



Georgetown University Law Center
Scholarship @ GEORGETOWN LAW

2017

Calling All the Statesmen: The (not) Mubarak Trial


Lama Abu-Odeh

Georgetown University Law Center, la34@law.georgetown.edu

This paper can be downloaded free of charge from:
<https://scholarship.law.georgetown.edu/facpub/1965>
<https://ssrn.com/abstract=2940381>

Law & Society in Post-Revolution Egypt (forthcoming)

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <https://scholarship.law.georgetown.edu/facpub>

 Part of the [Comparative and Foreign Law Commons](#), and the [Criminal Law Commons](#)

Calling all the Statesmen: The (not) Mubarak Trial

By Lama Abu Odeh

I read the decision that exonerated ex-Minister of Interior of Egypt and his assistants from the charge of giving orders to kill demonstrators textually. Shortcomings known to lawyers and journalists who were following the case about failure of performance on the part either of prosecutors, lawyers, or the judge overseeing the trial are not considered in my reading. You might call it a close reading—specifically, a reading of the rationalizing language used by the judge writing the decision to explain his verdict.

Introduction

They called it the “trial of the century.” The first time an Arab leader, Mubarak, appeared before a civilian (criminal) court to be tried.¹ The charge? Giving orders to kill demonstrators during the events of late January 2011 that led to his overthrow, commonly referred to as “the Egyptian Revolution”.² He was not the only defendant. With him the line-up included his ex-Minister of Interior and six of the latter’s assistants who all occupied high positions in Egypt’s various (and, apparently, multitudinous) security agencies.³

Mubarak, along with his ex-Minister, were initially declared guilty of charges. The verdict was appealed to the Court of Cassation, which overturned it and returned it to the Criminal Court of Cairo for retrial. The retrying judge, Chancellor Rashidi, reconsidered the facts and issued a decision, spanning 200 pages, in which the ex-Minister and his assistants were declared innocent of the charge of acting as “accomplice[s] to the crimes of murder of demonstrators.”⁴ Mubarak was dropped

¹ Several cases were joined together and adjudicated at the same time by the same court and they included: the charge of giving orders to kill demonstrators, illegal appropriation of public property and exporting gas at low prices. Defendants in those joint cases included Mubarak and his sons, Adly, his ex Minister of Interior and six of his assistants.

For a sequencing of the various stages the case went through including dates of sessions and stages of appeal see:

https://ar.wikipedia.org/wiki/محاكمة_حسني_مبارك

²The judicial text I will be discussing is the one referred to as:

A Judicial Statement on the two Criminal Cases Nos 1227, 3643 Year 2011 Qasr Neel. The text was issued by Chancellor Rashidi of the Cairo Criminal Court – the retrying court.

³ The agencies involved included: *Amn Markazi, Amn Aam, Amn Dawla, Amn Al Qahera, Amn Al Giza*

⁴ For a critique of the decision based on the external conditions that produced its end result see the report by EIPR

<http://eipr.org/pressrelease/2014/11/29/2288>

from the case by the judge on procedural grounds, a decision that was in turn appealed, overturned, and remanded to a lower court. The lower court had thus far met several times to try Mubarak for the charge of killing demonstrators. Mubarak failed to appear in any of the sessions.

In this essay, I will discuss the decision by Chancellor Rashidi declaring the ex-Minister of Interior and his assistants innocent of the charge of “accomplice” to the crime of murder of demonstrators.

The *Right* Revolution

By the time the court issued its exonerating decision in November of 2014, the Egyptian Revolution of 2011 had already transmogrified into something that was unrecognizable to those who identified with it as an Event (namely, its activists, writers, artists and supporters). The military regime of Sissi appropriated the Revolution as an element of a new national narrative according to which the events of 2011, while justified, were transcended by the events of June 30, 2013: the popular mobilization against the rule of the Muslim Brotherhood (*Ikhwan*) that began on June 30th and culminated in Sissi taking power on July 3, 2013. July 3rd was declared the *proper* revolution. Courts, including that of Rashidi, played a very important role in promoting this new national narrative.

Soon enough, the initial drive to put the men of Mubarak’s regime on trial, especially for cases on corruption, started to lose steam. Many of them, including Mubarak’s sons, were declared innocent of charges of corruption. Meanwhile, public attention was redirected from the fallen Mubarak regime to the *Ikhwan* turning them into the new object of national obsession. In December 2013, the Muslim Brotherhood was declared a terrorist organization. Thousands of its members were put in jail.

The Reversal

Rashidi’s decision of declaring Adly and his men innocent of charges was not exactly surprising when it was issued since Egyptians were already feeling the heavy weight of the post-*Ikhwan* military regime that emerged from the bosom of the old Mubarak one. Nevertheless, it proved devastating to those identified with the 2011 revolution. The reversal of the verdict, from guilty to innocent of all charges, did not just deliver a blow to the families of the dead and to those who were injured, but seemed to also signify a broader and more significant reversal. If the revolution of 2011 stood for the radical act of staring the state down, by the men and women protesting on the streets for days chanting “bread, freedom and social justice”, putting this state that had for so long kept them down and under in its proper place, screaming “J’accuse”, the reversal of the charges by the court meant a

reversal of this very radical act. It represented the state reclaiming its authority, staring back down at those revolting men and women, putting *them* in their place, and declaring their revolution nothing more than “*fawda*” (chaos) and the labor of its revolutionaries for naught.

The martyrs of the revolution – those killed as they protested in the public squares across the country- symbolized this labor in its most sacrificial form. Many of those martyrs were far from the “youth of the middle class,” celebrated in the literature written in the aftermath on the Arab Spring, but belonged to the struggling working class. Their participation in the events of January 2011 may have been their first experience of politicization;⁵ their first moment of expressing public rage at the state. The court’s reversal treated their lives as expendable; and this message hit home for the court’s audience on two levels: let their lives, as revolutionaries *and* as the disenfranchised, fall where they may.....as *before*.

The reversal was the return of “law and order.” But while it was a “return” to a previous mode of “ruling”, it was also a return on different terms. The terms of this return as well as its difference can be gleaned from the text of Rashidi’s decision. The “ruling” doesn’t just decide the rights and wrongs of what happened in late January 2011, but it aspires to set the terms for a new relationship of “rule” between the men of the state (represented by the accused and their witnesses) and the state’s “subjects” (represented by the dead and injured). It does so by introducing a third party into the relationship, the *Ikhwan*, who while exiled from the relationship, remain in the background as a conspiring force. It is the presence of this conspiring force that determines the “rules” that govern the reordering of “rule” in the post-revolutionary Egypt: namely, the statesmen protecting the state and its subjects from a conniving dark force that lurks in the background, a force that wants to undo the state, a force which only the statesmen *qua* statesmen can see—just like in late January 2011.

The Doctrine

On its face, the doctrinal side of the not guilty verdict issued by Chancellor Rashidi of Cairo Criminal Court, was not only well-reasoned, but I would say, reasoned in a way one would expect in the case of a police shooting. The defendants, Adly and his five assistants, heads of various security (*amn*) agencies, were charged with the crime of acting as “accomplice[s] to murder”. The alleged facts were that demonstrators were killed by members of these security agencies and police officers during the period of January 25 through January 31, 2011. It was further alleged that Adly and his assistants gave these officers orders to shoot at some of the demonstrators to deter others from participating, and that Adly and his men gave these officers access to firearms and ammunition to carry out these orders. Hundreds of people died and many others were injured as a result of those shootings.

⁵ In the courts’ papers they appear as: blacksmith, worker in an ironing facility, driver, salesman, student, delivery boy, etc..

The text of Rashidi's decision takes different twists and turns with many repetitions and lengthy insertions of dicta, the significance of which I will discuss below. Nevertheless, he offers a kernel of a doctrinal argument that is irrefutable. In simple terms, Rashidi argues that, according to Egyptian criminal law, for Adly and his men to be declared guilty of the charge of "accomplice" to the murder of demonstrators four elements must be met: a) that an act of solicitation and encouragement occurred, (i.e., Adly and his men gave instructions to their subordinates (police officers) to kill); b) that the officers did, in fact, shoot at the demonstrators; c) that when the officers shot at the demonstrators they were influenced by the instructions of their superiors, rather than other motivating factors like self-defense; d) and that Adly and his men had given the officers access to firearms and ammunition in order to carry out the instructions to kill.⁶

None of the above was established.

While we have dead and injured bodies, Rashidi argued, we don't have "killers." Some policemen had indeed been arrested and tried for fatal shootings that occurred around the police stations where they were serving during the protests, but those officers were already declared innocent of charges by other courts.⁷ No criminal actors have been arrested for the vast majority of cases of death and injury that occurred during the protests of January 25th to January 30, 2011 (the time frame under discussion in the retrial). Rashidi indicates that no direct causal link can be drawn between the acts of shooting (*actus reus*) and the specific deaths.⁸ Moreover, even if there was a direct causal link, between specific acts of shooting by an identifiable number of policemen and the ensuing result of death or injury, the *mens rea* of the actors still needs to be established.⁹ These officers may very well have shot at demonstrators out of fear for their lives rather than shooting to deter demonstrators pursuant to orders given to them by their superiors. Moreover, there is no evidence that such orders were given.¹⁰

In short, according to the court, Adly and his assistants, were charged with being accomplices to those crimes for which neither an act (or), nor a *mens rea*, nor a causal link to the resulting deaths has been identified; *and* no act of "solicitation or encouragement" has been established (the court found no evidence that orders

⁶ Article 40, Law No. 58 of 1937 Issuing the Penal Code:

An accomplice to a crime is:

a) He who solicits another to commit the *actus reus* of a crime provided this act took place as a result of this solicitation; b) he who agrees with another to commit a crime provided the crime was committed as a result of this agreement; and c) he who gives an actor or actors a weapon or an instrument or any similar thing that was used in the commission of a crime provided he was aware a crime using this instrument would take place or he assisted using them in any other way through preparation or facilitation or through completion of the crime.

⁷ They were deemed to have acted in self-defense as they were defending themselves and their station from the trespass and assault by "hooligans", see Judicial Statement, p. 181

⁸ Judicial Statement, p. 180

⁹ Judicial Statement, p. 181

¹⁰ Judicial Statement, p. 183

were given to kill demonstrators, either written or oral) on the part of Adly and his men.

Police Culpability

Police culpability is notoriously hard to establish as exemplified by the cases of police brutality against African Americans in the U.S. that have gained heightened media attention of late as a result of fierce public protests. Rare is the case when a police officer is found guilty in a police shooting and, recently, it has become hard to indict by grand juries in the first place. What often derails these cases is the problem of *mens rea*. Even if a direct causal link can be drawn between an act of shooting and a victim, the *mens rea* of the officer is hard to establish. An intent to kill has to be established that cannot be excused by self-defense. When considering whether this excuse applies, courts typically take into consideration what a reasonable man standing in the shoes of the police officer would have done. In the case of the police, and given the “nature of what they do,” this ultimately ends up being treated in U.S. courts as whatever the policeman actually thought when he aimed his gun and took the shot; the “reasonable” ends up being nothing more than the “subjective.” In short, if the policeman deemed himself in jeopardy, and he shot to protect himself, he is exempt from liability for the ensuing death or injury.¹¹

In the case before Rashidi, and given the facts, establishing *mens rea* becomes even trickier, since the shooting occurred in the middle of a protesting crowd and concerned multiple actors who were present at the scene.¹² Not only were there multiple police officers keeping the peace among the protestors, but other covert actors as well, the court insisted. There were *Ikhwan* and there were hooligans roaming the streets, who may have had access to firearms stolen from police stations as it was established that many had been raided and their ammunition stolen. In this case, establishing the specific act that caused the specific death, with the legally required *mens rea*, becomes an impossible task.

“Snitching”

Add to the above, the fraternal culture of the police (the ethos against “snitching” as it is called in the U.S.) makes it very difficult to find a witness from within the police force to provide testimony against other members of the police. In the case before Rashidi, and given the absence of written documents to establish the *actus reus* of complicity (namely, giving instructions to the police to shoot to deter demonstrations), the court is left with establishing the *actus reus* through witnesses who attended either the meetings that took place between Adly and the heads of the various security agencies or between those heads and members of their own force. Such witnesses would have needed to testify that instructions were given orally

¹¹ <https://www.thenation.com/article/why-its-impossible-indict-cop/>

¹² Judicial Statement, p 186

during those meetings to shoot at demonstrators to deter other participants. No such witnesses seem to have been presented to the court.¹³ To the contrary, several witnesses from the various “*amn*” agencies lined up before the Rashidi court to testify that no instructions to shoot for the purposes of deterring demonstrators were issued by their superiors, whether in written or oral form.¹⁴ Indeed, they all insisted that far from being given firearms and instructions to shoot, they were in fact given only “helmets, riot shields and batons” and specifically “instructed to exercise self-discipline and ensure the safety of the demonstrators”.

So the court says.¹⁵

The question of police fraternity would have been all the more urgent since the role of the police in the life of citizens was one of the most pressing issues posed by the 2011 revolution culminating in demands for radical reforms in the police culture and mode of governance. “Securitization” had become the privileged form of control under Mubarak with the local police acting as the neighborhood’s supreme lord and master. After all, the event that had triggered the demonstrations in the first place and given it unprecedented momentum was the circulation of pictures of a missing blogger, Khaled Said, dead with his body badly disfigured as a result of police torture. Because the officers and *amn* officials saw themselves as the very target of demonstrators’ ire and felt that their fiefdoms of control were under attack, it was to be expected that the various men of *amn* would band together and refuse to “snitch” on each other or their superiors.

No instructions to shoot were given, and no firearms were provided for use in demonstrations. The preponderance of evidence was such, the court declared.

¹³ Police fraternity has put a halt to prosecution in the Freddie Gray case of Baltimore in the US only very recently because the prosecutor found it impossible to find a policeman who would step forward to provide testimony that might establish the case a fellow officer.

¹⁴ Add to that the court was presented with several witnesses, namely, superiors of those who conducted the meetings to testify that they had actually not “witnessed any shooting in the public squares,” or that “the reports landing on their desks did not indicate police shooting had taken place,” or that “it would be difficult to believe that orders to shoot demonstrators were given by ex Minister Adly since this would be very “stupid” on his part”. Judicial Statement, pp 175-180

¹⁵ Instead, the court provided an alternative scenario of who the possible shooters could have been that killed the demonstrators: *first*, the pro *Ikhwan* rioters who had raided police stations in the various provinces, ransacked their arms supply and released their prisoners; *second*, police officers trying to defend themselves in these police stations from the pro-*Ikhwan* invaders (though this would have happened far from the public squares where crowds of demonstrators gathered and where the deaths and injuries the subject of the trial occurred); and *third*, “arrogant officers with an aggrandized sense of self, the pervert few, who were acting on their own behalf and defying orders of superiors”. In other words, if no instructions were given to police officers to shoot to deter, then those who actually shot and killed in the public squares would have been either the pro-*Ikhwan* sympathizers with appropriated guns from ransacked police stations or the *disobeying* policemen who carried firearms and shot contrary to given instructions. Either way, defendants of the case, Adly and five assistants, could not be held guilty as accomplices to criminal acts committed by such actors. See Judicial Statement, p 125

Liberal Legalism in the Service of the Revolution

I made the analogy to cases of police brutality in the U.S. to lay the groundwork for my argument and to establish that, on its face, Chancellor Rashidi's decision that there is no "preponderance of evidence that Adly and his assistants were guilty of crimes charged", was not altogether unreasonable. This is to say that the facts and the law allow for a conclusion such as the one he made, and there is nothing suspicious about the decision at first blush, my sympathies with the revolution and horror at the lost lives of its martyrs aside.

In fact, I think, if Rashidi's decision was confined to making the doctrinal argument above, it is possible that his audience, including some sympathetic with the revolution, would have regarded the decision as having satisfied the liberal legalist requirement of judicial "objectivity and neutrality." Such an audience could see him as having thrown his hands in the air so to speak having done the best he could as a judge, given the evidentiary and substantive limitations of criminal law (formally, the preponderance of the evidence standard for establishing facts and, substantively, strict requirements as to causal links and *mens rea*). Had the judge referred to the events of January 25th through January 30, 2011 in neutral terms, had he not given a hint as to his own views of those events, either favorable or otherwise, had he not shown any affinity to the accused nor dismissed the dead and injured out of hand; Rashidi could have made the exact same doctrinal argument from the criminal law, resulting in the same not guilty verdict, and the decision would have been seen as, it seems to me, a perfectly respectable one. Either side would have made claim to it as their own. The state would have cheered the release of its men, and the revolutionaries would have been assured of an independent judiciary even as it would have left the families of the dead and injured empty handed. *They* would have found a way to mourn their dead and nurture their injuries outside the courts of law.

It would have been a victory of liberal legalism.

Alas, that was not what happened. The decision spanned 200 pages, and the doctrinal argument, though repeated several times, only accounted for about three to four of those pages.

Calling All the Statesmen

Far from using the liberal legalist argument, which I am calling the "doctrinal argument", to establish an objective and neutral posture, presaging a different judiciary in a different future *liberal legalist* state, the court framed the doctrinal argument with dicta, and plenty of it, aimed at *re-state(ing)* the broken Mubarak state (i.e., re-establishing the lost authority of the state embodied by its statesmen). In other words, what the court did was not only declare the accused innocent of

charges but also put its argument to use. Specifically, it deployed it *in the service of* the state, or rather, in the service of *re-stating the state*. In the aftermath of a revolution that seems to have rattled the confidence of the *states(men)* in their dominance (evidenced by the very fact of their trial before a civilian court for acts they had long perceived to be *of the state*), the court rushed not so much to characterize their acts (killing demonstrators) as legitimate, but to exonerate them of such acts by transferring criminal liability to *others* (the *Ikhwan*, as rogues and renegades of the state). The state was then re-stated on different terms than before: from impunity to kill (the regime of Mubarak) to the *wrongly* accused (the new regime).

And what is this state that is being re-state(d) according to the court? One begins to glean the nature of this state from a close reading of the Chancellor Rashidi's representation of the parties to the case in the text of his decision.

I will offer a quote from the decision that reveals much about the orientation of the court:

*...as the court proceeds to consider evidence against the accused of the charges of solicitation and assistance [to kill demonstrators], it finds itself obliged to first point out, dismayed as it is by the unprecedented attacks directed at the innocence verdicts given by the grand judicial authorities of criminal courts in this country, and at those heads and officers of the police who have already been tried for the same acts of "solicitation and assistance" during the same period as the one under consideration..... and in an attempt to clarify the truth of the matter and to preserve the collective memory of the Egyptian people of what had in fact transpired during that same period, from the point of view that the homeland is eternal and it is the duty of the judiciary to answer to the call of justice and justice only as the embodiment of the conscience of the people, that rules without "ruling over"...the court would like therefore to write with the ink of justice what has settled in its conscience as to the events that had actually taken place during that same period, as historical record for future generations, and based on information that the court has collected, having listened to the testimonies under oath of those the court considers to be **the sages and guardians of the homeland, whose secrets they carry in their minds and have articulated in their testimonies before the court and they are, Tantawi....Nazeef...Anan...etc....these men have occupied positions of authority and leadership in the state and its various agencies (intelligence, information, security) or presided over executive authority, some of whom still occupy position of power, training future leaders.. elites always known for their truthfulness forcing this court to use their testimonies to decipher the truthfulness of the charges directed at the accused....and the upshot of those testimonies is that there is **an American Israeli*****

international plan to divide the middle East to the smallest number of states so that the Zionist entity remains the most important and most dominant...**through the mobilization of the organization of Al Qaeda and some of those hiding behind the cloak of religion**,the axis of evil consisting of the US, Israel, Iran, Turkey, Qatar proceeded to execute this plan either through waror alternatively through programs on "Democracy and Governance" which they described as the wars of the fourth generation in which they aim to undermine the ruling regimes through religious and sectarian strife....aided by media outlets that kept talking ad nauseam about the discontents of youth (albeit real), ...some foreign NGOs invited some of the youth to train them through workshops on how to protest, demonstrate, go on strikes, how to deal with security men, suggesting to them that that revolution against their rulers is only a question of time, ...giving them money to finance their NGOs even if at the expense of money earmarked for their own government, **and this was what was implemented on the ground by organizations hiding behind the cover of religion.....all** of this coincided with the worsening of the conditions of ordinary Egyptians in all aspects of life, political, economic, social, security wise, not to speak of a frozen regime slow in deciding...few of those chosen Egyptians lost patience and protested on the streets screaming: Life, Liberty and Social Justice.... **So a revolution, by the will of God took place on January 25, 2011 but the leaders of the Ikhwan, whose organization had penetrated state institutions supported by outside forces, moved on three fronts: the first to take over the government with a view to establishing the caliphate; the second to influence the protestors with ideas about Islamic conquest having succeeded in planting their followers, outlaws as well as simple people who have long suffered from the bad treatment of the police, among protestors to spread chaos and upheaval, and third, with the cooperation of some of the Bedouins of Sinai, the Ikhwan received on January 27, 2011 fighters from the Jaysh Al Islam, Izz Eddin Al Qassam, Hizbollah and Hamas ...who snuck into Egypt carrying advanced arms, mines, bombs, and ammunition- some of which had been sent by the Egyptian government to Hamas to assist the Palestinians- and they attacked on January 28, 2011 police stations and public property in various provinces: destroying, burning, stealing...they raided prisons using violence and released a total of 23710 some of whom are known leaders of the Ikhwan, and raided ammunition storehouses-bragging about all this on television channels- killed and injured policemen trying to guard the prison, stole police cars which in the dawn hours of January 29, 2011 were seen driven around in Gaza. Meantime, the militia of Ikhwan dispersed wreaking havoc in the land with the ammunition they had stolen and the weapons they had brought from the outside...exploiting the deterioration of the police force whose sole purpose had become to guard the palace of the**

*president, all of which established the fact that the handling of the protestors was the task of a majority of police officers using water cannons and tear gas following instructions they were given, and a wayward few who shot at protestors using their own discretion and in violation of instructions given by their superiors. **This was exploited by the Ikhwan militias who started shooting sometimes at the police officers other times at the protestors themselves from near distances, from far corners, from roofs of buildings, hitting and killing many in a war of the streets ...seeking to turn it into a civil war, meantime decrying the police and the military claiming falsely they were the ones killing the protestors, and on another front, working to undermine the standing of the judiciary, the Egyptian military, media...but fortunately in a moment of divine design a new spirit was breathed into this people on July 3, 2013,, followed by the police and the military to reclaim their original revolution that had been captured by the Ikhwan presaging the new birth for the modern history of the Egyptian state.***

So what is this state that the court was re-stating in its decision?

First, the men of the state, of security (*amn*) and of the military, who are represented in the case before the court by the defendants and their witnesses . Those men consistently appear in the language of the court to be trustworthy, knowledgeable, and wise, men who always keep the public interest in mind. Those men speak authoritatively on how the events that rattled the state in January 2011 and lead to the death of the demonstrators should be understood. Those men are the designated witnesses to the “state” of affairs whose word on this state is irrefutable (immune from counter evidence); they are the rulers.

Second, the subjects of the state and they are represented by the dead and injured protestors, the victims and their families. “They” appear in the court’s discourse as having a faint grasp of the facts, being driven by a biased and narrow perspective of the events, being prone to believing rumors, basing their testimonies on hearsay, and, worse still, as liars. The families of the injured presented the court, according to Rashidi, with false medical reports about the state of their bodies before they died or were injured falsely suggesting to the court that it was the “bullet” that killed or injured them.¹⁶ In fact, looked at more closely, the court found that there was barely *any* dead or injured to account for: they were either out-of-place (outside the place of the events that were under discussion in the case), or out-of-history (outside the time framework of the events that were under discussion in the case). But perhaps their biggest shortcoming was failure to see that behind their justified protests, lurked a conspiring force in their midst, the *Ikhwan*, who

¹⁶ According to the court, their lies were exposed by the medical reports presented to the court by the state appointed coroner.

fooled and seduced them by pretending to be, like they, protesting the regime of Mubarak in good faith, while what the *Ikhwan* really sought to do was bring down the state. So the “dead” and their families, standing in for the protestors writ large, themselves standing in for the state’s subjects were represented as: ignorant, irrational, and seduce-able. For all of the reasons above, they were the subjects of the state who needed the state and its statesmen to clarify to them the real “state” of affairs. They are the ruled.

Third, the infiltrators seeking to undermine the state and they are represented in the discourse of the court by the *Ikhwan* and their external and internal accomplices (Hamas militias, the U.S., Israel, Turkey, Qatar, Egyptian NGOs financed by outsiders, etc.). The infiltrators, having plotted for years to undermine Egypt, destroy its institutions, and steal its resources, not only succeeded in infiltrating the demonstrations, according to the court, but they also “lit them up with blood” as they had always planned to do.

As the quote above shows, the court wrote a great many words describing the nature of this third party—the glue that binds the statesmen (first party) to the ruled (second party) and makes their relationship as such necessary.

In other words, in the aftermath of a revolution that shook up the statesmen’s faith in their hegemony, a *paranoid nationalist* narrative about a lurking conspiracy in which the outside and the inside had joined forces to overthrow the state of Egypt, was what was needed to *put* the overthrown statesmen back in power over their subjects.

The Varied Treatment of the Witnesses’ Testimony

What distributed the parties to the respective positions of “ruler/statesman” and “ruled/subject” was not just in the words the court used to describe each but it was also through the distribution of tone, affect, and posture of quick-to-believe the former, hard-to-believe-the latter. It was this tone that permeated the court’s text and clued the reader into the hierarchical ordering apace in the court’s thinking.

While an excess of authority was given to the testimonies of those testifying on behalf of the defendants, the testimonies of those testifying on behalf of the victims was met with a cruel dismissiveness, bordering on contempt.¹⁷

First, the testimony of the statesmen was reinforced by introducing the testimony of *their* superiors to indirectly speak to what those men of *amn* had claimed. This occurred, as in the quote above, when the court inserted dicta into the

¹⁷ One suspects of course that the medical reports by the state’s coroner presented to the court may have been falsified or some of the witnesses may have lied or gave partial testimonies. None of that is apparent to the reader of the decision. What is apparent is the different representation of the respective testimonies.

middle of its decision expounding on the conspiracy against Egypt by *Ikhwan* and their accomplices. Amr Solayman, Vice President; Hassan Tantawi, Head of Military Council; Ahmad Mahmood Nazif, Prime Minister; Murad Mowafee, Head of Intelligence; Sami Anan, Chief of the Military, and others,¹⁸ were all quoted to make the point. All of them were *Mubarak's* men whose regime the court decried in its reframing of the events that led to the revolution (see quote above). Yet, Chancellor Rashidi declared that he drew on those statesmen's testimonies to "infer the truth of the charges against the accused". In other words, Rashidi declared that in order for him to decipher the course of events that took place on those days in late January 2011, the "big picture" that framed those events needed to be represented to the decision's audience, and for this picture to be represented, the men of *amn's* superiors have to be consulted for their wisdom and expertise. And what do these superior Statesmen have to say? Because there is a conspiracy against Egypt, the protestors (the victims) have to renew their faith in their statesmen (the defendants).

Second, in considering the case for the victims, the court dropped from its consideration many of the cases of the dead and injured. Here, the court moves quickly and makes short and regimented arguments. No surplus of words; no dicta. It removed five cases from consideration by arguing that those deaths occurred "outside the time frame under consideration in this case". It removed 103 cases from consideration by arguing their death occurred "outside the place frame of the case under consideration". It removed 95 cases from consideration by arguing that, "relatives couldn't specify where bullets came from as they were not present when incident occurred". It kept only 36 cases on its docket for consideration. Then, those 36 cases were duly dismissed because the "place of death was unspecified," the "the instrument of death was unspecified," or there was "no autopsy" conducted on the corpse.

As for the injured all their cases were dismissed because they were "injured by an instrument not known to be used by the police," the "place of injury was unspecified," the "evidence was inconclusive," the "testimony [was] based on hearsay," the "medical report was disavowed by the hospital issuing it," "there were no medical reports offered to the court on the claimed injury," the "injured appeared just fine, no sign of injury," the "injured has original medical impairment which could have caused the injury," reports "claimed beating by police could not have produced injury presented," "he is more likely stabbed by a civilian," or "injury was claimed to have inflicted by snipers and police do not use snipers!"

Just like that. By the time you're done reading this part of the decision, you wonder whether anyone was, in fact, killed or injured those late days of January 2011. And I think that's precisely what Rashidi meant to do. The total dismissal of all the cases, without a single exception, was meant to establish the fact that there was no "result" with which the court has to contend. Even if there were instructions to

shoot, even if policemen, in fact, shot, there were no dead or injured. It was a victimless crime. The fact that anyone died was all rumor, just hearsay. It's what your neighbor told you after he had heard it from his friend who worked as a nurse in the hospital and attended to an injured person who had told him he was shot in the demonstrations.

Case closed.

Conclusion

While Chancellor Rashidi wrote a decision that was reasonably argued on doctrinal grounds, he undermined his case by mistreating the respective testimonies of the witnesses. The radical credulousness he applied to those testifying on behalf of the defendants contrasted with the radical skepticism he applied to the witnesses of the victims, to the point of almost complete erasure of the latter, "undid" much of the posture of objectivity and neutrality he had established in making the doctrinal case.

Moreover, Rashidi inserted several pages of dicta in the middle of the opinion in which he marshaled the testimony of the statesmen of the Mubarak regime to opine on the presence of a conspiracy planned by the *Ikhwan* and others against the state of Egypt. In this dicta, he used the statesmen's testimony as a means of "inferring" what happened "during the time frame of the case under consideration." The stock he put in this testimony showed that Rashidi had something else in mind beyond establishing the rights and the wrongs of the case before him. Through the evocation of the *Ikhwan* conspiracy, Rashidi suggested both that the *Ikhwan* should be considered an "unnamed" third party to the case, as they may very well have been the ones who had shot at the protestors, *and* that the *Ikhwan* existed as a hostile force lurking in the background, unseen by the naïve and innocent protestors, seeking to undermine the state of Egypt. All the more reason, then, for the protestors to reconcile with their statesmen who were not only wrongly accused but whose "statesmanship" was absolutely necessary in the face of this looming threat.

Rashidi had a few good things to say about judges, too.