted on their loans in what became known as the third-world debt crisis.<sup>38</sup> As a result, bankers asked the US to force Mexico and other countries to repay their loans using the IMF to balance their payments. The G7 then had a chance to force the southern countries to cut their government spending to repay their loans. The IMF would only help the developing countries to finance their debt if they met certain conditions in the form of SAPs.<sup>39</sup> Debt was therefore used as a tool to spread neoliberalism and control developing countries, which affected national sovereignty. Poor people could not survive because they earned low wages and needed to spend their money on food, housing and healthcare.

The IMF and the World Bank forced developing countries to begin SAPs, which involved selling government infrastructure and increasing their exports, especially of raw materials. These forced programs increased the debts of developing countries

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<sup>37</sup> Hickel, above n 1, 165.

<sup>38</sup> Ibid 152.

<sup>39</sup> Ibid 153–154.

and decreased the incomes of farmers and miners.<sup>40</sup> The beneficiaries of the SAPs were developed countries, which once again gained access to large amounts of cheap raw materials for their manufacturing industries.

The IMF's policies were changed to directly affect approximately 185 countries, which caused people to lose their jobs and suffer from poverty and hardship.<sup>41</sup> The IMF offered short-term conditional loans to member countries that suffered from balance of payment hardship. This gave the IMF the ability to interfere with the economic policies of these countries, which had to implement a number of economic policies and prescribed financial measures, including reducing tariff barriers on imports, eliminating jobs, increasing interest rates to cool the economy and decrease inflation, imposing austerity programs to reduce healthcare and education services, and removing state subsidies that usually kept prices low.<sup>42</sup> In conclusion, the IMF used austerity, privatisation and liberalisation to:

1. cut spending on public services, healthcare and education
2. end subsidies for farming and food
3. privatise public assets
4. cut tariffs, stop capital controls and attract foreign investment
5. adjust the economy towards exports
6. keep inflation low as a kind of monetary austerity.<sup>43</sup>

#### **6.3.4 World Bank**

The World Bank was established in 1944 and consists of five institutions:

1. the International Bank for Reconstruction and Development, which makes development loans, guarantees loans and offers advisory services
2. the International Development Association, which provides loans to countries that are not creditworthy in the international financial market
3. the International Finance Corporation, which provides loans and equity financing for the private sector in the developing world

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<sup>40</sup> Scott Mann, 'US Power and Transnational Governance' (2011) 15 *University of Western Sydney Law Review* 109.

<sup>41</sup> Peet, above n 34, 66.

<sup>42</sup> *Ibid* 67.

<sup>43</sup> Hickel, above n 1, 154–155.

4. the Multilateral Investment Guarantee Agency, which provides investment insurance
5. the International Centre for Settlement of Investment Disputes, which helps resolve investment disputes between countries and foreign investors.<sup>44</sup>

The World Bank promotes neoliberal economics, good governance, political pluralism, accountability and the rule of law.<sup>45</sup> In 1980, the World Bank started demanding the same conditions as the IMF. Structural adjustment was the first condition when financing any loans. Developing countries had no choice but to accept structural adjustment if they needed loans.<sup>46</sup>

### **6.3.5 Washington Consensus, World Trade Organization and Financial Action Task Force**

In addition to the IMF and the World Bank, the developed world established a number of policies as extra tools to control the developing world. This was done by issuing policies (the Washington Consensus) and establishing organisations such as the WTO and the Financial Action Task Force (FATF). This section examines these policies and organisations and shows how they benefit the developed world.

#### *6.3.5.1 Washington Consensus*

The theory of the Washington Consensus was introduced in 1989 by John Williamson, a senior fellow at the Peterson Institute for International Economics. He used the term to summarise the policies that were common among the reform packages used by international financial institutions based in Washington, such as the IMF, the World Bank and the US Department of Treasury. Williamson suggested the following policies to help Latin America recover from the financial crisis of the 1980s:

1. fiscal policy discipline and budget deficits small enough to be financed without recourse to the inflation tax
2. redirection of public spending from subsidies towards a broad-based provision of key pro-growth, pro-poor services such as primary education, primary healthcare and infrastructure investment

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<sup>44</sup> Peet, above n 34, 128–129.

<sup>45</sup> Ibid 145.

<sup>46</sup> Hickel, above n 1, 157.

3. tax reform, broadening the tax base and cutting marginal tax rates
4. interest rates that are market-determined and positive, but moderate in real terms
5. unified and competitive rate to induce rapid growth in non-traditional exports
6. replacement of quantitative trade restrictions by tariffs, which should be progressively reduced until a uniform low rate of 10–20% is reached
7. abolition of any barriers to the entry of foreign direct investment
8. privatisation of state enterprises
9. abolition of regulations that impede market entry or restrict competition, except for those justified on safety, environmental and consumer protection grounds, and prudential oversight of financial institutions
10. legal security for property rights without any excessive costs, and make these available to the informal sector.<sup>47</sup>

This thesis suggests that the Washington Consensus policies imposed neoliberal economic practices as extra restrictions that prevented developing countries from modernisation, thereby enshrining poverty and increasing the gap between the rich and the poor.

#### *6.3.5.2 World Trade Organization*

The WTO was used as another tool to control the wealth of some and increase the poverty of others. The WTO was established on 1 January 1995 to regulate the world's trade in goods and services using a system of objectives and rules.<sup>48</sup> The principles of the WTO are based on free trade to prohibit discrimination in favour of national products and reducing tariffs.<sup>49</sup>

The WTO requested that every country decrease its tariffs and abolish industrial subsidies. As a result, developing countries could not compete with developed

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<sup>47</sup> John Williamson, 'The Washington Consensus as Policy Prescription for Development' (Paper presented at the World Bank, 13 January 2004) <<https://pie.com/publications/papers/williamson0204.pdf>>.

<sup>48</sup> Peet, above n 34, 178.

<sup>49</sup> Samir Amin, *Capitalism in the Age of Globalization: The Management of Contemporary Society* (Zed Books, 2014) 25.

countries because the WTO favoured rich countries and kept developing countries as sources of raw material.<sup>50</sup>

The developing world could not compete with the developed world. Most developing countries were in debt and their industrialisation was years behind that of the developed world. Thus, they did not have the technology required to compete with the developed world and were again forced to rely on exports of raw materials and imports of goods from developed countries.

#### *6.3.5.3 Financial Action Task Force*

The FATF was another supra-international body that established the neo-colonial era. It was established by the G7 members in 1989 in Paris to address the problem of money laundering. In 2001, it expanded to combat terrorist funding. The FATF called on the UN to implement Security Council Resolution 1373 to criminalise terrorist funding. Under pressure from the FATF, governments and banks around the world adopted new measures regarding money laundering and terrorist financing. This placed more pressure on developing countries because if they did not comply with the FATF's measures, they could be considered non-cooperative countries and territories and be placed on the name-and-shame list.<sup>51</sup>

As a result of its strategic position, Egypt was a victim of imperialism during the colonial expansion era, as discussed in Chapter 3. Egypt also became a victim of neo-imperialism through military intervention in 1956, and then through aid from the US and pressure from international organisations such as the IMF and the World Bank.

## **6.4 Postcolonial Egypt from Nationalisation to the Age of Neo-Imperialism**

Egypt has experienced all of the economic shifts and pressures experienced by developing countries. Egypt was affected by the Great Depression because its economy was dependant on agricultural products—in particular, cotton. Agricultural

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<sup>50</sup> Hickel, above n 1, 193.

<sup>51</sup> Fatemah Alzubairi, *The Role of Colonialism and Neo-Colonialism in Shaping Anti-Terrorism Law in Comparative and International Perspectives: Case Studies of Egypt and Tunisia* (Doctor of Philosophy Thesis, York University, 2017) 46–47.

exports declined and prices dropped, which increased poverty.<sup>52</sup> The price of cotton decreased by 60%. In the 1930s, the Egyptian government implemented a tariff reform that led to higher rates on manufactured goods. The economic, social and political effects of these developments were severe. Commodity prices fell, exports declined, the tax rate increased and real income per capita declined.<sup>53</sup>

During World War II, Egypt became a debtor instead of a creditor because of the expenditure of the Allies. In 1943, whatever remained of its external debt was converted into a local one, for which the creditors were either local Egyptians or foreigners who were born in Egypt. Egypt then became a creditor to Britain, lending it £430 million. After the 1952 coup, Egypt received some loans and grants; however, these were in small quantities and did not require repayment in foreign currency. In 1954, the US Congress passed the *Agricultural Trade Development and Assistance Act*, which was known as the Public Law 480 (PL480). The Act established a food aid program called Food for Peace. The PL480 program contained three major mechanisms:

1. Developing countries received a credit if they bought US agricultural commodities at concessional prices.
2. Food aid was provided in bilateral, government-to-government transactions through relief organisations and the UN World Food Programme.
3. Agricultural products were swapped for strategic resources and cancelling of debt for previous purchases of US agricultural products.

The motivation for this food program was to counter communists, develop commercial markets for US products and protect US interests.<sup>54</sup>

This section discusses postcolonial Egypt, shifting from nationalisation to the age of neo-imperialism. It explains how developed countries used military aggression against Egypt after the nationalisation of the Suez Canal, as well as debt pressure through the IMF and the World Bank to force Egypt into neoliberalism. The financial

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<sup>52</sup> Amy J Johnson, *Reconstructing Rural Egypt: Ahmed Hussein and the History of Egyptian* (Syracuse University, 2004) 28–29.

<sup>53</sup> Joseph Jupille, Walter Mattli and Duncan Snidal, *Institutional Choice and Global Commerce* (Cambridge University Press, 2013) 130.

<sup>54</sup> Richard Ball and Christopher Johnson, 'Political, Economic, and Humanitarian Motivations for PL480 Food Aid: Evidence from Africa' (April 1996) 44(3), *Economic Development and Cultural Change* 515–537; Ġalāl A Amīn, *Egypt's Economic Predicament: A Study in the Interaction of External Pressure, Political Folly and Social Tension in Egypt, 1960–1990* (EJ Brill, 1995) 1.



aid and debt pressure prevented Egypt from any modernisation and development that would support its independence. As a result, Egypt lost its sovereignty and became dependent on Western countries, especially the US. In particular, this section examines:

- the 1952 coup by the Free Officers and Egypt's relationship with the US
- Nasser's nationalisation program, the accumulation of debt and the enshrining of military rule
- Sadat's open-door policy
- Mubarak's introduction of a neoliberal economy and the pressure placed on Egypt by the IMF and the World Bank to repay its debt.

Ultimately, this section focuses on how successive regimes in Egypt, with the power of the military, have prevented a real democracy from flourishing in Egypt and justified the continuous state of emergency.

#### **6.4.1 Egypt from nationalisation to the age of neo-imperialism**

As previously stated, Egypt has vital strategic value for Western powers—particularly the US—because of its strategic geographic position. In addition to the Suez Canal providing a vital shipping route between Asia, Africa and Europe, the discovery of oil made Egypt's proximity to the Middle East oil fields crucial.

The US wanted to prevent the spread of communism and prevent the Soviet Union from gaining power in the Middle East.<sup>55</sup> This was mainly to protect the US' petroleum interests in the Gulf areas, especially in Saudi Arabia.<sup>56</sup> Over the years, oil supply became an increasingly important national security issue. For example, during World War I, the US administration claimed that the oil supply should always be under the US' control.<sup>57</sup> This thesis argues that the US used the communists and the Soviets as a justification to build the age of neo-imperialism. The reason for this argument is that the US used the same policy in Latin America to maintain it as a source of raw materials and to generate profits. Strategic position and Middle Eastern oil were vital to the US to prevent the Soviet Union from gaining control in the region, and Egypt was a strategic part of its plan.

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<sup>55</sup> William Joseph Burns, *Economic Aid and American Policy Towards Egypt, 1955–1981* (State University of New York Press, 1985) 1–2.

<sup>56</sup> Shahram Akbar Zadeh, *America's Challenges in the Greater Middle East: The Obama Administration's Policies* (Palgrave Macmillan, 2011) 74.

<sup>57</sup> John Rees, *Imperialism and Resistance* (Routledge, 2006) 73.

When King Farouk was ousted in the 1952 coup, the US welcomed the new development, especially after years of political disorder and anti-foreigner violence. The US claimed that the new military regime would assist with ending corruption.<sup>58</sup> However, this new alliance with the US did not always help Egypt. Between 1952 and 1954, Nasser tried to buy weapons from different countries, including the US, Britain and Sweden. He failed because of the unacceptable conditions imposed on the Egyptian population, such as joining the US-dominated military blocs.<sup>59</sup>

On 28 February 1955, Israel invaded the Gaza Strip, and on 6 April 1955, Nasser decided to buy arms from the Soviet Union. Both countries signed an agreement on 12 September 1955 for the Soviet Union to supply weapons to Egypt.<sup>60</sup> The Soviet Union tried to prevent any deliberate breach of the spirit of the Geneva Summit, which was held in July 1955.<sup>61</sup> The Soviet Union used Czechoslovakia as a secret channel to supply Egypt with weapons.<sup>62</sup>

In an attempt to repair its relationship with Egypt, in December 1955, the US offered to help Egypt construct the Aswan Dam, which was a vast dam and hydroelectric project in Egypt.<sup>63</sup> On 19 July 1956, after a meeting between Egypt and the US, the US issued an official statement abandoning funding for the dam.<sup>64</sup> Cancelling this funding was the breaking point between the US and Egypt. Misunderstandings continued to arise between both countries when Nasser refused to join the Middle East Defence Organization and the Baghdad Pact<sup>65</sup> to curtail any chance of the Soviet Union becoming a presence in the Middle East.<sup>66</sup> This was shocking news for Nasser because the dam project was necessary for a number of reasons, including:

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<sup>58</sup> Zadeh, above n 56, 74.

<sup>59</sup> Andrej Kreutz, *Russia in the Middle East: Friend or Foe?* (Praeger Security International, 2007) 111.

<sup>60</sup> Ibid.

<sup>61</sup> The summit was attended by the US, Britain, France and the Soviet Union. The main aim for Geneva was to build friendship, peace and cooperation.

<sup>62</sup> Ibid.

<sup>63</sup> Steven Humphreys, *Between Memory and Desire: The Middle East in a Troubled Age* (University of California Press, 2001) 86.

<sup>64</sup> Ibid.

<sup>65</sup> This defence organisation was formed in 1955 by Britain, Turkey, Iran, Iraq and Pakistan. The US participates as an observer and sits on a meeting committee. For more details, see US Department of State Archive, *The Baghdad Pact (1955) and the Central Treaty Organization (CENTO)* <<https://2001-2009.state.gov/r/pa/ho/time/lw/98683.htm>>.

<sup>66</sup> Peter L Hahn, *Historical Dictionary of US–Middle East Relations* (Scarecrow Press, 2007) 49.

1. The Egyptian population was growing rapidly, with approximately 23 million people in 1956.
2. The high dam would extend the year-round irrigation of the entire Nile valley, thereby increasing the amount of cultivated land that could be used by peasants.<sup>67</sup>
3. The new regime wanted to establish social justice as a key policy to show people that it was willing to improve people's lives by establishing a big project and distributing the newly cultivated lands to landless peasants. This would gain Nasser popular support.<sup>68</sup>

Nasser launched a program of nationalisation with the goals of a socialist economy, state capitalism, central planning and control of the resources of production by the people.<sup>69</sup> Before nationalisation began, 5% of the population held 65% of the assets and 3% held 80% of cultivated lands. After the nationalisation, the land was sold to individuals, with each purchase not exceeding five acres.<sup>70</sup>

From Nasser's socialist perspective, nationalisation meant the redistribution of ownership from a few people to the public. This meant that the public controlled vital production and profit-sharing, and minimum wage provisions could be implemented.<sup>71</sup> On 26 July 1956, Nasser announced the nationalisation of the Suez Canal Company.<sup>72</sup> All company and stockholder assets were frozen, and 12 Egyptians were to be appointed as members of a special board to manage the company. Nasser issued a decree to nationalise the Suez Canal Company. Article 1 of the President of the Republic Order Concerning the Issuance of Law No 285 of 1956 on the Nationalization of the Universal Company of the Suez Maritime Canal stated that:

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<sup>67</sup> After 10 years, the Aswan Dam was completed on 21 July 1970 at a total cost of more than \$1 billion. For more details, see Natalie Arsenault, Allegra Azulay and Jordan Phillip, *People and Place: Curriculum Resources on Human–Environmental Interactions, 'Aswan High Dam (Egypt)'* (University of Texas, 2007) 40.

<sup>68</sup> Humphreys, above n 63, 87.

<sup>69</sup> Nimrod Raphaeli, *Egyptian Army's Pervasive Role in National Economy*, The Middle East Media Research Institute (29 July 2013) <<http://www.memri.org/report/en/print7313.htm>>.

<sup>70</sup> K V Nagarajan, 'Egypt's Political Economy and the Downfall of the Mubarak Regime' (2013) 3(10) *International Journal of Humanities and Social Science* 24–26.

<sup>71</sup> Sami A Hanna and George H Gardner, *Arab Socialism: A Documentary Survey* (EJ Brill, 1969) 118.

<sup>72</sup> In 1949, Egypt became a board member and wanted to receive 7% of the Suez Canal Company's gross profits. See National Security Agency/Central Security Service, 'The Suez Crisis: A Brief Comint History' (2) (1988) (3) *United States Cryptologic History*.

The Universal Company of the Suez Maritime Canal (Egyptian joint-stock company) is hereby nationalized. All its assets, rights and obligations are transferred to the Nation and all the organizations and committees that now operate its management are hereby dissolved.

Stockholders and holders of founder's shares shall be compensated for the ordinary or founders shares they own in accordance with the value of the shares shown in the closing quotations of the Paris Stock Exchange on the day preceding the effective date of the present law.

The payment of said indemnity shall be affected after the Nation has taken delivery of all the assets and properties of the nationalized company.<sup>73</sup>

The Suez Canal was important to the Western powers because, at that time, two-thirds of canal traffic was carrying oil, including two-thirds of the European oil supply. Most of the canal tolls that were collected also went to British shareholders. Antony Eden, the British prime minister at the time, told a visiting Russian delegation that: 'I must be absolutely blunt about the oil because we would fight for it'. He continued that 'we could not live without oil and ... we had no intention of being strangled to death'.<sup>74</sup>

In 1956, a war began between Egypt and France, Britain and Israel, and was opposed by the US. When the war ended, the US became the dominant power in the Middle East, which had huge oil reserves.<sup>75</sup> This thesis suggests that the 1956 war gave the US an excuse to replace Britain and gain greater control of the Middle East. This objective was designed because of Egypt's strategic geographic position and oil refineries.

The Soviet Union continued to support Egypt. In 1958, the Soviet Union offered a \$175 million loan and \$100 million to help build the Aswan Dam and many other projects in Egypt.<sup>76</sup> The Soviet Union supported Egypt because it wanted to increase the Soviet Union's navy presence in the Mediterranean Sea and increase its prestige in Egypt.<sup>77</sup>

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<sup>73</sup> 'Article 1 of the President Republic Order Concerning the Issuance of Law No 285 of 1956', *American Foreign Relations* (1956) 289–291  
<[http://www.cvce.eu/content/publication/2001/10/9/50e44f1f-78d5-4aab-a0ae-8689874d12e6/publishable\\_en.pdf](http://www.cvce.eu/content/publication/2001/10/9/50e44f1f-78d5-4aab-a0ae-8689874d12e6/publishable_en.pdf)>.

<sup>74</sup> Rees, above n 57, 78–79.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Karen Dawisha, *Soviet Foreign Policy Towards Egypt* (Macmillan Press, 1979) 178.

Nasser allowed the military to take over and control entire projects, including land reclamation and basic commodities. He hired high-ranking officers to replace civilian managers to maintain a continuous military presence and influence the Egyptian economy.<sup>78</sup> Instead of giving the people the opportunity to control the economy, Nasser enshrined military rule. To carry out his nationalisation program, Nasser issued a number of decrees to nationalise many companies:

1. In 1960, he took the first step towards controlling the media by nationalising the mass media and forcing them to hand over ownership to the National Union. He then used the media to follow and support only his own ideas, and later re-imposed censorship to gain more control over the media.
2. On 20 July 1961, Nasser issued a decree to nationalise the banks and insurance companies. He also decreed participation of the state in private industrial enterprises by reducing property sizes from 200 to 100 acres.<sup>79</sup> A total of 275,000 fedans<sup>80</sup> were confiscated by the Egyptian regime.<sup>81</sup>
3. In February 1961, the regime nationalised the Bank of Misr and the Central Bank of Egypt, which controlled approximately 20% of Egypt's industrial output and more than half of Egypt's textiles.<sup>82</sup>
4. In June 1961, the government took control of the cotton trade. In July 1961, Law No 117 nationalised the remaining private banks and 44 companies trading in different industries.<sup>83</sup>
5. Under Law No 118 of 1961, the regime controlled 86 companies trading in commerce and manufacturing.
6. Under Law No 119 of 1961, the regime forcibly transferred any shares greater than £10,000 to the state. The remaining shares were confiscated by 1963.<sup>84</sup>

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<sup>78</sup> Shana Marshall, *The Egyptian Armed Forces and the Remaking of an Economic Empire*, Carnegie Endowment for International Peace (2015) 4.

<sup>79</sup> A Sadi, "'Arab Socialism' and the Nasserite National Movement' (1963) 24(2) *International Socialist Review* <<https://www.marxists.org/history/etol/newspape/isr/vol24/no02/sadi.html>>.

<sup>80</sup> A fedan is a unit of area for land used in Egypt and Sudan. It is approximately equal to one acre (0.42 hectare); English Oxford Living Dictionaries, *Feddan* <<https://en.oxforddictionaries.com/definition/feddan>>.

<sup>81</sup> Tamir Moustafa, *Rule of Law Quick Scan Egypt: Prospects and Challenges*, The Hague Institute for Innovation of Law (April 2012) 62 <<https://www.hiil.org/projects/rule-of-law-quick-scan-egypt/>>.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

The establishment of the United Arab Republic<sup>85</sup> and Nasser's involvement in the Yemen War in 1962 were other breaking points between Nasser and the US, leading the US to cut off its assistance in 1963. In 1967, the relationship was totally destroyed as a result of the US' assistance to Israel during the 1967 war against Egypt.<sup>86</sup>

Egypt suffered after the 1967 defeat by Israel. It lost the Sinai Peninsula and spent 25% of its gross domestic product rebuilding the military. Egypt lost approximately 80% of its aircraft, and its tanks were replaced by the Soviet Union. Egypt relied on military and financial support from the Soviet Union and relied on their relationship to obtain support to restore its occupied lands.<sup>87</sup> Nasser's nationalisation enshrined the military's tight grip on Egypt. Since then, the military has controlled Egypt. As a result of the 1956 war, the 1967 war and compensation for the companies that were nationalised, Egypt had debts that had to be repaid.

#### **6.4.2 Sadat's open-door economic policy**

After the death of Nasser, the new Egyptian president, Sadat, signed friendship and cooperation treaties with the Soviet Union on 27 May 1971. The Soviet Union pledged to continue its commitment to supporting Egypt financially, economically and militarily.<sup>88</sup> The US considered this treaty a step towards consolidating the Soviet Union's presence in Egypt, which was a threat to the US' policy of gaining more influence in Egypt. President Nixon decided to suspend the sale of aircraft to Israel. The US attempted to convince Egypt that it was the only power that could conduct any future negotiations with Israel regarding the return of occupied Egyptian land. The US also promised to support Egypt financially. This was an interim agreement between Egypt and the US to progress peace negotiations between Israel and Egypt.<sup>89</sup>

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<sup>85</sup> Between 1958 and 1965, Egypt was the largest consumer of US food aid. The US provided food aid to extend its interests in Egypt, which was one of the most important Arab countries. For more details, see Jean-Jacques Dethier and Kathy Funk, *The Language of Food*, Middle East Research and Information Project <<http://www.merip.org/mer/mer145/language-food>>.

<sup>86</sup> Zadeh, above n 56, 74–75.

<sup>87</sup> Paul E Lenze Jr, *Civil–Military Relations in the Islamic World* (Lexington Books, 2016) 73.

<sup>88</sup> Craig A Daigle, 'The Russians Are Going: Sadat, Nixon and the Soviet Presence in Egypt, 1970–1971' (March 2004) 8(1) *Middle East Review of International Affairs* <<http://www.rubincenter.org/2004/03/daigle-2004-03-01/>>.

<sup>89</sup> Ibid.

On 18 July 1972, Sadat decided to expel the Soviet Union's military presence and ordered 20,000 military advisers and technicians to leave Egypt. Sadat's decision to expel the Soviet Union aimed to gain support and legitimacy among Egyptians. Further, it was designed to give him a strong chance of reopening negotiations for peace and achieving the return of occupied Egyptian land from Israel.<sup>90</sup> This led to a poor relationship between Sadat and the Soviet Union, and Sadat planned to turn away from the Eastern Bloc to the Western Bloc. He claimed that the Soviet Union refused to supply the Egyptian army with significant arms during the 1973 war.<sup>91</sup> The 1973 war gave Sadat the opportunity to improve his position in any future negotiations and simultaneously gain credibility among his people.<sup>92</sup> This was a clever ploy by Sadat to attract the attention of the US, which was the main power that could pressure Israel to enter negotiations regarding the return of occupied Arab land. The diplomatic relationship between Egypt and the US had been broken since 1967, and in 1975, the US recommenced its economic aid to Egypt.<sup>93</sup>

Sadat adopted an open-door policy, which meant opening the Egyptian economy to Arab and foreign investments. This policy reversed the socialism of the 1952–1970 period, when Nasser was president.<sup>94</sup> New policies were created, including allowing Egyptians to own property.<sup>95</sup> In 1974, the Egyptian government issued Law No 43 to deal with the investment of Arab and foreign funds. It permitted tax concessions for foreign private investors and exemptions from labour laws, import and export licences, and exchange rate regulations.<sup>96</sup> This strategy moved the country from a closed or restricted economy that dealt only with Eastern countries to an open economy directed towards the West.<sup>97</sup> In his open-door policy, Sadat made it clear

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<sup>90</sup> Lisa Reynolds Wolfe, *Egypt Transfers Loyalty from the USSR to the US in the Middle of the Cold War*, Cold War Studies (10 June 2010) <<http://www.coldwarstudies.com/2010/06/10/egypt-transfers-loyalty-from-the-ussr-to-the-us-in-the-middle-of-the-cold-war/>>.

<sup>91</sup> Ahmed S Hashim, *The Egyptian Military, Part One: From the Ottomans Through Sadat* (2011) XVIII(3) *Middle East Policy Council* 74.

<sup>92</sup> Jeremy M Sharp, *Egypt: Background and US Relations*, Congressional Research Service (August 2008) 5.

<sup>93</sup> *Ibid.*

<sup>94</sup> M Ayman and A M Daef, 'The Effect of Open Door Policy on Public Service Provision in Urban Areas of Egypt: A Major Factor Influencing Income Distribution Since 1974' (Working Paper No 29, University College London, September 1986) 1

<[https://www.ucl.ac.uk/bartlett/development/sites/bartlett/files/migrated-files/WP29\\_0.pdf](https://www.ucl.ac.uk/bartlett/development/sites/bartlett/files/migrated-files/WP29_0.pdf)>.

<sup>95</sup> Wolfe, above n 90.

<sup>96</sup> Savinna Chowdhury, *Everyday Economic Practices: The 'Hidden Transcripts' of Egyptian Voices* (Routledge, 2007) 70.

<sup>97</sup> Ayman and Daef, above n 94, 3.

that he wanted to attract private capital to make Egypt a leading financial centre in the Middle East.<sup>98</sup>

However, Sadat's policy shifted Egypt from dependence on the Soviet Union to dependence on the US. Sadat focused more on defence products by establishing the Arab Organization for Industrialization with the primary goal of manufacturing military aircrafts.<sup>99</sup> In 1976, the Treaty of Friendship between Egypt and the Soviet Union was terminated, and Egypt started to depend on aid from the US instead.<sup>100</sup> However, Western countries, including the US and Japan, were concerned about Egypt's political and economic instability. Their policy was to wait and see, even though Egypt presented large opportunities because of its large market, large population, potential oil reserves in the Nile Delta, the Western Desert and the Suez Canal.<sup>101</sup> In addition, there were longstanding problems with Israel, the fact that Egypt had a large population living in a small area and the fact that Egypt needed around \$1.2 billion to service its foreign loans.<sup>102</sup>

On 17 September 1978, Egypt and Israel signed a peace treaty at Camp David with the US as a witness, which included two agreements. The first agreement provided the framework for peace in the Middle East, while the second agreement was the conclusion of a peace treaty between Egypt and Israel.<sup>103</sup> The Camp David treaty between Egypt and Israel resulted in significant foreign aid to Egypt, which compensated for some of its economic shortfalls, and it gave the Egyptian regime an opportunity to advance the Middle East peace process.

Thus, Egypt became the second-largest country to receive foreign and economic aid from the US. The purpose behind the food aid was to maintain the US' position in Egypt and protect the regime.<sup>104</sup> The US considered Egypt a partner, especially after Sadat became president. Egypt became an important country to the US during the Cold War, and the relationship became more important after the peace treaty was

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<sup>98</sup> Gerald T McLaughlin, 'Infitah in Egypt: An Appraisal of Egypt's Open-Door Policy for Foreign Investment' (1978) 46(5) *Fordham Law Review* 855.

<sup>99</sup> Marshall, above n 78.

<sup>100</sup> Donald F Busky, *Communism in History and Theory: Asia, Africa, and the Americas* (Praeger, 2002) 95.

<sup>101</sup> McLaughlin, above n 98, 885–866.

<sup>102</sup> *Ibid* 888.

<sup>103</sup> Sharp, above n 92, 5.

<sup>104</sup> Dethier and Funk, above n 85.



signed between Egypt and Israel.<sup>105</sup> The US continued to support the Egyptian regime with an annual average of \$2 billion in aid. This was divided between military aid,<sup>106</sup> which constituted approximately 80% of Egypt's military budget,<sup>107</sup> and economic aid to help maintain the regime and regional stability.<sup>108</sup>

Sadat promoted his legitimacy to prevent any opposition to his rule. He did this by maintaining the loyalty of the people by increasing the scope of products falling under the food subsidy system. This included rice, yellow maize, beans, lentils, frozen fish, chicken and meat. This food subsidy became a major issue when the price of wheat increased from US\$60 to US\$250 a tonne.<sup>109</sup> The US supported Egypt's demand for bread and helped the country build a capacity for distribution. With the US providing more than 50% of Egypt's food imports, pressure was reduced on Egypt's budget.<sup>110</sup>

Neo-imperialist organisations began to use debt to place pressure on Egypt, which affected people on low incomes. During the late 1970s, the Egyptian economy did not perform well, which increased mistrust and the gap between the regime and the people. The open-door economic policy failed because of the free-trade policies and the increase in imports. Luxury imports increased 300-fold during Sadat's era, and Egypt went into a deep budget deficit. Sovereign debt also increased, which plunged the country into deep financial difficulties that required financial reform and assistance.<sup>111</sup> Egypt relied on aid and oil to borrow money from outside, which increased consumption—especially of imported products—and discouraged economic reform. By the end of 1980, the price of oil began to decrease, which affected Egypt's ability to meet its payments for its loans. This caused a severe debt

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<sup>105</sup> Gregory Aftandilian, *Presidential Succession Scenario in Egypt and Their Impact on US–Egyptian Strategic Relations*, US Army War College (September 2011) 1.

<sup>106</sup> The US has sponsored the Egyptian regime since 1948 and given Egypt \$71.6 billion in bilateral foreign aid. For more details, see Marshall, above n 78.

<sup>107</sup> Aftandilian, above n 105, 2.

<sup>108</sup> Sharp, above n 92.

<sup>109</sup> Akhter U Ahmed, Howarth E Bouis, Tamar Gutner and Hans Lofgren, 'The Egyptian Food Subsidy System: Structure, Performance, and Options for Reform' (Research Report No 119, International Food Policy Research Institute, 2001) 6.

<sup>110</sup> Ram Sachs, *On Bread and Circuses: Food Subsidy Reform and Popular Opposition in Egypt* (Stanford University, May 2012) 16.

<sup>111</sup> Nancy El-shami, 'A Historical Appraisal of Egypt's January 25 "Day of Wrath": Incentives, Characteristics, & Implications', *Muftah* (27 January 2011).

crisis.<sup>112</sup> Further, the regime faced political problems because of the austerity program sponsored by the IMF, which led to rioting against the government. Egypt was at the mercy of the IMF, which caused the country to lose its autonomy.

Between 18 and 19 January 1977, tens of thousands of people in Egypt's major cities launched a 'bread riot' when Sadat, under pressure from the IMF, adopted certain measures, including cutting subsidies for more than 24 basic commodities, such as flour and cooking oil.<sup>113</sup> Sadat used a state of emergency to call on the military to stop the riots. The riot forced Sadat to reinstate the subsidies, and he called the protest the 'thieves' uprising'.<sup>114</sup> During the riot, 80 people died, 800 were injured and 1,000 were imprisoned.<sup>115</sup> The substantial increase in food prices in Egypt was viewed as a threat to the stability of the regime.<sup>116</sup>

In 1981, Sadat was assassinated and Mubarak became president. Mubarak established his legitimacy by strengthening the military, which was the key supporter of his regime. He gained their loyalty through extensive military spending and pay rises. This thesis argues that pressure from the IMF forced the Egyptian regime to use lethal force against peaceful civilians who were protesting against cutting subsidies. Debt was used as another justification for the state of emergency to protect the security of the regime.

#### **6.4.3 Mubarak's era and the introduction of a neoliberal economy**

During Mubarak's era, the military continued its control and expanded its power to gain more privileges, including increasing its extra-legal oversight in different sectors, from petroleum to terrorism. It also maintained its influence in the industrial and financial sectors.<sup>117</sup> At the same time, Mubarak's regime inherited Sadat's open-door policy, which fostered a bourgeois society, increased reliance on imported

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<sup>112</sup> Raymond A Hinnebusch, 'The Politics of Economic Reform in Egypt' (1993) 14(1) *Third World Quarterly*, 162.

<sup>113</sup> World War II increased inflation in Egypt, so the regime introduced food rations as a temporary measure to provide all Egyptians with food, including sugar, as well as kerosene, coarse oil and tea. For more details, see Ahmed, Bouis, Gutner and Lofgren, above n 109, 5.

<sup>114</sup> Abdullah Al-Arian, 'Egypt: Reducing the Past', *Al Jazeera News* (online), 1 February 2011 <<http://www.aljazeera.com/indepth/opinion/2011/02/20112110358461902.html>>.

<sup>115</sup> 'Egyptians Riot in the Streets in 1977', *CBC News* (online), 13 February 2011 <<https://www.cbcnews.com/news/egyptians-riot-in-the-streets-in-1977/>>.

<sup>116</sup> Ahmed, Bouis, Gutner and Lofgren, above n 109, 2.

<sup>117</sup> Marshall, above n 78, 5.

products and increased the defects and the debt. The regime depended on external aid to relieve the pressure and correct the imbalance.<sup>118</sup>

In 1986, the regime used force against police conscripts who were demanding an increase in wages from approximately \$4 per month. The conscripts also demonstrated against their officers and accused them of treating them badly, beating them with sticks and using them in their homes as servants.<sup>119</sup> The regime imposed a curfew throughout Egypt and called on the army to restore order among the police conscripts in the Central Security Forces who were involved in the street demonstrations. During the intervention,<sup>120</sup> 107 people died and 715 were injured.<sup>121</sup>

In 1987, Egypt and the IMF signed a structural adjustment agreement because of economic instability and debt. Egypt sped up privatisation by cutting tariffs and taxes, which affected workers by threatening their jobs, implementing longer shifts and reducing wages.<sup>122</sup> In the late 1980s, Egypt was severely in debt because of its trade imbalance and reliance on external aid. In March 1990, an SAP was begun under pressure from the World Bank. In May 1991, Egypt signed an agreement with the IMF to receive a conditional loan of \$372 million in exchange for a plan to privatise public enterprises and liberate prices, trade and the exchange rate.<sup>123</sup> Egypt suffered from a large financial deficit, and increased public debt placed the Egyptian regime under pressure from the IMF to adopt a plan to raise investments, bring the fiscal deficit and public debt under control, and decrease taxes to make Egypt an attractive place for foreign investment.<sup>124</sup>

In 2002, Mubarak created a policy committee headed by his son, Gamal Mubarak. The committee aimed to replace the old guard of the regime with professionals, including young businesspeople, professors and politicians, to prepare them to

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<sup>118</sup> Hinnebusch, above n 112, 160.

<sup>119</sup> John Kifner, 'Egypt's Army Praised in Quelling Riots, But for Mubarak, Crisis is Not Over', *New York Times* (online), March 1986 <<http://www.nytimes.com/1986/03/09/world/egypt-s-army-praised-in-quelling-riots-but-for-mubarak-crisis-is-not-over.html?pagewanted=all>>.

<sup>120</sup> Ibid.

<sup>121</sup> Ryan Curtis, 'Political Strategies and Regime Survival in Egypt' (4 January 2011) 18(2) *Journal of the Third World Studies* 8.

<sup>122</sup> Sachs, above n 110, 8.

<sup>123</sup> Angela Stephens, *Under IMF, Egypt Pushing Privatisation*, Washington Report on the Middle East Affairs (November 1992) 35–49.

<sup>124</sup> IMF, *Arab Republic of Egypt: Staff Report for the 2014 Article IV Consultation* (11 February 2015) <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=42692.0>>.

establish development programs and serve as ministers in the government.<sup>125</sup> The new guard, consisting of businesspeople and politicians, was headed by Gamal. This represented a de facto marriage between money and power. Their membership in the National Democratic Party and the parliament helped them to monopolise firm industries, and they depended on general immunity from prosecution if they were accused of corruption.<sup>126</sup>

This neoliberal economy gave the new guard the opportunity to dominate the top positions in the country. As a result, the strategic market of iron and steel, which was owned by three companies, controlled 90% of Egypt's total production. Over 50% of this share was taken by the company owned by the former chair of the parliamentary economic committee and the National Democratic Party, Ahmed Ezz.<sup>127</sup>

The IMF and the World Bank pushed for a liberal economy, private investment, privatisation of the public sector and cutting of state subsidies.<sup>128</sup> The neoliberal economy and corrupt bureaucracies increased poverty and the gap between the rich and the poor.<sup>129</sup> Most Egyptians felt that they did not receive any benefits from the improvements, and they blamed the regime for the country's economic problems.<sup>130</sup>

In exchange for US aid, the Egyptian regime gave the US privileges such as minimal fees in the Suez Canal. According to the US Government accounting office, between 2001 and 2005, Egypt gave permission for 36,553 US military aircraft and 861 US naval ships to pass through the Suez Canal.<sup>131</sup>

This thesis argues that the neoliberal policy failed to achieve its goals for the following reasons:

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<sup>125</sup> Ahmed Abd Rabou, *Decision Making in Egypt: What Has Changed Since Mubarak?* The Tahrir Institute for Middle East Policy (16 June 2015) <<https://timep.org/commentary/decision-making-in-egypt-what-has-changed-since-mubarak/>>.

<sup>126</sup> Aftandilian, above n 105, 8.

<sup>127</sup> Maha Abdelrahman, 'Policing Neoliberalism in Egypt: The Continuing Rise of the "Securocratic" State' (2015) 38(1) *Third World Quarterly* 187.

<sup>128</sup> Ġalāl A Amin, *Egypt in the Era of Hosni Mubarak: 1981–2011* (American University in Cairo Press, 2011) 63.

<sup>129</sup> Andrew Gavin Marshall, *Egypt Under Empire, Part 3: From Nasser to Mubarak*, The Hampton Institute (24 July 2013) <<http://www.hamptoninstitution.org/egyptunderempirepartthree.html#.VyXTmSHpdc4>>.

<sup>130</sup> Kashif Mumtaz, *The Fall of Mubarak: The Failure of Survival Strategies, Part 2*, Castle Journal <<http://www.castle-journal.com/web/the-fall-of-mubarak-the-failure-of-survival-strategies-part-2/>>.

<sup>131</sup> Aftandilian, above n 105, 1.

1. The IMF used debt as a tool to pressure Egypt to adopt policies that resulted in poverty and injustice.
2. The privatisation suggested by the IMF benefited a certain group of businesspeople and increased corruption and economic problems.
3. Pressure from the IMF gave the Egyptian regime justification to use a state of emergency to tackle Egyptian people's anger and use harsh measures against them. This was justified as protecting national security. These harsh measures led to the 2011 revolution.
4. US aid benefited the Egyptian military and enshrined its hidden deep state empire.

## **6.5 Egyptian Economy, International Monetary Fund and World Bank After the 2011 Revolution**

Egypt has a large population, and two-thirds of Egyptians are aged under 30. Poverty, inequality of income and the gap between the rich and the poor have increased, and these internal challenges have made the democratic transition difficult.

After 2011, Egypt suffered from high deficits in trade and state spending. Inflation caused public debt to grow and external investments to shrink.<sup>132</sup> University education had produced a large number of graduates—most of whom were unlikely to obtain a job in the future.<sup>133</sup> Egypt is considered to have a low standard of living compared with other countries. As a result of unequal and unfair wealth distribution, 20–30% of Egyptians live below the poverty line, with poor healthcare, limited food supplies, unclean water and crowded houses.<sup>134</sup> The gap between the rich and the poor was one of the causes of social unrest that led to the 2011 Egyptian revolution. Egypt also suffered from poor economic performance, corruption and social

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<sup>132</sup> Zubair Iqbal, *Egyptian Economic Challenges and Policy Exigencies*, Middle East Institute (8 September 2014) <<http://www.mei.edu/content/at/egyptian-economic-challenges-and-policy-exigencies>>.

<sup>133</sup> Nivin Abdel Meguid, Sanaa El Banna, Rana Korayem and Hoda Salah Eldin, *The Economic Causes of the Egyptian Revolution, 'January 25 2011'* (American University in Cairo Press, 2011) 10.

<sup>134</sup> *Ibid* 5–6.

injustice, with around 10% of Egyptians controlling one-third of the country's entire income.<sup>135</sup>

On 25 February 2011, the Egyptian revolution began with a peaceful demonstration against the authoritarian regime. Protesters called for the abolition of the state of emergency, more freedom, social justice and an end to corruption, high unemployment and inflated food prices. Afterwards, Egypt faced a severe economic crisis because of instability, shrinking investments and high debts. In May 2011, Egypt requested \$3.2 billion from the IMF to cover the economic damage from the 2011 revolution. This was delayed because of public pressure, with Egyptians believing that the IMF and the World Bank were associated with their financial problems. This was because a small group of business elite connected to Gamal Mubarak's sons benefited from privatisation, deregulation and trade liberalisation, while the IMF simultaneously imposed heavy burdens on the poor. The Egyptian people called the structural reform package 'a package of bondage and slavery' that would force Egypt to sell its pyramids.<sup>136</sup> In general, Egyptians opposed the IMF for the following reasons:

1. Their previous dealings with the IMF had caused financial hardship for people on low incomes.
2. The military opposed the IMF's loan because it posed a threat to the military's economic empire.
3. Public sector employees rejected the IMF's loan because it would reduce the size of the public sector by 6 million employees, which accounted for one-quarter of Egypt's budget.<sup>137</sup>

In August 2012, as a result of political and economic instability, the Egyptian government resumed negotiations with the IMF for a loan of \$4.8 billion. The initial agreement was signed in November 2012, but on 10 December 2012, the agreement did not proceed. Morsi postponed signing the IMF loan because of pressure from the Egyptian people over delayed tax reforms and the cutting of energy subsidies.

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<sup>135</sup> Doaa M Salman Abdou, *The Egyptian Revolution and Post Socio-Economic Impact*, ResearchGate (January 2013)

<[https://www.researchgate.net/publication/260082224\\_the\\_egyptian\\_revolution\\_and\\_post\\_socio-economic\\_impact](https://www.researchgate.net/publication/260082224_the_egyptian_revolution_and_post_socio-economic_impact)>.

<sup>136</sup> Farah Halime, *Egypt, the IMF and European Economic Assistance*, European Council on Foreign Relations (April 2013) 2–3.

<sup>137</sup> Ibid.

The US and Europe pressured Morsi to accept the IMF's loan agreement in the following ways:

1. The US secretary of state, John Kerry, stated that Washington would support Egypt with \$190 million of the \$450 million pledged for the budget support fund for Egypt if Morsi agreed to sign the IMF agreement. Kerry urged Morsi to agree to the IMF's terms.
2. European officials promised to support Egypt's economy with \$6.5 billion, including \$590 million from the European Union in 2011–2013, \$1.3 billion in macro financial aid, concessional loans and grants, potential lending from the European Investment Bank of up to \$2.2 billion from 2012 to 2013 and \$1.3 billion per year for the next two years from the European Bank for Reconstruction and Development. However, while \$900 million of these loans were unconditional, Egypt needed to sign and adopt the IMF's agreement to gain access to the rest.<sup>138</sup>
3. The World Bank funded only eight projects in Egypt from 2011 to 2013, costing a total of \$1.6 billion. The World Bank stated that if Egypt required more loans, it first needed to accept the IMF's agreement. The African Development Bank funded only four projects in Egypt in 2011 and none in 2012. It asked Egypt to sign an agreement with the IMF before any further loans would be granted.<sup>139</sup>

This thesis suggests that the US and Europe placed too much pressure on the Egyptian government to accept the IMF's agreement instead of supporting Egypt's economy with concessional and unconditional loans. The IMF claimed that its structural measures would reduce poverty, improve living standards and open new schools, hospitals and universities; however, in reality, the IMF's measures increased poverty, decreased employment, increased taxes and increased fuel and bread prices, which affected only the poor.

On 3 July 2013, a coup overthrew Morsi. The US did not criticise the coup; instead, a US spokesperson declared that the US could not reverse the will of '22 million who

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<sup>138</sup> Ibid 4.

<sup>139</sup> Adam Hanieh, 'Shifting Priorities or Business as Usual? Continuity and Change in the Post-2011 IMF and World Bank Engagement with Tunisia, Morocco and Egypt' (2015) 42(1) *British Journal of Middle Eastern Studies*, 119–134.

spoke out and had their voices heard'.<sup>140</sup> The US claimed that the military coup was the result of the people's revolution. The US considered the coup a legitimate action, and the Pentagon then announced that the US would proceed to sell F-16s to Egypt as previously planned.<sup>141</sup> According to reports at the time, the US was the main source of Egypt's military weapons, as outlined below:

1. The Obama administration asked Congress to approve \$1.3 billion as a military aid for the 2011 fiscal year.
2. The US–Egyptian co-production of the M1A1 Abrams battle tank is a cornerstone of the US' military assistance. Egypt planned to acquire 1,200 of the tanks, and General Dynamics Corp was the prime contractor for the program.
3. Lockheed Martin Corp built 20 new advanced F-16C/D fighter aircraft for Egypt. The final Egyptian F-16 under contract was delivered in 2013 to join the 240 Egypt had already purchased, according to Lockheed Martin, the Pentagon's biggest supplier by sales.
4. Egypt was the first Arab country to buy F-16s, widely viewed as a symbol of political and security ties with the US.
5. The US has also supplied Boeing CH-47D Chinook transport helicopters, Northrop Grumman Corp E-2C Hawkeye Airborne Early Warning Command and Control aircraft and Patriot air defence systems built by Lockheed and Raytheon, respectively.<sup>142</sup>

The support of the US and Europe was a mixture of cynicism and hypocrisy. For example, US Department spokesperson Jen Psaki declared, 'certainly there have been some significant bumps in the road, but our focus is getting back on a path to democracy'.<sup>143</sup> The initial aim of the Egyptian military, local crony capitalists and the US in instituting the coup of 2013 was to oust the Muslim Brotherhood, but the

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<sup>140</sup> Max Blumenthal, 'People, Power, or Propaganda? Unravelling Opposition', *Al Jazeera News* (online), 20 July 2013 <<http://www.aljazeera.com/indepth/opinion/2013/07/2013717115756410917.html>>.

<sup>141</sup> *Ibid.*

<sup>142</sup> 'Factbox: Most US Aid to Egypt Goes to Military', *Reuters* (online), 29 January 2011 <<https://www.reuters.com/article/us-egypt-usa-aid/factbox-most-u-s-aid-to-egypt-goes-to-military-idUSTRE70S0IN20110129>>.

<sup>143</sup> Johannes Stern and Alex Lantier, *Egyptian Junta Imposes Martial Law Amid Bloody Crackdown*, International Committee of the Fourth International (15 August 2013) <<https://www.wsws.org/en/articles/2013/08/15/egyp-a15.html>>.



ultimate target was to combat the working class that opposed the free market and pro-imperialist policies.<sup>144</sup>

In 2014, the Egyptian government began reforms that were endorsed by the World Bank, the IMF and the African Development Bank through parallel financing. The first wave of reforms focused on reducing energy subsidies, containing the high growth of wage bill and the liberation of the Egyptian pound. The second wave of reforms included encouraging an investment climate and improving governance by reforming the civil service. The reform law of 2016 removed investment barriers and encouraged foreign and local investment by reforming industrial licensing laws, investment laws and company laws.<sup>145</sup>

In August 2016, the Egyptian government and the IMF signed an agreement to grant Egypt a \$12 billion loan over three years to rebalance the currency market and reduce the budget deficit.<sup>146</sup> Egyptian economist Wael al-Nahas stated that ‘it was a mistake to resort to the IMF in the first place’. He noted that public debt reached £3.5 trillion (about US\$168.2 billion in three years).<sup>147</sup> Egypt’s external debt reached \$60 billion in the first quarter of 2016/2017. Under pressure from the IMF, Egypt implemented a series of reforms that focused on improving the governance and investment climate. A free-floating currency caused the cost of production and raw materials to rise and forced a reduction in energy subsidies.<sup>148</sup>

## 6.6 Conclusion

Since the middle of the twentieth century, the Middle East has been crucial to the world energy strategy, especially for the US. Egypt found itself at the centre of this strategy because of its strategic geopolitical position. The intervention of the US as

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<sup>144</sup> Alex Lantier, *Violent Clashes Spread in Egypt as US Backs Army Coup*, International Committee of the Fourth International (6 July 2013) <<https://www.wsws.org/en/articles/2013/07/06/egypt-j06.html>>.

<sup>145</sup> The World Bank, *The World Bank in Egypt*

<<http://www.worldbank.org/en/country/egypt/overview>>.

<sup>146</sup> Lin Noueihed and Ahmad Aboulenein, ‘IMF Agrees \$12 Billion Dollar Three-Year Funding Deal with Egypt’, *Reuters* (online), 12 August 2016 <<https://www.reuters.com/article/us-egypt-economy-imf-deal/imf-agrees-12-billion-three-year-funding-deal-with-egypt-idUSKCN10M1LZ>>.

<sup>147</sup> Ismael El-Kholy, ‘Egypt’s Economy Trapped in Vicious Cycle of IMF Debts’, *Al-Monitor* (London), 26 May 2017.

<sup>148</sup> Cecile Guerin, ‘What Challenges Lie Ahead for Egypt’s Economic Reforms?’ *Global Risk Insights* (online), 22 February 2017 <<http://globalriskinsights.com/2017/02/challenges-ahead-egypts-economic-reforms/>>.

part of the 1952 coup caused Egypt to lose its sovereignty and increasingly rely on US aid. This aid amounted to approximately \$1.3 billion a year, which was used to help the Egyptian military purchase tear gas and tanks, which have often been used to suppress opponents.

Nasser's socialism and nationalisation program initially succeeded in supporting the growth of Egypt's economy, including nationalising the Suez Canal. However, Nasser's strategy only increased the military's tight grip and enshrined authoritarian rule. Sadat's open-door policy for investment failed to achieve its goals of national economic development because of heavy reliance on US aid and importation. Mubarak's neoliberal policy increased privatisation, which benefited a group of businesspeople and increased poverty and corruption.

Since 1952, the military has controlled most of Egypt's economy. During this period, the IMF, the World Bank and the WTO have also come to control the world's wealth, particularly in relation to developing countries. Western powers have supported successive regimes politically and financially to stabilise the regimes and gain their loyalty to serve the interests of Western powers. Neo-imperialist organisations including the IMF, the World Bank have placed pressure on different political regimes to use demonstrations, protests and economic instability to maintain a state of emergency. However, this has been a mechanism to serve the interests of the Western powers and ensure their access to cheap raw materials and markets for their higher-priced manufactured goods.

For Egypt, resorting to reliance on the IMF and the World Bank has only served to increase prices, which has in turn increased poverty and inflation among Egyptians. Many people believe that the US should support Egyptians and their demands for a civilian country and end the US' economic and military intervention in Egypt; however, this has not happened. Cutting subsidies, especially on fuel and bread, will lead to more political instability because it will only affect people on low incomes.

This thesis suggests that different political regimes in Egypt have had limited opportunities to manoeuvre and escape from the structural reforms enforced by the IMF through debt pressure, and this has stifled any attempts within Egypt to become a democratically independent nation. The next chapter examines the deep state in Egypt.



## Chapter 7: Deep State in Egypt

### 7.1 Introduction

The previous chapter began to analyse the deep state in Egypt, to the extent that actual rule has continued to be exercised by overseas powers long after formal independence. This chapter focuses on the real but covert exercise of political power by elite groups within the country, both directly and indirectly supported by such overseas interference.

Nasser, Sadat and Mubarak ruled Egypt as civilians with military backgrounds, but the centre of power and decision-making remained exclusively in the hands of the military,<sup>1</sup> which used cosmetic changes rather than real changes to control opposition to the regime. The deep state prevented the development of a democratic state in Egypt because a democratic state would have posed a threat to deep state interests. Britain used martial law to protect its political and economic interests, and successive postcolonial political regimes used the war between the Arabs and Israel to justify the continuous and permanent state of emergency. After the assassination of Sadat in 1981, the regime justified the continuous and permanent state of emergency by arguing that it was necessary to fight terrorism and combat drug trafficking. After 2011, the regime justified the continuous state of emergency as necessary for fighting terrorism and protecting the gains made during the revolution. Contemporary imperialist assistance used debt and aid pressure to enforce policies that helped enshrine the authoritarian regime, which was headed by the military and a group of minority businesspeople who benefited from privatisation and increased poverty. Thus, Egypt has essentially suffered from a continuous and permanent state of emergency for the past 100 years or more. Traditional emergency power theories have failed to explain and justify the permanent state of emergency in Egypt. Therefore, this thesis aims to find another theory to examine, or help account for, the continuous state of emergency.

Different political regimes have at times been under threat from most of the working class because of poverty, inequality and the increased gap between the rich and the

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<sup>1</sup> Ryan Curtis, 'Political Strategies and Regime Survival in Egypt' (4 January 2011) 18(2) *Journal of the Third World Studies*, 4.

poor. Successive regimes have used emergency and exceptional laws to grant themselves more power, which they justified as necessary for maintaining national and public order. The continuous state of emergency gave regimes the opportunity to stabilise and protect their political and economic interests. In effect, the continuous state of emergency has been a tool used by those who comprise the deep state in Egypt to ensure that their interests are protected.

Several questions need to be asked to examine the deep state in Egypt:

1. What is the nature of the deep state?
2. Who really exercised power?
3. Why did the deep state in Egypt require a state of emergency to rule, while at the same time liberal democratic countries ruled without a state of emergency?

To examine the deep state and its political and economic interests, this thesis discusses different factors that helped shape the current Egyptian deep state, as follows:

- the nature of power and the meaning of the deep state
- the separation of power
- the political rule of the Egyptian military
- the economic rule of the military as the head of the deep state
- the deep state and the media
- elite businesspeople and the deep state
- fake opposition.

This chapter examines the deep state in Egypt to show how political and economic interests have been behind the continuous use of the state of emergency. Further, it shows who really benefited from the continuous and permanent state of emergency.

## **7.2 Nature of State Power**

In examining the nature of state power, it is important to consider the key sources of all social power to obtain a better idea of who really exercises power and which groups benefit from exercising this power. In Western democratic countries, this tends to be big business and lobbyists. In autocratic countries, the military elite often benefit from exercising this power.

### 7.2.1 Miliband's nature of social power

Miliband examined the nature of social power and developed a theory of social class based on the extended use of social power. He constructed a model of the nature of the contemporary state and used it to explain economic, political, legal and military power in liberal democratic countries.<sup>2</sup> On the basis of this analysis, Miliband developed a class map of capitalist society. Miliband's work can be used as a guide in discussing a class map of advanced capitalist societies. Miliband explained three main sources of domination:

1. control over the main means of economic activity, involving direct power over investment, employment and technological development
2. control over the means of state administration, including control of the army and the police
3. control over the means of communication, including newspapers, television, the internet, education institutions and lobbying.

Miliband drew a pyramid with eight levels, distinguished by the exercise of qualitatively different levels of social power. The first four levels contain the dominant class. Levels one and two are the power elite. This includes capitalist owners and controllers of the biggest commercial, financial and industrial corporations that exercise economic power and control mass communications media, as well as senior politicians, public servants and judges who exercise major political and legal power. The economic power of the former group in directing investment and employment translates into political power of creation and application of law. They can offer politicians huge financial rewards of campaign funding, future directorships, tax revenues from investments and positive media coverage, as well as huge threats of withdrawal of all such support. This underpins all ongoing and largely covert 'lobbying' of lawmakers by business interests. Levels three and four represent the dominant class, but not the power elite. Level three comprises people who control and own a number of medium-sized firms. Level four represents a large professional class of lawyers, accountants, middle-rank civil servants and military personnel.<sup>3</sup> Levels five and six represent the petty bourgeoisie or lower-middle class of small business owners. Level seven represents the vast aggregate of people in

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<sup>2</sup> Ralph Miliband, *Divided Societies* (Oxford University Press, 1991) 19–21.

<sup>3</sup> *Ibid.*

advanced capitalist societies who live on the sale of their labour power or on state-supported social welfare. Finally, level eight represents the underclass, including sick, retired, unemployed and disabled people.<sup>4</sup>

### **7.2.2 State power in liberal democracies**

Vital questions need to be asked about how elite groups within most liberal democracies, distinguished by vastly greater wealth and power than that of the majority, manage to rule without using a continuous state of emergency, while at the same time, other political elite groups have been unable to rule, and they enjoy the benefits of their position without using a continuous state of emergency. The simple answer is that such elites within liberal democratic countries have been able to employ a range of strategies that are not available to elite groups in less economically developed circumstances. This includes:

- controlling the labour movement by engaging them in the political and parliamentary scene
- imposing certain constraints to release pressure from the lower classes using the rule of law, national security and defence of freedom and justice.<sup>5</sup>

The deep state in liberal democracies functions through:

- the rule of law/democracy and the separation of powers
- the executive directly and indirectly enforcing laws and applying policy
- an independent judiciary applying laws.

This thesis argues that every capitalist state has its own deep state of business elite with the power to influence lawmaking and the applications of law and policy. The minority capitalist class in liberal democracies is wealthy and manages to give concessions by paying reasonable wages, creating reasonable working environments and allowing unions, freedom of expression and free elections. At the same time, the group serves its own interests and gains sufficient popular support by controlling the ideology and convincing ordinary people to adhere to this ideology through the media, sport and elections. Even with these concessions to freedom and democracy, the capitalist class in liberal democratic states can still make huge profits. They should recognise that handing over any significant amount of their power to the

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<sup>4</sup> Ibid 21–23.

<sup>5</sup> Ibid 116.

military could threaten and constrain their movements and redirect increasing amounts of profit to the military.

The exception of an advanced liberal democracy lapsing into a military police state was Germany in the 1930s. As discussed in the previous chapter, heavy industrial capital—particularly the Krups and the Thyssen’s—saw such a move as favourable or necessary to combat communism, pull the country out of recession and drive rapid economic growth through militarisation. However, their support for Hitler’s rise to power inevitably led to greater Nazi involvement in the running of their business operations.<sup>6</sup>

### **7.2.3 State power in Egypt**

In the case of Egypt, when Britain left, the military filled the gap without any ready plan. There was no strong Egyptian capitalist class to take over and lead the country, and most people in the capitalist class were foreigners. Different political regimes in Egypt have used different policies, but with the same goals. These policies increased and expanded the rule of the military.

After 1952, the military controlled the main economy and nationalised the Suez Canal and the banks. The country was then run using state capitalism. This failed because Nasser used the capitalist state to consolidate his power and maintain the military as the main player in Egypt. He used the constitution and emergency law as sources of power to legalise the actions of the regime. After 1970, privatisation began benefiting a minority of people in Egypt in the form of the business elite of crony capitalists.

From 1980 onwards, a different group of crony capitalists—namely, friends and relatives of those in Mubarak’s regime—benefited from neoliberalism. After 2011, the military regained control of the economy, which benefited a minority of businesspeople who had close ties with the regime. Different political regimes in Egypt failed to gain the support of the working class by paying reasonable wages and building a welfare state. Successive regimes did not want to give any concessions to the working class, which cost them their legitimacy.

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<sup>6</sup> Antony C Sutton, *Wall Street and the Rise of Hitler* (July 1976)  
<[https://www.voltairenet.org/IMG/pdf/Sutton\\_Wall\\_Street\\_and\\_Hitler.pdf](https://www.voltairenet.org/IMG/pdf/Sutton_Wall_Street_and_Hitler.pdf)>.



As a result of years of injustice, the wealth gap, poverty and lack of freedom, the working class began to feel that a group of people-controlled Egypt politically and benefited economically, leaving most people suffering and struggling to pay their expenses. Different political regimes used the continuous state of emergency and exceptional laws in Egypt to prevent people from rising up against them. Emergency law gave them the power to suppress the working class and prevent any threat to their position and interests.

### **7.3 Deep State Examples and Comparisons**

Based on Miliband's discussion of the nature of power, it is worth examining different kinds of deep state to help define the deep state that can be observed in Egypt. In this way, we can identify the similarities and differences between different kinds of deep states to discover who is really exercising power and benefiting. This research uses Brown's definition of the deep state and discusses examples of the deep state in the US, Turkey and Thailand.

#### **7.3.1 Definition of the deep state**

While limited studies have examined and explained the concept of the deep state and its roots, several authors have drawn attention to what they call the 'dual state', 'parallel state' or 'deep state'. The reason for examining different meanings of the deep state is to discern whether all deep states have the same framework, the same elite and the same objectives.

Focusing only on the Egyptian situation, Brown defined the deep state as a 'group of senior officials or critical institutions that collectively manage the entire political system—senior military officers, the security apparatus, intelligence agencies, and sometimes judges and some senior bureaucrats.'<sup>7</sup> This thesis argues that this definition is too narrow, even in relation to Egypt's situation. The definition needs to be expanded to include the business elite, the media and the fake opposition. In addition, Brown's definition ignores the reality in developing countries, whereby political and economic support from Western powers and the debt pressure used by

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<sup>7</sup> Nathan J Brown, *Egypt's Wide State Reassembles Itself*, Foreign Policy (17 July 2013) <<http://foreignpolicy.com/2013/07/17/egypts-wide-state-reassembles-itself/>>.

neo-imperialist organisations play an important role in the operation of the deep state.

Merieau defined the deep state as a state within the state, composed of state agents, over which civilian governments have limited or no control. According to this definition, the deep state has its own ideological support system and its own hierarchy. It manipulates public opinion using different tactics, including creating crises and national emergencies.<sup>8</sup> This thesis argues that this definition ignores important elements such as military rule, the goals behind creating crises or national emergencies, and the ideological control of the people.

Wilson refers to the deep state as a dual state, which is ‘a state in which one can distinguish between a public state and a top-down deep state. The deep state emerges in false-flag violence, is organised by the military and intelligence apparatus and involves their link to organised crime’.<sup>9</sup> This thesis suggests that this definition is too narrow because it does not include the rest of the elite of the deep state. As the head of the deep state in many autocratic states, the military uses exceptional laws to suppress and justify its measures.

The deep state arises in democratic and non-democratic countries. Democratic countries are ruled by an elite—a minority group of rich, powerful and influential businesspeople who work together to place pressure on senior politicians, public servants and lawmakers. Countries without liberal democratic institutions and practices are usually ruled by the military, by a civilian president without any authority, by a civilian with a military background or by undemocratic civilian rule. In autocratic countries, the president rules using different tactics and uses force against opponents. Autocratic regimes depend on the political and economic powers of the military to consolidate their rule and serve their agendas under the guise of protecting national security and democracy.

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<sup>8</sup> Eugenie Merieau, ‘Thailand’s Deep State, Royal Power and the Constitutional Court (1997–2015)’ (29 February 2016) 46(3) *Journal of Contemporary Asia* 445–466.

<sup>9</sup> Eric Wilson, *The Dual State: Parapolitics, Carl Schmitt, and the National Security Complex* (Ashgate, 2012) 2.

### 7.3.2 Deep state in the United States

As a result of the lack of literature discussing the deep state, this thesis provides a recent definition of the US deep state. Lofgren stated that the deep state in the US is:

A hybrid association of elements of government and parts of top-level finance and industry that is effectively able to govern the US without reference to the consent of the governed as expressed through the formal political process.<sup>10</sup>

He added that it is not:

A secret, conspiratorial cabal; the state within a state is hiding mostly in plain sight, and its operators mainly act in the light of day, it is not a tight-knit group and has no clear objective. Rather, it is a sprawling network, stretching across the government and into the private sector.<sup>11</sup>

The concept of national security is used by both the formal and the deep states. The protection of the country from foreign and domestic enemies is used to justify many actions and policies. The deep state extends the umbrella of secrecy not only to protect the state, but also to cover up things that are politically untenable.<sup>12</sup> Miliband examined the US deep state, which he discovered was dominated by the power elite controlling the major industrial, commercial and financial institutions in the US.

This thesis argues that the US deep state includes a group of elite civilians and military personnel. It is a de facto marriage between the business elite, including bankers, oil companies and the military. The concept of national security is used to increase and consolidate the deep state's power inside and outside the US, to generate more profit and to increase its tight grip on financial and political interests. Miliband stated that:

The military occupy a distinct place in the system, but their power is not such as to give them a co-equal place with the other two groups. This is not to deny them a great deal of influence, authority and power, particularly in crisis situations and in war time. For the most part, however, the political regimes of advanced capitalism have tended to be civilian-oriented, with the military kept fairly effectively in subordinate positions.<sup>13</sup>

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<sup>10</sup> Mike Lofgren, *Anatomy of the Deep State* (21 February 2014) <<http://billmoyers.com/2014/02/21/anatomy-of-the-deep-state/>>.

<sup>11</sup> Ibid.

<sup>12</sup> Marc Ambinder and D B Grady, *Deep State: Inside the Government Secrecy Industry* (John Wiley & Sons, 2013) 4.

<sup>13</sup> Miliband, above n 2, 20.

Miliband built his theory around Western capitalist countries, in which the military is not the main player, except in wartime. There are cultural and political differences between developing and developed countries. For example, in the deep states of Turkey, Thailand and Egypt, the military plays a major role in controlling these countries to protect its political and economic interests.

### 7.3.3 Deep state in Turkey

Turkey's deep state operates under official cover, without any accountability, and is mobilised by top military commanders.<sup>14</sup> The deep state in Turkey can be traced back to the Special Organization (*Teşkilat-ı Mahsusa*), a secret society of civil and military organisations that was established in 1913 by the Committee of Union and Progress, which was abolished after the 1918 war. Its underground network became the base of the Anatolian Resistance during the War of Independence led by Mustafa Kemal (Atatürk), who established the Republic of Turkey in 1923.<sup>15</sup> In 1930, the new Republic of Turkey adopted the Kemalist ideology based on modern Westernisation projects, which aimed at uniting society with the military under the secular monolithic nation state of Turkey. When Atatürk died on 10 November 1938, Turkish military forces used Kemalism to gain power. They abolished the multi-party system in 1946.<sup>16</sup> During the 1950s, a group of Turkish politicians formed a coalition called *derin devlet*, or the deep state, which was blamed for the death of thousands of Turkish people.<sup>17</sup>

The military suspended democracy through a series of five coups.<sup>18</sup> Two coups took place in 1960, when the military arrested and executed the prime minister, Adnan Mendres. In 1971, the military forced the civilian government to resign. In the 1980 coup, the military was accused of killing and detaining thousands of people. A new constitution was established, which granted the military the explicit power to

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<sup>14</sup> H Akin Unver, *Turkey's 'Deep-State' and the Ergenekon Conundrum*, Middle East Institute (April 2009) 1–25.

<sup>15</sup> Mehtab Söyler, 'Informal Institutions, Forms of State and Democracy: The Turkish Deep State' (2013) 20(2) *Democratization* 315.

<sup>16</sup> *Ibid.*

<sup>17</sup> Robert Longley, *The 'Deep State' Theory, Explained*, ThoughtCo (18 September 2017) <<https://www.thoughtco.com/deep-state-definition-4142030>>.

<sup>18</sup> Since 1960, the Turkish military has dominated not only the political power, but also the economic power, through the Army Mutual Trust Fund, Ordu Yardımlaşma Kurumu. For more details, see Mehtab Söyler, above n 15, 315.

overthrow a civilian government.<sup>19</sup> Bloodless military interventions again took place in 1997. After a number of ultimatums from the military, Prime Minister Erbakan resigned, and his party, the Welfare Party, was banned. The military accused him of opposing plans to enter the European Union and move closer to Islamists.<sup>20</sup>

Minimising the rule of the military in Turkey went through different stages, as follows:

- The Turkish military assumed responsibility for guaranteeing the republic's constitution. Turkey's constitutions of 1924, 1961 and 1982 stated that the duty of its armed forces was to protect and safeguard Turkish territory and the Turkish republic.<sup>21</sup>
- The Turkish military used this constitutional authorisation to justify its interference in the political realm by seizing power in 1960 and 1980 and forcing the resignation of the government in 1971 and 1997.<sup>22</sup>
- In September 2001, Turkey's parliament amended the 1982 constitution to ensure that the Constitutional Court of Turkey could review any decision involving the maintenance of freedoms and allegations of unconstitutionality. Therefore, the military could no longer act upon allegations of unconstitutional acts until there had been a court review.
- In addition, in July 2003, the Grand National Assembly passed a reform package that called for a civilian to lead the National Security Council.<sup>23</sup>
- The 2000s saw the gradual decline of Turkey's deep state, but not the end of the development of democracy targeted the Turkish military and the distribution of power changed profoundly.
- On 15 July 2016, the military and the followers of Fethullah Gülen were accused of a failed coup attempt against Erdogan.<sup>24</sup> Gülen was a Muslim preacher who supervised a religious and educational organisation in around 30 countries. His followers operated a wide network of schools, colleges, newspapers and television channels. Approximately 265 people died and 1,400 were injured in the failed coup. Thousands of military personnel, police and followers of Gülen were arrested and detained after the failed military coup.

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<sup>19</sup> James Fallows, 'The Deep State, the Permanent Campaign, and the Frayed Fabric of American Democracy', *The Atlantic* (online), 17 July 2013  
<<https://www.theatlantic.com/politics/archive/2013/07/the-deep-state-the-permanent-campaign-and-the-frayed-fabric-of-american-democracy/277828/>>.

<sup>20</sup> Ibid.

<sup>21</sup> David Capezza, 'Turkey's Military is a Catalyst for Reform: The Military in Politics' (2009) 16(3) *Middle East Forum* 13–23.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Fallows, above n 19.

This thesis suggests that Turkey's deep state first functioned as a secret organisation and then developed to include the Turkish military as the head of the deep state, with the support of Western powers. The military used the judiciary, as well as a group of businesspeople who controlled the media and universities, to maintain its tight grip on the country.

#### **7.3.4 Deep state in Thailand**

Thailand's deep state is composed of people of various ranks, spanning from low-ranking civil servants to the highest-ranking officials. They are all opposed to taking orders from the elected government. In their opinion, the elected government is incapable of administering Thailand. They use the monarchy (royal legitimacy) as their symbolic vehicle to strengthen their social, economic and political order. Royal legitimacy derives from the king's practice of the 10 Buddhist virtues and is used to consolidate the power of the deep state.<sup>25</sup>

After the king of Thailand died on 13 October 2016, the deep state found a new source of legitimacy based on legal, rational legitimacy through the judiciary. Judges had an informal role as the representatives of the king and were authorised to use extra power in times of crisis.<sup>26</sup>

This thesis suggests that the military in Thailand's deep state is the head and main ruler of the country. The deep state first used the monarchy as its justification to consolidate its power, and then used the judiciary as an extra tool to increase its legitimacy and to continue to protect its political and economic interests.

#### **7.3.5 Similarities and differences between the deep state in Egypt and that of other countries**

The main similarities between the deep state in Egypt and that of the three countries considered above are as follows:

1. The deep state is based on the military, police, the judiciary and the business elite.
2. The deep state functions in secret and is invisible and unaccountable to the state.

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<sup>25</sup> Merieau, above n 8, 446–447.

<sup>26</sup> Ibid 447.

3. The deep state uses the constitution and the law to consolidate and enshrine its power.
4. The deep state prevents any civilian-elected government from genuine representation of the elector's interests.
5. The deep state uses ideological concepts—such as royal legitimacy in Thailand, protecting Kemalist ideology in Turkey, protecting the gains of the revolution and protecting the country from anti-revolution in Egypt—to consolidate and gain more power.
6. The media and press, controlled by the government and businesspeople, play a crucial role in mobilising public opinion.

The main differences between the Egyptian deep state and that of other countries are as follows:

1. The legislative branch was part of the deep state elite in Egypt.
2. The deep state in Egypt created a fake opposition to prevent a civilian president from performing his duties.
3. The role of Western powers and neo-colonial organisations was visible and supported the deep state and its elite in Egypt.
4. The military in Egypt controlled 5–40% of Egypt's economy.
5. The presidents of Egypt all had military backgrounds, except for Morsi.
6. The deep state in Egypt includes effective businesspeople who share an interest in controlling the country.

This thesis finds that the Miliband model is helpful and relevant in an examination of deep states, while making the following notes:

1. The Miliband model is based on Western democratic countries.
2. The US deep state was controlled by levels one and two of Miliband's class map pyramid. In the US, the deep state exercises power through corporate lobbying and national security apparatus and arms companies to control the economy and ideology. However, Miliband neglected to examine the role of US neo-imperialist organisations such as the IMF and the WTO.
3. In Thailand and Turkey, the military were the main authorities that exercised power.

4. The Egyptian military used the legal vacuum left by Britain. The regime used economic power and the ideology of being the guardian of Egypt to maintain control of the country.
5. US aid to the Egyptian regime caused Egypt to lose its sovereignty.
6. The IMF and the World Bank used debt pressure to force Egypt to adopt certain programs.
7. The role of the legislature and the judiciary was as a rubber stamp for executive actions.
8. The media and fake opposition were used to change people's ideology.

### **7.3.6 Broader definition of the deep state**

Thus, a broader definition of the deep state is needed than what is offered by most deep state theorists to encompass the diversity of real-world deep states. In some cases, powerful national capitalist classes play a central role; in others, foreign capital, international organisations and different national groups included the military substitute for such national capital. However, a more precise definition of the form of the deep state in Egypt is also needed. This thesis argues that the following defines the deep state in relation to Egypt.

The deep state is a group of elites, headed by the military, anti-revolutionaries from the old regime, crony capitalists who benefit from having political and economic power, the judiciary, the business elite, fake opposition and the media. External financial and political support for the deep state comes from Western powers and the debt pressure imposed by neo-colonial organisations. This enables the deep state to continue controlling the country and to protect and stabilise its interests, thereby preventing any sharing of political and economic power.

The Egyptian deep state can also be defined as a hidden empire that functions as a state within a state, headed by the military and its elite. This secret empire has its own loyal members who work secretly for their own political and economic interests.

### **7.3.7 Role of the military in the deep state in Egypt**

The military has consistently used class division in Egypt to control the country for its own interests. There are numerous examples of this:



- During the 1919 revolution, the Wafd Party consisted of bourgeois nationalists who represented the urban and rural middle class, the owners of medium-sized agricultural properties and the urban effendiyya such as teachers, lawyers and Westernised journalists.<sup>27</sup>
- The social base for Nasser consisted of army officers, civil servants, teachers, sons of merchants, wealthier peasants and small-scale landowners.<sup>28</sup>

The military has also used ideology to convince people to accept its rule. For example:

1. For 60 years, the military depended on the myth of the 1952 coup and called it a revolution.
2. The regime used the 1956 Suez Canal, 1973 war and 2011 revolution to show that the army and the people were one.
3. The military used propaganda, institutional power, security apparatus and hidden economic independence to maintain and enforce the military rule.<sup>29</sup>

Before the 2011 revolution, the military was concerned about the new class of crony capitalists built by Mubarak and his son, Gamal, who tried to establish a new elite in Egypt. The military feared that the new elite would pose a threat to its political and economic interests in Egypt. The old military guard feared that Mubarak would transfer his power to his son, who was not from a military background.<sup>30</sup> The military sped up Mubarak's resignation during the uprising in 2011. Increasing liabilities, such as corruption and the benefits flowing to a small group of family and friends, affected the whole institutional power, especially the power of the military. At the same time, the US could no longer support Mubarak.<sup>31</sup>

The public's demands in the 2011 revolution included an end to corruption and fair distribution of wealth and income among Egyptians. The Mubarak regime, his family and allies benefited from corruption, especially after the regime adopted a structural adjustment suggested by the IMF, which resulted in reduced government investments in health and education and increased poverty of most Egyptians. Simultaneously, the privatisation of the public sector benefited the regime's allies. Loyal people were

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<sup>27</sup> Miliband, above n 2, 157.

<sup>28</sup> Ibid.

<sup>29</sup> Maha Azzam, *Egypt's Military Council and the Transition to Democracy* (The Royal Institute of International Affairs, May 2012) 2.

<sup>30</sup> Ibid 3.

<sup>31</sup> Azzam, above n 29, 3.

appointed to top positions in state-owned firms to gain their loyalty.<sup>32</sup> Corruption helped ignite the anger of the Egyptian people and was one of the reasons behind the revolution on 25 February 2011. However, corruption was one of the main tools of the deep state, so those within the deep state actively prevented the end of corruption in Egypt.

On numerous occasions, the Egyptian regime has used repressive measures to falsify elections. For example, many opponents have been arrested, election supervisors from human rights organisations have been prevented from attending polling and citizens have been prevented from voting. This has been achieved by hiring thugs with knives and machetes to disturb opposition voters, using physical force to expel independent voters or intimidate voters, and placing security forces and armed plainclothes police at each voting station.<sup>33</sup> The police force has regularly supervised the voting and counting procedures in local legislative elections and the presidential referendum to ensure that the presidential party wins at least 75% of the votes and that most people vote in favour of the president. At the same time, the police force has arrested people in opposition and prevented them from voting.

In the Egyptian parliament election of 2010, the ruling National Democratic Party, headed by President Mubarak, won all but 14 seats, which went to the opposition and independent candidates. The opposition claimed that the election was rigged and invalid, while the regime said that the voting was clean and free from irregularities.<sup>34</sup> Police used tear gas to clear the opposition supporters and arrested approximately 1,000 people, 11 of whom were sentenced to up to two years in jail for handing out brochures and displaying information about campaigns.<sup>35</sup>

While initially appearing to support the uprising in 2011, the military eventually physically opposed it and regained control during the transition period.<sup>36</sup> As the

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<sup>32</sup> Yezid Sayigh, *Above the State: The Officers' Republic in Egypt*, Carnegie Middle East Center (1 August 2012) <<http://carnegie-mec.org/2012/08/01/above-state-officers-republic-in-egypt-pub-48972>>.

<sup>33</sup> Johannes Stern, *Egyptian Elections Marked by State Violence and Fraud*, International Committee of the Fourth International (December 2010) <<https://www.wsws.org/en/articles/2010/12/egypt-d02.html>>.

<sup>34</sup> Jack Shenker, 'Egypt's Rulers Tighten Grip Amid Claims of Election Fraud and Intimidation', *The Guardian* (online), 30 November 2010 <<https://www.theguardian.com/world/2010/nov/30/egypt-poll-electoral-fraud-claims>>.

<sup>35</sup> Jacky Rowland, "'Vote Rigging' Mars Egypt Election', *Al Jazeera News* (online), November 2010 <<http://www.aljazeera.com/news/middleeast/2010/11/2010112844850659269.html>>.

<sup>36</sup> Azzam, above n 29, 3.

guarantor of the peace, the Egyptian military used the US' fears over the peace treaty between Egypt and Israel to convince the US not to end its \$1.3 billion aid to Egypt.<sup>37</sup> The Egyptian military used national security and the shared border with Israel to enshrine its secretive, coercive, corporatist policies.<sup>38</sup>

During the election battle between Morsi and Ahmad Shafiq in 2012, Shafiq's supporters were upper-middle class and the elite from Mubarak's regime. Morsi's supporters were lower-income Egyptians from the working class.<sup>39</sup> Said Sadek, a professor of political sociology at the American University in Cairo, noted that a 'sharpening' of class divisions since the run-off was 'reflected in political choices and voting'. He added that 'urban, upper and middle class and lower delta voters support the civil state while Upper Egypt, North Sinai Bedouins and urban residents of poor squatter settlements support the theocratic state of the Brotherhood'.<sup>40</sup>

The military used the division between political parties and their supporters—especially between secular parties and the Muslim Brotherhood—to maintain its tight grip on Egypt.<sup>41</sup> It was able to present clashes between different class groups as threats of disorder and the breakdown of the rule of law.

### **7.3.8 Separation of powers and the rule of law**

This section discusses who is really exercising power and determines whether there is a real separation of powers or whether there is only one authority controlling all of the power.

The separation of powers in a liberal democracy means that there are three branches of the government: executive, legislative and judicial. Power should be divided between these branches to ensure that none of the branches overuse or misuse their power. There should be an active checks and balances system to ensure that each branch is enforcing its rule without violating the separation of powers.

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<sup>37</sup> Ibid 6.

<sup>38</sup> Said Atef, 'The Paradox of Transition to "Democracy" Under Military Rule' (2012) 79(2), *Social Research*, 397–434, 552.

<sup>39</sup> Vivian Salama, 'Class Division in Egypt Makes a Comeback', *Al-Monitor* (online), 22 July 2012 <<https://www.al-monitor.com/pulse/originals/2012/al-monitor/class-divisions-in-egypt-makes-a.html>>.

<sup>40</sup> Ibid.

<sup>41</sup> Azzam, above n 29, 4.

This thesis has already touched upon the great concentration of power in the hands of a small elite in advanced liberal democracies. In part, this derives from the weakness of real separation of powers, with effective executive domination of both the legislature and the judiciary. It is this concentration of executive power that becomes the conduit for covert exercise of power by the business elite, bypassing the legislature and the judiciary to place pressure on the political leadership.

However, while there are serious real-world limitations on the separation of powers, typically including executive domination of both the legislature and the judiciary (which becomes the means for exercising political power by big business, acting directly through the political leadership), a degree of real power separation still represents a significant defence against totalitarian autocracy.

Authoritarian regimes pretend to have a separation of powers in theory; however, in practice, it does not exist. The centralised government in Egypt, ruled by a president, is described as a presidential system, even though the president rules as a civilian. However, out of six presidents, five (Naguib, Nasser, Sadat, Mubarak and El-Sisi) were civilians with military backgrounds. The sixth, Morsi, was a civilian.

Since 1952, Egypt has maintained the same structure, whereby the transfer of power occurs upon the death of the incumbent president. Exceptions to this rule are the 2011 revolution that ousted Mubarak and the 2013 coup that deposed Morsi. According to the constitution, the Egyptian president has massive power, as follows:

- They have the authority to select a prime minister and to dismiss them. That is, the president controls the executive authority.
- They can also dissolve the Legislative Assembly at any time, except in the case of declaring a state of emergency. The Legislative Assembly is mostly ruled by a dominant party. For example, the National Democratic Party, which was headed by President Mubarak, usually won the majority of seats in the Egyptian assembly. The limited minority opposition had no actual power. This majority in the parliament gave the president the ability to pass any laws. Further, the regime benefited from controlling the parliamentary seats, especially the one reserved for peasants and workers.<sup>42</sup>

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<sup>42</sup> Shana Marshall, *The Egyptian Armed Forces and the Remaking of an Economic Empire*, Carnegie Middle Endowment for International Peace (15 April 2015) 3 <<http://carnegie-mec.org/2015/04/15/egyptian-armed-forces-and-remaking-of-economic-empire-pub-59726>>.

- The president can use their power to issue decrees, which have the same power as legislative laws, to avoid formal legislative procedures that usually take longer to be issued.
- The president has the authority to appoint judges in the high Egyptian courts. This interference in the judiciary violates the separation of powers. Further, the law gives the president the authority to refer civilians to any military court.<sup>43</sup>

Successive Egyptian regimes have prevented any meaningful efforts towards political changes, especially in relation to ensuring the separation of powers. If any changes were to be accepted by the military, they would be minor.<sup>44</sup> In the case of Egypt, the military was, and remains, the head of the regime. It controls Egypt's political and economic life. As discussed earlier, the military enshrined its authority through the constitution and different exceptional laws. The military (armed forces and military intelligence) are the sole decision-makers at the executive, legislative and judicial levels. Even presidential advisers, ministers and governors are from retired, high-ranking military and police backgrounds.<sup>45</sup>

## **7.4 Egyptian Military and Police as the Heads of the Deep State**

### **7.4.1 Background**

When Muhammad Ali resumed power, he planned to turn Egypt into a powerful military country that was independent of the Ottoman Empire. At first, he succeeded in making the Egyptian army one of the most powerful armies in the Middle East. By 1830, the Egyptian army and navy consisted of approximately 125,000 soldiers. The senior ranks of the army comprised Turco-Circassians, the middle and the technical officers were from the West and the native Egyptians comprised the middle- and low-ranking troops.<sup>46</sup>

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<sup>43</sup> Nathan J Brown, *Egypt's Judges in a Revolutionary Age*, Carnegie Endowment for International Peace (22 February 2012) 3 <<http://carnegieendowment.org/2012/02/22/egypt-s-judges-in-revolutionary-age-pub-47254>>.

<sup>44</sup> Steven A Cook, 'The Unspoken Power: Civil–Military Relations and the Prospects for Reform' (Analysis Paper No 7, Saban Center for Middle East Policy at the Brookings Institution, September 2004) IV.

<sup>45</sup> Ahmed Abd Rabou, *Decision Making in Egypt: What Has Changed Since Mubarak?* The Tahrir Institute for Middle East Policy (16 June 2015) <<https://timep.org/commentary/decision-making-in-egypt-what-has-changed-since-mubarak/>>.

<sup>46</sup> Ahmed S Hashim, 'The Egyptian Military, Part One: From the Ottomans Through Sadat' (2011) XVIII(3) *Middle East Policy Council* <<http://www.mepc.org/egyptian-military-part-one-ottomans-through-sadat>>.

Given Ali's desires beyond Egypt's borders, the great European powers felt that he would threaten the balance of power and their interests in the Middle East. Thus, they sought to reduce the Egyptian military and, in return, promised that they would enable Ali's dynasty to rule Egypt forever.<sup>47</sup> The European powers justified reducing the Egyptian army by arguing that Egypt needed to pay off its debt rather than enlarge its military. After Britain colonised Egypt, native Egyptian officers could not be promoted above the rank of colonel. The higher ranks were seized for non-native Egyptians. There were only four Egyptian colonels in the Egyptian army during this period, one of whom was Urabi Pasha.<sup>48</sup> Urabi and his followers forced Tawfik Pasha to appoint a nationalist prime minister, Mahmud Sami al-Barudi. Urabi became the war minister and promoted 400 Egyptians while simultaneously dismissing 40 Turco-Circassian officers.<sup>49</sup>

In response to this nationalist uprising, Britain invaded Egypt to protect its political and economic interests. Britain ousted the nationalists and defeated and captured Urabi. In his trial, Urabi stated that:

In 1881 the Egyptian army was composed of twelve infantry regiments, in 1881, during the ministry of Uthaman Pasha Rifqi, it was decided to reduce it to only six regiments. The practice in Egypt was to tend to discriminate by race. And so, all promotions, decorations, and rewards went to those of the Circassian race ... After this faction came that of the Turks and others who were not Egyptians, along with those of mixed origins. Thereafter came those Egyptians by race; they were neither promoted nor indeed employed except by necessity, only when others were not available.<sup>50</sup>

To minimise the threat of the Egyptian army to British interests in Egypt, Britain reduced the Egyptian army from 80,000 to 6,000, and then increased it to 16,000 light-armed soldiers in 1900.<sup>51</sup> Decreasing the size of the Egyptian army and giving them light arms was a strategy to control the Egyptians and prevent them from having a powerful, efficient military. The Anglo–Egyptian Treaty of 1936 gave the Egyptian government greater control over the military. Between 1936 and 1937, the government liberalised admissions for army officers. This had only been open to

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<sup>47</sup> Sherif Khalifa, *Egypt's Lost Spring: Causes and Consequences* (Praeger, 2015).

<sup>48</sup> Hashim, above n 46.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

noble families when Britain controlled the Egyptian army. The officers' corps was opened up to all Egyptians, regardless of their family background.<sup>52</sup>

After the 1952 coup, the Free Officers resumed power and ousted King Farouk. A British commentator of the day stated that:

Basically, the Egyptian army has been built up not so much for the defence of Egypt as for the bolstering of Egyptian prestige and pride, and its senior officers are appointed on the basis of their political leanings rather than their military qualities. Many good officers have been dismissed ... the senior ones for becoming too popular and the juniors for being too independent.<sup>53</sup>

After 1952, the Free Officers showed no interest in having a democratically elected parliament. They labelled themselves anti-imperialist, anti-corruption and the servants of the nation. The country moved to a dictatorial rule in which one party became a vehicle of corruption and favouritism.<sup>54</sup> Between 1952 and 1970, the Cabinet of Egypt was controlled by the military. Even when Nasser created the Liberation Rally and the Arab Socialist Union, three-quarters of the general administration were from a military background.<sup>55</sup> The military maintained its tight control of the Egyptian administrative apparatus, preventing the executive authority from straying from its own control.<sup>56</sup> The regime depended heavily on military officers, either being in service and retired, to control sensitive positions in Egypt. To gain their loyalty, the regime used the rule of the armed forces to enforce its policies and strategies. The regime offered the military supplementary salaries and extra income to gain their loyalty, and the military served as the primary tool to enshrine the president's authority.<sup>57</sup> To gain the loyalty of the military and police officers, successive regimes also offered scholarships for officers to study overseas, as well as advantages in housing, appliances and medical care. Finally, the regime gave priority to retired military and police personnel when appointing provincial governors and military commissioners in London, Paris and Washington.

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<sup>52</sup> James P Jankowski, *Nasser's Egypt, Arab Nationalism and the United Arab Republic* (Lynne Rienner Publishers, 2002) 14.

<sup>53</sup> Hashim, above n 46.

<sup>54</sup> Fawaz A Gerges, *The New Middle East: Protest and Revolution in the Arab World* (Cambridge University Press, 2014) 72–73.

<sup>55</sup> Gregory Aftandilian, *Presidential Succession Scenario in Egypt and Their Impact on US–Egyptian Strategic Relations*, US Army War College (September 2011) 4.

<sup>56</sup> Wael Haddara, 'Egypt's Military Government Endures—But at What Cost?', *Al Jazeera News* (online), 19 February 2016 <<http://www.aljazeera.com/indepth/opinion/2016/02/egypt-military-government-endures-cost-sisi-160217080229171.html>>.

<sup>57</sup> Sayigh, above n 32.

## 7.4.2 Military interference in political life in Egypt after 2011

The Egyptian armed forces became the major player, the cornerstone and redline zone that controlled Egypt's political scene. After ousting President Mubarak, the SCAF resumed power. In 2013, the military ousted Morsi and appointed an interim government. In May 2014, El-Sisi became the president of Egypt. The opposition criticised the tight grip of the military forces on Egypt's political and economic activities, calling on them to return to their barracks to secure the Egyptian border and not interfere with political life.<sup>58</sup>

This section discusses the interference of military political in Egypt, especially by Egypt's SCAF, and particularly since 2011.

### 7.4.2.1 Egypt's Supreme Council of the Armed Forces

The SCAF is Egypt's highest military body. It was established by President Nasser under Law No 4 of 1968. Its main purpose was to run the armed forces during wartime.<sup>59</sup> After the 1979 Camp David peace agreement, the SCAF became a ceremonial body.<sup>60</sup> During the 2011 revolution, the SCAF did not declare emergency law because the country was already under a state of emergency. Instead, it issued Communique No 1, stating that the military would stand beside the Egyptian people and protect their achievements. Mubarak then announced that he would appoint a vice president, but the Egyptian people called for Mubarak's resignation.<sup>61</sup>

Before his resignation, Mubarak promised to modify the constitution to calm the angry Egyptians, but they continued to demonstrate until Mubarak resigned.<sup>62</sup> As the main power in Egypt, the SCAF resumed rule and overturned the 1971 constitution. The SCAF then announced many constitutional declarations to expand its powers, as outlined below:

1. The SCAF controlled the legislative and judiciary authorities and created military courts to try civilians.

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<sup>58</sup> Gerges, above n 54.

<sup>59</sup> Gilad Wenig, *Egypt's New Military Brass*, The Washington Institute (26 March 2014) <<http://www.washingtoninstitute.org/policy-analysis/view/egypts-new-military-brass>>.

<sup>60</sup> Ibid.

<sup>61</sup> Charles Tripp, *The Power and the People: Paths of Resistance in the Middle East* (Cambridge University Press, 2013) 101.

<sup>62</sup> R Ward Holder and Peter B Josephson, *The Irony of Barack Obama: Barack Obama, Reinhold Niebuhr and the Problem of Christian Statecraft* (Routledge, 2016) 117.



2. The SCAF retained the right to appoint a defence minister so that the future president could not appoint a civilian defence minister.
3. The SCAF retained the Supreme Constitutional Council, which consisted of eight committee members. They retained the power to dismiss and supervise the elections.
4. General Tantawi, the head of the SCAF and the defence minister, ended the state of emergency in theory, but in practice, the state of emergency still applied for hooligans and thuggery. The charge of thuggery was mostly used to curtail anyone in opposition to the military. The military used its authority to try civilians before the military courts.<sup>63</sup>
5. The military forces expanded the scope of their power and prevented any criticism against the military in the form of writing or drawing. On 13 June 2012, the justice minister authorised the intelligence services and the military police to arrest civilians for six months if they criticised the military in this way.
6. In a constitutional declaration on 17 June 2012, Article 53/2 stated that in the face of internal unrest, the president could issue a decision to direct the armed forces, with the approval of the SCAF, to maintain security and defend public property.<sup>64</sup>
7. The SCAF tried to weaken the president before the election by forcing any new president to take the oath in front of the Supreme Constitutional Court. In the absence of the parliament, the SCAF had the power to appoint the members of the Supreme Constitutional Court.
8. The SCAF limited the president's power to declare war without the approval of the SCAF.<sup>65</sup>
9. Instead of electing governors in Egypt, the military appointed 15 governors, most of whom were from a military background.<sup>66</sup>

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<sup>63</sup> Marc Lynch, *Ending Egypt's State of Emergency (Sort of)*, Foreign Policy (24 January 2012) <<http://foreignpolicy.com/2012/01/24/ending-egypts-state-of-emergency-sort-of/>>.

<sup>64</sup> Daniel Pipes and Cynthia Farahat, 'Egypt's Real Ruler: Mohamed Tantawi', *The Washington Times* (online), 11 July 2012 <<http://www.danielpipes.org/11584/mohamed-tantawi>>.

<sup>65</sup> Noor-Ul-Ain Khawaja and Muhammad Hashsham Khan, *Egypt: From Mubarak to Sisi*, Discover Society Organization (3 June 2014) <<http://discoversociety.org/2014/06/03/egypt-from-mubarak-to-sisi/>>.

<sup>66</sup> Benjamin Isakhan and Steven Slaughter (eds), *Democracy and Crises: Democratizing Governance in the Twenty-First Century* (Palgrave Macmillan, 2014) 152.

10. The military issued a constitutional annex limiting the incoming president from holding power over the state budget.
11. The military tried around 16,000 civilians who were involved in the 2011 revolution before the military courts.<sup>67</sup>

After ousting Morsi in 2013, the SCAF appointed an interim government headed by an interim president, Mansour. Mansour issued a presidential decree amending Law No 4 of 1968 by Law No 18 and 20 of 2014 regarding command and control.<sup>68</sup> Law No 18 of 2014 specified the main criteria for appointing the defence minister to ensure that they had held the rank of major general for at least five years and had previously had a central role in the armed forces.<sup>69</sup> Law No 18 of 2014 shows how the military prevented civilians from becoming the defence minister, or at least ensured that the military would influence who was appointed.

In addition, the above presidential decree established a National Security Council to be headed by the president. This consisted of the prime minister, the speaker of the parliament, the parliamentary Defence and National Security Committee, the chief of the general intelligence services and the ministers of defence, interior, foreign affairs, justice, finance, health, communications and education. The law required the National Security Council to meet once every month and, in case of war, natural disaster or other emergency, they must sit in permanent session. Any decision made by the National Security Council required a majority vote. The main duties of the National Security Council were to establish strategies to preserve national security, define political goals, develop and implement initiatives, preserve Egypt's identity, determine sources of threats and establish defensive measures in case of a crisis.

The constitution gave the president the power to declare war and send Egyptian troops outside Egypt with the approval of the National Security Council and two-thirds of the parliament. When the parliament was not in session, the president was required to seek approval from the cabinet, the defence council and the armed forces. According to Article 205 of the 2014 Egyptian constitution, the National Security Council could invite any relevant expert to attend the meeting without counting their vote.

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<sup>67</sup> Ibid 152–153.

<sup>68</sup> Wenig, above n 59.

<sup>69</sup> Ibid.

Presidential Decree No 20 of 2014 stipulated that the SCAF would consist of 25 members who would set the military and defence strategy and be responsible for building and operating the SCAF. Decree No 20 of 2014 gave the president and the defence minister the power to appoint a SCAF member and ensured that the defence minister would be the secretary general of the SCAF unless the president was in the meeting, in which case the president would head the meeting.<sup>70</sup>

The military also established a National Defence Council. According to Article 203 of the 2014 constitution, the National Defence Council comprises the president, the prime minister, the speaker of the parliament, the ministers of defence, foreign affairs, finance and the interior, the chief of the general intelligence services, the chief of staff of the armed forces, the commanders of the navy, air force and air defence, the chief of operations for the armed forces and the head of military intelligence. The main responsibility of the National Defence Council is to ensure the safety and security of the country and discuss the armed forces' budget as a single figure in the state budget. Article 203 of the 2014 constitution enshrined the secrecy of the military budget, although it allowed the national committee of the House of Representatives to attend meetings, and it gave the president the authority to invite any expert without counting their vote. The secrecy of the military budget shows how the deep state aimed to hide its financial situation and the extent of its profits.

#### *7.4.2.2 Examining the political rule of the military*

The military is the strongest institution in Egypt. Except for Morsi, all Egyptian presidents have come from a military background. The military maintains its popular image as the protector of national security, public order and stability.

At the start of the 2011 revolution, Egyptians stood up to the regime. However, when the revolution sparked wide demonstrations throughout Egypt, the interior ministry and its tool, the security forces, could not handle the situation. The military refused to use violence against Egyptian civilians,<sup>71</sup> which increased its popularity. The military was observed to be the safeguard of Egyptian national security. After Mubarak resigned, the military forces resumed power and promised not to interfere

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<sup>70</sup> Ibid.

<sup>71</sup> Birthe Hansen and Carsten Jensen, *The Egyptian Military and Democracy Management* (Copenhagen Middle East Research, 2013) 2.

in politics. After facing pressure from Egyptian activists, the military handed over limited power to the civilian president for one year, but in reality, the military retained most of the power. The main reason for handing over power to a civilian president was to buy time and placate Egyptians who were fed up with the use of the military as a tool for stabilising the rule of the regime. The military also wanted to prove to Egypt that it was not interested in politics and to show the world that Egypt was becoming a democratic state.

The banned 2012 Egyptian constitution included a vital principle in its preamble to prevent future political interference by the military in the Egyptian political scene. The preamble stated that the military was a neutral institution and should only focus on protecting the Egyptian border and its people.<sup>72</sup> Principle 2 of the preamble stated that Egypt was a democratic country based on the peaceful transfer of power. It did not mention whether Egypt was a civilian state.<sup>73</sup> The preamble of the current 2014 constitution does not mention the interference of the military. The preamble also uses vague and undefined concepts. Instead of ‘civilian state’, the constitution uses ‘civilian government’, which is only one branch of the state.<sup>74</sup>

We have observed how the military has controlled the political scene in Egypt. However, the military has also had a great deal of power and control in the economic sector. After signing the Camp David treaty, the military expanded its economic empire into the private sector.<sup>75</sup> The deep military root of Egypt’s economic empire was one of the main reasons behind the military’s intervention in the Egyptian political scene, which prevented any democratic state from growing in Egypt. The military was protecting its own economic interests.

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<sup>72</sup> Preamble of the 2012 Egyptian Constitution, signed by President Morsi on 30 November 2012 and passed in a referendum held between 15 and 22 December 2012.

<sup>73</sup> Principle No 2 of the Preamble of the 2012 Egyptian Constitution.

<sup>74</sup> ‘The 2014 Egyptian Constitution: Without Accountability, Checks or Balance’, *Egypt Daily News* (online), 24 March 2014 <<http://www.dailynewsegypt.com/2014/03/24/2014-egyptian-constitution-without-accountability-checks-balances/>>.

<sup>75</sup> *Ibid.*

## **7.5 Economic Rule of the Military**

### **7.5.1 Introduction**

The military expanded its empire and controlled most of Egypt's economy. This section provides a background of the enterprises of the Egyptian Ministry of Defense. It then examines the economic rule of the military after the 2011 revolution and the 2013 coup.

### **7.5.2 Background of the Egyptian Ministry of Defence's enterprises**

The defence ministry established three major military bodies, including:

1. Arab Organization for Industrialization: This organisation was established in 1975 by Egypt, Saudi Arabia, United Arab Emirates and Qatar to advance Arab industrialisation. When Egypt signed the peace treaty, the three other countries pulled out their shares and Egypt became the owner of the enterprise, which consists of 11 factories that produce civilian and military equipment, with a focus on infrastructure, environmental protection and transportation.<sup>76</sup>
2. National Service Projects Organisation: This organisation was established in 1979 to supply the military's needs and reduce the need to source supplies from the private market. The organisation runs 10 companies that produce a wide range of products, from food to construction.<sup>77</sup>
3. National Organisation for Military Production: This organisation runs 15 factories and produces military armaments and munitions, as well as electronic and sports equipment.<sup>78</sup>

The three military bodies were established for three reasons:

1. to absorb some of Egypt's conscripts
2. to provide an opportunity for generals and colonels to lead these projects
3. to hire loyal retired senior military officers.<sup>79</sup>

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<sup>76</sup> Ahmed Morsy, *The Military Crowds Out Civilian Business in Egypt*, Carnegie Endowment for International Peace (24 January 2014) <<http://carnegieendowment.org/2014/06/24/military-crowds-out-civilian-business-in-egypt-pub-55996>>.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

### 7.5.3 Military–economic empire since 2011

The military economy is still a taboo topic in Egypt, and few studies have discussed the military economy and its budget. According to Khaled Fahmy, the head of history at the American University in Cairo, the military economy is ‘a grey economy, in the sense that we know very little of them, they are not subject to any parliamentary scrutiny, the Egyptian government auditing office has no control or knowledge of them’.<sup>80</sup> Over the years, the military has enjoyed cheap government land, no taxes and cheap labour. The Egyptian army controls approximately 5–40% of Egypt’s economy.<sup>81</sup> The military budget is not subject to parliamentary checks because it is part of national security.

The military is involved in all aspects of the Egyptian market and controls most of the economy, including consumer goods, refrigerators, gas bottles, real estate, tourism, childcare, hospitals, medical equipment, gas, energy, agriculture and contracts with foreign investors.<sup>82</sup> The military can suspend any trade for security reasons. Further, the military refuses any interventions and any economic policies that could challenge its power.<sup>83</sup> A spokesman for Transparency International stated that:

There is evidence to suggest that some military officers, across all ranks, own their own enterprises and benefit significantly from the use of public infrastructure and facilities to increase profits. Furthermore, a network of military retirees either presides over or supervises government commercial enterprises and facilities or participates in consultancy contracts. This practice may extend to forming private companies to capture subcontracts.<sup>84</sup>

This thesis suggests that some high-ranking military officers and retirees in Egypt benefit from public infrastructure by using Egyptian conscripts and tax exemptions to generate profits.

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<sup>79</sup> Nimrod Raphaeli, ‘*Egyptian Army’s Pervasive Role in National Economy*’, The Middle East Media Research Institute (29 July 2013) <<http://www.memri.org/report/en/print7313.htm>>.

<sup>80</sup> Shereine Tadros, ‘Egypt’s Military’s Economic Empire’, *Al Jazeera News* (online), 15 February 2012 <<http://www.aljazeera.com/indepth/features/2012/02/2012215195912519142.html>>.

<sup>81</sup> Ibid.

<sup>82</sup> Abul-Magd Zainab, *The Egyptian Military in Politics and the Economy: Recent History and Current Transition Status*, CHR Michelsen Institute (October 2013) 6 <<http://www.cmi.no/publications/file/4935-the-egyptian-military-in-politics-and-the-economy.pdf>>.

<sup>83</sup> Lina Khatib, ‘Political Participation and Democratic Transition in the Arab World’ (2013) 34(2) *University of Pennsylvania Journal of International Law* 330.

<sup>84</sup> Henry Harding, ‘Analysis: Egypt’s Military–Economic Empire’, *Middle East Eye* (online), 30 March 2016 <<http://www.middleeasteye.net/news/analysis-egypts-military-economic-empire-35257665>>.

After the 2011 revolution, the Egyptian economy suffered from instability. This placed pressure on its foreign reserves, which decreased from \$36 billion before 2011 to \$17.5 billion in May 2016.<sup>85</sup> After 2013, the Egyptian military dominated the economy. Examples of this dominance are outlined below:

1. The military controls 94% of Egyptian land through the designation of such land as a 'military zone'. In addition, it controls the coastline in its role of protecting the border. The military makes huge profits from tourism projects<sup>86</sup> and through tax exemptions, reduced costs and low-cost labour from conscripts. In exchange, the military maintains and protects the stability of the regime.<sup>87</sup>
2. The military is engaged in business with Arabic companies such as Gulf conglomerates and the Kuwaiti group 'MA Kharafi and Sons'. It is also engaged with European companies such as the Italian oil and gas company 'Eni SpA'.<sup>88</sup>
3. After the ousting of Morsi in 2013, the former prime minister gave the military National Service Products Organization the right to build the Rod El Farag corridor for 99 years.<sup>89</sup> This organisation would also have the right to collect tolls and levies and sell licenses.<sup>90</sup>
4. In addition, the interim president, Mansour, issued a presidential declaration that gave the military priority in cases of emergency to avoid bidding and gave them \$1 billion in contracts.<sup>91</sup>
5. The Ministry of Local Development gave the military a \$280 million contract to develop the sprawling slums of Cairo.<sup>92</sup>
6. The Egyptian military also receives annual assistance from the US.

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<sup>85</sup> 'Egypt Could Secure \$10 Billion Loan from IMF', *Eyewitness News* (online), 27 June 2016 <[http://ewn.co.za/2016/06/27/Egypt-could-secure-\\$10bn-loan-from-IMF](http://ewn.co.za/2016/06/27/Egypt-could-secure-$10bn-loan-from-IMF)>.

<sup>86</sup> Harding, above n 84.

<sup>87</sup> Safa Joudeh, 'Egypt's Military: Protecting its Sprawling Economic Empire', *Atlantic Council* (online), January 2014 <<http://www.atlanticcouncil.org/blogs/menasource/egypt-s-military-protecting-its-sprawling-economic-empire>>.

<sup>88</sup> Ibid.

<sup>89</sup> Ahmed Aboulenein, 'Egypt's Deep State Gets Back to Business', *Public Radio International* (online), 14 January 2015 <<http://www.pri.org/stories/2015-01-14/egypts-deep-state-gets-back-business>>.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

This sprawling web of dedicated funding and the wide-ranging enterprises explains how the military empire has maintained its tight grip on the economic and political scene in Egypt for more than 60 years and prevented anyone from challenging or interfering in its secret empire.<sup>93</sup> The hidden military empire is part of state security. The military prevents the public from having any access to this empire by imposing legal restrictions and classifying it as a red zone. The regime's justification is the protection of national security;<sup>94</sup> however, the main reason for preventing public access is to protect its financial and economic interests and to protect the elite within the ranks. Economic interests explain why the military budget is secret. All military financial and industrial projects are tax-free and unaudited.<sup>95</sup>

In conclusion, the economic strategies of successive regimes, which shifted from nationalisation to the open-door policy and then to a neoliberal economy, enshrined the deep state economic empire that benefited a group of people headed by the military and a minority group of elite businesspeople. The military used the police and security apparatus to stabilise the regime, and police played a vital role in suppressing the opponents of successive regimes.

#### **7.5.4 Role of the police and security apparatus**

When the Free Officers resumed power in Egypt in 1952, they promised to abolish the notorious secret police, which had been established by Britain. Instead, Nasser used the secret police as a weapon to suppress his opposition. Nasser learned from Britain's experience and held nearly 100,000 political prisoners.<sup>96</sup> During Nasser's era, the state security service was called 'General Investigation'. Under Sadat, the name was changed to 'State Security Investigation Services'.<sup>97</sup>

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<sup>93</sup> Charles M Sennott, 'Inside the Egyptian Military's Brutal Hold on Power', *Frontline* (24 January 2012) <<http://www.pbs.org/wgbh/frontline/article/inside-the-egyptian-militarys-brutal-hold-on-power/>>.

<sup>94</sup> Raphaeli, above n 79.

<sup>95</sup> Abigail Hauslohner, 'Egypt's "Military INK" Expands its Control of the Economy', *The Guardian* (online), 18 March 2014 <<https://www.theguardian.com/world/2014/mar/18/egypt-military-economy-power-elections>>.

<sup>96</sup> Hazem Kandil, *Soldiers, Spies and Statesmen: Egypt's Road to Revolt* (Verso, 2012) 18–19.

<sup>97</sup> Mariz Tadros, 'The Securitisation of Civil Society: A Case Study of NGOs–State Security Investigations (SSI) Relations in Egypt' (25 February 2011) 11(1) *Conflict, Security & Development* <<http://www.tandfonline.com/doi/abs/10.1080/14678802.2011.552248?src=recsys&journalCode=ccsd20>>.



As the commander-in-chief, the president of Egypt in successive regimes has consistently used the police to counter the opposition. For example, Law No 109 of 1971 and Law No 116 of 1981 expanded the police force's power from securing public security to securing public order.<sup>98</sup> The above laws used elastic and vague definitions, which explained the large number of political prisoners. By 2009, there were 850,450 police and administrative staff in the Central Security Forces and 400,000 in the State Security Investigation Services.<sup>99</sup>

Mubarak made Egypt into a corrupt police state during his reign.<sup>100</sup> Corrupt police harassed people, asked for bribes from shops, ate for free at restaurants, arrested and tortured people to gain false confessions or forced them to work as informers and even harass people for identification or other documents.<sup>101</sup> The criminal investigation sectors hired thugs to work for the state security forces. For example, during election time, thugs intimidated opponents to give security officers the justification to arrest them before voting, thereby stopping the voting process. In addition, the police hired thugs to beat and bully activists and to harass females, wealthy people, shopkeepers and business owners.<sup>102</sup> Police state policy largely caused the uprising in 2011 that overthrew Mubarak.

After the 2011 revolution, the State Security Investigation Services was disbanded, in theory. In practice, the new regime simply changed its name to the National Security Agency. After the 2013 coup, the interior minister ordered the return of all experienced police who once worked in the State Security Investigation Services.<sup>103</sup> The minister of the interior played a crucial role in silencing opponents, and he committed a number of human rights violations. He used the state of emergency to enforce authoritarian rules by administering excessive and lethal force against civilians.<sup>104</sup> Police brutality against civilians was one of the main reasons for the 2011 revolution. Demonstrators also called for the resignation of the Minister of the

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<sup>98</sup> Law No 109 of 1971 and Law No 116 of 1981.

<sup>99</sup> May Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule* (Lynne Rienner Publishers, 2004) 40.

<sup>100</sup> Cook, above n 44, 5.

<sup>101</sup> Ann M Lesch, 'Egypt's Spring: Causes of the Revolution' (2011) XVIII(3) *Middle East Policy Council* <<http://www.mepc.org/egypts-spring-causes-revolution>>.

<sup>102</sup> Kandil, above n 96, 195–196.

<sup>103</sup> Ibid.

<sup>104</sup> Omar A Sheira, *Towards a Way Out of the Egyptian Dilemma: New Lessons for an Old Regime*, Tilburg University (1997) 9–10 <<http://arno.uvt.nl/show.cgi?fid=132820>>.

Interior, Habib El-Adly. Angry Egyptian demonstrators targeted approximately 100 police stations, setting fire to them and releasing many innocent detainees from jail cells.<sup>105</sup>

State coercion and the use of force by police authorities is not accidental. Force is used by authoritarian and non-democratic countries alike to suppress demonstrators who attempt to challenge policies. This is done largely to protect the interests of those in power. Even democratic countries increase surveillance and policing to protect capitalism and the neoliberalist system, which usually targets disadvantaged people, the poor and the unemployed. Police in Egypt are given wide-ranging and draconian powers that are justified by the regime on the grounds that there is an exceptional emergency situation.<sup>106</sup> The permanent declaration of a state of emergency gives the police more authority to arrest, detain and search without following the correct criminal procedures. At the same time, it enables them to commit offences with impunity while dealing with civilians. In this way, the deep state uses the legislative and judiciary branches as an instrument to protect its political and economic interests in Egypt.

## **7.6 Legislative and Judicial Interference**

As the head of the deep state, the military also controls the legislative and judiciary branches and uses them as an instrument to serve its political and economic interests. This section examines the military's interference in the legislature and the judiciary to protect its interests, mainly after 2011.

### **7.6.1 Domination of the executive power over the legislative branch**

The executive branch in Egypt comprises four sections: the president, the government, local administration and specified national councils.<sup>107</sup> The president is the head of the state and is responsible for appointing the prime minister and the

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<sup>105</sup> Maha Abdelrahman, 'Policing Neoliberalism in Egypt: The Continuing Rise of the "Securocratic" State' (2015) 38(1) *Third World Quarterly* 2–3.

<sup>106</sup> *Ibid* 4.

<sup>107</sup> Negad El Bora'i, *The Independence of the Judiciary: The Truth as it is!*, Human Rights Library 6 <<http://hrlibrary.umn.edu/research/Egypt/independence-of-the-judiciary-in-egypt-en.pdf>>.

cabinet. The president is also the head of the Supreme Judicial Council and the supreme chief of police.<sup>108</sup>

The Egyptian legislative branch consists of two chambers. The first chamber, called the People's Assembly, has 454 seats. Ten are appointed by the president and the other 444 are elected directly.<sup>109</sup> The second chamber, called the Consultative Council, consists of 246 members. Eighty-eight of the members are appointed by the president and the remainder are elected directly.<sup>110</sup>

The Egyptian parliament was dissolved in June 2012. By 2016, the country had been without an elected parliament for four years. The absence of the parliament gave the executive the opportunity to issue many decrees and legislations. After the 2013 coup, the executive branch produced large numbers of decrees, such as protest and counterterrorism laws. The constitution gave the executive branch, formed by the military, the ability to issue decrees without the parliament.

Article 5 of the 2014 Egyptian constitution stated that:

The political system is based on political and partisan multiplicity, the peaceful transfer of power, the separation and balance of powers, authority going with responsibility and respect for human rights and freedoms, as set out in the constitution.

According to Article 101 of the 2014 constitution:

The House of Representatives is entrusted with legislative authority, and with approving the general policy of the state, the general plan of economic and social development and the state budget. It exercises oversight over the actions of the executive authority. All the foregoing takes place as set out by the constitution.

However, the legislative branch in Egypt has effectively served as a rubber stamp for the executive branch without any actual oversight of the actions of the executive. The Egyptian parliament speaker, Ali Abdel Aal, who was elected in 2016, provided an example of how the executive dominated the legislative power: 'In tough times there

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<sup>108</sup> Ibid 8.

<sup>109</sup> The Law Library of Congress, *Legal Research Guide: Egypt* (9 June 2015) <<https://www.loc.gov/law/help/legal-research-guide/egypt.php>>.

<sup>110</sup> Ibid.

are no [individual] legislative or executive authorities. Rather, all of them should act as a single authority'.<sup>111</sup>

This shows how the elected people are expected to act in favour of the executive branch. This violates the Egyptian constitution, which affirms that the legislative branch needs to monitor the performance and actions of the executive branch to control its abusive measures. That is, it violates the independence of the legislative authority and the separation of powers.

Abdel Khabir Ata, a political science professor at Assiut University, stated that:

The executive branch is seeking to control the powers of the parliament and the judiciary. This can be considered political corruption, amounts to collapse of the state and neglects the people's right to a legislature and supervision of the government's performance.<sup>112</sup>

The legislative branch should play a crucial role in overseeing governmental action. As an elected branch, the parliament should use its authority to prevent the executive from abusing its power. This is not allowed to occur in Egypt because of the power and control exercised by the military as the head of the deep state.

### **7.6.2 Executive interference in the judiciary**

During his time as the president of Egypt, Nasser tried to curtail the independence of the judiciary in many ways:

- In early 1954, the regime criticised the State Council and its chief justice, Al-Sanhuri.
- In 1955, the regime brought the State Council under executive branch supervision.
- Nasser established a special tribunal to serve the political will of his regime<sup>113</sup> and used the judicial system as a tool to maintain power and control the country to promote the regime's own interests.
- In 1960, the Supreme Court was established by presidential decree, which granted the president the power to appoint the Supreme Court judges. The decree also gave the supreme council of judicial organisation, which is responsible for the administrative affairs of ordinary judges, the right to

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<sup>111</sup> Ahmed Hidji, 'Just How Independent is Egypt's Parliament?', *Al-Monitor* (online), 9 May 2016 <<https://www.al-monitor.com/pulse/originals/2016/05/egypt-parliament-speaker-statements-president-government.html>>.

<sup>112</sup> Ibid.

<sup>113</sup> Brown, above n 43, 3.

promote and appoint judges. However, this was placed under an executive oversight.<sup>114</sup>

- Nasser's regime forced judges to become members of the socialist party under Article 20 of the socialist union law of 1962. This law stated that: Law shall clarify the form of the representation for the armed forces and judges in the organisations of the Arab Socialists' Union through a decision by the union's supreme executive committee.<sup>115</sup>
- The Egyptian supreme judicial council, headed by the president of the Court of Cassation, was responsible for administrative affairs, judicial appointments and promotions for regular courts. It became a weak institution without any effective power.<sup>116</sup>
- The supreme judicial council consisted of seven judges determined by seniority. This became a traditional principle in Egypt.<sup>117</sup>
- In 1968, after the 1967 war, the Egyptian Judges' Club issued a report to enforce the independence of the judiciary and enhance the rule of law. In 1969, the reformer judges won the election and criticised Nasser's authoritarian regime. Nasser responded by dismissing 189 judges who did not agree with his policies.<sup>118</sup> He also dissolved the elected council of judges.<sup>119</sup>
- Nasser created the Supreme Constitutional Court in Law No 81 of 1969. In theory, this court was an independent judicial body created to check the legislation issued by the legislature and the executive. In practice, Nasser used it as a new institution to legitimise his personal actions and policies. Law No 81 gave the president the authority to appoint the Supreme Constitutional Court judges, who had to be members of the Arab Socialist Union.<sup>120</sup>

During the Sadat and Mubarak eras, reformer judges called for reforms to the judiciary law. They wanted to abolish the regime's executive control over the judiciary through the following recommendations:

- The judiciary should have a separate budget, similar to the parliament, to eliminate the financial influence of the Ministry of Justice on judges.
- The supreme judicial council should be accountable for judicial discipline rather than the discipline committee of judges, which works under the

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<sup>114</sup> Ibid.

<sup>115</sup> Mahmoud Hamad, *When the Gavel Speaks: Judicial Politics in Modern Egypt* (University of Utah, 2008).

<sup>116</sup> Nathan J Brown and Hesham Nasr, *Egypt's Judges Step Forward: The Judicial Election Boycott and Egyptian Reform*, Carnegie Endowment for International Peace (May 2005) 2.

<sup>117</sup> Yusef Auf, 'Prospects for Judicial Reform in Egypt', *Atlantic Council* (online), October 2014, <<http://www.atlanticcouncil.org/blogs/menasource/prospects-for-judicial-reform-in-egypt>>.

<sup>118</sup> Brown and Nasr, above n 116, 2.

<sup>119</sup> Ninette S Fahmy, *The Politics of Egypt: State-Society Relationship* (Routledge, 2002) 52.

<sup>120</sup> May Kassem, *Egyptian Politics the Dynamics of Authoritarian Rule* (Lynne Rienner Publishers, 2004) 19.

Ministry of Justice. The Ministry of Justice should no longer have the power to issue warnings to judges. The supreme judicial council should have the authority to review any penalty above a warning.<sup>121</sup>

The Egyptian Judges' Club was established in 1939 in Cairo to develop unity among its members and establish a fund for the families of deceased members. Senior and junior judges and members of the Public Prosecution Office were able to join the club, which was run by an administrative board elected by the General Assembly of the club.<sup>122</sup> The Ministry of Justice financially supported the Judges' Club. The problem with this was that the regime used financial pressure to ensure that the Judges' Club remained a club for social gatherings rather than professional discussions about reform. The club was first established as a social club and advocacy organisation in which judges and legal experts met over tea. It then became one of the institutional advocates for liberal reform and discussed the integrity of the judiciary.<sup>123</sup> The financial support affected the independence of the club because the regime placed pressure on the club to minimise discussion about reforms and the integrity of the judiciary.<sup>124</sup>

Egypt had two electoral commissions. One was a judicial body for overseeing the parliamentary elections and the other was an electoral commission for overseeing presidential elections. The electoral commission was established in 2005 and headed by the president of the Supreme Constitutional Court. This latter commission was used as an instrument by the regime to maintain exclusive power over the presidential elections. Any decision made by the commission could not be appealed before any courts.<sup>125</sup>

The tension between judges and the executive began again in 2005. The judges' movement uprising called for the freedom and independence of the judiciary. The judges warned the government that they would not supervise the 2005 election,

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<sup>121</sup> Brown and Nasr, above n 116, 2.

<sup>122</sup> Nathalie Bernard Maugiron, *Judges and Political Reform in Egypt* (American University in Cairo Press, 2008) 112.

<sup>123</sup> Matt Bradley, 'Activists Lose Control of Egypt's Judges Club' *The National* (online), March 2009 <<http://www.thenational.ae/news/world/middle-east/activists-lose-control-of-egypts-judges-club>>.

<sup>124</sup> Maugiron, above n 122, 112–113.

<sup>125</sup> Nathan Brown, *A Guide Through the Egyptian Maze of Justice*, Carnegie Endowment for International Justice (6 June 2012) <<http://carnegieendowment.org/2012/06/06/guide-through-egyptian-maze-of-justice-pub-48302>>.

which was enshrined in the constitution.<sup>126</sup> The judges believed that the judiciary should play a vital role and be the primary mediating institution between the Egyptian people and other branches of the government to enforce the rule of law and to minimise dictatorial desires.<sup>127</sup>

Egypt's faith in its judiciary system started to be shaken after the 2011 revolution.<sup>128</sup> The executive interference affected the independence of the whole legal system. Judges should not be politicalised and apply the law without discrimination. The judicial system should be independent, efficient and transparent so that it can defend human rights and national stability and security. At the same time, the judicial system should function as a check on the executive, restraining their arbitrary measures.<sup>129</sup> This was not being allowed to occur in Egypt because scrutiny and transparency did not serve the interests of the deep state.

After the 2013 coup, 73 out of 601 prosecution assistants who were appointed during the ousting of President Morsi were removed because the National Security Agency stated that they were members of the banned Muslim Brotherhood.<sup>130</sup> In October 2014, 60 judges were referred to the disciplinary board,<sup>131</sup> and in March 2015, the disciplinary board forced 41 Egyptian judges to retire, accusing them of supporting opponents of the regime.<sup>132</sup> An Egyptian judge was arrested in February 2016 and accused of contempt of court, and prosecutors ordered police to detain him for four days. The judge was accused of signing the Rabata Statement after the ousting of Morsi in July 2013. The disciplinary board of judges dismissed 15 judges who were excused of belonging to the judges for Egypt movement, which was established to support the ousted Morsi. Egyptian judicial lawyers accused these judges of violating Article 73 of the neutrality of judges' law (Law No 46 of 1972), which details the involvement of judicial authority in political affairs.<sup>133</sup> The disciplinary board

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<sup>126</sup> Abdelrahman, above n 105, 42.

<sup>127</sup> David Risley, *Egypt's Judiciary: Obstructing or Assisting Reform?* (Middle East Institute, 2016) 3.

<sup>128</sup> 'The 2014 Egyptian Constitution: Without Accountability, Checks or Balances: Part II', *Daily Egypt News* (online), 24 March 2014 <<https://dailynewsegypt.com/2014/03/24/2014-egyptian-constitution-without-accountability-checks-balances/>>.

<sup>129</sup> Risley, above n 127.

<sup>130</sup> Mahmoud Mostafa, 'The Outcasts of Judiciary's Elite Paradise' *Daily Egypt News* (online), 16 May 2015 <<https://dailynewsegypt.com/2015/05/16/the-outcasts-of-judiciarys-elite-paradise/>>.

<sup>131</sup> 'Egyptian Judge Facing Disciplinary Board for Supporting Mursi Detained for "Contempt of Court"', *Aswat Masrya* (Cairo), February 2016.

<sup>132</sup> *Ibid.*

<sup>133</sup> Article 73 from the neutrality of judges of Law No 46 of 1972.

rejected the appeal of the dismissed judges, making the decision final and not subject to appeal.<sup>134</sup> Dismissing the judges violated Articles 184 and 186 of the 2014 Egyptian constitution, which stated that the judiciary is independent and judges cannot be dismissed.<sup>135</sup>

The executive used the law to control the judicial authority as outlined below:

- The president has the authority to appoint the following positions in the judiciary: the president of the Court of Cassation, the president of the state council and the public prosecutor.
- The Ministry of Justice has administrative, disciplinary and financial power, as well as powers of promotion and supervision, over judges and public prosecution members. The ministry also places financial pressure on judges and public prosecution members by controlling the judiciary budget.<sup>136</sup>
- Successive regimes used indirect methods to influence judges—for example, through the Judges’ Club, via generous salaries and by increasing the superannuation age.<sup>137</sup>
- The judiciary created an elite class using the notion that they were the conscience of the country. This was done to create an elite group, similar to the military elite, which would be above criticism.<sup>138</sup> Many of the judges were against the revolution and the opposition policies, favouring the old regime. In many political cases, they ruled based on their political preferences.<sup>139</sup>
- When a group of Egyptian judges tried to launch a reform of the Egyptian judicial system to gain more independence from the executive branch, they faced a mix of repression and co-option from the regime, including heavy-handed political and financial interference in the judiciary.<sup>140</sup>
- Military courts were created to try civilians, which minimised ordinary judiciary power.

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<sup>134</sup> ‘Fifteen Egyptian Judges Dismissed for Engaging in “Political Activity”’, *Aswat Masrya* (Cairo), March 2016.

<sup>135</sup> Articles 184 and 186 of the 2014 Egyptian constitution.

<sup>136</sup> Mohamed Nour Farhat and Ali Sadek, *Promoting the Rule of Law and Integrity in the Arab Countries Project: Report on the State of the Judiciary in Egypt* (Arab Center for the Development of the Rule of Law and Integrity) 62.

<sup>137</sup> Brown above n 125.

<sup>138</sup> Ibid.

<sup>139</sup> Nancy El-Shamy, *The Egyptian Judiciary: Current Divisions and Historical Contexts*, Muftah (January 2013) <<https://muftah.org/the-egyptian-judiciary-current-divisions-and-historical-contexts/#.WIMfeE2KDIU>>.

<sup>140</sup> Daniela Pioppi, *The Judiciary and ‘Revolution’ in Egypt*, Insight Egypt (2013) 2 <[http://www.iai.it/sites/default/files/inegypt\\_02.pdf](http://www.iai.it/sites/default/files/inegypt_02.pdf)>.



- Reformers of the judicial system faced difficulties and obstacles from the old regime judges, who refused judicial reform because they would lose their privileges and prestige.<sup>141</sup>
- The politicisation of the judiciary raised a question regarding the relationship between the executive and the judicial branch, particularly after 2012. An example of this was the court’s decision to dissolve the 2012 freely elected parliament.<sup>142</sup>
- President Morsi attempted to remove the attorney general, Abdel Meguid Mahmoud, who was appointed by the previous president, Mubarak. Morsi was later forced by his opponents to withdraw his decision.
- The regime narrowed the scope of judicial scrutiny by issuing laws that prevented the courts from reviewing the actions of the regime. The regime appointed loyal judges to critical positions to ensure they served the regime’s interests.<sup>143</sup>

Thousands of Egyptian political activists who launched the 2011 revolution were arrested, tortured and faced harsh punishments. Morsi and his regime were then arrested, and many received harsh sentences, including life imprisonment and the death penalty. In contrast, most officials from the old regime were cleared of all charges. Mubarak, the chief of police and low- and high-ranking police did not receive punishments for killing hundreds of civilians.<sup>144</sup>

The judiciary used the idea of public and collective interest—undefined concepts—to rule in favour of the regime. They defined and redefined the meaning of ‘public interest’.<sup>145</sup> The politicisation of the judiciary and judicial interference in political life was undertaken to protect their positions as the old guard of the regime. The judiciary became another one of the deep state institutions headed by the military, and this affected their integrity and impartiality.

## 7.7 Politicisation of the Judiciary

This section provides some examples of political trials that were based on political views rather than the law—namely, the trials of the Al Jazeera journalists and the Morsi political trials.

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<sup>141</sup> Ibid 3.

<sup>142</sup> El-Shamy, above n 139.

<sup>143</sup> Hamad, above n 115.

<sup>144</sup> Ahmed Aboulenein, ‘Egypt’s “Deep State” Proves Victorious’, *Public Radio International* (online), 12 December 2014 <<https://www.pri.org/stories/2014-12-12/egypt-s-deep-state-proves-victorious>>.

<sup>145</sup> Brown, above n 125.

### 7.7.1 Trials of the Al Jazeera journalists

In June 2014, a number of Al Jazeera journalists were accused of aiding the Muslim Brotherhood terrorist organisation. On 29 August 2015, they were sentenced to three years in jail.<sup>146</sup> Peter Greste, an Australian who worked as a reporter for Al Jazeera News, was released on 1 February 2015, after 400 days in prison. A Canadian Egyptian bureau chief, Mohammad Fahmy, was sentenced to an extra three years in prison for possessing weapons. Egyptian Baher Mohammad, a producer with Al Jazeera, was sentenced to three years in prison. The three journalists were all accused of spreading false news and damaging Egypt's reputation.<sup>147</sup> The defendants described their trials as shame.<sup>148</sup> The trials were criticised by human rights organisations, and Mohammad Fahmy and Baher Mohammad were released on 13 February 2015 after being pardoned by the president.<sup>149</sup>

The UN special rapporteur on freedom of expression, David Kaye, stated that 'the journalists' detention and subsequent trials have been inconsistent with international human rights law from the start'.<sup>150</sup> Kaye added that:

The freedom of expression plays a central role in the effective functioning of a democratic political system. Egypt has a responsibility under Article 19 of the Universal Declaration of Human Rights and the international covenants on civil and political rights to protect a media that is free to impart information and ideas of all kinds.<sup>151</sup>

This thesis argues that to defend freedom of expression, the media must be protected from any kind of interference. Any kind of politicisation violates the Egyptian constitution, Article 19 of the Universal Declaration of Human Rights and the ICCPR.

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<sup>146</sup> 'FAQ: Al Jazeera's Journalists on Trial in Egypt', *Al Jazeera News* (online), 29 August 2015 <<http://www.aljazeera.com/news/2015/03/faqs-al-jazeeras-journalists-trial-egypt-150317113935704.html>>.

<sup>147</sup> 'Who Are the Al Jazeera Journalists Tried in Egypt?', *BBC News* (online), 13 February 2015 <<http://www.bbc.com/news/world-middle-east-27943387>>.

<sup>148</sup> *Ibid.*

<sup>149</sup> Amnesty International, *Egypt Frees Al Jazeera Staff Jailed for Journalism* (23 September 2015) <<https://www.amnesty.org.uk/egypt-frees-al-jazeera-staff-mohammed-fahmy-baher-mohamed-prison-journalism>>.

<sup>150</sup> UN Human Rights Office of the High Commissioner, *Egypt/Al Jazeera Trial: UN Rights Expert Condemns Sentence, Urges Immediate Release of Detained Journalists* (September 2015) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16370>>.

<sup>151</sup> *Ibid.*

### 7.7.2 Trials of President Morsi and his supporters

Morsi, the former president of Egypt, was ousted by the military on 3 July 2013. In a separate trial, Morsi and 105 of his supporters were sentenced to death for a mass prison breakout in 2011. Morsi's sentence was sent to the Grand Mufti, the highest religious authority in Egypt, for confirmation.<sup>152</sup> Morsi was also sentenced to life in prison for leading a banned organisation, the Muslim Brotherhood, which the regime treated as a terrorist organisation. The judiciary made many rulings regarding the Muslim Brotherhood and seized its assets.<sup>153</sup> Morsi was also sentenced to 15 years in jail for passing a secret document concerning Egyptian security to Qatar.<sup>154</sup>

The death penalty has become the favourite tool of the Egyptian authorities to purge political opposition. Most people who have been sentenced to death by the courts since July 2013 have been Morsi supporters. The sentences against the former president were unfair and impartial; it was mainly a political trial. The president was not given the opportunity to defend himself, or have a lawyer present to defend him, because he rejected the legitimacy of the court. In addition, the president was held incommunicado in detention, without judicial charge, for 23 days.<sup>155</sup> In April 2015, the president was sentenced to 20 years in prison based on evidence collected by police and military officers, which accused Morsi and his supporters of torturing and unlawfully detaining opponents of Morsi.<sup>156</sup> Due process was violated in the court because the president and several other detainees were placed in a cage with a soundproof barrier, which prevented them from hearing the judge or talking to their lawyer.<sup>157</sup>

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<sup>152</sup> 'Egypt's Ex-President Sentenced to Death', *Al Jazeera News* (online), 16 May 2015 <<http://www.aljazeera.com/news/2015/05/egypt-sentences-mohammed-morsi-death-150516091845111.html>>.

<sup>153</sup> Abdullah Al-Arian, 'Egypt's Hollow Parliament', *Al Jazeera News* (online), 12 January 2016 <<http://www.aljazeera.com/indepth/opinion/2016/01/egypt-hollow-parliament-160112071640089.html>>.

<sup>154</sup> Julian Robinson, 'Former Egyptian President Mohamed Morsi is Sentenced to Life in Spying Trial as Six Co-Defendants Get Death Penalty', *Daily Mail Australia* (online), 18 June 2016 <<http://www.dailymail.co.uk/news/article-3648062/Egypt-Morsi-sentenced-life-espionage-trial.html>>.

<sup>155</sup> Human Rights Watch, *Egypt: Morsi Trial Badly Flawed—Prosecution Failed to Show Former President Complicit in Violence* (25 April 2015) <<https://www.hrw.org/news/2015/04/25/egypt-morsy-trial-badly-flawed>>.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

There has been a great deal of international condemnation of Egypt, with many claiming that Egypt must ensure the independence and impartiality of the justice system and bring to justice all those responsible for gross human rights violations.<sup>158</sup> Abdullah Al-Rian, assistant professor at George Washington University in Qatar, stated that:

With these highly politicised trials that contravene all standards of justice, the judiciary is doing its part to cement a new political reality in Egypt, one that seeks to silence all dissent and restore the full strength of the authoritarian system that was in place for decades.<sup>159</sup>

Amnesty International opposed the death sentence because it violates the right to life under the Universal Declaration of Human Rights.<sup>160</sup> The deputy director of Amnesty International's Middle East and North Africa Programme also described the court sentence as null and void:

Egypt's authorities should disregard all the evidence that was obtained from Mohamed Morsi or any other detainee during the period in which they were subjected to enforced disappearance and must either release him immediately or retry him in a civilian court with full fair-trial guarantees. Any further criminal proceedings must be in line with Egyptian law and international standards. The authorities should also drop the charges of escaping from prison in January 2011, as at the time Morsi was held in administrative detention, under emergency powers and without a judicial detention order.<sup>161</sup>

It is widely argued that the Egyptian government should promote the independence of the judiciary and end the influence of the Ministry of Justice over the judiciary to strengthen the rule of law. To enhance the impartiality and dignity of judges, they should be prohibited from holding any executive role while working as a judge, as well as prohibited from joining any political party.<sup>162</sup> However, this cannot occur because of the continuing power of the deep state.

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<sup>158</sup> International Bar Association: Human Rights Institute, *Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt* (February 2014) 18–19.

<sup>159</sup> *Ibid.*

<sup>160</sup> Amnesty International, *Egypt: Court Recommends Death Sentences for Morsi, More than 100 Others, in 'Charade Trial'* (16 May 2015) <<https://www.amnesty.org/en/latest/news/2015/05/egypt-court-recommends-death-sentences-for-morsi-more-than-100-others/>>.

<sup>161</sup> *Ibid.*

<sup>162</sup> International Bar Association: Human Rights Institute, above 158, 18–19.

## 7.8 Media and the Deep State

Different political regimes in Egypt have used the media to convince people of their strategies and to convince them that they are right. Further, the media played a substantial role in overthrowing the first democratic regime in 2013. Miliband discussed how big private capitalist corporations exercise control over means of communication such as newspapers, television and the internet, as well as education institutions and lobbying. The capitalist power elite and their political supporters use the media as a tool to control the ideology of the people and convince them of the legitimacy of the existing status quo.<sup>163</sup>

At the same time, there remains scope for ideological opposition and the presentation of factual information—on the fringes, from radical newspapers and websites—without ruthless oppression. The depth of entrenchment of the dominant ideology and the scope for concessions allowed by wealth and social stability means that rulers can allow such opposition without fear of significant effect; however, this is not the case in Egypt.

The media is usually referred to as the fourth estate. It is supposed to be a watchdog over government actions and represent the interests of the people.<sup>164</sup> Successive regimes have controlled the Egyptian media by employing only loyal citizens who serve the regimes' interests and act as a mouthpiece for the regime.<sup>165</sup> The Egyptian media has largely served as a tool and a mouthpiece to support regimes' interests and serve their agenda. The mass media serve as a system for communicating messages that serve the dominant elite's interests.<sup>166</sup>

Nasser's regime nationalised the Egyptian press, including the privately-owned press, and it was used as a vehicle to mobilise the Egyptian people to support the regime's socialist policies and strategies.<sup>167</sup> The Egyptian regime ultimately owned

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<sup>163</sup> Miliband, above n 2, 145–147.

<sup>164</sup> Jenifer Whitten-Woodring and Patrick James, 'Fourth Estate or Mouth Piece? A Formal Model of Media, Protest and Government Repression' (2012) 29(2) *Political Communication* 3.

<sup>165</sup> Des Freedman, Jonathan Obar, Cheryl Martens and Robert W McChesney (eds), *Strategies for Media Reform International Perspectives* (Fordham University Press, 2016) 290.

<sup>166</sup> Edward S Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (Pantheon, 1988) 1.

<sup>167</sup> Hussein Amin, *Strengthening the Rule of Law and Integrity in the Arab World: Report on the State of the Media in Egypt* (Arab Center for the Development of the Rule of Law and Integrity) 5.

and controlled the three largest newspapers in Egypt: *Al-Ahram*, *Al-Gomhuria* and *Al-Akhbar*.<sup>168</sup>

Nasser also introduced centralised broadcasting of radio and television to dominate the media. The Egyptian Radio and Television Union operated to protect Egyptian national unity. The media was intensively used to control Egyptians, especially because of the high illiteracy rate in Egypt.<sup>169</sup> Sadat and Mubarak maintained control of the media, allowing them a small amount of freedom. However, the media was retained as the regime's public tool and used to mobilise the public for the regime's political and economic agendas.<sup>170</sup>

The Egyptian president has the authority to appoint editors-in-chief through the high council for media, headed by the Shura (Consultative Council) speaker. The council is composed of members of the former ruling party, the National Democratic Party.<sup>171</sup> To gain additional control, on 15 May 2002, Mubarak established a higher press council, headed by the speaker of the Shura Council.<sup>172</sup> During Mubarak's presidential campaign, the regime used the state media to express its policies and strategies using more space and coverage than other candidates.<sup>173</sup>

Social media began to play a vital role in Egypt during the 2011 revolution. Young Egyptians used Facebook, Twitter and YouTube to display the brutality of police, who shot at the civilians. Social media facilitated communication among citizens, which decreased the regime's ability to control communication.<sup>174</sup> Social media was used to mobilise uprisings and demonstrations as a form of political expression.<sup>175</sup> The regime responded by cutting off the internet service to eliminate communication via social media and to control the spread of the Egyptian uprising. However, the younger generation still managed to find ways to deliver their messages and opinions to the rest of the world.

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<sup>168</sup> Sassan Assaf, *Comparative Report on the State of the Media in Egypt, Jordan, Lebanon and Morocco* (Arab Center for the Development of Rule of Law and Integrity & IFES, May 2007) 7.

<sup>169</sup> Amin, above n 167, 7.

<sup>170</sup> Ibid 6.

<sup>171</sup> Assaf, above n 168.

<sup>172</sup> 'Egypt: President Issues Decree Forming Higher Press Council', *BBC Monitoring Media* (online), 16 May 2002.

<sup>173</sup> Rick Kelly, *Egypt: President Mubarak Dominates Fake Election Campaign*, International Committee of the Fourth International (3 September 2005).

<sup>174</sup> Whitten-Woodring and James, above n 164, 1–2.

<sup>175</sup> Anthony A Olorunnisola and Aziz Douai, *New Media Influence on Social and Political Change in Africa*, (IGI Global, 2013) 192.

Journalists were divided about the revolution. Demonstration supporters called for the ousting of the Mubarak regime, while other groups defended the regime and accused demonstrators of being conspirators funded by foreign governments.<sup>176</sup> Many journalists and presenters on state television declared that they would say whatever the military wanted them to say. These presenters and journalists became the regime's mouthpiece.<sup>177</sup>

After the coup on 3 July 2013, interim President Mansour dissolved the Supreme Press Council formed by Morsi. Mansour issued a declaration in the absence of the Shura Council, which had been dissolved. The declaration ordered the formation of a new press council with 15 new members. The Supreme Press Council was put in charge of all affairs of the press until a new constitution could be formed and a new parliament elected.<sup>178</sup>

Egypt's anti-terrorism laws punished journalists for writing any news related to terrorism unless it accorded with the government's official story. This limited the options for providing information from different sources.<sup>179</sup> Punishing journalists violates freedom of speech and freedom of receiving information from different sources. In Egypt, hundreds of journalists and editors-in-chief of state-owned newspapers signed the 'loyalty statement' or 'allegiance statement', in which they promised not to criticise the regime, military, police and judiciary. They justified their statement by claiming that there was an exceptional situation that required everyone to be unified. This exceptional situation referred to the need to prevent any support for the Muslim Brotherhood terrorist organisation.<sup>180</sup> For example, the editor-in-chief of the independent newspaper *Al-Shorouk* stated that 'we wanted to deliver a message to citizens that the media is with the state in fighting terrorism'. He

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<sup>176</sup> Nour Yousef, 'How Egyptian Media Has Become a Mouthpiece for the Military State', *The Guardian* (online), 25 June 2015 <<https://www.theguardian.com/world/2015/jun/25/egyptian-media-journalism-sisi-mubarak>>.

<sup>177</sup> Ibid.

<sup>178</sup> 'Egypt Interim President Appoints New Board for Supreme Press Council', *Ahram Online* (online), 5 August 2013 <<http://english.ahram.org.eg/NewsContent/1/64/78366/Egypt/Politics-/Egypt-interim-president-appoints-new-board-for-Sup.aspx>>.

<sup>179</sup> Sarah Edkins, 'New Bill Risk Transforming Egypt's Media into Mouthpiece of the Regime', *Pen America* (online), 14 July 2015 <<https://pen.org/blog/egypt-draft-anti-terror-law>>.

<sup>180</sup> Shahira Amin, 'Egypt: Regime Pushes Self-Censorship on Journalists', *Index*, 24 November 2014 <<https://www.indexoncensorship.org/2014/11/egypt-editors-pledge-propaganda-sisi/>>.

added that: ‘at this time of heightened nationalism, the climate does not allow for any criticism of the government’.<sup>181</sup>

Many journalists also used self-censorship out of fear of being accused of supporting prohibited organisations or being labelled unpatriotic.<sup>182</sup> Many journalists were detained and arrested for representing and reporting the truth.<sup>183</sup> Many parts of the Egyptian media labelled the opposition who mobilised the 2011 revolution as traitors and foreign agents.<sup>184</sup>

In conclusion, the media in Egypt has been used by regimes as a mouthpiece to express their policies and strategies. At the same time, successive regimes have used the force of the military and the threat of prosecution as a tool to suppress journalists. Most independent media outlets are owned by businesspeople who joined the military elite to protect their businesses and are fearful of appearing to criticise the regime because they would lose their benefits. In this way, the media has become another tool used by the deep state to control Egypt.

## **7.9 Business Elite and the Deep State**

The business elite has played a crucial role within the deep state of Egypt. The group is commonly called the ‘whales of the Nile’.<sup>185</sup> The business elite benefited from crony capitalism, making money and occupying most political positions, especially during the Mubarak era.<sup>186</sup> In the 2011 revolution, many Egyptians demonstrated against the businesspeople who benefited from the regime’s corruption. Along with the military, these elite businesspeople increased their economic and political influence in Egypt through privatisation, making them part of the deep state in Egypt.

Businesspeople benefited from being part of the parliament, and the electoral system made it more likely for businesspeople and the regime elite to win elections.<sup>187</sup> Once

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<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Steffen Hertog, Giacomo Luciani and Marc Valeri (eds), *Business Politics in the Middle East* (Hurst & Company, 2013) 256.

<sup>186</sup> Stephen Roll, *Egypt’s Business Elite After Mubarak: A Powerful Player Between Generals and Brotherhood*, German Institute for International and Security Affairs (September 2013) 7.

<sup>187</sup> Wahid Abdel Meguid, ‘Mubarak Era Figures to Dominate Next Egypt Parliament, Warns Analyst’, *Ahram Online* (online), 11 September 2014



elected, some were accused by regime opponents of benefiting themselves rather than performing their role of keeping a check on executive actions. In reality, the businesspeople never questioned the government because they had the same interests as the regime.<sup>188</sup> A weak parliament with no real opposition was part of the regime's policy to override the legislative branch.

In 1990, a few businesspeople and families controlled key sectors in Egypt, including tourism, construction and telecommunications. They enjoyed tax exemptions and generous energy, export and land subsidies.<sup>189</sup> In 2001, a group of businesspeople established the Egyptian Centre for Economic Studies, which was granted a \$10 million fund by the US Agency for International Development. Its aim was to apply the principles of neoliberalism and support privatisation by increasing and continuing foreign trade policies.<sup>190</sup> Mubarak's regime extended its ties with the business elite by establishing a network that helped to weaken the rule of law. For example, Investment Law No 8 of 2005 offered investors tax exemptions and a duty and custom free-trade zone.<sup>191</sup> The business elite built social networks based on friendship and kinship. Professional people, high-ranking officials and politicians played a political role by contributing to electoral campaigns by paying money to political parties. These businesspeople became part of Mubarak's political system. They benefited from having access to resources such as markets, land and bank credit. The de facto marriage between wealth and power was clear, especially when these businesspeople joined the ruling National Democratic Party, the parliament and the cabinet.<sup>192</sup>

After the 2011 revolution, under pressure from angry Egyptian demonstrators, the public prosecutor issued a travel ban against some of the businesspeople who were accused of corruption. A number of businesspeople were arrested and detained. One

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<<http://english.ahram.org.eg/NewsContent/1/64/110389/Egypt/Politics-/Mubarakera-figures-to-dominat-next-Egypt-parliame.aspx>>.

<sup>188</sup> Marwa Hussein, 'Businessmen Gain More Leverage in Parliament', *Ahram Online* (online), 23 December 2010 <<http://english.ahram.org.eg/NewsContent/3/0/2458/Business/Greater-business-leverage-in-Egyptian-parliament-.aspx>>.

<sup>189</sup> Amr Adly, *The Future of Big Business in the New Egypt*, Carnegie Middle East Center (November 2014) 3–4.

<sup>190</sup> Roll, above n 186, 8–9.

<sup>191</sup> Nadine Sika, *The Political Economy of Arab Uprisings*, European Institute of the Mediterranean (March 2012) 9 <[https://www.files.ethz.ch/isn/165555/10.%20PapersEuromesco10\\_Sika.pdf](https://www.files.ethz.ch/isn/165555/10.%20PapersEuromesco10_Sika.pdf)>.

<sup>192</sup> Adly, above n 189, 5.

example of this was Ahmad Ezz, the head of the steel company<sup>193</sup> that controlled 65% of the local Egyptian market. Ezz was accused of buying the largest public steel corporation at a low price, generating profits and raising external tariffs to achieve protection from foreign competitors.<sup>194</sup> Another example was the former housing minister Ahmed Al-Maghrabi, who was accused of using his position to sell land to his largest real estate company in Egypt and to other businesspeople at cheap prices.<sup>195</sup> These officials were accused of abusing their positions to make money by stealing Egyptian public money,<sup>196</sup> and through unfair competition, unfair borrowing from state banks, unfair subsidised energy, conflicts of interest, receipt of bribes and illegal funding of political campaigns.<sup>197</sup> Although some businesspeople were detained, most were able to leave the country with their families because of a lack of evidence or as a result of reconciliation with the government.<sup>198</sup> Some were never investigated.

Businesspeople in Egypt went on to play a crucial role in ousting Morsi. They used their ownership of the media to shape public opinion, abstained from investing in the Egyptian economy, pulled some of their investments out of Egypt and froze other investments.<sup>199</sup> After the 2013 coup, which ousted Morsi, the crony capitalists reconfigured and continued their ties with the military. However, some changes occurred. The old guard of businesspeople were replaced by a new guard. The newcomers continue to use their political connections and favours from politicians to protect their interests.<sup>200</sup>

## 7.10 Fake Opposition

This section examines the role of ‘fake opposition’ in the operation of the deep state. It examines the Tamarod (Rebellion) and the National Association for Change and discusses their role in overthrowing the first democratic civilian president on 3 July 2013.

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<sup>193</sup> Roll, above n 186, 10.

<sup>194</sup> Hamouda Chekir and Ishac Diwan, ‘Crony Capitalism in Egypt’ (Working Paper No 250, Center for International Development at Harvard University, November 2012, updated August 2013) 2.

<sup>195</sup> Ibid.

<sup>196</sup> Samia Nakhoul, ‘Analysis: Egypt Uprising Hits Mubarak’s Business Elite’, *Reuters* (online), 10 February 2011 <<http://news.trust.org/item/20110210152600-baki8/>>.

<sup>197</sup> Chekir and Diwan, above n 194, 2.

<sup>198</sup> Roll, above n 186, 11.

<sup>199</sup> Adly, above n 189, 5.

<sup>200</sup> Ibid 9–10.

### 7.10.1 Tamarod (Rebellion) Movement

Tamarod, which means rebellion, was a grassroots campaign that played a crucial role in ousting President Morsi. The movement was established in 2013 and was used as a tool by the military and the business elite.<sup>201</sup> Tamarod was founded by three activists from the Kefaya (Enough) movement. It was established in 2005 during Mubarak's era and called for reforms.<sup>202</sup>

The old guard of Mubarak's regime and his elite formed an opposition known as Tamarod (Rebellion) to show that Morsi was not a suitable president and that he had lost his legitimacy.<sup>203</sup> Morsi's opponents met regularly with military generals and made advanced plans together before ousting Morsi. The military asked the opposition to gather and protest as much as possible, and then the military would intervene.<sup>204</sup> Tamarod demanded the ousting of Morsi, accused him of putting the interests of the Muslim Brotherhood above those of Egypt and gave him an ultimatum to resign or face civil disobedience.<sup>205</sup> Tamarod started to collect signatures for a petition that contained multiple complaints against Morsi. They focused on the lack of security, the collapse of the Egyptian economy and the lack of justice after the revolution.<sup>206</sup> Tamarod claimed that it gathered 22 million signatures in eight weeks to oust Morsi.<sup>207</sup>

The business elite also played a crucial role behind the scenes in creating Tamarod. Businesspeople paid money to Tamarod members to organise demonstrations. At the

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<sup>201</sup> Walaa Hussein, 'Egypt's Tamarod Outlives Its Purpose', *Al-Monitor* (online), 8 May 2015 <<http://www.al-monitor.com/pulse/originals/2015/05/egypt-tamarod-movement-political-campaign-mubarak-sisi.html>>.

<sup>202</sup> Ahmad Ateyya, 'Rebel Egyptian Movement Defies Morsi Through Petitions', *Al-Monitor* (online), 17 May 2013 <<http://www.al-monitor.com/pulse/en/originals/2013/05/rebel-movement-egypt-early-elections.html>>.

<sup>203</sup> Ha Hellyer, 'Mohamed Morsi Can Help Egypt's Revolution to Succeed or Not', *The Guardian* (online), 30 June 2013 <<https://www.theguardian.com/commentisfree/2013/jun/30/mohamed-morsi-help-egypt-revolution>>.

<sup>204</sup> C Levinson and M Bradley, 'In Egypt, "Deep State" Raises Again', *Wall Street Journal* (online), 13 July 2013 <<http://search.proquest.com/docview/1399663238?accountid=36155>>.

<sup>205</sup> 'Profile: Egypt's Tamarod Protest Movement', *BBC News* (online), 1 July 2013 <<http://www.bbc.com/news/world-middle-east-23131953>>.

<sup>206</sup> *Ibid.*

<sup>207</sup> Levinson and Bradley, above n 204.

same time, they used their networks, private newspapers and television channels to turn the Egyptian people against Morsi.<sup>208</sup>

### 7.10.2 National Association for Change

The National Association for Change was established in 2010. It started with 30 politicians, activists and intellectuals who called for reform. They demanded an end to the state of emergency and judicial oversight over the election. They also demanded that local and international organisations be allowed to monitor the election, that Egyptians living abroad be given the right to vote, that all media outlets be given equal access during the election and that the presidency be limited to two terms.<sup>209</sup>

When Morsi issued the constitutional declaration in 2012, the National Association for Change was headed by Mohamed ElBaradei, a former head of international atomic energy who won the Nobel Peace Prize in 2005.<sup>210</sup> The association started meeting with some of Mubarak's followers and the military in navy officers' clubs to establish plans to overthrow Morsi by gathering people to protest in the streets.

The deep state, which was headed by the military and its elite, did not give the newly elected President Morsi the chance to complete his four-year presidency, but instead created problems to show that he was a failure. For example:

1. The deep state created problems in every important service sector, such as fuel and electricity, to make the people turn against Morsi. Morsi's opponents stated that the president had failed to fulfil his promise of having an inclusive government. They criticised government plans that made the country suffer from financial crises and shortages of electricity and gas.<sup>211</sup>
2. The deep state showed that the president could not fulfil his promises to decrease prices and fight corruption.
3. The politicised judiciary disbanded the Egyptian Constituent Assembly and the first elected parliament after the 2011 revolution. The judiciary dissolved

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<sup>208</sup> Bob Dreyfuss, 'Egypt's Fake Mass 'Rebellion'?' *The Nation* (online), 11 July 2013 <<https://www.thenation.com/article/egypts-fake-mass-rebellion/>>.

<sup>209</sup> 'National Association for Change (NAC)', *The Cairo Post* (online), 13 November 2013 <<http://thecairopost.youm7.com/news/35475/wiki/national-association-change-nac>>.

<sup>210</sup> 'ElBaradei to Form a National Association for Change', *BBC News* (online), 24 February 2010 <<http://news.bbc.co.uk/2/hi/8534365.stm>>.

<sup>211</sup> Ibid.

the first elected parliament in 2012, which had a majority of Morsi supporters. Dissolving the parliament was used as a strategy to weaken the president's authority, jeopardise his actions and prevent him from fulfilling his promises.<sup>212</sup>

4. Morsi offered his opponents a place in the cabinet, but they refused, which was another obstacle in the president's attempt to share power with the opposition.<sup>213</sup>

Morsi's opponents claimed that the constitutional declaration in November 2012, which gave Morsi powers of judicial oversight, made him a dictator for the following reasons:

- Thousands of Egyptians protested against Morsi's declaration, claiming that it was a counter-revolutionary rule because he resumed executive, legislative and judicial powers. This gave Morsi more power than the president had in Mubarak's era.<sup>214</sup>
- Morsi's opponents stated that Morsi served the Muslim Brotherhood's interests rather than Egypt's interests. They claimed that the Muslim Brotherhood was not a revolutionary or reformist party, but a right-wing bourgeois party without any roots in the workers' movement. It was historically associated with attacking workers' demonstrations and collaborating with US imperialists and free market economic policies.<sup>215</sup>
- They maintained that Egypt needs a socialist political leadership that safeguards the interests of workers and youth rather than protecting the interests of the capitalist class.<sup>216</sup>
- The most significant elements of the 2012 constitution enshrined the privileges and power of the Egyptian military. For example, Article 195 stated that the defence minister should be an officer of the Egyptian military, while Article 197 approved a National Defence Council, not controlled by

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<sup>212</sup> Ibid.

<sup>213</sup> Patrick Kingsley, 'How Mohamed Morsi, Egypt's First Elected President, Ended Up on Death Row', *The Guardian* (online), 1 June 2015 <<https://www.theguardian.com/world/2015/jun/01/mohamed-morsi-execution-death-sentence-egypt>>.

<sup>214</sup> Johannes Stern, *Mursi's Crackdown Exposes Counter-Revolutionary Role of Egyptian Revolutionary Socialists*, International Committee of the Fourth International (6 December 2012) <<https://www.wsws.org/en/articles/2012/12/06/revo-d06.html>>.

<sup>215</sup> Ibid.

<sup>216</sup> Chris Marsden, *Mass Anti-Mursi Protest, Clashes with Police in Cairo*, International Committee of the Fourth International (5 December 2012) <<https://www.wsws.org/en/articles/2012/12/05/egyp-d05.html>>.

parliament, with unlimited power. Article 198 allowed for military trials for any crimes that harmed the armed forces.<sup>217</sup>

- The Egyptian government negotiated a \$4.8 billion loan from the IMF. It was claimed that this would open the free market, economic liberalisation and privatisation, which would affect the working class by cutting food and fuel subsidies. The IMF also demanded that Egypt reduce its large budget deficit from 11% of gross domestic product in the 2012 fiscal year to 8.5% before the end of 2014.<sup>218</sup>

In contrast, the military's opponents claimed that Morsi's constitutional declaration did not make him a dictator for several reasons:

- Morsi's decree lasted only three weeks. The decree was important because it was the first step towards Egypt's democratic transition through the holding of parliamentary elections and to call for a referendum to vote for the new constitution.
- Morsi's decree was necessary to prevent the military from playing a dominant role and returning Egypt to quasi-military rule. At the same time, it prevented the old regime's judiciary from political interference.<sup>219</sup>

Morsi's experience shows the incapacity of the deep state to give up its power to anyone other than its elite. It also demonstrates that even an elected president cannot rule without declaring a state of emergency because of pressure from the military and its elite, as well as debt pressure from the IMF and the World Bank.

To achieve consensus, restore order and meet the demands of the Egyptian people, the SCAF—presenting itself as the guardian and saviour of the Egyptian people—offered a 48-hour ultimatum.<sup>220</sup> Morsi's opponents began demonstrating and gathering on 29 June 2013, and on 3 July 2013, a military coup led by the defence minister ousted the first civilian democratic Egyptian president. The military's justification for removing the elected president was that the Egyptian people had demanded his removal because he performed poorly during his first year of ruling

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<sup>217</sup> Johannes Stern, *Egyptian Constitutional Referendum Marked by Low Turnout, Allegations of Fraud*, International Committee of the Fourth International (17 December 2012) <<https://www.wsws.org/en/articles/2012/12/17/egyp-d17.html>>.

<sup>218</sup> Johannes Stern, *President Mursi, IMF Prepare Austerity Policies in Egypt*, International Committee of the Fourth International (9 January 2013) <<https://www.wsws.org/en/articles/2013/01/09/egyp-j09.html>>.

<sup>219</sup> Mohamad Elmasry, 'Morsi Myths: Re-Examining Justifications for Egypt's Coup', *Middle East Eye* (online), 3 July 2015 <<http://www.middleeasteye.net/columns/myths-about-morsi-examining-justifications-egypt-s-2013-cou-1248467631>>.

<sup>220</sup> Salma Abdelaziz, 'Reza Sayah and Ben Wedeman, Egypt's Military Gives Morsy Ultimatum', *CNN* (online), 2 July 2013 <<http://edition.cnn.com/2013/07/01/world/meast/egypt-protests/>>.

Egypt. However, the main reason for ousting the first elected president was that the old regime's judiciary, army, security apparatus and corrupt businesspeople had begun to lose their privileges and benefits.<sup>221</sup>

The defence minister suspended the 2012 constitution and nominated the head of the constitutional court as the interim president.<sup>222</sup> The military arrested the president, placed him in military custody and prevented him from communicating. The security forces arrested 38 of the senior leaders of the Muslim Brotherhood and placed some of the president's advisers under house arrest.<sup>223</sup> The military declared that it had no interest in politics and only interfered because the president had failed to fulfil his promise of national consensus and national reconciliation.<sup>224</sup> After the announcement of the removal of Morsi, on 3 July 2013, approximately 14 people were killed, including two from the security forces, and hundreds were injured in clashes between Morsi's supporters and the security forces.<sup>225</sup> Many prominent revolutionaries were either jailed or exiled.<sup>226</sup> The anti-revolutionary and counter-revolutionary members returned stronger than before, and many of Mubarak's loyal officials were released with minimal accountability.<sup>227</sup>

The military backed the interim regime and facilitated the prosecution of the opposition members in a number of different ways:

1. The interim regime designated the Muslim Brotherhood a terrorist organisation and justified the killing of civilians at Rabaa and Nahda Squares. They arrested officials from Morsi's regime, closed the Muslim

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<sup>221</sup> Yahia Hamed, 'Egypt's Coup Has Plunged the Country into Catastrophe', *The Guardian* (online), 16 March 2014 <<https://www.theguardian.com/commentisfree/2014/mar/16/egypt-coup-catastrophe-mohamed-morsi>>.

<sup>222</sup> Patrick Kingsley and Martin Chulov, 'Mohamed Morsi Ousted in Egypt's Revolution in Two Years', *The Guardian* (online), 4 July 2013 <<https://www.theguardian.com/world/2013/jul/03/mohamed-morsi-egypt-second-revolution>>.

<sup>223</sup> David D Kirkpatrick, 'Army Ousts Egypt's President; Morsi is Taken to Military Custody', *New York Times* (online), 4 July 2013 <[http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?\\_r=0](http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?_r=0)>.

<sup>224</sup> Ibid.

<sup>225</sup> 'President Morsi Overthrown in Egypt', *Al Jazeera News* (online), 6 July 2013 <<http://www.aljazeera.com/news/middleeast/2013/07/20137319828176718.html>>.

<sup>226</sup> Michele Dunne, *Egypt's Nationalists Dominate in a Politics-Free Zone*, Carnegie Endowment for International Peace (15 April 2015) <<http://carnegieendowment.org/2015/04/15/egypt-s-nationalists-dominate-in-politics-free-zone-pub-59764>>.

<sup>227</sup> Sahar F Aziz, 'Independence Without Accountability: The Judicial Paradox of Egypt's Failed Transition to Democracy' (Research Paper No 16-07, Texas A&M University, 23 March 2015) 164.

Brotherhood's social service organisation, shut their business and seized and froze their assets.<sup>228</sup>

2. Political trials resulted in the issuing of mass death sentences by senior judges who were loyal to the regime. The judges ignored incriminating evidence and used their discretion and distrust while trying the opposition.<sup>229</sup>
3. The court dropped the charges against Mubarak, but the public prosecutor appealed the court's decision and the appeal was accepted. Mubarak was sentenced to life in prison in 2012 for murdering 239 Egyptian protesters.<sup>230</sup> In May 2015, the Cairo Court of Appeals sentenced Mubarak to three years in jail on charges of corruption during his term in office.<sup>231</sup> In addition, Mubarak's two sons were sentenced to three years in jail for corruption.<sup>232</sup>
4. Many youth activists who led the mobilisation of 25 January 2011 were jailed for three to five years and fined £50,000 for violating the Protest Law. These sentences violated the rights of expression and assembly.<sup>233</sup>
5. Top-ranking generals in the military had many closed-door meetings with Amr Moussa—the former Egyptian foreign minister, Arab League chief and head of the 50-member committee in charge of writing the 2014 constitution—to persuade other committee members to guarantee the military extra privileges, such as the right to try civilians in secret military courts. The military justified its demand for more power by citing the increase in militant attacks.<sup>234</sup>

## 7.11 Conclusion

This chapter has shown that an understanding of the nature and persistence of emergency power in Egypt requires an examination of economic and political

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<sup>228</sup> Ibid 163.

<sup>229</sup> Ibid.

<sup>230</sup> Mahmoud Mourad, 'Mubarak to Stand Trial Again Over 2011 Killing of Protestors', *Reuters* (online), 4 June 2015 <<http://www.reuters.com/article/us-egypt-mubarak-idUSKBN0OK0L720150604>>.

<sup>231</sup> Ian Lee, 'Mubarak to Stand Trial Again for Deaths of Protestors, Egypt's High Courts Rules', *CNN News* (online), 4 June 2015 <<http://edition.cnn.com/2015/06/04/middleeast/egypt-mubarak-retrial/>>.

<sup>232</sup> 'Egypt Court Orders Release of Hosni Mubarak's Sons', *Al Jazeera News* (online), 12 October 2015 <<http://www.aljazeera.com/news/2015/10/egypt-court-orders-release-hosni-mubarak-sons-151012134842899.html>>.

<sup>233</sup> Ibid.

<sup>234</sup> Erin Cunningham, 'Egypt Considers Expanded Powers for Military in New Constitution', *The Washington Post* (online), 2 November 2013 <[https://www.washingtonpost.com/world/middle\\_east/egypt-considers-expanded-powers-for-military-in-new-constitution/2013/11/02/cf0b3c8e-41a7-11e3-8b74-d89d714ca4dd\\_story.html](https://www.washingtonpost.com/world/middle_east/egypt-considers-expanded-powers-for-military-in-new-constitution/2013/11/02/cf0b3c8e-41a7-11e3-8b74-d89d714ca4dd_story.html)>.



interests, as well as practices and conflicts ignored by traditional emergency power theories.

Miliband examined the nature of the state and developed a class map to explain the political, economic, legal and military powers in liberal democratic countries. His work shows that each state has its own deep state.

In liberal democratic countries, the capitalist class is able to rule without a state of emergency by giving some concessions to citizens, such as paying reasonable wages and allowing unions and free elections. A real separation of powers contributes to the legitimation of such class rule without undermining it.

Less democratic and authoritarian regimes use a continuous state of emergency to protect their political and economic interests because they feel threatened by the majority of the people. In these states, the deep state is often headed by the military because it controls the economic and political scene with the support of Western powers. The military manages to survive by using a permanent state of emergency and exceptional laws to protect its interests. This has been the case in Egypt.

Successive Egyptian regimes can be described as authoritarian or pharaonic. After the 1952 coup, the Free Officers did not have any ready plan, except for establishing the power of the military. Nasser, a charismatic leader from a military background, united Egyptians in the name of fighting imperialism and corruption and ending feudalism. Since then, the military has controlled the country. As the head of the deep state, the military has dominated the executive, legislative and judicial branches in Egypt. The legislative branch is powerless because most of its members belong to the president's party. A weak parliament enables the executive to override the parliament. The military has also interfered in the judiciary by establishing military courts with wide-ranging authority. Judges from the old regime have prevented any judicial reform because it poses a threat to their privileges and prestige. The legislative and judicial branches served as a rubber stamp for the executive's actions and interests.

In 2011, Mubarak resigned and handed over power to the military, which led the country and promised a democratic transition, but instead controlled the executive and legislative branches of power and issued many constitutional declarations that

enshrined its rule and expanded its authority. After electing Morsi on 30 June 2012, the military and its elite created many obstacles to prevent the new president from performing his duties. For decades, the military has controlled the political and economic scene in Egypt. It has been involved in all aspects of Egyptian economic and industrial markets and generated large profits. The military has used businesspeople, the media and the fake opposition to protect its hidden empire and stabilise and consolidate its rule. In response to the deep state's fear of losing its privileges and profits, on 3 July 2013, a military coup succeeded in overthrowing the first democratically elected civilian president of Egypt, President Morsi, and the military regained its power.

## **Chapter 8: Conclusions and Recommendations**

### **8.1 Introduction**

This thesis has used Egypt as a case study to understand the use of emergency law for several reasons, which are outlined.

#### **8.1.1 Failed traditional emergency power theories**

Traditional emergency power theories have failed to justify the permanent state of emergency in Egypt for the following reasons:

1. Traditional emergency power theories are based on developed countries, whereas Egypt is a major developing country.
2. Traditional emergency power theories ignore military interference in legislative and judiciary branches of power. This interference protects the economic and political interests of the deep state in Egypt.
3. Emergency power theories are premised on the idea that declaring a state of emergency is a temporary resort for exceptional cases.
4. Emergency power theories disregard the fact that imperial Western powers have supported successive authoritarian regimes, thereby preventing real democracy.
5. Traditional emergency power theories overlook the economic interests behind declaring and extending a state of emergency.
6. Emergency power theories assume that the purposes of declaring a state of emergency are to counter terrorism and protect national interests.
7. Extending and expanding emergency law will never address the threats of public disturbance or terrorism because emergency law is part of the problem.

#### **8.1.2 Establishment and enshrining of martial law during the colonial period in Egypt**

Britain declared martial law in Egypt to protect its interests for the following reasons:

1. Britain established martial law in 1914, and it was enshrined in the 1923 constitution, Military Rule No 15 of 1923 and the Anglo–Egyptian Treaty of 1936.
2. Britain used Egypt’s resources and raw materials to generate profits by buying Egyptian cotton at low prices, imposing heavy taxes on Egyptian farmers and then exporting cotton back to Egypt at high prices.
3. Britain used Egypt as a military base in times of war and peace because of its strategic position and, in particular, its access to the Suez Canal.
4. Britain used martial law against Egyptian nationalists and activists who opposed British rule and occupation. The British military and administrators enacted a number of repressive measures, such as declaring gatherings of five or more people without prior authorisation to be penal offences. They also exiled hundreds of Egyptian nationalists and activists.
5. Martial law was used to end the capitulation system because it gave massive privileges to foreigners. In addition, martial law was used to arrest, detain and exile foreigners, especially Germans, Austrians and Turkish people.
6. Controlling Egypt gave Britain the power to control other African countries by controlling the Nile river basin and its main resources.

### **8.1.3 Developing and expanding the notion of emergency law after the colonial period**

After 1952, the new regime developed and expanded emergency law as follows:

1. Nasser installed British martial law and changed the name from ‘martial law’ to ‘emergency law’. Emergency law was enshrined in the 1956 Egyptian constitution.
2. In 1958, Nasser issued Emergency Law No 162, which gave the regime the power to arrest, detain, search and try civilians in exceptional courts.
3. Sadat depended on the military to stabilise his regime. He used the war against Israel to justify his continuous use of a state of emergency, and he introduced an open-door policy and relied on US support. The open-door policy failed because it increased poverty and the gap between the rich and the poor.

4. The 1956, 1967 and 1973 wars between the Arabs and Israel were the main reasons given for declaring a state of emergency, except for when a state of emergency was declared in 1981 without disruption after the assassination of Sadat.
5. The Mubarak regime depended on the military and extended the state of emergency every two to three years. Mubarak's regime justified the extension of the state of emergency by arguing that it was necessary to combat terrorism and drug trafficking.
6. Different political regimes retained the same emergency law because it was a comprehensive law that gave each regime a great deal of authority.

#### **8.1.4 Emergency law was the main cause of human rights breaches in Egypt**

Emergency law was the main cause of human rights breaches in Egypt, as demonstrated below:

1. Police brutality was the main reason for the 2011 revolution.
2. The military and police forces used emergency law to justify employing coercive force against their own people.
3. Successive regimes used exceptional laws, such as protest and terrorist laws, as tools to stifle opponents of the regime and consolidate their power.
4. Mass arrests, torture, forced disappearance and detention of people for an unlimited time were widespread in Egypt because emergency law unofficially justified these acts.
5. Military trials were enshrined in the Egyptian constitution as a parallel system without the right of appeal. The law expanded the military's authority and increased the range of crimes considered harmful to the military, resulting in more human rights breaches. Military courts sentenced hundreds of Egyptians to death or life imprisonment.
6. In theory, the Egyptian constitution contained articles protecting against the violation of human rights and protecting freedom of speech and expression. However, different political regimes used the concepts of protecting national security, maintaining public order and combating terrorism to suspend these laws, which resulted in an increase in human rights breaches.

7. The international human rights treaties that were supposed to protect human rights had exemptions. Different political regimes used these exemptions to maintain the state of emergency and its harsh measures under the guise of fighting terrorism.

### **8.1.5 Age of neo-imperialism**

Contemporary neo-imperialist organisations have used debt pressure as another tool to control the developing world, as shown below:

1. In the mid-twentieth century, the US replaced Britain as the main Western powerbroker and used neo-imperialist organisations to control the developing world.
2. The US used its financial aid to protect and consolidate authoritarian regimes and safeguard its interests. The Egyptian military benefited from approximately \$1.3 billion of military aid, which helped to stabilise its political and economic interests.
3. The IMF, World Bank and WTO assisted in increasing the gap between the rich and the poor. The policies of these organisations increased class divisions, increased poverty and benefited a minority of elite businesspeople.
4. Nasser's nationalisation policies helped to enshrine military rule. Sadat's open-door policy failed because it benefited only a small group of businesspeople. Mubarak's neoliberal economy also benefited only a small group of businesspeople.

### **8.1.6 Deep state's political and economic interests justified a permanent state of emergency**

The deep state elite used a permanent state of emergency to protect its political and economic interests in Egypt, as follows:

1. The deep state of each state has unique features. In liberal countries, the capitalist class usually succeeds in ruling without using a state of emergency by sharing some of its profits in fair wages, improving work environments and allowing unions to operate. The dominant class also manages to control the ideology of the people using the rule of law, media and sport to promote its policies.

2. In less democratic and authoritarian regimes, the military operates as the head of the deep state. The military cannot rule without a continuous state of emergency because it does not want to share its privileges and interests with the rest of the people, except for a minority of businesspeople and some judges. The military and its elite justify the continuous use of a state of emergency by arguing that it is necessary to protect national security and ensure public order. The military has the power, money and external support to justify its use of force, arrests, detention and military courts to try civilians, because it feels under constant threat from the majority of the people.
3. In Egypt, the military interfered in the judiciary by establishing military courts with wide authority. Judges from the old regime prevented judicial reform because it posed a threat to their privileges and prestige. The legislative and judicial branches of power served as a rubber stamp for the executive's actions and interests.
4. The military used businesspeople, the media and fake opposition to protect its hidden empire and stabilise and consolidate the rule of those belonging to the deep state. The military generated pressure and obstacles to prevent President Morsi from resuming full power.
5. The military coup on 3 July 2013 succeeded in overthrowing Morsi, and the military regained power. Morsi's experience proved that the military is not willing to share its privileges with any democratically elected civilian president.

#### **8.1.7 Egyptians failed to achieve their goal of creating a democratic country**

1. Successive regimes generated fear among Egyptians to consolidate power. Successive regimes used uncertainty about the future and instability in other countries, such as Syria and Libya, to gain more power, because the Egyptian people feared disorder.
2. There was division between the Egyptian political parties. The secularists and the Islamists each feared how the other would rule Egypt.
3. To avoid becoming a failed state, Egypt needs a new, peaceful revolution to minimise the political and economic power of the military. This revolution

must ensure that the duty of the military is limited to securing the country's borders, and it must minimise the military's economic power.

## **8.2 Thesis Recommendations**

Different political regimes in Egypt have issued different constitutions and laws. In theory, such documents are meant to ensure the separation of powers, maintain the rule of law and protect people's rights. However, in practice, there is only one authority that controls the parliament and the judiciary in Egypt—namely, the military, which operates as the head of the deep state. The consequence of this is that the constitution consistently fails to protect the human rights of Egyptian citizens.

Different political regimes in Egypt have adapted certain economic and political policies that have benefited the ruling elite. These policies and strategies have served to increase poverty, increase income inequality, result in an unfair distribution of wealth between the rich and the poor, create a high deficit and inflation, and ensure instability and poor healthcare for Egyptian people.

Given Egypt's history, it would be naïve to believe that formal constitutional or legal constraints could protect the population from dictatorial 'emergency' forms of rule. Further, given the country's record of colonial and neo-colonial oppression, it is not realistic to conclude that the solutions lie in Egypt alone. Therefore, no attempt is being made in this thesis to provide a detailed prescription for Egypt's constitution or legal framework.

Certainly, to overcome the problems in Egypt, it is necessary to change the law. At the heart of any changes, the government must maintain the separation of powers. It must also abolish Law No 162 of 1958 and abolish all exceptional laws, such as protest and terrorism laws, because they have been the main cause of human rights breaches. The Egyptian government must also prohibit any derogation from fundamental rights and non-derogable rights to meet international standards. Further, it must end the military trials of civilians and abolish military courts.

However, it is not sufficient to change the letter of the law alone. The answers lie deeper, in the underlying socioeconomic structures in Egypt and around the world. It is beyond the scope of this thesis to provide a blueprint for overturning that reality. However, some general principles can be suggested, including social equality, new



forms of genuinely participatory democracy, democratic control over all aspects of life (including production, finance and the key levers of the economy), guarantees of basic social rights such as education and health, and guarantees of core legal rights such as *habeas corpus*, open civilian trials and the presumption of innocence.

To establish a genuine democracy in Egypt, this thesis recommends far-reaching economic changes to give citizens certain social rights and conditions, such as:

- placing power in the hands of the people and ending military rule
- expanding the welfare state, including a higher minimum wage
- expanding the provision of public goods and services
- providing free education and health
- implementing a progressive income tax system
- creating fairer distribution of income and ensuring that citizens have an acceptable living standard
- guaranteeing jobs for all people of working age.

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