

PREFIGURING THE REVOLUTION

THE POLITICS OF LAW AND LAWYERING IN EGYPT

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A thesis submitted for the degree of Doctor of Philosophy

Kent Law School, University of Kent, August 2018

89,000 words, 269 pages

ABSTRACT

Egypt's 2011 uprising was notable for two significant, seemingly contradictory features. It was understood by most participants as 'revolution', yet, many of its diverse visions of change and forms of mobilisation were marked by language of law and ideas of legality. This juridified praxis of revolution led many observers to conclude that it was lacking in radical visions and other quintessential revolutionary elements. Against such conclusions which draw on prevalent ideas of revolution to dismiss the Egyptian case out of hand, this thesis seeks to focus further on the Egyptian revolution as an important case study for examining the implications of when law and revolution come together. In a context in which law is envisioned as a means and a domain of revolutionary struggle, the thesis asks, what are the implications of when legal processes and spaces are engaged with and reimagined by participants who act according not to dominant legal culture but their revolutionary visions and utopian sense of possibility.

I take as the starting point of analysis, not the established (Western) concept of revolution often 'applied' when studying new revolutions, but the praxis of revolution in Egypt and its important political history. I do so while emphasising the performative character of revolution as a concept, and what is at stake politically in the different ways it is imagined and enacted. Examining the praxis of revolution in Egypt, it will be suggested that there was a palpable focus on *processes* of collective actions in the *here-and-now*, with an emphasis on *prefiguring* radically different forms of social relations and political culture. Taking this into account, the thesis studies the juridified praxis of revolution on the basis of its broadly shared utopian vision and prefigurative method to argue that this could help better understand the Egyptian revolution and the politics of law therein. In doing so, the thesis focuses on the role of activist lawyers as an important part of the Egyptian revolution and on their struggle against the regime's counter-revolutionary forms of legal intimidation. Examining, through interviews and observations, some of the everyday as well as broader aspects of their work, I will suggest that it can be understood as *prefigurative legal praxis*. Inspired by the visions of the revolution, theirs is a process-oriented form of legal support driven by an emphasis on solidarity and continuity in the here-and-now. At the same time, it is a utopian form of legal practice which, while aware of its grounded experience of the legal system to the contrary, insists on reimagining and acting prefiguratively within legal-institutional processes and spaces as if they were otherwise. Ultimately, the thesis concludes that studying the praxis of activist lawyers and the broader juridification of revolution in Egypt from the perspective of their utopian-prefigurative features could provide a necessary addition to the current scholarship on law and revolution in general and activist lawyers in particular.

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LIST OF ABBREVIATIONS

ANHRI	Arab Network for Human Rights Information	الشبكة العربية لمعلومات حقوق الإنسان
ECESR	Egyptian Centre for Economic & Social Rights	المركز المصري للحقوق الاقتصادية والاجتماعية
EIPR	Egyptian Initiative for Personal Rights	المبادرة المصرية للحقوق الشخصية
EOHR	Egyptian Organisation for Human Rights	المنظمة المصرية لحقوق الإنسان
FJP	Freedom and Justice Party	حزب الحرية والعدالة
HMLC	Hisham Mubarak Law Centre	مركز هشام مبارك للقانون
NCRVT	Nadeem Centre for Rehabilitation of Victims of Violence & Torture	مركز النديم لتأهيل ضحايا العنف والتعذيب
NDP	National Democratic Party of Egypt	الحزب الوطني الديمقراطي
SC	State Council of Egypt	مجلس الدولة
SAC	Supreme Administrative Court of Egypt	المحكمة الادارية العليا
SCAF	Supreme Council of the Armed Forces	المجلس الأعلى للقوات المسلحة
SCC	Supreme Constitutional Court of Egypt	المحكمة الدستورية العليا
SCLR	Supreme Committee for Legislative Reform	اللجنة العليا للإصلاح التشريعي
SJC	Supreme Judicial Committee of Egypt	مجلس القضاء الأعلى

ACKNOWLEDGMENTS

In the process of researching and writing this PhD thesis I benefitted from the help and support of numerous people. First and foremost, I would like to thank Davina Cooper who acted as my main supervisor for this project, and Kate Bedford who supported me as my second supervisor. Approaching the end of this journey, I now realise more than ever how tremendously lucky I have been to have the privilege of working with these two exceptional, generous, inspiring, and supportive scholars. I am truly grateful for their intellectual generosity, invaluable guidance, and insightful feedback throughout the course of this project.

I would also like to extend my sincere gratitude to academic colleagues and administrative staff at Kent Law School who inspired and supported me at different points during this project. I am particularly grateful to Donatella Allesandrini (who joined the supervisory team during my writing-up stage, and provided valuable guidance during that challenging period), Thanos Zartaloudis, Maria Drakopoulou, Toni Williams, Didi Herman, Lucy Welsh, Serena Natile, Lynn Osborne, Iain MacKenzie (School of Politics), and Vinita Joseph (School of English). I am also grateful to the University of Kent for a generous PhD scholarship.

Furthermore, I am deeply indebted to those lawyers and activists in Egypt who, despite their many daily challenges and responsibilities during a difficult time, agreed kindly to share with me their views, experiences, memories, problems, and aspirations. Their real names are not mentioned in the thesis, but their influence remains the real force behind any good bit the thesis may have been able to offer. I am also grateful to several friends who provided precious support and intellectual stimulation during the course of my fieldworks in Cairo in 2014 and 2015, including Jihad S. for help with interpreting interviews, Amr Shalakany, Mario Cortese, Nesreen Hussein, Mohamed N., Tarek, Hassan, and Mustafa. *Shukran Gazeelan!*

Very special thanks go to several friends who encouraged, motivated, and supported me, each in their own way, throughout this project, including Mehran Moazen, Bardia Hariri, Elmira Esmaili, Sara Seifan, Jayne Cohen, and Brian Cox.

And finally, when all is said and done, I would like to dedicate this thesis to my younger brother, Ali. This project would not have been realised, had it not been for his ever-joyful presence and unceasing love.

PREFACE

Soon after the day in December 2010 when a distressed Tunisian street vendor, Mohamed Bouazizi, immolated himself in front of his local municipality office, a wave of uprising engulfed his country, and before long set the whole region aflame. A flame of indignation sparked by decades of systematic oppression, violence, and corruption had brought many people to streets and squares, united by their chant *al-shab yurid isqat al-nidam*, the people demand the overthrow of the regime.

In Egypt,¹ calls were made, mainly by activist youth groups such as the April 6 Youth Movement, Kefaya, and We Are All Khaled Said to protest on 25 January 2011, now dubbed the 'Day of Anger'. Egypt had been under state of emergency² for decades and Mubarak had ruled for 30 years. Many of those who planned or took part in the protests had seen no other political system or ruler. Nevertheless, on the 25th of January, to the surprise of the organisers and protesters themselves, thousands came out in defiance of the Emergency Law and security warnings, to protest in Cairo and other cities. Nehal, a socialist activist in her university years and now a young lawyer, joined the demonstrations in Tahrir square, just as she had taken part in many demonstrations in

¹ Unless stated otherwise, material used in the Preface is based on my interviews in Cairo in 2014 and 2015. As with the rest of the thesis, names have been changed to protect the identity of the respondents (see Appendix 1).

² Law no. 162 of year 1958 (the Emergency Law) provided for the suspension of many basic rights and freedoms while granting extended powers to the police, security forces, and emergency courts (see further Singerman, 2002).

previous years. In the past, there would normally be a few hundred protestors at most, she explained, surrounded by twice as many policemen and security personnel. They would be allowed to chant for a little while and then would be dispersed, if not arrested. But, 25 January 2011 was really different, she noted, “I was standing in the middle of the square and people were arriving in their thousands. Like everyone else, I couldn’t believe it. Something had changed.”

During the following days, demonstrations and occupations in Cairo and across Egypt continued to expand in size and strength. Despite the extraordinary level of violence unleashed against protestors by the police and security forces (Stacher, 2013), and later deployment of the army and imposition of curfew, Egyptians from all walks of life began to align themselves with what was now popularly referred to as ‘*thawra*’, revolution. Workers went on strike, as many government employees and professional unions and syndicates were organising sit-ins. In Cairo, students, doctors, university staff and faculty, and even dozens of lawyers and judges dressed in their gowns were marching to Tahrir square. Soon, thousands were permanently occupying the square, now referred to as ‘liberated’ space. As the revolution continued to gain momentum, people’s demands too grew in scope and range. By the second week into the revolution, some of the main demands of the people which had been written on several large banners overlooking Tahrir square included:

Mubarak to be deposed, immediate end to the state of emergency, a constituent assembly and a new constitution, a transitional government independent from the ruling party, dissolution of the illegitimate houses of Parliament, immediate prosecution of those responsible for killing the martyrs, immediate prosecution of those who robbed the nation’s wealth.³

For thousands joining the revolution, like Sameh and Nehal, their legal demands were essential to their idea of revolution. They were however not their sole focus. Equally indispensable to their idea of revolution was their collective act of occupation itself and the contents of their everyday mutual conversations, actions, and organisations. It had been the first time for many of them to get together with thousands of others and collectively do something meaningful, noted Lena, a political activist in her 20s who was first politicised during the revolution. “Egyptians had always been kept divided, be it for football teams, or for religion or gender”, Lina added, “but now it was like people were

³ See photos of Tahrir Square during February 2011 taken by activist Mona Seif, available from <https://www.flickr.com/photos/89031137@N00/albums/72157625987327382> (last accessed 17 February 2017).

discovering themselves, leaving behind old habits, helping each other to hang on to the fight.” By the 11th of February, Sameh, a Christian activist and blogger, and his Muslim comrades had been in occupation for eighteen days.⁴ Tahrir was filled with women and men, the elderly and the youth, Christians and Muslims who along with millions of other demonstrators in Alexandria, Suez, Port Said, Mahalla, and elsewhere were demanding the immediate departure of Mubarak. As the clock ticked past 6pm, a visibly shaken Omar Suleiman, Mubarak’s vice-president, appeared on TV to read a statement.

Fellow citizens! In the difficult circumstances our country is experiencing President Mubarak has decided to give up the office of the president of the republic and instructed the Supreme Council of the Armed Forces to manage the affairs of the country.⁵

The squares and streets across Egypt exploded in jubilation. Breaking down in tears of joy and pride in Tahrir, Sameh was speechless, for he could not have imagined even a month earlier that his country would be liberated from Mubarak dictatorship so soon. Such was the sentiment shared by many around him, as before long the entire square was chanting in unison, “hold your head high, you are an Egyptian”. Amid waving flags, there seemed to flow a genuine sense of empowerment and historical responsibility. “On that miraculous evening”, Sameh would recall later, “it felt as if anything was possible, if we stuck together.”

In following months, it seemed that the success of the revolution in removing Mubarak, and the new experiences it had helped create, profoundly shifted and reinvigorated the dynamics of politics in Egypt. Student unions’ and professional syndicates’ elections witnessed unprecedented levels of mobilisation and participation, while several political parties were affected by their grassroots activists’ mobilisation to demand more transparency and democracy in their organisation (Bayat, 2017, Ch. 9; Amar, 2011). The same vigour seemed to have permeated the labour movement as hundreds of new independent trade unions were formed, leading to an unprecedented level of workers’ collective action not seen since the anti-colonial movement of the 1940s (Alexander, 2012; Beinin, 2013). People began, many for the first time, to collectively imagine long-forgotten dreams for their country, convinced that they were possible. Overall, the hopeful feeling that a student activist described seemed to ring true for many Egyptians: “[people] might be angry or afraid sometimes, but they are not pessimistic. They own their country now” (Amar, 2011).

⁴ For two excellent first-hand memoirs of those eighteen days see Prince (2014) and Soueif (2012).

⁵ *The Guardian*, 11 February 2011.

Despite the immense, diverse wave of popular mobilisation and the invigorated sense of optimism across the country since the overthrow of Mubarak, the years that followed were marked by increasing counter-revolutionary oppression and violence, social division, and economic hardship. None of those who succeeded Mubarak seemed to be committed to the demands of the revolution that had brought them to power. The first ‘interim’ rulers, Supreme Council of the Armed Forces (SCAF), ruled with an iron fist until mid-2012 and did not agree to parliamentary and presidential elections until after waves of protest across the country. Neither did the succeeding, democratically elected, rulers seem to be committed to the people’s revolution. The new president (Mohamed Morsi), the new Parliament, and the Constituent Assembly all were dominated by Muslim Brotherhood who, many people felt, were more concerned with consolidating their own power and interests than the revolution. After a year under Morsi’s increasingly incompetent and autocratic regime, by late June 2013, millions of dissatisfied Egyptians were back in the streets chanting once again *al-shab yuriud isqat al-nidam*.

The Military intervened and forcefully removed and detained the president, dissolved the Parliament, and suspended the Constitution. After another year of military rule, a new Constitution was drafted and by June 2014, the former head of SCAF, General Abdel Fattah Al-Sisi, was elected president. Leading a hyper-nationalistic campaign, and with the backing of the main body of the Judiciary and the military, Al-Sisi embarked on an even more aggressive counter-revolutionary path. Thousands of protestors, activists, students, workers, journalists, professionals and others continued to be subjected to criminal prosecution, military trials, forced disappearances, or prolonged detention without charge for crimes including breaking the Protest Law, inciting violence, insulting the president, and violating national security (Amnesty International, 2015). By summer 2014 a general sense of frustration, despair, and hopelessness seemed to have befallen many of those who had participated in the revolution. This hopelessness was perhaps made more exasperating by people’s nostalgic memories of 2011. Yet, those same memories and experiences were what other revolutionaries were still drawing on in their defiance of hopelessness and their struggle for a better future.

And, in the midst of this battle between hope and despair, I arrived in Cairo.

CHAPTER 1

INTRODUCTION

*To be truly radical is to make hope possible,
rather than despair convincing.*
Raymond Williams (1989)

It is the 28th of August 2014. Under Cairo's blazing sun, I am standing in front of Salah al-Din mosque, a mile away from Tahrir Square the birth place of the '25 January' revolution that three and a half years earlier ended Hosni Mubarak's rule. Under way is the funeral of Ahmed Seif al-Islam, a veteran lawyer who died yesterday due to heart complications. Hundreds of relatives, friends, colleagues, and activists are present, as are plainclothes state security personnel who are here to ensure that the funeral does not turn into a political demonstration. Also allowed to attend are Seif's younger daughter and son, Sana and Alaa, both well-known revolutionaries who were recently imprisoned for violating the new Protest Law by 'protesting without permission'. Seif's lifeless body is carried inside the mosque amidst banners which remember him as "the lawyer of the revolution",¹ "the exemplary fighter", and "the defender of the poor and the workers".² "This is the funeral of the revolution too", whispers melancholically an activist (Lina) standing next to me, "everything's back to the way they were before the revolution, as if

¹ 'محامي الثورة' – the Arabic term for 'lawyer' (male), *al-muhami*, also signifies 'the one who defends'.

² 'محامي الفقراء والعمال'; 'مات المناضل المثال'.

nothing has happened”. Her words seem to be symptomatic of a wider sense of despair and frustration shared by many Egyptians these days (see further Matthies-Boon, 2017, 2014; Winegar, 2013), as another mourner would later sum up the funeral as “a valediction not just to a person but to a history of dreams.” (Long, 2015). Similar sentiments were expressed a few months earlier as another lawyer and a member of the Revolutionary Socialist party, Mahienour El-Masry, was put on trial for her part in an ‘illegal protest’ outside Alexandria Criminal Court. The protest had coincided with the trial of police officers charged with murdering Khaled Said, whose murder in 2010 and the justice campaign around it by Mahienour and other lawyers and activists, had been one of the precursors of the revolution. Mahienour, the lawyer who had been described by an activist as “the embodiment of the struggle and the signpost of a better future” (Ali, 2014), was sentenced to two years in prison.



I. JUSTIFICATIONS AND OBJECTIVES

It was one of the unusual, perhaps paradoxical, features of Egypt’s ‘25 January’ revolution that some *lawyers* such as Mahienour El-Masry and Ahmed Seif were seen by revolutionaries as one of them, and celebrated not as leaders (as in the 1919 revolution³), but, as noted above, as defenders or embodiments of the revolution and its dreams. One way to grasp this unfamiliar reality, and its broader meanings and implications for that revolution, is to understand the role of legal language and ideas in the popular visions and praxis of change and ‘revolution’ in Egypt especially since 2011, and to reflect on the significance of the work of activist lawyers⁴ as part of it. Indeed, the impetus for this project came from my dissatisfaction with the prevalent ways in which that revolution and the roles of law and lawyers therein continue to be approached and (mis)understood by much of the otherwise sprawling scholarship on the Egyptian revolution.

This failure, I argue in this thesis, is due at least to three interrelated problems. The first consists in the shortcomings of prevalent conceptual approaches – particularly in the scholarship on law and revolution – to the study of new revolutions which have

³ Lawyers were in the vanguard of the nationalist movement which led to the 1919 revolution in Egypt (Ziadeh, 1968). See further Chapter 3 below.

⁴ On my use of the term ‘activist lawyers’ throughout this thesis, instead of other more common terms such as ‘human rights lawyers’ or ‘cause lawyers’ see Chapter 6, part II below.

contributed to the second problem, the unsatisfactory understandings of the Egyptian revolution and the otherwise intrinsic, rather than incidental, role of law in it. This has consequently been conducive to the third problem, the inadequate scholarly attention given to the otherwise important praxis of activist lawyers as part of, and in support of, the revolution. Consequently, along with its in-depth study of the work of activist lawyers, the thesis also aims to use this important case study to revisit and improve upon the conceptual approaches I critique as the first problem, thus my modest contribution to the scholarship on law and revolution.

The first problem has been manifested in the conspicuous terminological-conceptual split between the views of many Egyptians themselves, who understood their uprising predominantly as ‘revolution’⁵ (Prince, 2014), and scholars (e.g. Achcar, 2013, 2016) who have often rejected the plausibility of such understanding (see Chapter 4). The latter group’s ideas of what a revolution ought to involve (see Chapter 2) seem to have hardly concerned themselves, or been satisfied, with those of the former (see Chapter 4), hence their all too familiar verdicts of ‘failure’ (Lust et al, 2016) and ‘dead revolution’ (Lee, 2014). Ultimately this scholarship – including legal theories of revolution – has told us more about prevalent (Western) conceptions of revolution than it has about the revolution in Egypt, and its particular trajectory and praxis. Of little concern, it seems, were the grounded knowledge, experiences, and visions underlying the ways Egyptians understood and performed their revolution, the historical and political backdrop against which they chose to name their uprising a revolution, and their aims in doing so. This is especially unfortunate for the idea of revolution and what it means has been a contested issue in Egypt since 2011 (Cambanis, 2015, 230).

The second problem relates to the unfamiliar praxis of the Egyptian revolution which seemed to be marked by a strong language of legality in its collective mobilisation, performances, goals, and demands. A considerable part of this “legal revolution” (Francis, 2011) during early 2011 and beyond were driven by ideas of legality, constitutionalism, and legal rights which seemed to provide a shared, unifying language and rallying point for the revolutionary grassroots (see Chapters 4 & 5). Moreover, with the removal of Mubarak and the intensification of the revolution, the political domain was soon marked by continuous conflicts over new constitutions and constitutional amendments and declarations, legislative provisions, referenda and elections, while the legality of many of these and other major processes were continuously challenged by different political actors in administrative and constitutional courts. The struggles both

⁵ *Thawra* [ثورة] in Arabic.

for and against revolution seemed to be marked by “legalization of political battles” (Abu Odeh, 2013) as political contestants were regularly speaking in a legal language and invoking legal arguments (Brown, 2012). The revolutionary struggle was equally marked by popular mobilisations for and the resulting criminal trials of numerous figures of the old regime. Meanwhile it was affected by the arrests and prosecution of thousands of protestors, activists, workers, students, NGOs, and others for crimes related to the ongoing revolution⁶ (see Chapter 5). Legal discourses and methods thus continued to extend in prominence, bringing legal actors such as judges, prosecutors, and lawyers to the centre of the ongoing revolutionary struggle (El-Ghobashy, 2016). And yet, this crucial, multi-faceted role of law continues to be, as Sultany (2017) noted recently, one of the most understudied aspects of the Egyptian revolution.

These developments contributed to what I hereafter refer to as the *juridification of revolution*; a term which broadly denotes, as discussed below, the contested processes whereby the revolution – its visions, praxis, conflicts, goals and demands – was increasingly framed by both revolutionary and counter-revolutionary forces, in and through legal terms, logics, and methods (as seen for instance in the extensive petitioning of the courts by revolutionary groups to pursue their goals, discussed in Chapter 5). Faced with this unfamiliar, juridified praxis of revolt, many commentators seem to see it as yet another reason for declaring the uprising a failed revolution (see Chapter 3). Understanding revolution as signifying a desire for modernisation and (Western) democracy (Khosrokhavar, 2012), some deemed formal rule of law, protection of property, and legal certainty as the ultimate horizon of possible change (de Soto, 2011), which they saw as nonetheless failing to materialise in Egypt. Others, in contrast, often underplayed the uprising’s juridified characteristics and demands as indicating a lack of radical visions, co-opted by liberal discourses of legality, thus signifying “a revolution without revolutionary ideas” (Bayat, 2017). Both groups have thus been dismissive of the role of law in the praxis of revolution in Egypt. Beyond such normative comments on the role of law in revolution, once again, there seemed to be little attempt at understanding the grounded experiences and visions of the participants themselves and the meanings and roles they attached to law in their revolutionary praxis.

A consequence of these two problems, the third is rooted in the role of activist lawyers. The legal characteristics of the revolution and the significance of law in post-Mubarak Egypt inevitably brought legal actors and institutions to the centre of the revolutionary

⁶ By April 2011, over 5000 civilians had been reportedly referred to the military courts alone (Human Rights Watch, 2011b). In the following years thousands were detained or charged with illegal protest, inciting violence, or violating national security (Amnesty International, 2015) (See further Chapter 5).

struggle, affording them new powers to affect the direction of change in the country. From the outset, many activist lawyers had become actively involved in various forms of grassroots struggle especially those which concerned the courts (see Chapters 6 & 7). Many lawyers were working to support the increasing number of revolutionaries (including workers, students, women's movements activists, human rights advocates) who had been subjected to detentions, prosecution, and generally legal intimidation by the post-Mubarak regimes, especially since 2014. Their criminal defence work encompassed a range of activities including defending gay men accused of 'corrupting the nation's morality' and tortured, workers prosecuted for going on strike, students charged with promoting atheism in campuses, Brotherhood members arrested and tortured for belonging to an 'unlawful terrorist organisation', and representing female activists subjected to virginity tests by the military. Meanwhile they were representing different groups (including those injured or tortured during the revolution, or the families of the 'martyrs') in their legal claims and charges against figures of the old and new regimes, police, state security etc., while petitioning the higher administrative and constitutional courts to challenge the new regime's counter-revolutionary policies such as criminalisation of workers' strikes by the SCAF⁷ (see Chapters 6 & 7).

Along with street protests, occupations, strikes and sit-ins, those legal claims seemed to form a significant part of the popular mobilisation for the goals and demands of the revolution. And they would perhaps not materialise in the way they did were it not, at least to some extent, for the work performed by many activist lawyers as legal experts committed to the revolution. Egyptian revolutionaries had embraced a considerably juridified vision of revolution and change, and activist lawyers were soon an integral part of it. Lawyers like Seif and El-Masry (mentioned above) were thus in a remarkable position at the intersection of revolution and law, for many continued to work as lawyers in the domain of law while committed to the revolution through seeking to preserve its gains, push for its demands, and protect its protagonists under escalating state repression – hence their particular importance in the current situation compared to 2011.

However, this evident role of activist lawyers in the revolution (hence their popularity with many revolutionaries, noted above), has not been reflected satisfactorily, if at all, in the scholarship about the Egyptian revolution. In fact, scholarship with a particular focus on lawyers in contemporary Egypt is noticeably limited (Shalakany, 2013, 2006, 2001; Agrama, 2012, Ch. 6; Al-Tawil, 2007; Reid, 1981; Ziadeh, 1968; Al-Sayyid, 1988; also,

⁷ The Supreme Council of the Armed Forces (SCAF) assumed power as 'interim' rulers immediately after the overthrow of president Mubarak, following 18 days of protests and occupations. On the role of the military in Egypt since 2011, see further Kandil (2014, 221-263).

Colla, 2005). In spite of some recent, albeit limited, attention to the work of Egyptian activist lawyers (Adly, 2017; Afify, 2015; Shams El-Din, 2015) or more generally human rights NGOs⁸ (Abdelrahman, 2007, 2004b), the legal practices of those activist lawyers continue to remain decidedly understudied in relation to the Egyptian revolution, and markedly absent from the scholarship on juridification of politics and legal activism.

The aim of this PhD project is, therefore, to engage with and address the above interrelated gaps as to the inadequate analytic attention to both the juridification of revolution and the praxis of activist lawyers in Egypt. Juridification of politics is not new in Egypt, as it played a crucial role in ruling elite's new forms of social control during the recent decades as well as in the political struggles against them (see Chapter 3). However, I am studying it in a new context of the revolution. Going beyond those normative approaches to revolution noted above, my objective in this project is instead to know more about the meanings Egyptian revolutionaries and their fellow lawyers attached to their praxis of revolution, its underlying visions of change, and its markedly juridical character. I aim to examine, furthermore, how they had come to take up such juridified visions of revolution and change, and the ways in which those visions may have played out in their revolutionary praxis since 2011 vis-à-vis the equally juridified efforts of the regime to contain the revolution.

Therefore, my basic aim is to reflect on the dynamics and significance of *revolutionary* juridification in Egypt, and its broader implications for scholarship on juridification and legal activism. I focus especially on examining the ways in which legal discourses, tools, and processes may have been taken up by the revolutionaries in other, new ways based on and driven by revolutionary ideals and desires. From this vantage point, the praxis of activist lawyers in particular offers an interesting, if unusual, case for studying the conflicts, dynamics, and potentials of radical legal praxis in an ongoing revolutionary struggle within an authoritarian situation, and more broadly, the relation between revolution and law in such contexts. This project is thus an exercise in reflecting on the kind of revolution and law – and the political projects – lawyers' (and the broader revolutionary) praxis have presupposed, helped construct and maintained, or challenged. Doing so could further help provide new insights and valuable additions to our current, otherwise limited understanding of the processes of (revolutionary) legal activism in Egypt, and other revolutionary and/or authoritarian contexts.

⁸ Although the work of human rights NGOs and activist lawyers in Egypt overlap considerably, as I explain in Chapter 6 (part II), they are not the same, and therefore a more fruitful understanding of the latter requires them to be studied as a separate group while remaining attentive to many practices they share with the former.

II. JURIDIFICATION

The existing scholarship on juridification, as discussed in this section, offers a useful framework broad enough to help me engage simultaneously with different aspects of the contested relation between law and revolution in Egypt, namely the popular juridification of revolution, the counter-revolutionary forms of juridification, and the praxis of activist lawyers. I will nevertheless suggest in this section that, based on the findings of my field research, some of the common features of this scholarship may not be able adequately to reflect the complexities of processes of juridification in Egypt. Therefore, I will suggest some adjustments and additions to be adopted in the study of Egypt, and as a way of contributing to the existing scholarship on juridification.

Broadly speaking, juridification of politics refers to the processes by which political and social relations, conflicts, or problems are increasingly framed in legal terms (Blichner & Molander, 2008). A concept mainly developed in relation to the context of the 'global north', juridification has been primarily described as a growth phenomenon i.e. that which increases over time (Teubner, 1998, 392; Blichner & Molander, 2008). It is often defined in negative terms (Sieder, 2010, 161; Teubner, 1998), for instance when it is referred to as "the colonization of the life-world by law" (Habermas, 1987), as "legal pollution" (Ehrlich, 1976), or as driven by "the fetishism of the law" (Comaroff & Comaroff, 2006, 25).

The scholarly literature on juridification of politics, however, seems to have stretched to cover a range of different processes with varying forms, functions, and purposes. As a form of juridification, *legal proliferation* concerns the expansion of law and regulations into new realms and activities (Blichner & Molander, 2008), and has also been described as the "proliferation of formal, or positive, written law" (Habermas, 1987, 359), "introduction of regulatory law by an interventionist state" (Teubner, 1998), or the legal regulation of new areas (Magnussen & Banasiak, 2013). As another form of juridification, *constitutionalisation* can be understood as the increasing framing of social or political conflicts and issues as constitutional crises or questions. It is often driven by "the enchanted faith in constitutions" (Comaroff & Comaroff, 2006, 25) so that the promulgation or amendment of a constitution is portrayed and perceived, symbolically and substantively, as what it means to significantly reform a polity, or as a 'new beginning' and a radical break with the past (Ackerman, 1996, 5). While postulating the constitution as the primary norm for the political-legal system and legal cultures, this form of juridification may at the same time depict the constitution as the basic normative source for national identity and political subjectivity (Rosenfeld, 2010 & 1994). Such might especially be the case in post-independence, transitional, or revolutionary contexts when

questions of (new) national identity and legitimacy are contested (Arjomand, 2007; Arato, 2007; Brown, 2007).

As another form of juridification, *judicialisation* of politics signifies “the ever-accelerating reliance on courts and judicial means” (Hirschl, 2006, 721) whereby social and political problems and conflicts are increasingly framed as legal claims to be resolved by, or with reference to, law (Magnussen & Banasiak, 2013; Blichner & Molander, 2008). Judicialisation may result when for different reasons political elites or activists turn to courts to achieve their respective political objectives. For example, it may include, on the one hand, attempts by governments to increase their control over the population (e.g. through criminalisation of particular forms of dissent), and on the other hand, legal mobilisation by civil society organisations or social movements (often supported by activist lawyers) to challenge or compel governments in relation to particular policies or actions. Judicialisation may therefore result in the expansion of judicial power (Tate & Vallinder, 1995; Vallinder, 1994), while spreading judicial ways of thinking and decision-making into new social fields (Magnussen & Banasiak, 2013). The expansion of judicial power could also be the result of lack of transparency in laws, or as in the case of Egypt, the existence of oppressive laws *vis-à-vis* a relatively fair constitution, which may help increase the power of constitutional courts through, for example, declarations of unconstitutionality.

These different processes of juridification may contribute to the abstract capturing of social and political relations by discourses of law (Dressel, 2012, 3) whereby people increasingly think of themselves and others as mainly legal subjects or draw on legally-framed discourses and categories, and consequently to the increased salience of legal norms in people’s understanding of their political subjectivity. This may materialise for instance, as Blichner & Molander (2008) note, when the acceptance of legal duties replace other allegiances and loyalties, when individuals increasingly understand themselves as right-bearers entitled to do what is not legally forbidden and entrust the protection of such rights and freedoms to the legal system, when individual and social wellbeing is increasingly thought of in terms of legal provisions, and not for example in terms of political decision-making, or when democratic participation is increasingly thought of in legal terms. This may contribute to the proliferation of legal activism (i.e. formulating social and political claims and interests as legal claims) as the language of law takes up a greater place in bottom-up forms of political mobilisation (Merry, 2010) driven by rights-based claims, or popular mobilisations for constitutional changes etc.

Nevertheless, and despite a wealth of theoretical insights, scholarship on juridification seems to have been marked by a general lack of clarity. It seems to have stretched to cover

a range of different processes (Dressel, 2012; Teubner, 1998) to the extent that literature on juridification is to a considerable extent characterised by ambiguities about what it means (Blichner & Molander, 2008), what is driving it and what its effects are (Dressel, 2012). This general lack of clarity is also partly rooted, in the weakness of empirical knowledge about the actual dynamics and implications of juridification in specific contexts (Magnussen & Banasiak, 2013). It is an analytic gap which is deepened further due to the attention of much of this literature on Western societies, with considerably less written on non-Western, transitional, or autocratic contexts (Huneeus et al, 2010; Sieder, 2010; Dressel, 2012). In fact, some scholars (Tate, 1994, 188) consider societies without concrete democratic and constitutional systems as beyond the analytic domain of juridification. This view is often due to the longstanding presumption, as Moustafa & Ginsburg (2008) criticise, that law and the legal systems in such contexts serve as mere pawns of their rulers and lack any independent influence in political life.

While acknowledging the ‘fragility’ of legal systems in autocratic contexts (Shapiro, 2008), however, in recent years there have been efforts to address this analytic gap through studying juridification of politics in non-Western contexts especially Latin America and East Asia (Dressel, 2012; Harding & Nicholson, 2010; Ginsburg & Chen, 2009; Couso et al, 2010; Sieder et al, 2005; Ginsburg & Moustafa, 2008). Despite these efforts, literature on juridification of politics continues to suffer from limited empirical knowledge in relation to authoritarian contexts such as Egypt, and one objective of this thesis is precisely to help fill this empirical gap.

Besides this general lack of conceptual and empirical clarity, there seems to have been a normative tendency in much of this scholarship, as McCann (2006) notes, to approach bottom-up forms of juridification (e.g. legal activism) as either subversive or co-opted by the state. It is often contended, especially by critical scholars, that juridification of political struggle leads to negative, limiting effects. In one such debate in the nineteenth century in Weimar Republic, the term *Verrechtlichung* (juridification) was used polemically by Kirchheimer to criticise the legalisation of labour relations, which he believed had neutralised genuine political conflicts by limiting unions' possibilities of militant action (Teubner, 1998; also see Engels & Kautsky, 1977; Loick, 2014). For Brown (2000) juridification of feminist political struggle limits and domesticates it and pre-empts the possibility of more fundamental change,⁹ while for Habermas (1987), juridification is

⁹ For general context regarding the debates on the role of law in, and its effects on feminist struggle see for instance J. Conaghan, ‘Reassessing the Feminist Theoretical Project in Law’ (2000) *Law and Society* 27 (3): 351-85; and the collection of articles in ‘Special Issue: Feminist Legal Theory’ (2016) *Studies in Law, Politics and Society* (69), edited by A. Sarat.

politically incapacitating due to its paternalistic protection as it undermines the power of those disadvantaged subjects it is seeking to protect.

Approached from this perspective, for instance, the work of activist lawyers may be portrayed and studied on the basis of their ‘transgressive’ actions (Scheingold & Bloom, 1998) against the state and in support of social movements (Sarat & Scheingold, 2006, 2004, 1998), while others may criticise them as counterproductive for social movements or pacifying more radical forms of politics. Abu Odeh (2013), for example, portrays legal and rights activism in Egypt as a de-politicised response to authoritarianism, co-opted by state’s “macro-political trade-off strategy” of allowing increased judicialisation but at the expense of political mobilisation.

My focus here is, however, not aimed at engaging in such normative debates on emancipatory or co-opting effects of bottom-up juridification on revolution in Egypt. Thinking in those binary frameworks, often based on a normative understanding of revolution and resistance, may overlook significant domains of political action and agency and their complexities and contingencies. This critique has been aptly made by Abu-Lughod (1990) and Mahmood (2005), in their studies of bedouin women and women’s piety movements in Egypt respectively. Abu-Lughod (1990) criticises those too preoccupied with “explaining resistance and finding resisters” at the expense of understanding the workings of power, thus concluding that we respect resistance more by letting the practices of resisters teach us about complex workings of structures of power. Mahmood (2005) is similarly critical of the tendency to conceptualise agency based on binary model of subordination and subversion, which may elide other dimensions of human action which do not map onto this binary logic. Mahmood questions whether it is even possible to identify a universal category of acts – such as resistance – outside of the ethical and political conditions within which such acts acquire their particular meaning and significance.

Instead, we can use the popular bottom-up forms of juridification and the praxis of activist lawyers in order to understand the dynamics of the workings of power within Egypt’s juridified political context, and the potentials and/or limits of different forms of juridification to address those dynamics. Therefore, the question for this project is not whether those practices by participants and lawyers were revolutionary enough or co-opted by counter-revolutionary forms of juridification. The goal is instead to understand and examine how their particular forms of praxis played out within the context of post-Mubarak Egypt, and what kinds of potentials, possibilities, or limits they may point to, help create, or maintain.

Moreover, the normative framework underpinning many studies of juridification has often been used in conjunction with analytical perspectives which are to a large extent formal-institutional. Those different forms of juridification noted above have often been studied from a perspective in which their (legal) *outcome* is deemed analytically as their most important, decisive part; which is examined and evaluated to the extent that it can contribute to concrete *institutional* changes. In other words, insofar as the study of legal activism is concerned, formal institutional reform is often deemed as the main form and domain of desirable and meaningful social and political change. When it comes to the role of law in politics in Egypt, many studies have thus been framed in such a way as to take macro institutional change as the main objective of legal mobilisation (Moustafa, 2007; Brown, 2008; Hamad, 2008; Rosberg, 1995), while understanding legal mobilisation as activities which seek to bring about such objectives through campaigns for legislative, constitutional reform or through strategic use of litigation (Moustafa, 2007). Thus, from this perspective, the main issue at stake, for instance, in studying the work of activist lawyers has been how convincing and innovative their legal arguments are (Woods & Barclay, 2008; Conley & O'Barr, 2005) in the service of concrete legal-institutional reform.

Despite their importance, an analytic framework which is solely focused on the legal-institutional outcomes of bottom-up forms of juridification may provide a rather incomplete and imprecise picture. Lang Jr (2013), for instance, makes the same argument in relation to mobilisations for constitutional change by Egyptian women's rights activist groups during 2012. Analysing and evaluating those widespread mobilisations on the basis solely of concrete constitutional outcomes they may or may not have been able to achieve, he argues, could distort and underplay unprecedented, complex, and analytically significant processes involved in collectively organising and mobilising for such campaigns. That is, processes that may inevitably result in an imperfect political order but are nonetheless significant instances of collective political action in their own right. Furthermore, as Cavatorta (2012, 78) argues in relation to Egypt, focussing on formal structures might fail to capture the complexity of how society 'expresses' itself, since engagement with social and political issues does not only occur through formal structures and individuals may often mobilise their informal social networks to pursue forms of change. Especially in non-democratic contexts in which people may have limited means or opportunities of accessing formal institutions, the informal and the everyday may become, as Bayat (2013b) shows in relation to Egypt, equally significant domains for affecting social change.

Moreover, throughout my empirical fieldwork in Egypt (see Methodology below), it became apparent that the aforementioned prevalent frameworks in the study of juridification and legal activism, often normative and characterised by legal formalism and outcome-dependency, were not entirely adequate to make sense of the specific forms of juridification or the praxis of activist lawyers there. As discussed in Chapters 6 and 7, many lawyers I interviewed seemed to espouse a perception of legal praxis much broader than the formal-institutional and outcome-oriented frameworks used in many studies of juridification. Rather, an integral part of what they seemed to understand as legal praxis consisted of what might be defined as *supra-legal* and *process-oriented*. For instance, in relation to a significant number of court cases that they were representing, many lawyers seemed to devote significant effort and consideration to not only concrete legal outcomes of such cases but also different aspects of their processes in the here-and-now (see Chapters 6 & 7). And yet, these are precisely the kinds of activities, processes, and concerns which, at times, remain absent from studies of juridification.

Indeed, as I suggest in Chapter 4, a significant part of the praxis of revolution in Egypt, especially during early 2011, was marked by a strong focus on the processes involved in collective actions to perform a different politics and live those desired changes prefiguratively in the here-and-now. Perhaps all popular (revolutionary) struggles, regardless of their participants' specific ideals, involve some form of desire for another, better world; a desire which, as discussed below, is arguably the constant element in all forms of *utopianism* (Levitas, 2013, 2011). In the Egyptian revolution a considerable part of this utopian desire was manifested through collective, public performance of change which were markedly prefigurative (van de Sande, 2013; Bamyeh, 2013a, 2012).

The analytic implication of this understanding of the Egyptian revolution is critical for my study of the processes of juridification which were an integral part of that revolution: to really understand the complexities and potentials of those bottom-up forms of juridification (including activist lawyers' praxis) which were driven by a revolutionary vision, we ought to pay equal attention to those utopian desires and prefigurative impulses and performances which mark that revolutionary vision. In other words, an analysis of the popular juridification of revolution ought to be able, at the same time, to capture the "utopian visions and popular enthusiasms that underlie the mass levies of revolutions and provide much of their transforming power" (Paige, 2003, 19). Yet, with some exceptions (Cain & Harrington, 1994; Schärf, 1994), the existing legal scholarship is poorly equipped to adequately engage with and reflect such prefigurative, utopian features and potentials of the processes of juridification and legal activism. Therefore, to provide a better understanding of the relation between law and revolution in Egypt, and help fill these

analytic and empirical gaps in, and extend our knowledge of, juridification, this project aims to study the juridification of revolution, especially the praxis of activist lawyers, through focussing specifically on their utopian and prefigurative features, potentialities, and possible limits.

III. UTOPIANISM, PREFIGURATION, AND PREFIGURATIVE JURIDIFICATION

Colloquially, utopia has traditionally been understood as a good but non-existent and therefore an impossible place which is essentially perfection seeking, didactic, and intended as blueprints (Sargisson, 2007). Scholarly understandings of utopia, however, vary considerably as they may be based on content, form, or function (Levitas, 2011). Regarding content, there is the assumption that utopia should be a portrayal of the good society, though what a 'good society' entails is itself a contentious issue. Utopia may also refer to many different forms such as fiction, experiments in alternative living or intentional communities, or social theory (Sargisson 2000).

Utopia can also be understood in terms of its function, i.e. what it is for. Many such definitions, for instance, in Marxist tradition, Levitas (2011) suggests, see utopia's function negatively as escapism. For others, however, utopia is not about an escape from reality, or imposing a social totality or blueprint but imagining and showcasing other, new ways of being and acting. From this view, utopia can positively educate (Bloch, 1986), provide a critical distance from the status quo and habitual ways of thinking (Gorz, 1999) and thus inspire or catalyse change (Sargisson, 2012; 1996), while at the same time pointing to the limits of our imagination (Jameson, 2010, 23). Understood in this way, the function of utopia can be "the education of desire", that is, to desire better, more, and otherwise (Abensour, 1999, 145). Understanding desire as its constant element, utopia is thus defined "as the expression of desire for a better way of being" (Levitas, 2011).

This analytic rather than descriptive approach postulates utopia as a *method* (Levitas, 2013, 2007), and can help pay attention to the utopian "impulse" (Jameson, 2010) and features of social phenomena, that is, their forms of orientation and ways of engaging with spaces, objects, and practices that are oriented to the hope, desire, and belief in the possibility of better worlds (Cooper, 2014, 3). We are therefore moving away from the idea of utopia as a place towards the utopian, and utopianism, as a *process* (Jameson, 1982; Buchanan, 1998). This has afforded new ways to engage with critical, transgressive utopian features, visions, and practices which are process-oriented and perhaps open-

ended (Firth 2011; Bell 2010; Sargisson 2000; Moylan 1986), especially those striving for radically different ways of being and acting oriented towards the here-and-now.

Such different temporalities (processual, open ended, here-and-now) can further point to prefigurative aspects of utopia, so that collective practices (of social movements, for instance) are defined by, and studied in relation to, their prefigurative or immanent approach to social change (Robinson & Tormey 2009) including consensus decision-making, non-hierarchical organisation, and direct action. In this sense, utopianism is understood as that which “operates *against* as well as *within* and *beyond* the here-and-now.” (Bell, 2017, 15; emphasis in the original).

In order to bring about their desired alternatives, prefigurative practices and forms of direct action, unlike many other forms of politics, often begin with and are mainly focused on (process of) actions and relations in the here-and-now by enacting the kind of change they wish to encounter (Franks, 2018; Scholl, 2016; Maeckelbergh, 2011; Boggs, 1977). Whereas, for instance, a revolution is traditionally understood as beginning with popular mobilisations which then capture state power whereupon begins the business of creating new institutions, processes, and ultimately social life, a prefigurative direct action proceeds in the opposite direction, as a “revolution in reverse” (Graeber, 2012, 41-65), by trying to create new forms of relations and processes of collective action and decision-making in the here-and-now inspired by the ideals of a better society. Against the teleology, linearity, and state-centrism of most forms of politics, a prefigurative form of utopianism is thus focussed on the present rather than only the future, the process rather than only the outcome, and the dynamics of horizontal and informal relations rather than only the working of state and institutions.

Within the scholarship on utopianism, noted above, there has been a common emphasis on the significance of vision, desire, hope *and* action. While rejecting both blueprints and escapism, “concrete” utopianism (Bloch, 1986) is thus defined as reaching forward, deliberately, towards a possible future, with a certain element of closure and specificity about what would actually be entailed in practice (Levitas, 2007, 57; also, Williams, 1980). This closure and specificity is particularly the focus in prefigurative forms of utopianism, which are praxis-based, open-ended, process-driven, and present-oriented. They strive to transcend or rupture taken-for-granted boundaries of the wider social and political relations, activities, spaces, and concepts they are embedded within, through prefiguratively enacting them on the basis of the desired changes they wish to see, while in the process showcasing more desirable yet viable alternatives in the present conditions. The utopianism of those alternatives is not only in their ability to prefiguratively illustrate such viable alternatives but also in that in the process they point to and anticipate

something which is ‘impossible’ within, and radically beyond, what can be realised in the existing state of affairs (Bell, 2017, 15).

Such utopian attempts to prefigure a desirable future condition in the present may involve reimagining relations, activities, spaces, and concepts in radically new ways, inspired by how one wishes to see them operate in an ideal future condition, and enacting them in the present as if their reimagined meanings and properties were already effective. This would therefore mean an emphasis on thinking about and presently enacting, for instance, concepts such as ‘state’ or ‘law’ as they could be, rather than how they actually are, which could consequently help rupture or transcend existing “conceptual boundaries” (Sargisson 2000, 10) and further enable those concepts to be desired and enacted in previously unthinkable ways. Therefore, “against the assumption that more progressive conceptual meanings must await their right time and space”, Cooper (2017) proposes ‘conceptual prefiguration’ as “[acting] as if preferred meanings are currently operative, while knowing that they are not, both to reimagine what things could mean and to put new meanings into practice” (336).

Furthermore, despite its seeming contradiction given the conventional perceptions of utopia, prefigurative forms of utopianism may be concerned particularly with the possibilities of the *everyday*. Emphasising the everyday as a significant domain for both practices of social domination and resistances against them (de Certeau, 1984; Scot, 1990), ‘everyday utopianism’ is thus understood as concerned with “forces, tendencies and possibilities that are immanent in the here and now, in the pragmatic activities of daily existence.” (Gardiner, 2006, 2). Striving to go beyond or rupture taken-for-granted boundaries of everyday activities, relations, spaces, and concepts, ‘everyday utopias’ (Cooper, 2014) may help prefiguratively reveal new possibilities through their ability to pose other, more desirable, and viable alternatives to the present settings they are embedded in (Cooper, 2014; Gardiner, 2006; Pinder, 2010). This is the basis for Chapter 7’s study of the everyday aspects of the practice of activist lawyers in Egypt.

As I suggested earlier, my empirical fieldwork in Egypt made it apparent that the prevalent formal-legal and outcome-oriented frameworks often adopted in the study of juridification may not adequately reflect the complexities of popular, revolutionary juridification in Egypt and the praxis of activist lawyers therein. Most scholarly approaches to juridification, I suggested, are ill-equipped to engage with the strong utopian drive and the common prefigurative methods of the revolution (see Chapter 4), which inevitably imbued those revolutionary forms of juridification too. Nor are they able to sufficiently reflect the supra-legal and process-driven practices oriented towards the

here-and-now which many activist lawyers seemed to otherwise understand as a crucial part of their legal praxis in support of revolution (see Chapters 6 & 7).

Juxtaposing ‘juridification’ and ‘utopian prefiguration’ thus helps create a “space of encounter” (Banakar & Travers, 2005, 5) at the cross-section of those different scholarships which could help transcend some of their disciplinary limitations and produce new knowledge through such “transformative” encounters (Moran, 2010, 15). It allows for examining and understanding the Egyptian revolution and its juridified characteristics in new ways, whilst helping think about these concepts and scholarships in novel ways in the light of my findings from Egypt.

The insights from scholarships on prefiguration and utopianism can help fill those analytic gaps and provide a better, more situated, faithful understanding of juridification and the praxis of activist lawyers in Egypt. It allows for examining the role and significance of lawyers’ work in relation to its processual, prefigurative, and supra-legal dynamics when they engage with legal-institutional spaces (courts, police stations, prisons), legal relations (lawyer-client, lawyer-judge), or legal practices (criminal defence). Consequently, this approach can complicate and expand our existing knowledge of juridification through reflecting on what may be called *prefigurative juridification* or *prefigurative legal praxis* through the case study of Egyptian activist lawyers (see Chapters 6 & 7).

Bringing juridification and utopian prefiguration together can also provide new ways to think about prefigurative politics and utopianism approached from the vantage point of juridification. Although not the main focus of this thesis, the popularly juridified Egyptian revolution and the praxis of activist lawyers therein can offer an interesting case study for what may be called *juridified utopianism* as a framework for future studies to think about what happens when prefigurative forms of utopianism are articulated in a legal language.

IV. METHODOLOGY

As explained above, my main aim in this project was to focus on the work of activist lawyers as a case study for how law and revolution, or juridification and utopian-prefiguration, came together since the ‘25 January’ revolution. This required me to try and understand what their legal work involved, what meanings they attached to it, based on what objectives and visions, and through what processes. It also required me to gain an understanding of how the broader legal system of which they were part worked, and more importantly how those lawyers perceived it and sought to engage with it. However,

as noted earlier, current empirical material or studies on Egyptian activist lawyers, and the broader role of law in the revolution, is extremely limited. Thus, to have access to and understand their views, the dynamics of their legal practice, and the conditions in which they worked, my presence in Egypt and face-to-face conversation with them was the most efficient and possibly the only viable solution.

I spent the summers of 2014 and 2015 in Cairo for a total of three months, with the aim of conducting in-depth, qualitative interviews mainly with activist lawyers but also with some political activists who had participated in the revolution. My presence in Egypt would also help me, crucially, to get a better understanding of the broader context of the ongoing, albeit struggling, revolutionary contestation and the increasingly volatile political and legal-constitutional conditions in the country.

Before travelling to Egypt, I contacted by email (in Arabic) a total of 17 law centres, independent lawyers, and rights NGOs. The NGOs I chose to contact were those doing legal work along with their other activities, and when contacting them I asked to interview either their in-house lawyers (if they had any) or independent lawyers they were working with. The majority of them did not respond. When I arrived in Egypt in summer 2014, I contacted them again but, based on advice from one of the lawyers I had been in touch with, this time I phoned or visited their offices directly. In most cases it proved helpful and I was able to arrange for interviews for the following days and weeks.

This, however, proved more difficult than expected, as several interviews had to be postponed (some for a few times), and others did not materialise in the end. The main problem was not so much obtaining lawyers' consent and trust; for due to the nature of their work many of them were publicly known and were often interviewed by journalists and quoted in newspapers and TV programmes. Rather, the problem was getting meaningful access to them, that is, making arrangements in advance and then finding enough time to sit down and talk on the day. Due to their ongoing, ever-expanding workload during summer 2014 (which coincided with a new wave of arbitrary arrests of activists before and after the May 2014 presidential elections) many activist lawyers were often simply too busy to be interviewed (even if they had consented to it beforehand) or had to change schedules due to unforeseen circumstances (e.g. new arrests, court hearings postponed etc.). For instance, I visited the office of Nadeem Centre for Rehabilitation of Victims of Violence and Torture, located in downtown Cairo, four times during that summer and, despite prior arrangements with their lawyer, every time it had to be cancelled due to such unforeseen circumstances, so that eventually I wasn't able to meet her before returning from Cairo.

This intensity and unpredictability remained largely the same during the summer of 2015 when I was back in Egypt. As I discuss below, these particular material conditions (including unprecedented waves of legal intimidation in the form of arrests, prolonged detentions, prosecutions, or disappearance of activists) directly influenced the findings of my field work and consequently my analysis of the work of activist lawyers dealing with them (see Chapters 6 & 7).

Another factor that affected the course of my fieldwork in Cairo was the sensitive nature of my project and of the work of lawyers I wanted to engage with. Doing empirical study of ‘sensitive topics’ could have methodological, ethical, political, or legal implications for the project, and may have potential adverse consequences, even threats, for the participants, for the class of individuals represented, or for the researcher (Lee, 1999). Between early 2011 and July 2013 when president Morsi was removed by the military, the generally positive public attitude resulting from the revolution meant that interviews and direct observations in relation to the revolution posed little risk for the researcher or the participants. With the July 2013 events, and the social polarisation, xenophobia, and violent silencing of dissent that ensued, doing interviews and observations in relation to the revolution became difficult and posed real dangers for researchers¹⁰ and participants (Elyachar, 2013; Chakravarty, 2017; Tonsy, 2016) as well as journalists.¹¹ As noted earlier, interviewing activist lawyers carried much less risk due to the already public nature of their work. Nevertheless, due to the deteriorating political situation in Egypt during 2014 and 2015 and the government crackdown on many law centres, human rights NGOs, and activists, activist lawyers seemed generally more cautious. Two activists and one lawyer I had contacted did not wish to be interviewed, one activist withdrew her earlier consent due to such concerns, and two lawyers did not give consent for the interviews to be audio recorded.

The work of lawyers can be understood as a “multi-sited field” (Marcus, 1998) and is often a complex process involving different lawyers, clerks, settings, and spaces in relation to pre-trial, during trial, and post-trial dimensions (Scheffer, 2005). The work of lawyers I interviewed took place not only in their offices (where I was able to interview them) but

¹⁰ In January 2016, five months after I had returned from my second visit to Cairo, Giulio Regeni, an Italian PhD student researching independent unions was kidnapped and murdered in Egypt. He had been “under police surveillance up until he disappeared.” *BBC News*, 26 January 2018, available from <http://www.bbc.co.uk/news/world-europe-42821199> (last accessed 25 April 2018).

¹¹ In November 2014, two months after I had returned from my first visit to Cairo, a French and an Egyptian journalist were arrested in a café in downtown Cairo for discussing politics. *Mada Masr*, 11 November 2014, available from <https://www.madamasr.com/en/2014/11/11/news/politics/french-egyptian-journalists-held-in-cafe-for-discussing-politics/> (last accessed 25 April 2018).

also in courtrooms, prosecution offices, police stations, prisons, even clients' homes. It would have been helpful for the purpose of this project to be able to not just interview them but also observe their range of activities in those other settings and while conferring with clients, other lawyers, or judges. However, doing such observations would require access to those official settings, and would need obtaining official permissions, which due to the nature of my research and the political conditions in Egypt was impossible. Also, due to the sensitive nature of many cases they were working on, observing lawyers during their preparations, meetings with other lawyers, clients, or activists would raise far too great ethical issues of confidentiality. It could also put myself in a risky situation. As one of my lawyer respondents (Alaa) explained, going to activist lawyers' offices, interviewing them, and then leaving was not a problem. However, once you begin to spend many hours in their offices over a period of time, you might be perceived by the observing state security as implicated in lawyers' work, which can be extremely risky for a foreigner.

Nor could I realistically hope, due to the same political conditions and the nature of my project, to obtain official permission to interview some government officials, judges, prosecutors, or MPs to gain a better insight into the use of law by the state. Such permissions are rarely ever granted in Egypt. Thus, in examining the dynamics of juridification by the regime, as well as material from my interviews with lawyers, I also significantly draw on a number of statutory provisions, governmental decrees, or court decisions issued during this period to enhance the depth of my analysis.

When contacting lawyers and activists my aim was for the respondents to be as diverse as possible (especially in terms of gender, age, class, and religion). As feminist scholarship on research method has most persuasively emphasised through its discussions of standpoint, positionality, and difference (Hartsock, 1983; Maynard & Puvis, 1994), reflecting the multi-faceted and multi-layered nature of 'reality' would need a more inclusive and multiple epistemology (Andersen, 1993). The issues of access and sensitivity, however, made this difficult at times, but I always tried to achieve this when possible. For instance, when given permission to interview lawyers working for law centres or human rights NGOs, I insisted so far as possible on interviewing one of their women lawyers. Eventually a third of my respondents were women. This proved more difficult with regards to social class, for all the lawyers I was able to reach were from middle-class backgrounds, reflecting the predominantly middle-class composition of legal profession in general and law centres and human rights NGOs in particular (Abdelrahman, 2004b). With regards to religion, while the majority of my respondents had an Islamic heritage, one activist and one lawyer I interviewed were from the minority

Coptic Christian community. In terms of age I was able to talk to a diverse group of lawyers and activists.

Ultimately, I was able to conduct one-to-one interviews with ten lawyers in their offices, and five political activists, as well as one group interview with three lawyers from two different firms. All lawyers interviewed were mainly based in Cairo, with some frequently involved in cases which were based outside of Cairo.¹² Of the lawyers interviewed, four identified as independent, three of them worked for law centres, and six for rights NGOs.¹³ Of the activists interviewed, one was a trade union activist, one was working for a rights NGO, and two were student activists one of whom was also involved with activists working on women issues. Most interviews lasted between sixty to ninety minutes and all were conducted in in-depth, qualitative, semi-structured format in order to allow the interviewees some freedom to talk about different aspects of their work. Since I am not fluent in the colloquial Arabic dialect spoken in Egypt (*'Ammiya*), I was accompanied by an Egyptian friend who had agreed to act as interpreter if needed. I let the interviewees choose which language to use and consequently most interviews were a mixture of both English and Arabic. All interviews were audio recorded by permission, except in two instances when permission was not given due to safety concerns.

Due to sensitivity concerns, especially when permission for audio recording was given, some sensitive issues were not discussed, even though most of the lawyers were experienced in interviews and had their own ways of avoiding some sensitive questions. For instance, from early on, I made the decision not to ask specific questions about NGOs' and law centres' funding and financial matters. This I did due to the complexities of the ongoing case known as 'foreign funding' where several rights NGOs and law centres were being threatened, investigated, or prosecuted for 'illegitimate' use of foreign funds¹⁴ (in reality, a form of legal intimidation by the regime to subdue them). Also, no personal details which could identify the interviewees were mentioned during the recorded interview – hence all names used throughout the thesis are pseudonyms. The interview files were given non-identifying names, password-protected, and stored in a secure virtual

¹² As I will indicate in the Conclusion (part IV), the Cairo-based nature of my fieldwork could be seen as a limit of my thesis, and thus one fruitful, possible suggestion for further studies would be to focus on activist lawyers from outside of Cairo.

¹³ These classifications (i.e. independent lawyers, law centres, human rights NGOs) should not be treated as clear-cut, for as I explain in Chapter 6 (part II), there is a considerable overlap between them, with many blurred boundaries.

¹⁴ For one such example, see 'Hisham Mubarak Law Centre threatened with judicial investigation', *Mada Masr*, 30 July 2015, available from <https://www.madamasr.com/en/2015/07/30/news/u/hisham-mubarak-law-center-threatened-with-judicial-investigation/> (last accessed 8 February 2018).

location. Another ethical issue was that some comments and observations regarding particular cases could potentially identify the respondent. I have been very careful throughout the thesis to ensure that none of this material is mentioned. Of course, this has had a negative impact on my evidence base since some of those comments, if they could have been used, would have further substantiated my arguments. But my foremost, ethical priority throughout has always been safety of those who participated in my research as respondents.

Ensuring the safety and anonymity of the participants were not my only ethical, methodological concern. It was equally important for me that the arguments I developed and the conclusions I drew were driven primarily, not by my preconceived theories, but by the specific perspectives and experiences of the participants. To answer the questions set for this project, I was keen to elicit and understand how Egyptian activist lawyers understood their own work and its broader social and political context of the revolution, rather than claiming to know more about them, their history, and society from a supposedly objective, detached vantage point.

As I discuss in Chapter 2, much of the research on emerging revolutions and social movements from the ‘global south’ (including the Egyptian revolution) continues to be driven by methodological division of labour and “epistemological vanguardism” (Motta 2011; De Sousa Santos, 2007; also, Firth, 2013) whereby the outsider (Western) experts produce (universal) theoretical knowledge and the specific revolution under study provides practical material support for their theory. Postcolonial theory’s powerful critique of the ways in which Western epistemological practices colonise local knowledge and practice (Denzin & Giardina, 2007) offers a non-vanguardist approach to epistemology that helps open up the possibility for understanding movements on their own terms (Motta, 2011), always starting analytically from the location of the speaker and their situated experience (Spivak, 1988). Being a researcher born and raised in the aftermath of one ‘third world’ revolution (Iran), writing about another ‘third world’ revolution (Egypt), but in the language and academic institution of a Western country (Britain) that had colonised both of those countries in the past, it was particularly important for me, from the outset, to avoid any form of *epistemological* colonisation in my own methodology.

Therefore, rather than a strict “theoretical control” over the fieldwork (Wacquant, 2002) which seeks to establish the researcher and theory as the more powerful and determining factors, I was keen to adopt a “rolling style” of theorising (Flood, 2005; Becker, 1993) whereby in-depth, qualitative interviews allowed ideas and knowledge immanent to the participants’ concrete experiences to build on each other as the fieldwork progressed,

shaping the direction and conclusions of the research. This was precisely what directed me, as discussed earlier, towards bringing together juridification and prefiguration due to my new understanding of the prefigurative aspects of lawyers' praxis. In other words, taking as my starting point their particular experiences allowed me to avoid the "invisibilization" (Motta, 2011) of prefigurative and utopian visions and practices immanent in lawyers' work.

Nevertheless, and despite my efforts to engage with the particular experiences and visions of the activist lawyers I interviewed, nowhere do I make any claim to have 'discovered' the essential truth of their praxis during this period. Inevitably each perspective can only be a partial engagement with reality which is itself multi-faceted and multi-layered. This is particularly the case, and one of the difficulties, with regards to working with ongoing events and in times of change and uncertainty, as in Egypt, which was marked by competing narratives of reality and possibility. Although the approach, analysis, and conclusions of the thesis draw mainly on material from my interviews with activist lawyers and political activists during 2014/2015, I also make use of material and examples from a number of court cases, statutory provisions, and constitutional and administrative decrees from this period to support the arguments and contextualise that material. Attention is also given to the broader context of the revolution and related political developments during this period as reflected in several written, first-hand memoirs by participants, and as reported by the Egyptian press or documented by relevant human rights NGOs.

Ultimately, my contentions and conclusions, including those about activist lawyers' prefigurative legal praxis, should be thus treated as based on my own *reading* off from their otherwise complex, diverse practices some overall tendencies towards law and revolution – a reading based on my three-month presence in Egypt and then following their work from the UK during the rest of the project. At no time during the interviews did any lawyer claim to have engaged in a project of utopian, prefigurative legal praxis. Lawyers may engage in activist lawyering for different reasons and they certainly follow different standards and forms of legal practice. Nor did the broader, diverse popular revolutionary movement with its many contributing forces claim, to my knowledge, to have intended a popular project of prefigurative juridification. The same is true with regards to my reading of the actions of counter-revolutionary forces and their attempts at juridifying and containing the revolution. Juridification was not a unified process but a combination of several, evolving – complementary or conflicting – processes, strategies, and incidents which have been deployed or adopted by different, at times opposing, political actors, revolutionaries, and state institutions.

This PhD project is, therefore, a modest effort at providing a reading of the praxis of activist lawyers and the revolutionary movement in Egypt which I believe can lead to a better, more helpful understanding of some aspects of lawyers' work as well as the broader relation between law and revolution in Egypt. And yet, no reading is ever neutral or innocent (Said, 1983, 241), for the methods and concepts that we create or employ in this process are not descriptive of an objective reality out there but help create that reality (Deleuze & Guattari 1994; Tanesini, 1994). Methods inevitably impose singularity on the otherwise multiple and contingent nature of reality, and therefore at their core are a political practice that interfere with the world (Bacchi, 2012; Mol, 2002). Therefore, the question to consider when formulating a research project is not only 'what we want to know', but also 'what we want to do' (Mol & Messman, 1996, 422). So, there is a responsibility for researchers to reflect on broader political commitments, and their implications, that help frame the questions asked, determine the methods employed to gather evidence, and shape the conclusions drawn (Smith 2012, 144; Harding, 1987, 2-3; Banakar & Travers, 2005, 19-20).

Consequently, this requires me to be open and self-reflexive with regards to my own political values and commitments in relation to what I wanted to know through this project but also what I wanted it to *do* (whilst avoiding intellectual vanguardism). With the overwhelming sense of despair and hopelessness that seems to have befallen many Egyptian revolutionaries and their supporters world-wide in the last few years, of course there are plenty reasons to be pessimistic about the revolution. In fact, part of the scholarship on Egypt is already returning to its long-standing "conceptual imaginations" (Bayat, 2013b) which have been interested more in historical continuity and "durability of Arab states" (Dawisha & Zartman, 1988) than their change. This can be seen in their increasing use of frameworks such as "resilient", "new authoritarianism" (Armbrust, 2017; Stacher, 2012) to study the post-Mubarak political developments in Egypt. Yet, I set about doing this project due to my belief that within the present historical-political juncture of the revolution in Egypt, besieged by numerous predicaments as it is, activist lawyers have something important and inspiring to offer. Indeed, there are ordinary people, activists, lawyers, and others who are continuing to struggle not just against increasing oppression but also against hopelessness and fear. And my aim has been to engage with and emphasise, without romanticising, those important features of activist lawyers' praxis which might be seen as pointing to continuity, possibility, and hope despite being situated in an imperfect, authoritarian political context.

Consequently, some readers might consider my analysis of Egyptian activist lawyers as more sympathetic than critical in some places. Despite their mostly shared commitment

to the revolution and its demands, the praxis of activist lawyers has not been without its shortcoming, gaps, internal conflicts and hierarchies, and exclusions. Some of these are briefly discussed in Chapters 6 and 7. However, there is a lot more to their work than that. Precisely because of their continuous legal work in support of the revolutionaries – when many other groups have given into despair – they have been increasingly subjected by the Egyptian regime (and its conspiring media) to defamation, censorship, and vilification (exemplified in the ‘foreign funding’ case noted above), as well as outright intimidation and abuse. Taking seriously my responsibility to the community of participants (Boon, 2005), I did not wish for my research analysis, findings, and conclusions to contribute to this narrative.

Ultimately following my own political commitment both to the ideals of the Egyptian revolution and to the necessity of ‘educated’ hope in times of despair, my aim has not been to provide a systematic critique to dismantle lawyers’ praxis, or, say, to prove them ‘inadequate’ vis-à-vis the mighty power of the regime – a readily deployed narrative that in the current juncture of the Egyptian revolution means only one thing: there is no alternative. Instead, the basic aim, and thus methodological principle, behind this project has been: to make hope possible (by making hopeful acts visible) rather than letting despair to become convincing; and, that’s precisely what I ultimately argue many activist lawyers have been doing in recent years.¹⁵

V. CHAPTER OUTLINE

As I explained at the outset, in studying the politics of law in the Egyptian revolution this thesis is concerned with three intertwined problematics in the extant scholarship namely revolution, juridification, and activist lawyering. It has been the shortcomings of common approaches to the study of revolution – including legal theories of revolution – which have considerably contributed, I proposed, to an unsatisfactory understanding of the relation between revolution and juridification in Egypt, which in turn has overlooked the otherwise important practice of many activist lawyers at the cross-section of law and revolution as they engage in legal practice inspired by the visions and demands of the revolution.

Chapter 2 thus begins by examining prevalent scholarly approaches in the study of new revolutions, focusing on two key aspects of the extant scholarship namely its *conceptual*

¹⁵ See the epigraph at the beginning of the chapter.

model and *epistemological method*. It suggests that the ostensibly universal concept of revolution underpinning much of this scholarship, especially legal theories of revolution, is marked by a generally fixed model which remains largely state-centric, outcome-dependant, and exceptionalist. The chapter further suggests that the epistemological methods often used in studying new revolutions have led to a largely Eurocentric, normative scholarship marked by an epistemic division of labour and the primacy of theory over phenomena.

However, it will be argued that these common features have considerably rendered this scholarship inadequate and unhelpful for understanding the complexities of the visions and practices of new revolutions including the one in Egypt. Instead, the chapter proposes an alternative approach which treats revolution as an essentially contested and historically contingent concept which ought to be studied from within the specific socio-political context it has emerged, and on the basis of its own situated visions, forms of knowledge, and praxis. This framework takes as starting point of analysis participants' own ideas of 'revolution' and emphasises the performative character of revolution as a concept and what is at stake politically in the different ways it is imagined and enacted. Ultimately, the chapter concludes that this performative, participants-driven approach can provide helpful ways, in the following chapters, to better understand the politics of the juridified praxis of revolution in Egypt.

Any serious study of the revolution in Egypt needs to examine the specific ways in which law came to occupy such a key role in the struggles both for and against the revolution. Consequently, after a critique of the common frameworks used in studying the Egyptian revolution, Chapter 3 begins its study of the politics of revolution and law in Egypt by taking a longer historical view at the evolution of the modern vision of revolution and change in Egypt and the political role discourse of law played therein. The chapter suggests that discourses of legality and 'rule of law' along with legal institutions played an important role, especially in recent decades under Sadat and later Mubarak, as part of the broader, contested visions of society, politics, and change. They were increasingly drawn upon by the ruling elite in their attempts to consolidate social control through a rule-by-law political system, but also by the expanding bottom-up forms of activism and legal mobilisation in their struggles for change. If, as I suggest in Chapter 2, revolution ought to be studied as a historically contingent concept, then understanding the developments and political dynamics of this key role of law in contemporary Egypt, Chapter 3 concludes, is essential for the study of the politics of law and lawyering since the revolution.

Subsequently, Chapter 4 focuses on several aspects of the praxis of the '25 January' revolution. It takes a closer look at the popular forms of mobilisation during the lead up and the early stages of the revolution, suggesting that language of legality provided a crucial, unifying rallying point for different groups who joined that otherwise leaderless, horizontally organised revolution. At the same time, the chapter further suggests that a key part of the popular praxis of revolution in Egypt consisted in novel, collective performances of state-subject and inter-subject relations which were largely driven by new visions of political and legal culture and were equally marked by visibly process-oriented and prefigurative methods. The chapter ultimately suggests that for a better understanding of the revolution in Egypt we need to analytically bring together and study as intertwined, rather than contradictory, both its juridified and prefigurative features.

Following from conclusions of Chapter 4, the focus of Chapter 5 will be on the contested juridification of revolution following the fall of Mubarak. It begins by examining the ruling elite's forms of *constitutionalisation* and *legal intimidation* to argue that, despite their many differences and inconsistencies, the ideas of revolution underlying these counter-revolutionary forms of juridification were often broadly comparable – mirroring the Western conception of revolution – in their state-centrism, exceptionalism, and outcome-dependency. Against this backdrop, the chapter then focuses on bottom-up forms of revolutionary juridification during this period exemplified by the grassroots mobilisations during the drafting of the constitution in 2011 and 2012 and mobilisations demanding the criminal prosecution of figures of the old regime. Opened up by the utopian force of the popular revolution and the demise of the legitimacy of the state, the chapter suggests, these juridified forms of revolutionary praxis consisted in acting to prefigure a political-legal culture radically different from those hitherto prevalent under Egypt's authoritarian, rule-by-law system. The chapter thus concludes that, a better understanding of the (seemingly paradoxical) juridified praxis of revolution during this period (which has been underplayed by many scholars) would require a serious analytic attention to its utopian-prefigurative features. Otherwise, our understanding of those practices, and of the broader politics of law in the revolution, may remain partial and incomplete.

Following the conclusions of Chapter 5, the final part of the thesis (Chapters 6 & 7) focuses on the praxis of activist lawyers especially during the post-Mubarak period. Based largely on material from my interviews in Egypt in 2014 and 2015, Chapter 6 examines the key role and significance of the work of activist lawyers as part of the broader juridified forms of revolutionary struggle discussed in Chapter 5. This is followed by Chapter 7 which, while continuing with the same focus on activist lawyers, specifically examines some of the everyday aspects of their legal praxis in support of the revolution. The main

argument in these final chapters of the thesis is that considering their emphasis on continuity and on the processes of legal practice in support of the revolution, the praxis of activist lawyers could be understood as *prefigurative legal praxis*. Inspired by the visions and demands of the revolution, their work may be understood as a process-oriented form of legal support and representation which is driven by an emphasis on solidarity and endurance, and on continuing the struggle in the here-and-now. At the same time, it is a utopian form of legal practice which, while aware of its grounded experience of the legal system to the contrary, insists on reimagining and acting within legal-institutional processes and spaces, prefiguratively, *as if* they were otherwise, characterised by the goals and visions of the revolution.

CHAPTER 2

THE CONCEPT OF REVOLUTION AND ITS (DIS)CONTENTS

I. INTRODUCTION

In studying the politics of law in the Egyptian revolution, as I said in the Introduction, this PhD project is concerned with three intertwined problematics in the extant scholarship namely revolution, juridification, and activist lawyering. It is the shortcomings of common approaches to the study of revolution, I proposed, which are a significant reason why the juridified praxis of revolution in Egypt has baffled many observers who, depending on their respective theoretical positions, often dismiss it as revolution. Those shortcomings, I further suggested, have contributed to an unsatisfactory understanding of the relation between revolution and juridification in Egypt, which in turn has overlooked the otherwise important practice of many activist lawyers at the cross-section of law and revolution as they engage in legal practice inspired by the visions and demands of revolution.

Consequently, the chapter aims to engage with the problematic of revolution. It begins by exploring two common aspects of the existing scholarship on revolution namely its *conceptual model* and its *epistemological method*. It will be suggested that some aspects of the extant, prevalent approaches to the study of revolution, including legal theories of revolution, are inadequate for this task. Firstly, the chapter shows that the ostensibly universal concept of revolution underpinning much of this scholarship is characterised,

following the historical trajectories of 'Great Revolutions', by a generally fixed conceptual model which remains largely state-centric and outcome-dependant based on an extraordinary and totalising event of social and political transformation. Largely following this model, scholarship on law and revolution in particular has been marked by strong formalism and teleology whereby revolution is conceptualised as an unlawful but successful and efficacious change of state and basic constitutional norm. However, I suggest that this common conceptual model has become increasingly inadequate as it no longer reflects the qualitatively different forms and practices of many new social struggles and revolutions around the world. Nor is this prevalent conceptual model entirely helpful analytically, my argument further suggests, as it often tends to overstate and reify a number of factors including the place of the state as the sole target of revolution and its purported distinction from society, as well as the reform-revolution dualism, and the possibility of total transformation/domination. Secondly, the chapter shows that, following this prevalent conceptual approach, the common epistemological methods often used in studying new revolutions have led to a largely Eurocentric scholarship marked by normative debates on definitions of successful revolutions, an epistemic division of labour, and the primacy of theory/theorist over phenomena/participants.

These common conceptual and epistemological features of the scholarship on revolution, I thus argue, have rendered it considerably inadequate and unhelpful for understanding the complexities and changing dynamics of the visions and practices of new revolutions including the one in Egypt. In its stead, the latter part of the chapter proposes an alternative, de-colonial approach which treats revolution as an essentially contested and historically contingent concept which ought to be studied from within the specific socio-political context it has emerged, and on the basis of its own situated visions, categories, forms of knowledge, and praxis. In this approach which is followed throughout the thesis, I take as the starting point of my analysis participants' own ideas, visions, and enactments of revolution. While doing so, I also I emphasise the performative character of revolution as a concept and what is at stake politically in the different ways in which it is imagined and enacted by different set of actors involved in the revolutionary struggle. Ultimately, the chapter concludes that this participants-driven, de-colonial, and performative approach to the study of revolution can provide helpful ways, in the following chapters, to better understand the dynamics of the ongoing contestation in Egypt over the meaning of revolution, and, more importantly for this thesis, the 'unfamiliar', paradoxical use of the language of law and legality in the popular praxis of revolution therein.

II. BACKGROUND

For much of its Western history, the term ‘revolution’ was mainly used, following its Latin root, as an astrological term to designate the circular motion of the stars, thus as something beyond the influence of humans (Arendt, 1990, 42; Hill, 1990, 82-4). Calvert (1970) traces the political history of ‘revolution’ to the Italian Renaissance when it meant merely a forcible overthrow of a ruler by another,¹ as a common feature of politics. During the centuries that followed, revolution continued to be understood as circular and restorative, as strictly political in scope, and as the result of divine intervention beyond human intention (Hill, 1990, 97).

With the trans-Atlantic revolutions of the late 18th century (in America, France, and Haiti) those earlier understandings began to change in the West (Hobsbawm, 1962; James, 1938; Palmer, 1964; Polansky, 2015). Revolution began to be perceived as the foundation of a new world through human intention and action, and as a means to achieve such sweeping ideals as freedom and liberty through major socioeconomic changes (Arendt, 1990; Hill, 1990; Calvert, 1996). Later, the socialist revolutions and the 1917 Bolshevik Revolution emerged (Trotsky, 1932; Lenin, 1968; Luxemburg, 1918; Faulkner, 2017), as a result of which many parts of the world witnessed revolutions carried out in the name of socialism. They later coincided with the so-called ‘Third World’ and anti-colonial revolutions many of which, unlike previous revolutions, were initiated through guerrilla insurrections and partaken by urban proletariat as well as the peasantry (Debray, 1967; Fanon, 1967; Wickham-Crowley, 1992; Chaliand, 1976). The idea of revolution continued towards the latter part of the 20th century with other revolutions such as the Iranian 1979 revolution which was, once again, different from previous revolutions in that it was a largely urban movement, significantly inspired by an anti-imperialist ideology and Islamic liberation theology (Kurzman, 2005; Parsa, 1989; Moaddel, 1993). Later, there emerged the post-1989, East European ‘colour’ revolutions which unfolded, once again, in ways different from previous revolutions, as for instance many of them involved a strong element of negotiations and little revolutionary violence (Garton Ash 1990; Kumar, 2001; Lawson, 2005).

By the end of the twentieth century the ‘age of revolution’ was considered by many as over and the idea of revolution no longer relevant or useful. For some the prevalence of capitalism, liberalism, and formal democracy around the world signalled “the end of history” (Fukuyama, 1993) where there no longer was a need for or likelihood of total transformation of political, social, and economic structures of societies (Snyder, 1999).

¹ Today, many would term this a ‘coup’ (Calvert, 1970).

For others the modern idea of revolution no longer seemed to reflect the realities of contemporary 'social movements' and thus was deemed redundant (Goodwin, 2001; Nodia, 2000).

However, the 2010-2011 popular uprisings across the Middle East and North Africa once again reinvigorated scholarly and political debates on revolution, especially because, like most revolutions before them, they did not seem to share several attributes common to their predecessors. Notable in most of these cases were the conspicuous lack of revolutionary leaders and vanguards, and of any serious attempts to capture the state. This new interest in revolution was partly driven by the fact that many people who participated in these new uprisings (particularly in Egypt) effectively understood and referred to them as revolution, *thawra* in Arabic (see Chapter 3). This generated lively scholarly debates, once again, about the meaning of 'revolution', and its relevance and applicability to those events. Such debates included, for instance, discussions concerning the relation between revolution and issues of legitimacy and legality, as well as how to define revolution for the purpose of this debate (Taylor, 2013; Panara & Wilson, 2013; Varol, 2012; Paust, 2013; Powell, 2014; Obse, 2014; Sturman, 2011).²

As regards Egypt, the popularly named '25 January revolution' witnessed continuous disagreements inside and outside the country as to the precise meaning of the term revolution and whether what was happening/had happened could be defined as one. Inside Egypt, many ordinary people, activists, intellectuals, political and judicial figures were in one way or other part of this ebbing and flowing tide of disputes over the meaning, application, or implications of revolution (see Chapters 3 & 4). Political and legal disagreements however went far beyond Egyptian borders. The African Union, for example, continued to witness heated debates over how to react to the overthrow of Mubarak (and later president Morsi in 2013) due to the difficulties of agreeing on the meaning, legitimacy, and implications of those events as revolution (Obse, 2014).

Egypt's revolution also divided scholars due to its two significant, seemingly contradictory features. Whilst it was understood by most participants as 'revolution', its otherwise diverse forms of mobilisation, visions of change, and demands were commonly marked by language of law and popular ideas of legality (see Chapter 4). These *juridified* visions and praxes of revolution, as well as their leaderless method and lack of attempts at capturing state power, led many observers to the conclusion that it was lacking in radical visions and other quintessential revolutionary elements and therefore, despite the

² Also, generally see Colon-Rios & Hutchinson (2012), Samahon (2012), Nanda (2012), Landau (2012), and Hamoudi (2012).

participants' view, could not be considered as a revolution (see Chapter 3). In spite of this prevalent dismissive view, other observers insisted on the continued relevance of the concept of revolution to Egypt. The latter group argued that the prevalent epistemological and conceptual approaches underpinning those dismissive conclusions were often marked by features that were unhelpful for understanding new forms of revolution, and therefore needed to be rethought in the light of what was happening (Dabashi, 2012; Marinelli, 2014; Selbin, 2012). For reasons that I discuss in this chapter, I agree with this view. In what follows, I begin by exploring and critiquing some of the common conceptual and epistemological features underpinning the prevalent scholarship on revolution, before proposing an alternative participant-driven, performative approach which I suggest is more helpful for understanding new revolutions, including the one in Egypt and its notably juridified character.

III. THE CONCEPTUAL MODEL OF REVOLUTION

Despite the occurrence of numerous revolutions before³ and afterwards, for much of its modern history, a great deal of the understanding of the idea of revolution in the 'global north' has been formed, curiously, on the basis of a specific narrative of one particular set of socio-political upheavals during the late 18th century France – known as the French Revolution.⁴ Pundits elevated the French Revolution “as a model for all succeeding revolutions” (Geschiere & Nordholt, 1969, 323), while revolutionaries, amongst them Marx himself, treated it as “the model of revolution as such” (Kumar, 1971, 2). The main body of scholarly knowledge produced about revolution has thus largely been built on the same model (Selbin, 2009, 33), whereby revolution often requires the capture of state power by a revolutionary vanguard who leads a popular event of mass mobilisation for grand ideals of liberty and equality, and fundamentally and rapidly transforms the social, political, and class structures of a country (Skocpol, 1979, 4). In studying new revolutions,

³ In Europe, for instance, political upheavals known as revolution emerged as early as the 14th century (Calvert, 1970).

⁴ Some tenets of the egalitarian narrative of the French Revolution have been questioned (Doyle, 1991). For instance, while some have critiqued its gendered character and subordination of women's interests to broader goals of emancipation (Gutwirth, 1993; Hesse, 2001), others have highlighted the socioeconomic benefits of the slave trade for French society as a major yet unacknowledged root of that revolution (James, 1938).

this conception is often used as the starting point of enquiry, and as a means to broadly delimit the field of inquiry.

It is nonetheless a model which is based on a number of generally fixed attributes. Firstly, the established history of 'Great Revolutions' is predominantly the story of revolutionary leaders struggling for and capturing the state power. Studies of revolutions are thus based on a model of the centrality of the *state* as an indispensable component of revolution, as *the* target of revolutionary movements, and the main means for bringing about social transformation (Brinton 1965; Skocpol 1979, Tilly, 1991; Goodwin, 2001). It is, therefore, considered a truism that "revolutions involve the taking of state power" (Tilly, 1991, 1), and that social struggles that do not concern themselves with or fail to capture the state are perceived as anything but revolution (Calvert, 1970). Revolutions are fundamentally state-centred phenomena, insists Goodwin, hence "no states, no revolutions" (1997, 12; also, Tilly, 1978).

Therefore, one of the main disagreements amongst scholars of revolution concerns the extent of analytical weight that should be afforded to the state in comparison to other essential attributes of revolution. *Statist* theorists, as Calvert (1996, 1) observes, tend to place the contest for control of the state at the centre of their theories about the likelihood, cause, and outcome of revolutions. The reason, Goodwin (1997, 2001) reaffirms, is that only after the emergence of modern states which possessed considerable infrastructural power to remake extensive social, political, and economic arrangements in fundamental ways did it become possible for people to imagine and strive for a total transformation of society. Any radical recasting of a polity, Goodwin concludes, would require access to, and a fundamental reorganisation of, state power itself (1997, 12). Despite their assertion as to the eventual "withering away" of the state, in Marxists revolutionary traditions too revolution was "to *concentrate all its forces of destruction* against the state power" (Lenin, 1968, 201; emphasis in original). Thus, Badiou (2012, 46), following Lenin, described the 'Arab Spring' as "historical riots", arguing that the term revolution should be reserved only for those struggles that possess within themselves the resources required for an immediate seizure of state power.

A strong variation of this state-centric, formalist conception of revolution is often found in established legal theories of revolution, who following Kelsen, have largely conceptualised revolution on the basis of *unconstitutional but efficacious change of state and constitution* (Katz, 1993; Wroblewski, 1989; Eekelaar, 1973; Finnis, 1973). The prevalent 'effectiveness doctrine' formulated by Kelsen (1967, 1949) and cited with approval in

some cases,⁵ defines revolution as every not-legitimate change or replacement of the hitherto valid constitution regardless of whether this change has been brought about by force, by mass movement, or by a small group of individuals (Kelsen, 1967, 290ff). Consequently, all successful, efficacious revolutions can be considered as lawful revolutions (Kelsen, 1949, 368). A revolution is efficacious, for the purpose of this definition, when the population behave in general conformity with the new revolutionary legal order (see Khan, 1987, 16). As an inconvenient fit for legal theory, the dominant perspective among legal theorists has been to view revolution as a *fait accompli* (Khan, 1987, 2), so that a revolution becomes validated by the sheer reality of its success and effectiveness in changing the state and constitution (Kelsen, 1967, 1949).

Others have tried to introduce several normative elements to legal theories of revolution. The ‘democratic revolution’ theory has sought to establish legality of revolutions on a more elevated normative ground using the ideals of human rights and democratic governance (Paust, 2013; Kalkidan, 2014). Meanwhile, for ‘social approval’ theorists, the *fait accompli* argument fails to separate socially acceptable revolutions from socially unacceptable ones, and therefore, a legal analyst must identify criteria which will verify the legitimacy of a revolution. In this view, a revolution is legitimate if the revolutionary regime institutes democratic rule and governs by rules acceptable to the community (Khan, 1987, 20). Nevertheless, and despite their differences, in all of these approaches a revolution is at its most basic level an essentially state-oriented concept. “[T]he legal definition of a revolution”, Khan suggests, consists in “a revolutionary group tak[ing] possession of the coercive state machinery in violation of the existing succession rules” (1987, 2) which may or may not have a profound sociological impact (Khan, 1987, 5). Similarly, for Brookfield (1999, 13), a revolution is legally defined as the overthrow and replacement of a legal order, whether or not brought about by violence, contrary to the rules of change belonging to that legal order (also, Green, 2005, 339). Thus, from the legal point of view, Opatek (1991, 5) suggests, revolution is effective political change not in accordance with the constitution hitherto in force.

Other scholars, however, have levelled different criticisms against the state-centred nature of the common concept of revolution. Rejecting the ‘state-then-revolution’ historical narratives as “anachronistic”, Lachmann (1997, 76-7) contends that the relationship between revolution and state development should be problematised, not taken as given.

⁵ The Supreme Court of Pakistan in *The State v. Dosso* [1958] PLD S. Ct. 533 noted that a revolution is legitimate provided it has been efficacious. This judgment as well as Kelsen’s effectiveness theory were later cited with approval by the Ugandan High Court in *Uganda v. Commissioner of Prisoners* [1966] 1 EA 514 while deciding the legitimacy of the country’s new 1966 constitution.

Moreover, Marinelli (2014, 3) suggests that, due to its focus on formal-political and institutional change, such a perspective overlooks and underestimates the human processes at stake in revolutions and thus, as Goodwin (1997, 21-22) notes, unable to theorise the 'nonstate' or 'non-political'. On the other hand, it has been argued that seeing the state as the quintessential target of revolution may not reflect contemporary realities of globalisation, consumer culture (Kristeva, 2000), and neoliberalism (Harvey, 2005; Holloway, 2002) where capturing state power may no longer be the central or desirable goal for revolutionaries (Foran, 2005, 236).⁶ Instead, revolutionaries may be more concerned with "changing the world without taking power" (Holloway 2002), as personified in the new figure of the 'multitude' who continues to seek autonomy from the state through decentralised networks (Hardt & Negri, 2000; 2004; Negri, 2008; Virno, 2006a).

In fact, as Farhi (2003, 35) suggests, in many postcolonial contexts in particular, the goal of revolutionaries may not be to seize and turn the state into an instrument of social change, but to redefine it and pull it back from its role of imposing its will on society in an arbitrary fashion. Highlighting the 'intrusive-absent' nature of such states, Reddy (2016; 1992) argues that, following the legacies of their predecessor colonial states, postcolonial and autocratic states are often simultaneously present in and absent from their societies.⁷ They are present, intrusively, as they seek to control different domains of social life through bureaucratic networks, judicial systems, and political institutions implemented for the purpose of domination, coercion, and disciplining of the population (Mitchell, 1991; Comaroff & Comaroff, 1991). Yet the state is absent from social life when it concerns provision of social welfare. This absence of the state from people's lives, where civil society may seek to remain distant from the state, thus raises important questions regarding perspectives that focus on state to reference revolutionary transformation (Reddy, 2016). Therefore, seeing 'state crisis' as a cause of revolution (i.e. providing political opportunities for people to mobilise), as many common theories do, is perhaps not entirely helpful. For, as Beinin & Vairel (2011) argue, in many postcolonial contexts, states are so far removed from the lives of people living on the margins of society (the unemployed, poor, rural dwellers etc.) that state/elite crises or their internal conflict are often unlikely to culminate in mass mobilisation.

⁶ Also, see chapters in edited volumes by Foran (2003) and Foran et al (2008).

⁷ Also, see broadly similarly Badie's notion of 'imported state' (2000) in discussing some features and predicaments of post-colonial states.

Furthermore, the “foundational image” (Levine, 2013) within common theories of revolution which tend to reify the state and society (Goodwin, 1997, 21) as conceptually distinct, raises more fundamental questions. Mitchell (1991a) has called into question such conceptions of state as those that assume seemingly discreet ‘boundaries’ between states and society, arguing that, “[t]he state should not be taken as...an agent, instrument, organization or structure, located apart from and opposed to another entity called society.” (Mitchell, 1991a, 95). Therefore, while some have pointed to the contingent, contradictory and peopled nature of the state and emphasised its essentially social character (Gill, 2010, 1048; Painter, 2005; Migdal, 1994), others have contested the common portrayal of revolution based on the subject standing outside the state and trying to seize it (Holloway, 2002; Foucault, 1991).

In this sense, the legal theories of revolution (the effectiveness doctrine in particular) are not only state-centred but also outcome-dependent and teleological, for they share a common conceptual ground in so far as they accept as revolution, Opatek (1991, 5) notes, only the *successful results* of actions aimed at changing the state and constitution hitherto in force. A successful, effective revolution is therefore treated as legal, while legal theory treats an ‘unsuccessful’ revolution as not a revolution at all, but ‘crime’ (Douzinas, 2013). This emphasis on the outcome is equally shared by most other, social science approaches to revolution for they are “almost invariably shaped by the fate of the movement” (Greene, 1990, 2). The latter emphasise as necessary outcome for a revolution not only capture of state power but also fundamental transformation of the material and ideological conditions of social life (Selbin, 2008, 131).

The necessity for ‘total’ and ‘radical’ transformation is the basis for the distinction often made between *political* as against *social* revolution. Political events which do not involve transformation of the economic and social structure of society, Marx dismissed as “partial, *merely* political revolution which leaves the pillars of the building standing” (1844, emphasis in original). Pointing to the American Revolution, Arendt (1990, 35) similarly accepts as revolution only that which leads to the foundation of an altogether new body politic. Selbin (2008, 131) thus suggests,

[revolution consists] a *process* of origination and subsequent struggle, and an *outcome*, the effort at fundamental transformation. When both elements are realized, we are more likely to consider them ‘great’ or ‘social’ revolutions; lesser instances are often labeled political revolutions, rebellions, revolts, resistance, or other types of collective action.

Bauman (1994) maintains a similar distinction between *political* and *systemic* revolutions, whereas others often invoke a similar dualism between revolution and reform. Most

notably, the debate between Rosa Luxemburg and Eduard Bernstein in early 20th century on the question of ‘reform or revolution?’ established, as Holloway (2002) observes, the terms that were to dominate thinking about revolution for most of the twentieth century, where reform was seen as a gradual transition to socialism through electoral and parliamentary means, whereas revolution was seen as a more rapid transition to be achieved by taking state power and using it for radical change. The reform-revolution binary follows the common emphasis on the *swiftness* of revolution, and thus the perception of revolution as a “necessarily sudden” (Kamrava, 1999, 320), “explosive moment” (Goldstone, 2009), when there is a close proximity between the event and its revolutionary outcome (Lachmann, 1997, 73). A true revolution is consequently seen as only that which aims and succeeds “to reconstruct the entire society” (Blumer, 1995, 74), and does so swiftly.

From this perspective, revolution, unlike reform or rebellion, is necessarily a single event of total social transformation when the *ancien régime* falls and society is profoundly and swiftly changed for the better, a momentous break which divides history into before and after. Some scholars, however, have insisted on the untenable conceptual division between reform and revolution (Martin, 2012) and on their blurred boundaries (Huntington, 1968, 344). Others, meanwhile, have altogether rejected the implicit assumption in such theories that a revolution should – or could – neutralise in one fell swoop an entire apparatus of structural violence, to leave the social field open for an untrammelled outpouring of revolutionary creativity (Graeber, 2012, 58; also, Newman, 2011). This prevalent conception of revolution may be politically disempowering and rather conservative (Springer, 2016) since, adds Graeber (2012, 29), anything short of it is seen as a defeat of revolution. Perhaps it can be argued that it is against such politics of scale that Foucault (1980, 1998) developed his key conception of power understood as also local and capillary, and not external but internal to social relations of all levels. One conclusion from this perception of power is that understanding revolution as *total* emancipation and transformation of society is misguided just as it is to assume complete and utter domination. (Deleuze & Guattari, 1994; Rancière, 1999; Laclau & Mouffe, 1985). Moreover, revolution thus defined becomes an event that, as Azoulay (2012) suggests, by nature can only take place for a limited, clear-set period of time, the time between the dark past and the glorious future.

To conclude, the ostensibly ‘universal’ concept of revolution underpinning much of this scholarship is marked by attributing conceptual primacy to a particular narrative of ‘Great Revolutions’ as part of European historical trajectories. It is based on a generally fixed conceptual model which remains largely state-centric, outcome-dependant, and

exceptionalist and accepts as revolution only a swift, totalising event of social and political transformation. Largely following this model, as noted above, legal theories of revolution in particular are marked by strong formalism and teleology whereby revolution is conceptualised on the basis of an unlawful but successful and efficacious change of state and constitution. However, as suggested in this section, these features of the commonly used concept of revolution could be problematic as they tend to overstate and reify the role of state and its purported distinction from society, the reform-revolution dualism, and the possibility of total transformation/domination.

IV. THE EPISTEMOLOGICAL METHOD FOR REVOLUTION

The problem with the established approaches to revolutions is not only the specific attributes of their underlying, common conceptual model itself but also their epistemological method; that is, how the concept is used to provide frameworks for constructing, evaluating, and organising theoretical claims in the study of new revolutions. Many studies of new revolutions are marked by theorists examining to what extent and in what ways the case under study has incorporated those ‘indispensable’ core attributes of the concept; an epistemological method that, as Rao (2016) shows, enables theoretical debates but ensures that the basic conceptual model is preserved. In other words, concerned mainly with whether the theory “works” and with “confirm[ing] theory’s predictions” (Beinin & Vairel, 2013, 3), the struggle under study is often made to affirm the concept, thus correcting the movement while leaving the concept intact (Douzinas, 2013, 188). In the relationship between the concept and a singular phenomenon, therefore, it is the former that is treated as the starting point of enquiry, like a ‘touchstone’ (Azoulay, 2012) against which the latter is measured.

As a result, this scholarship often retains normative conceptual binaries such as successful-failed revolutions, revolution-rebellions, or as noted earlier, revolution-reform. Consequently, a significant part of the scholarship on revolution, including from the sociology of revolution,⁸ has been predominantly driven by and focused on theorisation about revolutions with the aim of predicting their likelihood, ‘discovering’ their causes, explicating and rationalising their outcomes, and generally hypothesising about the

⁸ See edited volumes by Foran (2005, 2003, 1997). For recent reviews of this literature see Lawson (2016) and Rao (2016).

(necessary) trajectories, stages, and conditions of ‘successful’ and ‘failed’ revolutions. Some developed elaborate theories about the stages of the so-called ‘Great Revolutions’ (Brinton, 1938, Pettee, 1938; Sorokin, 1925) which were later used, with adjustments, for systematically theorising about causes and outcomes of several ‘Third-World’ and anti-colonial revolutions (Huntington, 1968; Gurr, 1970; Davies, 1962) and to hypothesise about the “indispensable conditions” needed for them to be successful. In Foran’s (2005, 18-23) formulation, for instance, such conditions include dependent state development, exclusionary regimes, strong cultures of resistance, economic downturn, and a world-systemic opening (also, Goldstone, 2009). Others have been, for a long time, theorising about the role of structures or agency (or a mixture of both) in causing revolution and determining their outcomes. Whilst some saw revolutions as product of “objectively conditioned” crises whose cause and outcome are determined by particular structural alignments in relation to state, the economy, elite dynamics, and/or demographic changes (Goldstone 1991; Skocpol, 1979), others put more emphasis on agency of actors and coalitions, and on the role of ideas and culture in motivating those actors along with structural factors.⁹

The “etiological illusion” (Bennani-Chraïbi & Fillicule, 2012) of this approach has been criticised as it often involves finding and theorising causes of revolutions *ex post facto* on the basis of their outcomes (Kurzman, 2005, 5-6; Aya, 1990; Greene, 1990, 2). Others scholars of revolution have rejected the use of such fixed models of revolution and their highly defined forms of theorisation since they tend to reduce the complexity of revolutionary phenomena to a predictable, linear, cause-effect narrative involving fixed, predetermined elements, and unfolding according to observable rules (Lawson, 2016; Emirbayer 1997; Aya, 1990). What has been, therefore, missing from this scholarship on new revolution is in fact those revolutions themselves. As Lawson (2016, 116) suggests,

The problem is that any definition rooted in the attempt to ascribe revolutions with a set of essential characteristics must by necessity freeze history. Such an exercise not only occludes the empirical subject matter it claims to explain, it also fails to capture the sense in which revolutions are entities-in-motion. The result is the flattening of the social world into a static sphere of preexisting social formations.

⁹ This included emphasis on the power of ideology (Sewell, 1985), ‘cultures of resistance’ (Foran, 2008; 2005), ‘repertoires of collective action’ (Tilly, 1978), cultural symbols (Swidler, 1986), popularised stories (Selbin, 2010, 2008), the ‘infrapolitics of resistance’ and everyday interactions (Scott, 1990), the role of gender (Moghadam, 2008, 2003, 1989), social class (Lane, 2008; Foran, 1991; Farhi, 1990), or race (Blackburn, 2008; Shilliam, 2008).

Furthermore, the problem with this prevalent conceptual-epistemological approach is the resulting epistemic division of labour (Icaza & Vázquez, 2013; Motta, 2011). That is the implicitly assumed binary between the fixed, universal *theoretical* knowledge produced by the (Western) observer and the relational, *practical* knowledge produced by the movement, and the superiority of the former over the latter. The singularity of a non-Western people's struggle is thereby often theorised and normatively measured against a Western model and standard of revolution by Western pundits – a 'successful' or 'failed' verdict (Selbin, 2016, 21). The Western theorist has come to be conceived as the knowing subject, and the West as the principal 'site of theory' and ideas, whereas the non-West is reduced to mere object of study and the 'site of the practical' where those ideas are applied and tested (Mitchell, 2016; Alatas, 2006; Abu-Lughod, 1989). We are not far from the orientalist division of the world into the West as developed and rational thus superior, and the rest as undeveloped thus inferior (Mamdani, 2004, 32; Said 1978, 1993) and as subaltern who cannot think (Dabashi, 2015; Mignolo, 2015; Mahbubani, 2009), or speak (Spivak, 2010) for themselves. Therefore, the outsider-interpreter who ostensibly knows more about non-Western people than themselves (Said, 1978) takes it upon himself to enlighten them on what a *real* revolution ought to look like – a state-centred model based on total, swift transformation to freedom. It is in this sense that Kedourie (1991, 194) has argued that, like imperialism, the idea of revolution as total transformation and complete liberty is a Western importation.

To conclude, on the one hand, it is increasingly evident that the common Jacobin-Bolshevik conception of revolution no longer reflects many new social struggles and revolutions which are marked by "qualitatively different" forms and practices (Garton Ash, 2009, 377; Nail, 2012, 1). On the other hand, the common methods of studying new revolutions have led to a largely Eurocentric scholarship equally marked by an epistemological division of labour, and the primacy of theory which effectively drives the singularity of phenomena to the periphery of analysis. Reflecting on the state of scholarship on the 'Arab spring', Mitchell (2016) thus insists that in studying new revolutions, we need to transcend Western understandings of the concept and abandon altogether the basic Western form of analysis which is based on the "sovereignty of theory" and the concept-phenomena binary.

V. TOWARDS A PARTICIPANTS-ORIENTED, PERFORMATIVE REVOLUTION

Social struggles often develop forms of knowledge and practice for social transformation and political change, as Motta (2011, 179) argues, based on their own concrete political experiences and through a process which is immanent to these experiences as opposed to territorially or intellectually transcendent. Against the normative, highly fixed, Eurocentric conceptual and epistemological approaches used in many studies of new revolutions, including in Egypt (see Chapter 3), my aim in this thesis is rather to take as the starting point of analysis the specificities of the situated conception of revolution. This approach, as I will propose in this section, helps afford the singularity of the case under study a more central role, rather than accessory or appendage for theory. It could be achieved by emphasising the performative character of revolution as a concept, and thus its conceptual fluidity and open-endedness. Instead of asking normative questions, based on fixed, predefined concepts, about whether and to what extent a specific social struggle can be deemed a (successful) revolution, we can build our analysis on the participants' own conceptions (visions and practices) of revolution and on what is at stake politically in the different ways revolution is conceptualised, by revolutionary and counter-revolutionary actors, in that specific context. This entails approaching revolutions not as mere objects of theory but as in and of themselves sites and processes within which valuable new knowledge and ideas emerge. We can then draw on these new ideas, categories, and forms of knowledge as the starting point to develop our framework to study a revolution.

Such fluid, performative understanding and approach to revolution helps highlight its important material dimension as a concept. Concepts, as Tanesini (1994) suggests, can help shift the ground for our political imaginings and thus influence the evolution of ongoing practices and make certain realities, rather than others, possible. Put differently, as Rowse (2009, 35) argues, concepts can help constitute political technologies that shape our political possibilities, and consequently, as Bacchi (2012, 151) suggests, they don't merely represent the social reality, but part of its production. Therefore, like concepts in general, 'revolution' (theoretically and politically) can't be deemed as a neutral reflection of an objective, external reality *out there*. No understanding of revolution is ever politically neutral. "What defines a revolution – where it can be located on a calendar and a map, what it includes, who speaks for it, the things it seeks to change", Shenker (2017, 11) aptly notes, "is never a neutral question." I thus approach revolution here as a contingent and "essentially contested concept" (Gallie, 1955), always implicated in, affecting and affected by broader power relations in which it is situated.

It is, therefore, important to examine the performative character of revolution as a concept, that is, how the revolting subjects take up the concept of revolution and what is at stake politically in the ways it is imagined and enacted by them, as different ideas of revolution may contribute towards and help point to different political and material effects. Ultimately, the point is that if what ‘revolution’ is and what it does depends to a large extent on the ways in which it is imagined and taken up in any specific time and place, then, unlike the common conceptual-epistemological approaches noted above, the idea of revolution is always emergent and contingent, always fluid and unfinished. Rather than a universal idea which has been defined once and forever, revolution is thus situated in a multitude of specific temporal and spatial contexts (Sorbera, 2014). It is an equivocal term whose meaning is by no means a settled question (Arditi, 2003, 91), and a historically contingent phenomena the very character of which is prone to change (Rao, 2016, 267) depending on the revolting subjects’ “repertoires of collective action” (Tilly, 1978), their “revolutionary imaginaries” (Selbin, 2016) or “imaginaries of insurgency” (Khasnabish, 2007; 2008), and the tools they find at their disposal (Selbin, 2003, 83).

With their common epistemological division of labour and their underlying ‘sovereignty of theory’ over concrete phenomena, prevalent scholarship on revolution (including on the Egyptian revolution as discussed in Chapter 3), often underplays this fluid, performative approach that starts from the participants’ particular conception of revolution. They often treat participants’ own views of their struggle with suspicion and mistrust them as potentially misguided and analytically irrelevant. For instance, in Arato’s view (1994, 185-6),

When actors describe their action as revolution, they are generally referring to the coexistence of experience, event, and structural change. Since they may be mistaken about structural change, it is impossible to determine the presence of revolution by focusing solely on revolutionary involvement, experience, anxiety, or labelling.

This mistrust of the participants’ conceptions and forms of knowledge, and their treatment as, at best, appendage to theory often leads to the “invisibilization and de-legitimization” (Motta, 2011) of ‘other’ visions and practices of revolution. It consequently leads also to what Santos (2007) terms “Abyssal” forms of scholarship, that is scholarship marked by deep disparity between new forms of struggle and the epistemological/conceptual categories used to study them. Participants’ visions of revolution, as Selbin (2016, 24) rightly notes, are often a creative concoction of specific names (often heroes and martyrs), dates, places, grievances, as well as means and methods, woven together, into some sort of shared, meaningful narrative of hope, desires, and commitments which they may understand collectively as revolution. These commonly shared, situated visions may not

look like the established, Western model of revolution that the Western scholar, in his Eurocentric universe, expects and accepts. But, why should they? Nor does this difference make them necessarily less radical or revolutionary than those revered Western ‘Great Revolutions’. Revolution, as an idea, “travels” (Said, 1983, 226-241) from one place to another but is necessarily taken up in different ways. The spaces in which struggles are concentrated significantly shape the identities and agendas of the participants (Schneider, 2000, 798), and so, any conceptual use of revolution for new phenomena should begin from the specificities of where we find them and on the basis of the specific visions, actions, and interactions of the revolting subjects vis-à-vis the relations and regimes of power in which they are situated.

My concern in this thesis, therefore, is not whether and to what extent Egyptians’ praxis of revolution compares to the prevalent concept of revolution. Instead, I examine the ways in which practices of different actors during the Egyptian revolution have underpinned different conceptions of revolution, and how they matter politically, and thus may have affected the unfolding of that revolution. The aim is to give primacy to the participant’s own ideas of revolution through continuously connecting our understanding of revolution with the meaning they attribute to the actions they take, what they say, and do (Bennani-Chraïbi & Fillieule, 2012, 13). Different revolutionary subjects may take up different visions of ‘revolutions’ and social change, some of which may be seen by different scholars as more empowering and progressive, or exclusionary than others. But from the perspective I adopt here the question is not so much what the *right* theory of revolution is, or which definitions fit contemporary revolutions more accurately. My focus is rather on the meanings that revolutionaries themselves attribute to their actions and the ways in which they continue to imagine the meaning and potentialities of their desires and actions during the process of framing and pursuing their revolt (Hardt, 2009, 139; Bamyeh, 2013a).

As noted earlier, a considerable theoretical tendency within the established study of new revolutions is to make claims about revolutions which imply that their totality can be fully known and theorised. Instead, in the performative, participants-oriented approach I adopt here, we start from the position that each perspective is a partial engagement with phenomena. Recognising this partiality of knowledge can thus help deconstruct and avoid the otherwise common epistemological method of studying revolutions noted above, which assumes a privileged position for the (Western) theorist as a detached, neutral observer and ultimate judge on the existence or ‘success’ of a revolution. Thus, against the ways in which Western epistemological, theoretical practices recuperate and ‘colonise’ (Denzin & Giardina, 2007) local knowledge, visions, and practices of

revolution, the approach I adopt here can help towards a de-colonial, non-vanguardist epistemological approach (Motta 2011) through opening up the possibility for understanding social struggles on their own terms (Firth, 2013). Consequently, no longer are new revolutions studied and classified, based on fixed Western models and retrospective cause-effect theories, as “the already known”, but instead as themselves emergent sites of heterogeneous, new forms of knowledge (Mignolo, 1997, 11).

This immanent, rather than intellectually transcendental, approach has been adopted broadly by several scholars of revolution who have argued for studying revolutions and social movements as site of knowledge-production (Casas Cortes et al, 2008; Mignolo, 2012; Escobar, 2010). Whilst Mignolo (1997) approached the Zapatista uprising as a “theoretical revolution” and a “theoretical intervention”,¹⁰ Icaza & Vázquez (2013) study that uprising as “epistemic struggle”. Similarly contesting the “reductionism of Western discursive frames of analysis”, Ghamari-Tabrizi (2016) has approached the Iranian 1979 revolution based on the revolutionaries’ own visions of revolution. The analytic starting point for his study has thus been the possibility for people “to envision and desire futures uncharted by already existing schemata of historical change and patterns of social change... and to think of dignity, humility, justice, and liberty outside Enlightenment cognitive maps and principles” (Ghamari-Tabrizi, 2016, xii). This latter approach largely follows Foucault’s, otherwise understudied but important writings on the Iranian revolution (2002, 2005a, 2005b). Rejecting the commonly adopted Western logic of ‘history’ and ‘revolution’, Foucault approached the Iranians’ revolution as that which was unfolding at the threshold of novelty and thus the study of which should begin from the people’s own visions, forms of knowledge, and classifications. Thus, questioning the Western pundits’ continued use and application of their own ‘familiar’ frameworks when faced with an ‘unfamiliar’ revolutions, he observed in a rather sarcastic tone,

This long succession of festivities and mourning, these millions of men in the street invoking Allah, the mullahs in the cemeteries proclaiming revolt and prayer, these sermons distributed on cassette tapes... it was difficult for us to call all this a ‘revolution.’ Today, we feel as though we are in a more familiar world. There were the barricades; weapons had been seized from the arsenals; and a council assembled hastily... History just placed on the bottom of the page the red seal that authenticates a revolution... The first act is going to begin: that of the struggle of the classes, of the armed vanguards, and of the party that organizes the masses, and so forth. Is this so certain? (Foucault, 2005a, 239).

¹⁰ Translated from Spanish and quoted in Icaza & Vázquez (2013).

Consequently, in his study of the ‘Arab Spring’ revolutions (including in Egypt), Dabashi (2012) warns against the common “universalist philosophies and sweeping theorizations [and their] longing for ‘total revolution’ following the French Revolution” (241), which reduce revolutions “retrogressively to what we know” (75). Against the prevalent figure of the Western theorist as the objective, knowing, supreme subject vis-à-vis the singular revolution as the object of study, the task is that of “becoming attentive students of the uprisings and...their own knowledge” (Dabashi, 2012, 241). Meanwhile, against the “hegemony of the concept” whereby the world is described merely as the unfolding of a Western conceptual logic, Mitchell (2016) suggests that in studying ‘Arab Spring’ revolutions we approach them, on the basis of their ‘specific materiality’, as themselves the grounds from which theory is produced. Attention to materiality means, he explains,

to ask a set of quite material questions about the ability of populations to interrupt authority...So, one can think of materiality itself as ways that doesn’t begin from the concept and therefore in that sense is working against Eurocentrism; because of the way in which Eurocentrism is associated with the concept, with taking a certain idea and then looking for its expression or its absence or its delayed or distorted arrival elsewhere. (Mitchell, 2016, 745-746).

VI. IMPLICATIONS FOR THE STUDY OF EGYPT

Rather than seeing revolution like a state (as per the common conceptual model), or like a privileged Western theorist (as per the common epistemological method), this thesis is an exercise in seeing revolution like participant-in-revolt, that is, based on the visions and embodied practices of subjects who are engaged in what they understand as revolution. The advantages of doing so are manifold. Firstly, as discussed above, it helps avoid the prevalent subject-object binary and epistemological division of labour in the study of new revolutions. Secondly, unlike the limited purview of the common scholarship, it helps pay attention to a wider range of practices that the subjects may engage with and understand as part of their revolution, and to what is at stake politically in those understandings and enactments. This latter advantage can help towards a more fruitful study of some key aspects of the revolution in Egypt which are equally crucial for my analysis in the present thesis. They include, as I explain below, the *processual* and *prefigurative* aspects of that revolution.

The formalist, state-centric approach to revolution, common especially in legal theories of revolution discussed above, concerns itself mainly with activities targeting the state and insofar as they contribute to the unlawful but effective and successful change of the state and the constitution hitherto in force. A performative, subject-oriented approach to studying new revolutions can help widen the otherwise limited scope of the common scholarship, as it studies as revolution those activities of the participants which may not necessarily and directly target, or seek to capture, state power but are nonetheless understood by them as part of their revolution. This means paying attention to a wider range of practices that the subjects engage with and understand as revolution, and to what is at stake politically in those understandings and enactments.

This could mean, as in the case of Egypt, studying as revolution new collective performances which, rather than the seizing of state power, were largely concerned with imagining, experimenting with, and bringing about new forms of *state-subject* relation and political/legal culture as well as with *inter-subjective* relations and solidarities (see Chapter 4). And yet, these key aspects are often analytically relegated to the ‘less-important’ category, if not the unseen, of the revolution being studied. Indeed, revolutionaries’ emphasis on new inter-subjective relations and solidarities as part of their revolution, and the “epistemic uniqueness” of such new performances (Icaza & Vázquez, 2013), is almost entirely overlooked when revolution is conceptualised by theorists on the sole basis of what it opposes (i.e. the state).¹¹

Consequently, based on a performative approach to revolution as a concept, in the following chapters, I ask what it would mean for our understanding of the Egyptian revolution and its unusual, juridified character if we begin, following the participants, from state-subject relation and political-legal culture (rather than state capture) as the key domain of struggle for change and revolution. In other words, what are the implications for studying the relation between law and revolution in Egypt when popular visions and practices of revolution were largely driven by a desire for radically different social relations and political-legal culture, rather than by a revolutionary vanguard attempting to replace the incumbent rulers by themselves.

The understanding of revolution based mainly on what it opposes and as ‘unlawful but efficacious change of state’, which I critiqued above, merits further consideration. Surveying the literature on the Mexican revolution, Mancall (1971) noted almost half a

¹¹ For a number of recent studies which have similarly sought to avoid analysing social struggles based on what they oppose, see Icaza & Vazquez (2013), Wallerstein (2011), Gills & Gray (2012), and Rocamora (2012).

century ago that one reason for many misconceptions of that revolution is that we are so accustomed to thinking of revolution always as opposition to something, so that any part of the struggle that is not seen as oppositional seems to merit little attention. His criticism continues to be relevant with regards to much of the current scholarship on revolution which effectively valorises what it considers as the ‘outcome’ (understood as singular) over the processes of revolt and their heterogeneity.¹² Complex, multi-faceted processes of revolutionary mobilisation and praxis are thus reduced to the ostensible singularity of what a revolution is opposing (i.e. state) and its eventual outcome.

This can be problematic and misleading when analysing a revolution in which participants may have espoused a different idea of the outcomes and processes of their struggle and its meaningfulness and importance. The Egyptian revolution is a case in point whereby for many revolutionaries the *processes* of their struggle seemed to be the object of much of their efforts (see Chapter 4). Indeed, there existed a significant range of revolutionary involvement by participants which were simply not concerned with the final outcome, nor targeted towards change of state or other grand-scale institutional transformations (see Chapter 4). Furthermore, unlike common theories of revolution characterised by finality and completeness as the conclusive end point of a teleological cause-event-outcome narrative, revolution seemed to be envisioned and enacted by many participating Egyptians not as a grand moment of total change in the wished-for future, but as that which essentially unfolds in the processes of the struggles in the here-and-now. This common emphasis on processes and on merging means and ends in the popular praxis of the Egyptian revolution, as I will propose in Chapter 4, further points to participants’ prefigurative attitude to social change as a method of revolt. Many participants were insisting on collectively performing through the present processes of revolt some of their wished-for changes (including different state-subject and inter-subject relations) as if their desired conditions were actually operative, rather than demanding them as a future outcome (see Chapter 4).

On a more basic level, a performative approach to revolution as a concept can help highlight the ways in which the popular naming of the struggle by participants as a *thawra*, revolution, can be understood, as suggested in Chapter 4, as a prefigurative act in and of itself. This is when the term ‘revolution’ itself is used by people as an ideal, as a mantra to name their struggle hoping to incite more resistance and thus to make a ‘revolution’ happen. This performative notion of revolution brings to fore a crucial form of

¹² But also, not to mention the problematic, foundational view underpinning many such studies in which state and society are reified as distinct domains (see Chapter 2, part IV above).

prefigurative, utopian ontology whereby reality is imagined, named on the basis not of what it is, but of a present potentiality within it which a people desires to actualise. It can be seen as a form of “revolution in reverse” (Graeber, 2012) whereby the participants declare their acts of resistance a revolution first, rather than waiting for a future moment when the scale and outcome are clear so that it can be called a ‘revolution’. This performative approach can therefore help highlight how naming a struggle revolution can, as a term of hope, sometime help a people imagine and act upon the possibility of rupture in a dominating reality, whereby “demanding the impossible becomes the very opening of possibility as such” (Arditi, 2003, 89). Thus, it is an act which is prefigurative in the sense of bringing about something by not just acting it but also by naming it on the basis of what is wished-for. At the same time, it is an act which is focussed on the present, since using ‘revolution’ as a mantra can also help incite and encourage more resistance in the here-and-now.¹³

Whilst approaching concepts such as revolution as performative can help study how different conceptions may help constitute and bring about different political effects, it can also facilitate analysis of the ways in which different political contestants may define revolution (consciously or not) in ways that help bring about their desirable political effects. Such an approach to revolution can, therefore, help study as part of a revolutionary struggle, practices of counter-revolutionary actors who might seek to promote their own visions of revolution and change in a bid to contain or redirect a popular revolution. Just like revolutionaries, counter-revolutionary forces, as Virno (2006, 241) suggests, often actively attempt to construct their own ‘new order’ through forging new imaginaries, cultural habits, and a common sense, and reinterpreting in their own ways the set of material conditions that would make imaginable certain forms of social change. On the other hand, as Calvert (1996, 3) shows, many ruling elites who come to power as a result of a revolution often seek to define the ‘revolution’ and describe the sequence of events in terms which serve to legitimise their new position and the programmes they want instituted. Foregrounding the performative effects in how revolution is used could consequently help pay attention to the different ‘revolutions’ that the actions of different set of actors might help construct – what they include or relegate

¹³ In a broadly similar way, Ardit (2003, 84-85) emphasises the prefigurative but also present-oriented role of ‘promise’ in the politics of revolution as that which “elicits enthusiasm and entices people to demand the impossible [whereby] the ‘now time’ of revolution is being acted upon in anticipation of an event. [We] can think of the anticipation at work in revolution not as prefiguring the future but as structuring the ‘now time’ as the time of our becoming-other.”

in their narrative – and how such visions of revolution and change might relate to, or contribute towards their broader political projects at a particular juncture.

From this performative perspective, as noted above, all concepts exclude certain aspects of the reality they seek to define, for they inevitably impose singularity on an otherwise multiple reality of social phenomena. Therefore, the question is not whether they exclude something but rather what they exclude and include, and how that relates to the ways in which they help bring about different political effects. Consequently, in studying the contested idea of revolution at the heart of the Egyptian revolution, this approach can be helpful for highlighting and studying how different visions of revolution and change may effectively seek to exclude and relegate certain aspects that others seek to emphasise, and thus help understand how such specific visions underpin different political projects. Following my broader aims of studying the politics of law in Egypt's revolution, I am particularly interested in this thesis in examining conceptions of revolution (albeit varied and at times incoherent) underpinning what might be understood as the ruling elite's counter-revolutionary practices of juridification. While suggesting that the popular conception of revolution in Egypt was considerably marked by attention to *processes* of revolt in the *here-and-now* enacted through *prefigurative* forms of praxis (Chapter 4), I examine the ways in which counter-revolutionary forms of juridification could be seen as promoting a different understanding of revolution thus helping bring about other political effects to contain and redirect the revolution (Chapter 5).

Not only is it the case that concepts (including revolution) exclude and relegate certain elements of reality, but also that concepts are often constructed in such ways precisely to ensure that those relegated elements continue to remain so (Ahmed, 2006). When it comes to revolution, such relegations are inherently political ways of acting on the world which are inseparable from prevalent regimes of discourse regarding the meaning, viability, and impact of social struggles. Consequently, the other, related question in studying counter-revolutionary forms of juridification in Egypt is in what ways they could be seen as helping relegate and repress those processual, presentist, and prefigurative elements of the popular praxis of revolution (see Chapter 5). This is followed in Chapters 6 and 7 by focusing on the work of activist lawyers with the view to examine what conception of revolution could be seen as underpinning their forms of praxis (especially in relation to those processual and prefigurative ideas of revolution), and what political effects and possibilities it could help bring about within that contested struggle.

VII. CONCLUSION

As the first step in studying the politics of law in the Egyptian revolution, this chapter considered some aspects of the conceptual model and epistemological methods commonly used in the study of new revolutions. It suggested that the ostensibly universal concept of revolution underpinning much of this scholarship has for a long time been characterised by a generally fixed conceptual model which remains largely state-centric and outcome-dependant based on an extraordinary, swift, and totalising event of social and political transformation. Largely following this model, scholarship on law and revolution in particular has been marked by strong formalism and teleology whereby revolution is conceptualised as unlawful but successful and efficacious change of state and basic constitutional norm. However, I suggested that this common Jacobin-Bolshevik conceptual model has become increasingly inadequate. On one hand, it no longer reflects the qualitatively different practices of many new social struggles and revolutions. On the other, it tends to overstate and reify a number of analytic factors including the place of the state as the sole target of revolution and its purported distinction from society, as well as the reform-revolution dualism, and the possibility of total transformation/domination. The epistemological methods often used in studying new revolutions, I further argued, have led to a largely Eurocentric scholarship marked by normative debates on definitions of successful/failed revolutions, an epistemic division of labour, and the primacy of theory over phenomena.

Suggesting that these common features of the extant scholarship may be inadequate for making sense of the juridified praxis of revolution in Egypt and the practice of lawyers in support of it, the chapter proposed an alternative, de-colonial approach which treats revolution as an essentially contested, historically contingent concept which ought to be studied from within the specific socio-political context it has emerged, and on the basis of its own situated visions and praxis. In this approach which is followed throughout the thesis, I take as starting point of analysis participants' own ideas of revolution, and emphasise the performative character of revolution as a concept and what is at stake politically in the different ways in which it is imagined and enacted by different actors involved in the revolutionary struggle. The chapter concluded that this performative, participants-driven approach to the study of revolution can thus provide a helpful framework to study the politics of law and lawyering as part of the revolution in Egypt. Refocussing attention on the "cultural embeddedness and situated meaningfulness" of revolution (Theodossopoulos, 2014, 416) through studying the visions and practices of the subjects-in-revolt, and their performative effects, could afford a more central analytical place to such processes and their specific dynamics. Understanding revolution as

performative helps with examining what political effects, outcomes, and practices different ideas of revolution by different actors may have helped (or sought to) bring about in Egypt. It also, crucially, helps highlight what certain practices of different revolutionary and counter-revolutionary actors can tell us about their underpinning (consciously taken up or not) visions of revolution and change.

In that sense, a participants-oriented performative approach can particularly help engage with the contested juridified character of the revolution in Egypt in ways other than the formalist, outcome-dependent framework commonly underlying legal theories of revolution. It will be noted that some of those common state-centric, teleological, exceptionalist conceptions of revolution which were critiqued earlier also seemed to underlie the actions of the ruling elite in their efforts to contain and redirect the revolution (see Chapter 5). Meanwhile, the popular, juridified praxis of revolution could be seen as driven by very different perceptions of revolution, marked by a processual and prefigurative approach, seeking to bring about new, radically different political effects in the present yet in anticipation of a wished-for future (see Chapters 4 & 5). Indeed, this approach allows us to study the juridified, prefigurative praxis of revolution and the political stakes therein, not against a normative, fixed theoretical model, but as part of the broader political-historical context and the specific discursive regimes and power relations within which it emerged. Consequently, after a critique of the common frameworks used in the study of the Egyptian revolution, the next chapter will begin our study of the politics of law and lawyering in the Egyptian revolution by taking a longer historical view at the visions of revolution and change in modern Egypt and the political role of law therein.

CHAPTER 3

A POLITICAL HISTORY OF REVOLUTION AND LAW IN EGYPT

I. INTRODUCTION

The study of revolution, including legal scholarship, has been beset by a number of conceptual and epistemological problems which, as Chapter 2 suggested, have often made it unsatisfactory for engaging with new revolutions. Whilst the ‘universal’ concept of revolution underpinning much of this scholarship has often been based on a model which, unhelpfully, remains state-centric, outcome-dependant, and exceptionalist, their epistemological methods have led to a largely Eurocentric and normative literature. A number of such problems, as the present chapter will show, have been evident in many scholarly engagements with the Egyptian revolution. Many scholars have been drawing on a range of pre-existing theories to retroactively discover and ‘explain’ the causes and outcomes of the revolution. Others have highlighted its absence of revolutionary leaders or ideologies, lack of attempts at capturing state power, or its juridified character as justifications for dismissing the struggle as no more than a protest movement, or at best, a failed revolution.

However, for a better understanding of the complex dynamics of the Egyptian revolution, especially its juridified character, this chapter and the following ones aim to take a different approach. Following Chapter 2 which proposed a de-colonial, participant-oriented, performative framework, this chapter begins the study of the Egyptian revolution through approaching revolution as an essentially contested, historically

contingent concept to be studied from within the historical, political context it has emerged, and on the basis of its own situated visions, forms and methods of praxis. Rather than using pre-existing theories and conceptual models to explicate, assess, and correct the Egyptian revolution, I suggest, we could begin by letting the particular (juridified) praxis of Egyptian revolutionaries teach us about complexities of historically changing forms of revolution against equally evolving regimes of power. This would require studying the ways in which participants understood and acted their revolution as well as, crucially, the ways in which they had come to understand revolution in such ways.

Examining the common perceptions of the participants in the Egyptian revolution, this chapter suggests that despite the prevalent scholarly view to the contrary, the vast majority of those participants understood what they were engaged in, including its juridified aspects, as 'revolution'. But, what was the historical backdrop against which, and the political context within which, they came to such understanding? To answer this important question, the remainder of the chapter aims to provide a brief history of the vision of revolution and change in contemporary Egypt especially in relation to the changing role and politics of law and legal institutions therein. The chapter will ultimately propose that the seemingly paradoxical coming together of revolution and law in 2011 should be understood not as incidental but as part of this particular, complex political-legal history and social context.

I begin by taking a look back at president Nasser's 'revolutionary state' in which law and legal institutions were treated with increasing hostility, before considering the changing political discourses of his successors, Sadat and then Mubarak, who brought law and legal institutions to the centre of their authoritarian, 'rule by law' political projects. The failure of Nasser's authoritarian 'revolutionary' project and the juridified nature of his successors' authoritarian rule, the chapter suggests, coincided in recent decades with the disappearance of the language of revolution from popular visions of change and the increasing juridification of grassroots oppositional activism. Taking into account this historical trajectory of law and revolution in Egypt can help with contextualising the '25 January' revolution and the role that language of law played in its popular visions and praxis (Chapter 4), in the post-Mubarak juridified struggles for and against the revolution (Chapter 5), and in the practice of activist lawyers in support of the revolution (Chapters 6 & 7). Egyptians had been oppressed by 'revolution' (under Nasser) and then by 'law' (under Sadat and Mubarak) so that, as I will argue, when the '25 January' arrived they summoned both revolution and law, but this time envisioned and enacted, as the next chapters will suggest, in ways radically different from the past.

II. SCHOLARSHIP ON THE EGYPTIAN REVOLUTION

Open most books about Egypt's '25 January' revolution – or the 'Arab Spring' for that matter – and you will almost certainly recognise two common features. First are the same opening lines that have become a conventional theoretical cliché about most revolutions. It usually begins by emphasising how unexpected the Egyptian uprising was and how it took everyone – scholars, pundits, and politicians alike – by surprise (Gause, 2011). This is because, according to this narrative, in recent years we have been failing to recognise several clear signs which were signalling a forthcoming uprising in Egypt. But if we adopt *the correct* analytical lens to look back at the past few years or decades, continues the narrative, it will at once make clear, logical, and retrospectively predictable when and how it occurred. Depending on the exigencies of the author's theory of choice, a definitive, rational combination of several events and elements is then presented as "quite specific reasons" (Joffé, 2011, 507) that had supposedly been destined all along to spark the uprising and eventually determine its logical outcome.

Whilst some take as starting point of their analysis economic or Marxist theories, others adopt intra-elite conflict theories, theories of relative frustration, modernisation, post-colonialism, or nationalism, and yet others start from social network theories or contentious politics to explicate the causes and outcomes of the revolution. Adopting an economic approach, a number of scholars have begun from the increasingly aggressive neoliberal reforms of recent years in Egypt, growing inequalities and social divides, and the recent global financial crisis (Beinin & Duboc, 2013; Aoudé, 2013; Noueihed & Warren, 2012; Agathangelou & Soguk, 2011), corruption and crony capitalism (Joya, 2011), or oil profits (Danahar, 2013), thus theorising the Egyptian revolution as an "anti-austerity", anti-capitalism movement (Della Porta, 2015), while others have framed the uprising as caused by authoritarianism understood as "the political form of capitalism" (Hanieh, 2011).

Meanwhile, adopting state or intra-elite conflicts theories, several observers have proposed as the cause of the uprising in Egypt the ruptures between elite and frustration of the marginalised elite (Weipert-Fenner, 2015; Isaev, 2014), whereas theorists of 'relative frustration' have emphasised as the cause, often with quantifiable methods (Beck, 2014), relative deprivation seen in the educated, middle-class youth and their disillusionment, loss of social status, economic decline, and rise of unemployment during the 2000s (Al Attar, 2012). Following from this, others thus claim to have built "quantitatively-sound" theories for measuring, assessing, and forecasting the uprising (Korotayev et al, 2014). Moreover, invoking democratic theories of revolution, a number of observers have suggested that the mid-2000s constitutional amendments along with the

2010 rigged elections (which facilitated the dominance of the NDP¹ in the Parliament while preparing Mubarak's son Gamal's rise to power) effectively blocked any oppositional access to the institutional political sphere (Joffé, 2011), and therefore left the streets as the only viable alternative (Noueihed & Warren, 2012). Some have gone as far back as the role of the military since the 1952 Revolution (Hashim, 2011), while others have emphasised the continued effects of colonialism reflected in the durability and "adoptability" (Stacher, 2012) of Egyptian state's "new authoritarianism" (Armbrust, 2017) which caused but also defeated the revolution.

Furthermore, beginning from modernisation theories (Huntington, 1968), some scholars have theorised about the causes and outcomes of the uprising on the basis of the emergence of a globalised, connected, educated youth as a result of its exposure to Western democratic culture (Khosrokhavar, 2012), as others have pointed to the use of new social media and technologies in the late 2000s which, they argue, brought with it democratic awakening or new repertoires of contention (Castells, 2015; Lim, 2012; Tufekci & Wilson, 2012). Although, this latter framework has been strongly criticised by several others for, inter alia, its underlying orientalism and Eurocentrism (El-Mahdi, 2011; Aouragh & Alexander, 2011). Nevertheless, some commentators have credited GW Bush's new, democratising Middle East policies since 2005 for such democratic awakenings, or American scholar and activist Gene Sharp for their non-violent methods of resistance (Ruaridh, 2011).

Similarly emphasised have been the emergence of the "democratization of minds" (Nanabhay & Farmanfarmaian, 2011), and of new "modern", "democratic", or "post-Islamist" values and ideas ostensibly different from previous nationalist, Pan-Arab, and Islamist ones (Bayat, 2013, 2013c; Challand, 2013). From this latter perspective, the revolution in Egypt was supposedly the result of a new "democratic mindset [and] a new relationship with...the World, and in particular, the West [while striving for] the rule of law rather than any 'substantive' content such as religion or community national, ethnic, sectarian." (Khosrokhavar, 2012, 10).

On the other hand, adopting theories of 'contentious politics' and 'new social movements' while foregrounding agency and culture, many scholars have built their theoretical narratives on the emergence of grassroots movements such as industrial workers' general strikes, the Intifada demonstrations, or the emergence of April 6 and Kifaya movements in the 2000s (Ismail, 2011; Beinin & Vairel, 2013; Korany & El-Mahdi, 2012). Meanwhile, invoking frameworks of study based on civil society activism, some observers

¹ The National Democratic Party, the ruling party in Egypt until the 2011 revolution.

have emphasised the role of NGOs as decisive in relation to causing as well as determining the outcome of the uprising (Carapico, 2012), whereas others have reiterated orientalist arguments for the weakness of civil society in the region (Sadowski, 1993) and Arab exception to the third-wave democratisation (Miller et al, 2012) for the eventual ‘failure’ of the revolution.

Nevertheless, and despite an extremely varied array of theoretical frameworks whereby some aspects of the revolution have been highlighted and others downplayed, the basic assumptions and assertions of such “common after-the-fact reconstructions of events” (Bamyeh & Hanafi, 2015) remain largely the same. Following the conclusions of Chapter 2 in relation to the common approaches to the study of new revolutions, we can say that the scholarship noted here can be seen as similarly sharing at least two implicit epistemological assumptions in the study of the Egyptian revolution. Firstly, there is an epistemological division of labour and the primacy of (Western) theory over phenomena which effectively drives the singularity of the latter to the periphery of analysis, thereby reducing the non-Western revolution to the mere ‘site of the practical’ where those theories are applied and tested (Mitchell, 2016; Alatas, 2006; Abu-Lughod, 1989). Secondly, it is the understanding that with the use of right theory and the right combination of elements, units of analysis and their interactions (Beck, 2014)² the totality of the Egyptian revolution, and its causes and outcomes, however complex, are already knowable and rationally explicable based on existing categories, and therefore retrospectively predictable.

The second notable feature shared by many such studies of the Egyptian revolution is that in spite of continuous theoretical disagreements as to definitions, precise causes and effects, or trajectory of the uprising, they often adopt a broadly common conceptual model when it comes to studying the uprising as a ‘revolution’. It is a conceptual model which is largely informed by the prevalent Western concept of revolution used in studying new revolutions, discussed in Chapter 2, characterised by state-centrism, outcome-dependency, politics of scale, and exceptionalism. Consequently, given its markedly different forms of praxis, especially in terms of its absence of leaders and vanguards, its horizontal method, lack of attempts at capturing state power, and its juridified character, many observers have been dismissive of the Egyptian uprising as a revolution, declaring it as the “Arab fall” (Trager, 2016) and “Failure” (Lust et al, 2016; Hessler, 2017). At the most, some scholars have perceived it as an initially potential revolution, or ‘revolutionary

² Beck (2014, 197) claims to have provided a “structured example of theory building” to explain the 2011 revolution through “a meta-framework for revolutionary theory that combines multiple levels of analysis, multiple units of analysis, and their interactions”.

situation' which was nonetheless derailed (Brown, 2013b), lost initiative (Roberts, 2013), or aborted in terms of outcome (Achcar, 2013; 2016) when it failed to capture state power and transform social and political structures, thus nothing more than a "dead" (Lee, 2014) or a "Stillborn revolution" (Aziz, 2014).

Meanwhile, other commentators have contended that it is far too early to call the uprising in Egypt 'revolution' because, they argue, its final outcome is not yet clear (Bennani-Chraïbi & Fillieule, 2012, 1). Yet, others have argued that the 'revolution' framework is altogether inapplicable, and that the Egyptian struggle should be studied as part of the scholarship on protest movements (Krastev, 2014) or social movements (Beinin & Vairel, 2013).

These two mutually reinforcing conceptual-epistemological features have been shared by many studies of the Egyptian revolution. The result has been that often the noted failure of scholars to predict the revolution or to explain some of its emerging causes, features, and outcomes has not been treated as a sign of a major problem of existing conceptual frameworks, but instead as a minor issue demanding slight adjustments in observation and focus only. Nor have the novel characteristics of the Egyptian revolution been treated as reason enough to rethink the tenets of the prevalent conceptions of revolution – or of common forms of knowledge about the Middle East, for that matter. Instead, they have often been treated by scholars as an invitation to either reaffirm the prevalent, Western conceptual framework (by dismissing the Egyptian revolution), or at the most, to slightly sharpen and extend (and thus reaffirm again) the existing, dominant theory and model of revolution.

In other words, many such studies of the Egyptian revolution seem to tell us more about their own theories and concepts of revolution than they do about the Egyptian revolution they claim to study. Nowhere has this common approach been more visible than perhaps their bipolar attitude towards that revolution. Whereas, initially many observers were celebrating Egyptians and their uprising as revolutionary, inspirational, sophisticated, and politically adept, soon with the events that followed in the years after Mubarak, this approach turned into retrospective pathologisation of the same people and the same struggle, now frequently dismissed as too conservative and easily manipulated by Islamists or elites.

III. TOWARDS A PERFORMATIVE APPROACH TO REVOLUTION

Such has been the problematic logic of the prevalent, Western “conceptual imagination” (Bayat, 2013b) in the study of the Egyptian revolution, which other observers have similarly criticised as self-centred and ill-advised (Dabashi, 2012; Gerges, 2014; Selbin, 2012). As my argument in Chapter 2 suggested, a revolution cannot be assumed to be merely and entirely part of, and explicable by, our current knowledge system. Instead, the coming of a revolution calls for an opening up to possibilities that surpass those available in a given political horizon of expectations at a given point in time. We must begin instead, as I suggested, from the assumption that the conceptual imagination and knowledge that is needed to understand a revolution comes, to a significant extent, from and with the visions and praxis of the participants themselves, rather than preceding them (Bamyeh & Hanafi, 2015). One implication of this perspective for the study of Egypt is that, rather than as an object and a mere reaffirmation of theory, the revolution could be studied as on the potential threshold of acting upon other understandings and conceptions of revolution, or legality for that matter, beyond our extant, prevalent understandings of those concepts (Ghamari-Tabrizi, 2016).

This approach could involve, as in this thesis, taking the participants’ visions and praxis of what they understand and refer to as ‘revolution’ as a principal site of new knowledge and ideas about the concept of revolution, while crucially paying attention to the performative aspects and political effects of their specific, shared conception at the particular political historical juncture it emerged. Consequently, this would mean considering the ‘25 January’ revolution not just as a candidate for inclusion in the already-known history/concept of revolution, but to re-think that history/concept in its light. In other words, following Mitchell (2016) and Abu-Lughod (1990), rather than using our pre-existing conceptual model and epistemological frameworks about revolution to explicate, assess, and correct the Egyptian revolution, we could begin by letting the particular (juridified) praxis of Egyptian revolutionaries teach us about complexities of historically changing forms of resistance and revolution against equally evolving workings of regimes of power.

Consequently, I take as the starting point of study the ways in which participating Egyptians envisioned, understood, and enacted revolution and the particular meanings they attached to their actions. I examine this as within a broader performative approach whereby the aim is to study how different such conceptions could help bring about different political effects as well as how certain desirable political effects might lead revolutionaries (and counter-revolutionary actors) to take up and deploy visions and methods of change that could be seen as helping bring about such desired effects. Of

course, in this latter sense, my focus is on what the juridified praxis of revolution can tell us about Egyptians' visions of revolution and their desired forms of social and political change (Chapters 4 & 5), as well as what the counter-revolutionary narratives of revolution and practices of the ruling elite could tell us about their underlying visions of revolution in their effort to contain and redirect the revolution (Chapter 5).

Consequently, the first key step in this approach consists in exploring in more detail the participants' common understanding of what they were involved in, followed by a closer examination of the political history following which, and the specific context within which, those common understandings emerged. In other words, the questions here include: what were the ways in which Egyptian revolutionaries understood their struggle, and how did they come to understand it in such ways? The answer to these questions could help towards a better understanding of the particular characters of that revolution including its popular juridification. In the remainder of this chapter, I first consider the common use of the term 'revolution' in Egypt and the conspicuous disparity between the views of the participants and of scholarly observers of Egypt. This is followed by a brief political history of the visions and practices of revolution and change in contemporary Egypt and the evolving role of law therein. Following from the conclusions of this study, Chapter 4 will subsequently examine in detail some aspects of the praxis of the '25 January' revolution and the considerable role of the language of law in its initial mobilisations, before Chapter 5 which will study the contested forms of revolutionary and counter-revolutionary juridification after the fall of Mubarak, followed in Chapters 6 and 7 by an analysis of the significant role of the work of activist lawyers therein.

IV. CONCEPTUAL-TERMINOLOGICAL GAP

Concerned more with theoretical continuity than change, the common approaches to the Egyptian revolution, with their minimal attempts to engage with the perspectives of those involved, have been the basis for the predominant view that, despite all, the Egyptian uprising was not a revolution. What is striking is that this prevalent approach to, and dismissal of, revolution in the English scholarship appears to be in sharp contrast to the prevalent view espoused by the Arabic scholarship and the participants themselves who commonly considered the uprising as revolution, *thawra* in Arabic – perhaps most unmistakably exemplified by Egyptian scholar Mona Prince's 2014 memoir *Ismi Thawra* (*Revolution is My Name*).

What transpired in most of my own interviews and conversations in Cairo was that participants in the uprising predominantly referred to and understood it as revolution. So different, qualitatively and quantitatively, had been the events of 2011 from anything in the past, and so profound the way they had touched and transformed individual, social, and political lives of countless Egyptians, that many could only describe them as revolutionary. On the first days of the uprising in January, however, as several participants noted, they were only referring to their act as *muzahara* (protest, demonstration). It was by early February, with the increasingly unparalleled immensity, spread, and depth of the uprising, that majority of those in Tahrir and across the country had adopted the term *thawra* and self-identified as *thuwwar*, revolutionaries (also, Soueif, 2012, 24; Prince, 2014).

This conspicuous disparity points to a crucial terminological and conceptual gap at the core of the study of the ‘25 January’ revolution which has often been overlooked or trivialised in the English scholarship. It was not the first time such a disparity had appeared. Historically, this contrasting terminological-conceptual gap resurfaced with several new revolutions in the region, as seen for instance in the Western scholarship on the Dhufar Revolution of 1965 (Takriti, 2013, 7). Instructive in terms of the common conceptual model and Eurocentric epistemological method of Western studies of revolution (discussed in Chapter 2), many western observers of the Egyptian uprising, among them those who dismiss it as revolution, seem to feel little obligation to refer to, let alone engage with, the common terminological practice of Egyptians themselves. Emblematic of the sharp inequality in terms of “whose knowledge counts” (Abaza, 2011), the Western thinker is deemed as the “knowing subject” (Alatas, 2006) while the many Egyptian participants who understood their struggle as revolution are proclaimed, for instance by Roberts (2013), as simply misguided.

Indeed, the noted Eurocentric, dismissive judgment seems to be more concerned with protecting the lofty concept of revolution from undeserving phenomenon. It is, therefore, hardly surprising to see, not just liberals but those on the radical left lamenting “[t]he popular use and acceptance of the term revolution to describe the events in Egypt” because, they complain, it has “de-radicalized” the term revolution (Baraka, 2013). This brings to mind Douzinas’ persuasive criticism against “a well-known tradition of the academic Left which corrects the movement, leaving the theory intact. Instead of the theory fitting in and helping to change the world, the world is made to fit the theory.” (2013, 188). Consequently, the lofty, ‘universal’ concept of revolution is ‘applied’ to the Egyptian uprising, reducing the latter to no more than a failed attempt at replicating the former. Following in the footsteps of the conventional wisdom about the tension between

Arab societies and ‘universal’ standards of democracy (Held, 2003, 199),³ the revolution is reduced to Egyptians’ effort (failed nonetheless) aimed at “joining the contemporary world” (Benhabib, 2011) embodied by the West, and as the expression of their “desire for the West” (Badiou, 2012, 48;⁴ also, Ghamari-Tabrizi, 2016). Pointing to an already existing normative order, this scholarly approach thus portrays the revolution in Egypt (and elsewhere) as but a conservative project to join and be judged by that existing order, and at best a mere reaffirmation and continuation of Western history of revolution (Poe, 2014, 325).

But if, despite all existing political and theoretical assumptions to the contrary, Egyptians rose up to overthrow not just their regime but also the prevalent regimes of knowledge in and about Egypt (Dabashi, 2012), and thus “[to] speak for themselves” (Danahar, 2013, 52), then a necessary approach for studying their revolution seems to be one that starts from the very visions and praxes of revolution espoused by the participants themselves. As noted in Chapter 2, ‘revolution’ is essentially a creative construct on the part of the participants as they envision, unite around, and act upon an evolving narrative of revolt which is a mixture of grievances, demands, desires, possibilities, means and methods (Selbin, 2016; Clark, 1991). By naming it ‘revolution’, Egyptians defined their struggle as part of the longer history, and future possibilities, of revolutionary struggles in modern Egypt. It provided a set of imaginaries (albeit diverse) which enticed people to operate within a specific assembly of points of references. Therefore, studying the Egyptian revolution based on the participants’ visions and practices (conceptions) of revolution, implies connecting, continuously and mutually, between on the one hand, those meanings that participants attribute to their revolutionary enterprise and the discursive, imaginary universe it is part of, and on the other hand, our broader understanding of and reflection on the concept of revolution.

The point, therefore, is not to use such an approach as the basis for either delivering a final judgment on the success of Egyptian revolution, or for comparing Egyptians’ conception of revolution with the established Western concept in order to answer the question ‘was it a revolution?’ – which seems to have become the main preoccupation for much of the scholarship on the Egyptian revolution. As an Egyptian activist, Sameh,

³ Held (2003, 199) claims that “[t]he fundamental fissure in the Muslim world is between those who want to uphold universal standards...of democracy and human rights...and those who are threatened by this and wish to retain and/or restore power to those who represent ‘fundamentalist’ ideals.”

⁴ Badiou (2012, 48) has criticised the perspective adopted by many Western powers and media according to whose narrative “what is expressed in [Arab spring] is...a desire for the West [and] to be included in the ‘civilized world’.”

powerfully explained to me,

We cannot compare what happened in Egypt with what happened in France in the 18th century. Why should we compare? I don't see it as relevant either. That is because the mind is different, the knowledge is different, the tools are different, the people are different, the objectives are different. Everything is different. And you find all those Marxists and liberals who stopped reading in the 60s trapped all the time in asking, 'was it a revolution?'

Instead, my aim in this thesis is to study Egyptians' popular visions and praxes of revolution (and, later, those of the activist lawyers) from inside the historical, socio-political, and legal conditions within which they acquired their particular meanings and significance. It helps fill the noted conceptual gap between English scholarship on Egyptian revolution and common understanding of revolution inside Egypt. Furthermore, it helps with moving towards an understanding of revolution as performative (see Chapter 2) thus further examining the political context, stake, and effects of the popular conception of revolution in Egypt, but also how different actors deployed different conceptions to achieve different political outcomes.

Against the fundamental "sovereignty of the concept" (Mitchell, 2016) in the common approach which effectively drives the singularity of Egyptian struggle to the periphery of (Western) theory of revolution, this approach may help towards decolonising the concept of revolution through affording the singularity of Egyptian revolution a more central role. Heeding Said's notion of "critical consciousness" (1993), revolution is approached as an idea that travels from one place to another but is necessarily taken up in different ways according to the exigencies of the space (Schneider, 2000, 798), thus an equivocal term whose meaning is by no means a settled question (Arditi, 2003, 91), and the very character of which is prone to change (Rao, 2016, 267).

V. HISTORY OF REVOLUTION AND LAW IN EGYPT

The term 'revolution', *thawra*, has a long, rich intellectual history in the Arabic language (Dawood, 2013; Giordani, 2013) and an enduring, though not uncontested, political history in the region in general, and modern Egypt in particular (Al-Hakim, 1988; El-Tayar, 2016). The term has been used in the Arabic language to refer to several events which are perceived as milestones within the broader context of Egyptian modernity

(Sorbera, 2014, 63-4), or what Cole (1999) refers to as “the long revolution”. Amongst them, a number of modern political upheavals have been popularly referred to as revolution including the 1880 Urabi revolution (Cole, 1999), the 1919 revolution (Botman, 1991), and the July 1952 Free Officers movement whereby a group of army officers (‘free officers’) removed the king and effectively established a republic (Gordon, 1992).

Of these three prominent examples, however, none would fulfil the requirements of the prevalent concept of revolution – i.e. mass mobilisation leading to successful overthrow of the state and its replacement by popular revolutionary leaders; total, radical, and swift socio-political transformation, and so forth (see Chapters 2). Both the 1880 and 1919 revolutions were essentially anti-colonial struggles which were eventually crushed by the British colonial power (Cole, 1999) and would amount to no more than a ‘rebellion’ or ‘riot’ according to the prevalent scholarship on revolution. Meantime, the 1952 events – the one with the most far-reaching political effects – continue to be subject of debate as to whether they amounted to a revolution or a military coup (*inqilab* in Arabic) (see Powell, 2014). Nor could any of these revolutions be classified as strictly ‘popular’, for although they all enjoyed widespread sympathy of the population and some degree of participation, none involved their mass participation on the scale seen in 2011.

In more recent times, similarly, collective struggles continued to lack the popular mass involvement and cross-section participation seen in 2011. Examples included the 1977 ‘bread riots’ which mainly involved some of the poorest Egyptians who had been hard hit by the termination of basic food subsidies (Cooper, 1982), the uprising of 1986 which involved thousands of central security conscripts (Kechichian & Nazimek, 1997), several waves of strikes including those in Mahalla al-Kubra throughout the 2000s which were predominantly organised and partaken by industrial workers (Beinin, 2009), and the emerging new movements such as Kifaya and April 6 Youth during the same period which primarily attracted the middle-class youth (Clarke, 2011). In other words, like Egypt’s modern history, Egyptian popular imagination and its ‘repertoires of collective action’ (Tilly, 1978) seemed to hold little memory or precedent of a popular revolution. In that sense, the ‘25 January’ revolution with its immense, diverse popular mobilisation was well and truly a historical novelty – which further underscores the importance of studying its popular understanding of revolution, the particular political conditions within which it emerged, and from which it has been trying to break away.

Nevertheless, the 1919 revolution is particularly noteworthy. Although essentially a nationalist, anti-colonial movement, its visions and demands were expressed to a large extent in a legal language by a vanguard of new elite lawyers who led it (Ziadeh, 1968).

With the legal reforms and modernisation of the late 19th century in Egypt, according to Shalakany (2006), a new, liberal elite of lawyers emerged who set the political and cultural tone of Egypt until the mid-20th century, working as ministers and government officials, as well as journalists and intellectuals.⁵ Some of these lawyers managed to take charge of the nationalist movement of independence against the British occupation which directly led to the 1919 revolution. The spark of that revolution came when the British arrested nationalist lawyer Sa'ad Zaghloul and his allies which was followed by law students going on strike in protest, soon leading to mobilisations, demonstrations, and other acts of resistance by many other groups (Botman, 1991, 25-28). So heavy on legal references was the vision and demands of the movement, and so largely composed of lawyers was its leadership, and of law students its initial marches, that Shalakany (2006) goes so far as to suggest that the Egyptian nationalist movement was essentially a modern legal artefact.

Popular Sovereignty and the Revolutionary State

However, following the 1952 Free Officers movement which ended monarchy, established a republic, and eventually brought Gamal Abdel Nasser to power, a veritable 'paradigm shift' occurred in the Egyptian ruling elite's vision of society and change (Shalakany, 2001, 236) which significantly affected the hitherto strong public presence of the language of law. Under Nasser, as discussed below, the juridical discourse of the 1919 revolution gave way to a reinvention of the nation's identity towards a secular Pan-Arab nationalist project, and soon replaced lawyers with a new elite of military officers and technocrats.

Perhaps the closest to a popular memory of revolutionary imagination in Egypt, and the region, belongs to this period when several major ideological traditions could be seen as centred on the idea of *revolution* as the main strategy of change. They included anti-colonial, pan-Arab nationalism and Arab Socialism of new 'developmental states', certain (non-Soviet) variations of Marxism–Leninism, and militant Islamism (Cook, 2012; Takriti, 2013; Bayat, 2013; Hanafi, 2012). Meanwhile, as perhaps the most significant revolutionaries in the Cold War era, Marxist–Leninist organisations were embracing the ideals and elaborate theories of revolution which found fervent receptions in many people across the Middle East (Bayat, 2013, 2013c). The anti-colonial, pan-Arab nationalist visions of revolution were perhaps most notably embodied by, among others, Nasser's

⁵ On the role of legal elite in modern Egypt see Shalakany (2013), Ziadeh (1968), and Cannon (1988).

United Arab Union project and his ideas of “communities of revolution” (aimed at creating a united pan-Arab revolutionary front to defeat the European colonial projects in the region), as well as the South Yemen Revolution, Dhufar Revolution, and the ongoing Palestinian resistance which continued to capture the revolutionary imagination of the people.

When it came to revolutionary method and organisation these different strands of revolutionary praxis often shared a number of characteristics. Most notably this consisted of a strict organisational hierarchy of a revolutionary party,⁶ a strong leadership and vanguard, *Tali’a*, that would champion the people, “organized and united through political parties and cohesive organizations, committed to a common and pure doctrine and bound by concrete and true loyalty” (Zureiq, 1948, 55; quoted in Takriti, 2013). In terms of vision, it was predominantly state-centric, for the capture and transformation of state was seen by Arab nationalists, Marxists, and Islamists alike as the most effective way to change society for the better (Bayat, 2013, 2013c). Meanwhile Marxists-Leninist movements’ conceptions of revolution in particular was also driven by grand, historical visions of global revolutionary struggle and its promise of the inevitable, final victory (Takriti, 2013, 93ff.). This seemed to be the way in which *thawra*, revolution, was popularly imagined, and what those who called themselves *thuwwar*, revolutionaries, were striving for.

Despite its radicalising, revolutionary effects across the region, Nasser’s project had the opposite effect inside Egypt, pre-empting and suppressing any genuine form of oppositional activity or pluralistic politics. His principles of ‘popular sovereignty’ (*siyadat al-sha’ab*)⁷ and ‘revolutionary state’ effectively helped construct a project of “authoritarian modernism” (Meijer, 2002) where the state made revolutionary, modernising changes from above with the full support of the population whose will and interests were ostensibly represented and embodied by the undisputable leader (Younes, 2012). This was notably visible in Nasser’s hostility towards ideas of legality and legal institutions and actors (Brown, 1997, Chapter 3). In his revolutionary vision of ‘Arab socialism,’ ‘welfare’ was not defined in terms of individual freedom, but as Hourany (1983, 348-51) suggested, as

⁶ It is reflected in the famous statement by Nayef Hawatmeh in 1968: “to ignite a revolution... we have to build our revolutionary party, our Marxist-Leninist party. With the absence of this kind of party, it is impossible to transfer the resistance movement into a real revolution.” (Takriti, 2013, 94).

⁷ As reflected, for instance, in Nasser’s speech during the national celebrations for adopting the 1956 Constitution when he proclaimed, “Citizens: today popular sovereignty prevails, not the sovereignty of the princes or the rulers.” Available from <http://nasser.org/Speeches/browser.aspx?SID=429&lang=ar> (last accessed 23 May 2018).

a rather top-down, autocratic form of aggressive economic development which would supposedly give rise to better living standards and provision of social services. As Shalakany (2001, 237) has convincingly shown, Nasser came to view the institutional mechanisms of liberal legality, its due-process and rule of law commitments, with the privileged role played by lawyers, as impediments to his revolutionary vision. His strategy, as a result, became to subjugate all judicial bodies and suppress any judicial resistance to executive power (Moustafa, 2008, 134). Nevertheless, considering the key role of law, legal institutions, and extensive regulations during the British colonisation of Egypt as an instrument of social control and oppressive colonial governance (Esmeir, 2012; Mitchell, 1991, 2002; also, Naseer, 2003), the hostility shown by Nasser (and other anti-colonial leaders and movements) towards law and legal institutions was perhaps not unexpected.

Upon coming to power, Nasser annulled the Constitution and oversaw the drafting of a new constitution designed to create a president with extensive powers thus contributing to a strongly paternalistic form of rule which severely undermined the possibility of democracy and pluralism (Botman, 1991, 54) – a constitutional design which remained unchanged under Sadat and Mubarak. At the same time, he sought to consolidate his control by circumventing the regular court system through establishing several exceptional courts with sweeping mandates, few procedural guidelines, no appeals process, and staffed by loyal supporters of the regime typically from the military (Brown, 1997). Consequently, the engagement of lawyers in politics was drastically curtailed (Ziadeh, 1968, 148-59) and the Judiciary was subjected to extensive reforms to stop it from meddling with Nasser's top-down socialist project. This was perhaps best exemplified by what has since become known as the 'massacre of the judiciary' whereby in 1969 he dismissed more than 200 judicial officials, including many judges and prosecutors, with an executive decree (Brown, 1997, 84ff.).

Against political actors whose visions and demands for change were based on gradual reforms through liberal legislation by an elected, civilian (rather than military) government, Nasser believed that such mechanisms would not be able to carry out the radical reforms the country needed, nor could they be sufficiently far reaching for achieving social justice. Instead, for Nasser's revolutionary regime, law was viewed as only marginally relevant and in an instrumental sense. Examples included special legislations purporting to achieve social justice by disenfranchising the landed bourgeoisie through mechanisms such as expropriation, rent control, and maximum land holdings, along with other, extra-legal methods of mass redistribution of wealth (Roy & Irelan, 1989; Shalakany, 2001).

In the final analysis, the 1952 regime oppressed Egyptians by the same ‘revolutionary’ vision that purported to free them from the shackles of monarchy and colonialism. And the irony was not lost on later generations of Egyptians’ vision of revolution and change – just as it wasn’t lost on many post-Soviet visions of change. Nevertheless, so integral was the idea of revolution to Nasser’s top-down, anti-colonial nationalism and state socialism that the collapse of the pan-Arab project and the failure of Egypt’s post-colonial state to fulfil its promises of prosperity and social justice severely undermined the political currency of ‘revolution’ (especially in its *etatist* variation) within Egyptian popular imagination (Bayat, 2017). This coincided with and was exacerbated by the concomitant collapse of the Socialist Eastern Block and its discourse of revolution.

Rule by Law and the Juridification of Politics

By the late 1970s, Nasser’s successor, Anwar Sadat, was shedding all of the state’s revolutionary socialist and pan-Arab pretences by embracing neoliberal policies (through his *Infitah*, open door, state policy), and Israel (through the Camp David Accord). Nasser had treated law as only marginally and instrumentally relevant, frequently using exceptional legislation and decrees while keeping judicial bodies subjugated. In contrast, Sadat brought law and legal institutions to the centre of state’s political strategies. Introducing a new Constitution in 1971, Sadat promoted it as an effort to restore greater democracy to Egypt (Feuille, 2011, 241-3) and to guarantee the independence of the Judiciary and non-interference of the Executive in trials (Kienle, 2001, 41-47).

In Sadat’s project, the rhetoric of constitutionalism and legality became the main pillars of the new social discourse. As Moustafa (2007) demonstrates, with the view to attract foreign investment, Sadat strengthened institutional guarantees on private property rights through the establishment of a relatively independent constitutional court and strengthening administrative courts both of which with powers of judicial review. The Supreme Constitutional Court (SCC) was founded with a relative degree of independence⁸ and, as Hashish (2013, 152) argues, it served its goals by transplanting free market policies into the legal system as well as showing a commitment to rule of law and constitutionalism. In addition, Moustafa (2007) suggests that with the failure of state centralised monitoring strategies to produce reliable information on the activities of the

⁸ Despite its relative fragility and its role in many forms of legal intimidation of the population, the Egyptian Judiciary, as Goldberg & Zaki (2010, 24) remark, has been nearly exceptional in the Arab world in terms of the independence of judiciary (also, Brown, 1997, 51).

state's own institutions, Sadat enhanced the independence and capacity of the administrative court system to police his own state bureaucracy.

Under Sadat, state's oppressive practices nonetheless continued, even though under a new set of discourses increasingly invoking the language of legality where judicial institutions played a crucial political role. Thus, as Moustafa (2007, 16-7) shows, when the decisions of the Supreme Constitutional Court and Supreme Administrative Court effectively replaced some of Nasser's social welfare policies with free market economic policies, which impacted the livelihood of many working-class Egyptians, it enabled the government to disclaim any responsibility and suppress any opposition by claiming that it was respecting the courts under an autonomous rule-of-law system.

At the same time, continuing Nasser's use of exceptional courts, Sadat and later Mubarak expanded and increasingly relied on special emergency courts as well as military courts to deal with various forms of dissent under the façade of 'fighting against terrorism'. Since 1967 Egypt had been under an almost perpetual state of emergency, which provided the basis for, among other things, arbitrary arrests and searches, indefinite detention without trial, heightened censorship, and restraints on the gathering of more than five people at any one time. It also helped effectively make emergency and state security courts an established part of the Egyptian legal system, even though they have not been part of the Judiciary and are under the direct control of the Executive and the Army (Singerman 2002; Varol, 2012, 341-2; El-Ghobashy, 2012a, 127). The president and all judges of these courts have been military officers appointed directly by the Minister of Defence, and there are almost no procedural safeguards, with many trials held in secret and with no right to appeal. In other words, the emergency state security courts and, more recently, the military courts, according to Brown (1997), seem to have effectively formed a parallel legal system, serving as the ultimate regime check on challenges to its power (see further Auf, 2015).

In sum, following Moustafa (2007), we can identify some primary functions for juridification of politics under Sadat and later Mubarak, namely to establish social control and suppress dissent through courts, to bolster the regime's claim to legitimacy, to strengthen administrative compliance within the state's own bureaucratic machinery, to facilitate economic liberalisation and foreign investment, and to implement controversial policies with minimum political cost.

Consequently, Nasser's populist, state socialist vision of revolution and change and his principle of *siyadat al-sha'ab* (popular sovereignty) had given way to a juridical-neoliberal vision of progress and social change, and the principle of *siyadat al-qanoun* (rule of law).

The discourses of rule of law and state of emergency along with the neoliberal *infitah* policies, as Mitchell (1999) shows, presented and incisively enforced particular forms of imagining the self, society, and the state (and the state-society relation) which were markedly different from those of the mid-20th century. In this principally juridical-neoliberal perception of progress and vision of future, marked by a new constitution (1971) and a combination of ‘privatisation’, foreign investment, and judicial safeguard of property (Moustafa, 2007), no longer was the state portrayed mainly as the guardian of the nation, nor the personification of its popular sovereignty and will. Instead, as several studies have suggested, the state was depicted predominantly as the guardian of the law, the constitution, and the economic regulations that ostensibly embodied the modern will of the citizens, while protecting their stability, security and property, and representing their new global aspirations (Elyachar, 2005; Ghannam, 2002; Peterson, 2011; Schielke, 2012, 2015). Concurrently, rather than a member of the region-wide, pan-Arab ‘communities of revolution’, the individual citizen was now increasingly portrayed as the subject of laws, policies, and regulations with the duty not to violate law-and-order (Moustafa, 2007), nor ‘sully the image of Egypt’ (Saad, 1998) before the all too important foreign investors.

Yet, this far-reaching set of ‘structural adjustments’ led to another irony of the political history of revolution in Egypt. Not only had Sadat been amongst the first adversaries of the twentieth-century variety of revolutionary vision, and a loyal host and pall-bearer for those fleeing from it (i.e. the Shah of Iran).⁹ He was also amongst its last notorious victims – assassinated by militant Islamists who were struggling in vain to keep aflame their own (divine) version of revolutionary dream. His successor, Mubarak, who narrowly survived that revolutionary wrath, continued Sadat’s neoliberal-juridical policies, albeit more aggressively (Abdelrahman, 2014, 16-20) and under a strictly enforced, draconian Emergency Law¹⁰ which suspended the protection of many rights and freedoms and severely undermined the possibility of pluralism and political dissent (Singerman 2002; Varol, 2012; El-Ghobashy, 2012a, 2008).

Legal institutions played a major role in Egypt’s colonial and postcolonial political systems as an instrument of social control (Esmeir, 2012; Hussain, 2003). But more than

⁹ Sadat hosted the Shah of Iran who was fleeing the 1979 revolution and gave him a state funeral when he died in 1980.

¹⁰ Law no.162 of year 1958, the Emergency Law, effectively kept Egypt under state of emergency almost continuously since the Arab-Israeli war of 1967. It provided for, among other things, arbitrary arrests and searches, detentions without trial, extensive censorship powers, and restraints on public gatherings.

before, during Mubarak's three-decade presidency, state discourses of legality played a prominent role in maintaining an authoritarian political system along with a paternalistic, rentier economic system (Richter & Steiner, 2007). This system, which was mainly protected by a generally nepotistic and corrupt judiciary (IBAHRI, 2014; Auf, 2013; Aziz, 2016) working in parallel with a complex of exceptional, military and emergency courts, could be best described collectively as a 'rule by law' system (Arjomand & Brown, 2014; Bernard-Maugiron, 2014; Brown, 1997). As Moustafa (2011, 182) aptly describes Mubarak's 'rule by law' system of government,

It had maintained its power not simply through brute force, but through complex array of laws and legal institutions that were deployed to dominate every aspect of political and social life, from labor unions, to professional syndicates, to the press, to university campuses, to religious institutions, to political parties and civil society groups. Egyptians have a sober understanding of the centrality of law and legal institutions to both dictatorship and democracy.

Moreover, Mubarak's rule was characterised, as Hashish (2013) suggests, by a number of legal-constitutional structures that had hindered any possibility of genuine politics or serious political reform, thus at the core of people's grievances. One example relates to (oppositional) political parties, as Mubarak's regime heavily controlled the registration and official recognition of any new political party as well as the activities of existing ones (Al-Sayyid, 1993).¹¹ Another example was related to the constitutional safeguards for elections. On the one hand, after the 2000 decision of the SCC,¹² stating that elections must be placed under full judicial supervision to comply with Article 88 of the Constitution, parliamentary elections in 2000 and 2005 were held under judicial supervision. This resulted in an increase in the number of opposition seats in the parliament as, for instance, in the 2005 Parliamentary elections the Muslim Brotherhood won 20 percent of the seats in the People's Assembly.

However, with the 2007 constitutional amendments which, among other things, limited the scope of Article 88 for judicial supervision of elections, the 2010 election ended with the ruling National Democratic Party winning more than 90 percent of the seats. On the other hand, Article 93 of the 1971 Constitution had empowered the Court of Cassation¹³

¹¹ Thus, unsurprisingly in March 2011, the military rulers amended the Law on Political Parties 1977, relaxing the conditions for the formation of new political parties (see further Khatib, 2013).

¹² Supreme Constitutional Court, Judicial year 13, Case No. 11, July 2000.

¹³ The Court of Cassation [محكمة النقض] is the highest appeal court in Egypt for majority of criminal and civil cases.

to only investigate cases of electoral fraud, yet the final say on appeals was left to the Parliament itself, which often ignored the recommendations of the Court (Hashish, 2013).¹⁴ The result was that while legal institutions were central to Mubarak's rule (and social control), the regime saw to it that those same institutions were kept effectively closed to the Egyptian people, their representatives, and their opinions and demands.

Nevertheless, the establishment of relatively independent constitutional and administrative courts and the prominence of the rule of law discourse had some perhaps unforeseen political consequences. It helped gradually open up and point to new ways of challenging the practices of state institutions by activists which, among other things, contributed to the increasing prominence of discourse of law and legality within oppositional politics (Brown, 2008; Moustafa, 2007; Hamad, 2008; Rosberg, 1995), and consequently to "the pervasive legalism of Egyptian politics" (El-Ghobashy, 2016). The SCC and the SAC (Supreme Administrative Court) provided institutional openings which political activists began to use, particularly since the last decade of the twentieth century,¹⁵ as new places of enunciation of demands to challenge the Executive in ways that substantially transformed methods and patterns of activism in Egypt. As Moustafa (2008) notes, activists were able to challenge the regime by initiating constitutional or administrative litigations without having to initiate a broader social movement within Egypt's highly restrictive political environment.

The unprecedented upsurge (Moustafa, 2008, 150), since the last decade of the twentieth century, of litigations on the basis of rule of law and rights thus led towards the juridification of many strands of activism in Egypt while serving, as Shalakany (2006) suggests, to mainstream those new notions as part and parcel of the public discourse. Thus, As El-Ghobashy (2008, 1592) remarked,

In the 1970s, only judges and legal scholars concerned themselves with Egypt's courts. They seemed to be hardly the places where citizens would first go to protect or regain their rights. Thirty years later, the renaissance of Egyptian courts was dramatized by the Supreme Constitutional Court's landmark 2000 ruling requiring full judicial supervision of parliamentary elections for the first time in Egyptian history.

¹⁴ Thus, during the early days of the revolution, Mubarak regime made several statements confirming its intention to amend article 88 of the Constitution and to give the Court of Cassation full jurisdiction on election matters (for instance, see *Al-Ahram Weekly*, 16 February 2011).

¹⁵ According to El-Ghobashy (2016), between 1995 and 2008, the caseload of the administrative courts increased six-fold from 10,709 cases filed to 65,546.

Some of the decisions of the constitutional and administrative courts had major political consequences, bringing courts to the centre of controversial political issues many of which were extremely difficult for political oppositions and activists to challenge through any other available means. For instance, SCC decisions enabled a number of banned oppositional political figures (including the leader of the Wafd party) to return to politics,¹⁶ while it compelled the regime to legally recognise some political parties (including the Nasserist Party).¹⁷ In another set of significant decisions, Parliamentary elections laws were ruled unconstitutional by the SCC in 1987 and 1990¹⁸ effectively dissolving the Parliament and resulting in change of electoral laws. Meanwhile, in another judgment the same court compelled¹⁹ the Executive to reform the electoral system for local councils (see further Rutherford, 1999; Moustafa, 2007).²⁰

Furthermore, as will be further discussed in Chapter 6, the increasing juridification of activism in Egypt coincided with, and helped provide conditions for the emergence of a new generation of lawyers and human rights activists working for now proliferating human rights NGOs, civil society organisations, and law centres focused on legal forms of activism (Abdelrahman, 2004b). Within Egypt's "extremely litigious" society and politics (Singerman, 2005, 165), legal activism had thus become one of few viable routes for many activists in their struggle for change as it often offered relatively less-threatening conditions and more-effective and at times steadier outcomes (see Chapter 6).²¹ This shift could be seen as emblematic of the broader evolution of the vision of change in Egypt, from Arab-socialist 'Communities of revolution' to legal activism. Over time, the legacy of Nasser's top-down socialism which associated revolution with authoritarianism and erosion of individual freedoms, as well as the rule-by-law nature of Mubarak regime, and the increasing possibility of using law to challenge the regime seemed to help transform the common methods of activism and its underlying vision of change. This could be seen as a shift towards the juridification of politics whereby, as Shalakany (2006) remarks, the

¹⁶ Supreme Constitutional Court, Judicial year 3, Case No. 353, June 1986.

¹⁷ Supreme Constitutional Court, Judicial year 4, Case No. 98, May 1988.

¹⁸ Supreme Constitutional Court, Judicial year 4, Case No. 31, May 1987.

¹⁹ Supreme Constitutional Court, Judicial year 5, Case No. 191, April 1989.

²⁰ Nevertheless, during the 2000s, the ruling regime sought to particularly contain the SCC through intimidating law centres and human rights NGOs whose litigations had allowed the court to act; meanwhile, breaking an established convention, in 2001, Mubarak appointed a chief justice from outside the SCC and continued to do so (Moustafa, 2007, 199).

²¹ For a detailed account relating to an example of a pre-revolution legal mobilisation against the regime, and the involvement of activist lawyers in a local grassroots struggle for environmental issues in 2008 in Damietta see Elmusa & Sowers (2009).

‘rule of law’ became the single most unifying slogan shared by different strands of Egyptian opposition groups, professional associations, intellectuals, and grassroots activists regardless of their seculars or Islamists, and liberals or socialist views. Thus, Godlberg & Zaki (2011, 18) conclude that,

It may not be an exaggeration to say that if parliamentary democracy, free elections, and guarantees of civil liberties remain theoretical concerns for most Egyptians who have had little experience with them in the past 60 years, the rule of law has, in its original meaning [the use of the court system by citizens to lodge suits against officials in other branches of government], become a deeply embedded practice of Egyptian political life.

By the beginning of the twenty-first century, with traditional party politics losing much of its appeal (Abdelrahman, 2004a),²² and despite the regime’s increasing intolerance, grassroots labour movements (Beinin & Duboc, 2013), the urban poor (Bayat, 2013b), student movements, Kifaya and the April 6 movements, along with the human rights movement and activist lawyers, continued to mobilise in new ways and for a range of issues (Cook, 2013). However, considering the legacy of Nasser’s revolutionary socialism whereby revolution had become identified with centralism, repression, erosion of individual freedoms, and authoritarianism, hardly any of these groups, as Bayat (2017; 2013c) suggests, imagined change in terms of revolution and few had really envisioned or strategised for revolution, even if they might have dreamed about it. Nor did they seem to entertain in their visions of change, as Abdelrahman (2013) suggests, the thought of assuming state power themselves. Even, when some on the left did seek to imagine a revolution, their frame of reference was a variety of Leninism (Bamyeh & Hanafi, 2015), the model of organisation least relevant to the revolution that followed.

Nevertheless, hardly did activist groups such as Kifaya, April 6, or Islamists (who were the strongest opposition to the regime) consider themselves ‘revolutionary’. Nor were they considered by others as anti-system movements with revolutionary agenda (Albrecht, 2013; Demmelhuber, 2009).²³ Thus, whilst one activist (Magdy) noted that “we were

²² Due to the restrictive Political Parties Law 1977, lack of grassroots participation, personalistic organisation, and internal power struggles, secular opposition parties were not deemed a contender to Mubarak, but rather as a source of legitimisation for its authoritarian rule (Abdelrahman, 2004a; Negus, 2013; Zartman, 1988, 73-80). The “opposition party cartel” or “the loyal opposition” (Albrecht, 2013), it was suggested, served a ‘Moderation Function’ by de-radicalising resistance (Albrecht, 2005).

²³ It is contested whether under Mubarak Kifaya or Islamists could be seen as ‘anti-system’ movements or as ‘tolerated opposition’ (Albrecht, 2013, Chapters 3 & 4). Demmelhuber (2009) argued that the regime let Kifaya get on with their activities because it considered the movement unthreatening.

reading about revolutions around the world, but not many of us were comparing them to our own situation”, another (Lina) explained,

It is true that despite all the political activism, we couldn’t imagine that we would actually witness a popular revolution in Egypt anytime soon. Nor did even those who called themselves ‘Revolutionary Socialist’. But that is because, I think, none of us had seen or heard of a popular revolution, or something like that, before in Egypt. Same was true of all the people who were around us during Tahrir days.

Even with the large popular mobilisations and protests for change which spread in 2006 as a result of several judges’ testimonies²⁴ regarding the rigging of votes in the 2005 Presidential elections (Bernard-Maugiron, 2008; El-Ghobashy, 2016; Browsers, 2009, 109ff.; Vairel, 2013), the idea of a popular revolution did not appear as an alternative. This was largely because, argues Prince (2014), for many people it wasn’t clear what a revolution would look like, or who would bring it about and how.

Instead, both Islamists and secular activists appeared to have adopted markedly different approaches compared to their predecessors in terms of strategy, organisation, mobilisation, and goals for change. On the one hand, shedding their previous radical, militant revolutionary visions of the twentieth century, most Islamist movements had by now largely espoused ideas similar to Muslim Brotherhood’s gradualist, reformist visions (Izquierdo-Brichs & Etherington, 2017; El-Ghobashy, 2005; Mitchell, 1993).²⁵ On the other hand, while political opposition parties were largely beset by bitter rivalry and personalistic organisation, secular forms of political activism were no longer organised through formal, hierarchical political organisations - common in the mid-twentieth century forms of revolutionary organisation noted above. Instead, their methods of activism were largely marked by loosely-established horizontalism, that is, networks with fluid memberships and no hierarchical leadership structures while striving for consensus (Chalcraft, 2012; Abdelrahman, 2004b). Committing to an inclusive, ‘no agenda’ strategy, the expanding Kifaya movement, for example, had adopted a form of horizontalism which brought together activists from diverse ideological orientations and social groups (including leftists, nationalists, moderate Islamists, etc.), based on consensus,

²⁴ The fact that judges and their testimonies were a major cause of this political crisis for the regime, can in itself further point to the increasingly significant role of law and legal actors in Egyptian politics, and a testimony to the strengthening role of language of law for political mobilisation.

²⁵ So much had Islamists’ radical vision for change shifted since the previous century that in 2011 some of them including Muslim Brotherhood were initially reluctant to join in the protests, while others opposed it altogether (Trager, 2016, 13-36; Wickham, 2013, 154ff.).

cooperation, solidarity, and autonomy (Abdelrahman, 2004b; Hirschkind, 2012; Browsers, 2009).

The latter called themselves ‘activists’, not ‘revolutionaries’, while their general visions and strategies, as for instance formulated by one of its prominent members, journalist Abdel Halim Qandil (2008, 2009), were increasingly articulated as ‘transition’ to a rule of law and democracy system of government. In his widely popular *Red Card for the President* (2009), Qandil argued that there is no solution to Egypt’s predicament other than peaceful change of the ruling regime through a transition period under a coalition government towards democracy, rule of law, and fair distribution of wealth, while repealing the Emergency Law and the 2007 constitutional amendments, suspending military and exceptional courts, reviving freedom for the press and for forming political parties, NGOS, syndicates, and unions. In this perspective, common among many activists during the 2000s, the justification, vision, and method of change seems to be articulated in a predominantly legal language. Thus, for instance, Mubarak was deemed as lacking legitimacy because he had been appointed as president by a parliament which itself had no legal legitimacy. This due to an SCC decision in 2000 which ruled illegitimate any elections not judicially supervised, thus effectively rendering illegitimate the previous parliaments which had been elected without full judicial supervision (Qandil, 2008).

Indeed, instructive of the popular visions and methods of change in this period is the fact that what the newly formed Kifaya movement adopted in 2004 as its manifesto was none other than a piece written by an influential *judge*, Tariq Al-Bishri. In “A Call to Civil Disobedience” (2006), Al-Bishri argued, in a language heavy on notions of legality and human rights, for the legitimacy and necessity of confronting Mubarak. Not very different from such vision was, for instance, the *Together We Will Change* initiative in 2010 by liberal figure Mohamed El-Baradei, upon his return to Egypt, to set up a popular petition to collect signatures for demands including ending the state of emergency, returning full judicial oversight over elections, and a two-term limit for presidency²⁶ (also, El-Ghobashy, 2016).

Besides, not many activists, even those who might have wished for it, used the language of revolution. Even when envisioning an uprising that would end the regime, the image and terminology that was often evoked was not ‘revolution’ but something more akin to a civil war. In his popular 2008 book, *El-Ayyam El-Akhira (The Last Days)*, journalist and Kifaya member Abdel Halim Qandil provocatively asked, what will the end of Mubarak look like? One of the more likely scenarios he imagined is “the nation combusts” i.e. a

²⁶ *Al-Masry Al-Youm*, 20 July 2010.

security vacuum, sectarian strife, civil chaos, and political warfare amongst the elite. In this account he does not consider using the term 'revolution' at all. Indeed, as activist Magdy noted during our interview, in the immediate years before the revolution, for many the idea of an uprising would mean an immanent outburst of rage and violence by the poor similar to the 'bread riots' of 1977. As Prince (2014, 9) similarly observed, with the widening class divide and extreme poverty across the country, a bloody and chaotic eruption of rage by the poor seemed to be the closest to a revolution many intellectuals could imagine. Thus, it was instructive that following the Tunisian revolution in late 2010, an Egyptian minister declared that there would not be a revolution in Egypt because of subsidies which, he claimed, had helped stabilise the living conditions of the poor and thus ensured a degree of allegiance from them (Gamal, 2014).

VI. CONCLUSION

Egypt's '25 January' revolution divided scholars especially due to a pervasive language of law in its popular vision, initial mobilisation, and later practice and direction. Following Chapter 2, this chapter suggested that underpinning the scholarship which has rejected the Egyptian case as a revolution has often been a conceptual model which, unhelpfully, remains state-centric, outcome-dependant, and exceptionalist, and an epistemological method which has been largely Eurocentric and normative. Instead, I argued for a different framework which approaches the Egyptian revolution not as the already-known, and as part of and explicable by our existing knowledge, but as on the threshold of new ideas about revolution, law, and their relation. This can be achieved, I suggested, through asking what the particular ways in which Egyptians envisioned and enacted their revolution were, and how they had come to envision it in such ways.

Therefore, the chapter began its study of Egypt by examining participants' own understanding of their struggle. This pointed to a terminological-conceptual gap whereby despite the common scholarly view to the contrary, the vast majority of participants understood what they were engaged in, including its juridified aspects, as revolution. The next question for the chapter consisted in what was the historical trajectory following which, and the political and legal context within which, such visions of revolution and change emerged and took its meaning. To answer this question, the chapter took a broader historical view of the changing visions of revolution and change in contemporary Egypt and the shifting role and politics of law and legal institutions therein.

It was noted that the period of mid-twentieth century rule under Nasser's discourses of 'popular sovereignty' and 'revolutionary state' coincided with a vision of revolution characterised by a strong leader who was portrayed as embodying a homogeneous nation and its will, and who embarked on a project of authoritarian modernisation on their behalf and with their full support. This was a period of revolutionary legalism based on special courts, executive decrees, and erosion of individual rights and freedoms, while keeping ordinary courts and legal institutions subjugated and marginalised. However, the chapter further suggested, with the coming to power of Sadat in the 1970s, and since then, legal discourses and institutions were brought to the centre of the ruling elite's projects of political consolidation, economic liberalisation, social control, and bureaucratic regulation – a political system which could be defined as a 'rule by law' system. A neoliberal-juridical discourse was significantly underpinning the vision of society and progress promoted by the ruling elite, as they sought to maintain authoritarian rule through a proliferating web of laws and legal institutions (including exceptional courts) that sought to dominate many aspects of political and social life and hinder reform.

Meanwhile, the chapter suggested that the failures of Nasser's 'revolutionary state' and the juridification of authoritarian politics under his successors went in parallel with the gradual disappearance of the language of 'revolution' from the popular visions of change and the expansion of the language of law and rights within more recent forms of activism. Especially since the beginning of the twenty-first century, the visions of change and methods of activism shared by many activist groups in Egypt seemed to be marked by the absence of formal, hierarchical political parties, or plans for revolution or capture of state, and instead by an emphasis on horizontalism, consensus, solidarity, and autonomy, while often articulating their goals and demands in a legal language.

This brief historical account of revolution and law in Egypt shows that during the decades before the revolution Egyptian people had been oppressed by both the language of 'revolution' (under Nasser) and by the language of 'law' (under Sadat and Mubarak). Therefore, when the 2011 uprising arrived, Chapter 4 will suggest, they summoned both languages of revolution and of law but this time envisioning and enacting them in ways which were radically different from the past. As this thesis will ultimately argue, through the following chapters, the particular visions of revolution and law manifested during the 2011 uprising are better understood if we pay attention to how they contained elements of both continuity and change compared to the visions of revolution and law in the past. Whereas Nasser's 'revolution' had turned into a top-down, homogeneous, authoritarian utopian project in the name of which rights and freedoms were eroded, and due processes of law suspended, the popular '25 January' revolution sought to bring back utopianism

but this time with an emphasis on legality, as well as diversity and autonomy – revolution envisioned in a juridified way. Whereas Sadat-Mubarak’s ‘law’ had turned into a juridified forms of authoritarianism in which legal institutions turned into tools of social control to prevent change, the popular ‘25 January’ revolution sought to reimagine and enact law and legal institutions, as if they were otherwise, to bring about meaningful change and radically transform the hitherto paternalistic, undemocratic forms of political and legal culture – law envisioned in a revolutionary way.

CHAPTER 4

THE POPULAR PRAXIS OF REVOLUTION IN EGYPT

I. INTRODUCTION

It was suggested in the Introduction that the key role and politics of law and lawyering remain one of the most understudied and least understood aspects of the Egyptian revolution. Among the reasons for this analytic lack has been, it was further suggested, the shortcomings of the extant scholarships on both revolution and juridification. Therefore, Chapter 2 put forward the proposition that, rather than the commonly used conceptual model of revolution and its associated epistemological method, we could take as the starting point of analysis of the Egyptian revolution the particular ways in which, and the historical-political context within which participants themselves envisioned and practiced revolution, and the role of law therein. Following this proposition, Chapter 3 began the study of ‘25 January’ revolution by revisiting the political history of the evolving visions of revolution and change in modern Egypt, and the important, albeit shifting, role of law in that history. It was suggested then that Egyptians had been oppressed by discourses of ‘revolution’ under Nasser and ‘law’ under the Sadat and Mubarak regimes, and that in more recent decades, the growing juridification of politics coincided with increasingly juridified forms of oppositional activism.

Against this backdrop of the politics of revolution and law, the aim for the present chapter is to continue my participants-driven approach to the study of the Egyptian revolution by examining in detail several significant aspects of the popular praxis of that revolution,

especially in its early stages, and the key role that the language of law played therein. Drawing on material from my interviews in Egypt, and other relevant primary and secondary sources, the questions for the chapter are: what conceptions of revolution can be seen as underpinning the popular praxis of revolution in relation to its goals, demands, visions, and methods; what is at stake politically in those conceptions, and in what ways do they compare to earlier understandings of revolution and change which were discussed in Chapter 3.

Marked by forms of praxis comparable to visions and experiences of activism and revolution in the past, the popular praxis of the '25 January' revolution, the chapter will suggest, gradually came to adopt a number of common features. Firstly, against the backdrop of the recent role of legal discourses and institutions in maintaining authoritarian rule and in struggles against it (discussed in Chapter 3), the otherwise diverse revolutionary movement seemed to espouse a considerably juridified idea of revolution and change marked by popular discourses of law. It will be noted that the language of law seemed to have become one of the main discourses and points of reference for the struggle providing a unifying intellectual anchor and common imaginary which was understood and shared by many different groups, and a rallying point which helped mobilise large sections of the population. Secondly, the chapter will show that rather than capture of state power the praxis of revolution, and its underpinning utopian desire for change, seemed to be driven by a palpable emphasis (albeit diverse and varied) on reimagining, reclaiming, and reaffirming new, radically different forms of social relations and political culture. One of the significant methods for this, I will argue, consisted in leaderless, prefigurative, public performances of those wished-for social relations in the here-and-now, whose underlying visions of political culture was unmistakably participatory and inclusionary.

Taking these two crucial features of the praxis of revolution in Egypt into account, the chapter will ultimately propose that a better understanding of the revolution needs those features – juridification and prefiguration – to be studied not as distinct but closely interwoven and mutually effective. Unlike many studies which, faced with this seemingly paradoxical praxis of revolution, often focus on one of those features and overlook the other according to their theories of choice, I will conclude that the juridified vision and praxis of revolution as well as its prefigurative methods ought to be studied together – hence my analytic emphasis on *prefigurative juridification*. Consequently, this perspective will serve as the framework for a more detailed analysis of the contested juridification of revolution after the fall of Mubarak (Chapter 5), and the significant role and practice of activist lawyers as part of it (Chapters 6 & 7).

II. BACKGROUND

It was suggested in Chapter 3 that by the 2000s, the idea of revolution had largely faded from many visions of change and forms of activism in Egypt, and that many recent forms of oppositional politics had increasingly embraced legal activism in their struggles against Mubarak regime's 'rule by law' system of governance. During the months preceding January 2011 several major legal events and crises emerged and seized the political domain in Egypt. As a result of the controversial constitutional amendments of 2007,¹ and an unprecedented level of vote rigging (which infuriated many Egyptians),² the parliamentary elections in November 2010 brought back the ruling National Democratic Party's total control over the parliament. As El-Ghobashy (2012b) summarised,

No one thought parliamentary elections under Hosni Mubarak were democratic or even semi-democratic. The elections did not determine who governed. They were not free and fair... [The NDP] always manufactured a whopping majority, never getting less than 70 percent of the seats. The opposition was kept on a tight leash, restrained by police intimidation, rampant fraud and severe limits on outreach to voters. And citizens knew that elections were rigged, with polling places often blocked off by baton-wielding police, so few of them voted.

Only a few months earlier, Mohamed ElBaradei and other groups in the newly established National Association for Change initiated a national campaign for political change mainly through demanding amendment of the constitution (especially its provisions in relation to state of emergency, executive powers, supervision of elections, presidential terms, etc.). By the time of the elections the campaign had collected hundreds of thousands of signatures in support of their petition for constitutional change, while continuing their calls for the boycott of the forthcoming elections³ (also, Abdelrahman, 2014, 44).

¹ See Chapter 3, p. 81 above.

² Vote rigging particularly flourished under the rule of president Sadat whereby referenda would often result in 99% 'yes' votes (Feuille, 2011, 242; Moustafa, 2007, 70). This continued under Mubarak, but the violations in 2007 were even more blatant. For instance, as one international newspaper described, echoing several others, "Observers catalogued misdemeanors ranging from removing the names of opposition candidates from ballots, to blocking their representatives from monitoring the polls, to shutting polling stations in the face of would-be-voters, to simple stuffing of ballot boxes. Many of these infractions were captured on film, and spread in real time on the internet." *The Economist*, 29 November 2010.

³ *The Guardian*, 7 September 2010.

Not long before that, in June 2010, emerged the news of the brutal murder of a youngster, Khaled Said, allegedly by the police.⁴ Initially the police refused to investigate but when public pressure mounted the regime initiated an orchestrated smear campaign which portrayed Khaled as a criminal, a drug addict/dealer who had been on the run due to military desertion (West, 2011, Chapter 8). Even when in July 2010 state prosecutors finally agreed to question and charge the two officers, they did so merely on the basis of “the use of excessive force and illegal arrest”⁵ and not murder or manslaughter. Meanwhile, during the ongoing trial, several witnesses, including Khaled’s family, were threatened, blackmailed and even kidnapped.⁶ Nevertheless, the criminal prosecution case against the police officers, and the significant part played by Khaled’s family with the help and collaboration of several human rights groups and activist lawyers (El Naggar, 2012), continued to be closely followed and sympathised with by many Egyptians.⁷

The facts of the ongoing case, the issues raised in it, and the troubling ways in which the regime dealt with it were seen by many Egyptians as emblematic of the broader forms of political repression in the country (Abdelrahman, 2014, 48). It revitalised concerns and debates regarding many legal issues including the protection of legal rights, the continued use of the Emergency Law, the independence of the Judiciary, and police brutality and immunity (West, 2011, Chapter 8). Indeed, regarding the latter, as Ismail (2006) has remarked, a feeling of being humiliated had been the main experiences of many ordinary Egyptians in their everyday interactions with government agents and agencies.

The ongoing legal case consequently became a rallying point for mobilisation across many activist groups (Abdelrahman, 2014, 44-48), as protests erupted in several parts of the country demanding justice.⁸ At the same time, the newly created Facebook page *Kullina Khaled Said* (We Are All Khaled Said)⁹ and its *No to Emergency Law* campaign began to garner a considerable mass, popular base especially from Egyptian youths, soon

⁴ *Al-Masry Al-Youm*, 14 June 2010.

⁵ See an extensive summary of the case and some of the broader social and political issues raised by it, published by *Al-Ahram* on 7 June 2012, the second anniversary of the murder of Khaled Said.

⁶ *Ibid.*

⁷ See the statement by the Egyptian Organization for Human Rights (EOHR) on 28 July 2010, available from <http://en.eohr.org/2010/07/28/postponing-khaled-saids-case-to-session-25th-of-september/> (last accessed 1 June 2018); also, *the Guardian*, 24 & 25 September 2010. On broader issues of systematic torture in Egypt immediately before the revolution, see the report by Human Rights Watch, ‘Impunity for Torture in Egypt’ (2011a).

⁸ For instance, *Al-Ahram*, 25 June 2011.

⁹ Available from <https://www.facebook.com/ElShaheeed/>. The page has not been active since July 2013 when the military removed President Morsi (last accessed 17 July 2018).

organising events and demonstrations. The campaign and the social media page, Saad (2012) suggests, further expanded legal activism in Egypt towards a more popular movement, as many of those who attended the events had never participated in any political activity before.

So, when their Tunisian neighbours rose up and deposed president Ben Ali by mid-January 2011, the first public calls in Egypt for demonstration came from the same, now hugely popular Facebook page *Kullina Khaled Said* who called for nation-wide protests on the 25th of January¹⁰ – a national holiday to celebrate police forces. Yet, despite the deeply infuriating, frustrating effects of those above-noted events, and the sense of political deadlock many Egyptians had experienced as a result of them (Prince, 2014, 13), the view of some Egyptians seemed to be that ‘Egypt isn’t Tunisia’. It was claimed by many ‘realists’ that there was no organised force in Egypt that could potentially initiate an uprising against Mubarak’s all-powerful, repressive regime (Gamal, 2014).

Even such prominent leftist intellectuals as Amr El-Shobaki publicly dismissed the possibility of any serious popular movement in Egypt (quoted in Saad, 2012). Tunisians’ rise against Ben Ali’s regime had been driven by their deep awareness and strong desire for such ideals as justice and freedom, El-Shobaki lamented, whereas Egyptians were merely concerned with narrow, sectarian issues, and had little interest in politics, let alone revolution. In others’ view, Egyptians were “not cut out for revolution”, “too lazy for the kind of revolution that transforms society, government, and state”, and “not ready for change”.¹¹ So unlikely did the idea of revolution seem to some that when the first calls came to demonstrate on the 25 January, they dismissed it as ‘child’s play’ while the idea of ‘making an appointment to start a revolution’ was particularly ridiculed (Saad, 2012). Nevertheless, many activists, youth groups, and others continued, despite regime’s threats of violence,¹² to mobilise, organise, and spread the word for the 25 January demonstrations.

¹⁰ Others groups calling for and participating in demonstrations on the same day included the April 6 Youth movement, Kifaya, the Revolutionary Socialists, the Nasserist party, the Tagammu party, the National Association for Change, and the Popular Democratic Movement for Change.

¹¹ Egyptian youths’ comments about the possibility of political change and revolution in their country. *BBC News*, 3 August 2005, available from http://news.bbc.co.uk/1/hi/world/middle_east/4709011.stm (last accessed 2 March 2018). For some Egyptians, the problem was not their leaders or political system but people themselves. For instance, a 19 year-old middle-class medical student from Cairo explained to me that for him revolution had not been the solution for Egypt’s problems, because most Egyptian people are “not educated for living in a democratic society, and we should educate people first”.

¹² For instance, the Interior Ministry threatening to deal strictly with those making plans to violate law and order; *Al-Masry Al-Youm*, 23 January 2011.

To the total disbelief of everybody, the regime, the activists, and the people alike, hundreds of thousands of Egyptians heeded the call and came out, in defiance of the Emergency Law, to fill the streets and occupy the squares. Several of my respondents (Nehal, Kemal, Magdy, Nesreen) had been involved in organising for the 25 January demonstrations in Cairo, and what all of them noted in different ways was their sheer amazement and surprise at seeing so many ordinary Egyptians turning up on the day. Nehal, for instance, explained that many demonstrations in which she had taken part in the past would normally involve a few hundred protestors at most, however, 25 January 2011 was really different. “I was standing in the middle of the square and people were arriving in their thousands”, she added, “Like everyone else, I couldn’t believe it. Something had changed.” By the second week, the uprising had immensely expanded in size and spread across the country.

Despite the extraordinary level of violence unleashed against the protestors by the police, security forces, and later the army (Stacher, 2013), millions of Egyptians from all walks of life began to align themselves with what was now popularly referred to as *thawra*, revolution (see Chapter 3, part IV). Against all odds, it seemed, ‘revolution’ had made an astonishing comeback. Astonishing for it occurred at a time when the idea of revolution had largely disappeared from oppositional activism and politics in Egypt (see Chapter 3) – and other parts of the world – and the major post-colonial ideologies (Arab nationalism, Marxism-Leninism, militant Islamism) that vigorously advocated revolution had vanished or been undermined (Bayat, 2017).

Not only had the idea of revolution returned to Egyptians’ popular political imagination, but despite some similarities, it also looked decidedly different compared to the revolutionary episodes of the past. The manifestly different demands, modes of mobilisation, and strategies in 2011, Bayat (2017) contends, indicate that the meaning of revolution and the nature of transformative demands had considerably changed. So much so that a number of observers deemed the events as signifying a *paradigmatic shift* in society (Dabashi, 2012; Hanafi, 2012; Sabry, 2013; Zubaida, 2011). The ways in which Egyptians understood, imagined and carried out revolution shared a number of broadly common features. Insofar as my analysis in this thesis is concerned, they were marked by at least two crucial features. In what follows, I suggest that it was a leaderless, diversified practice of revolution which, among other things, drew on language of law and legality as one of its main unifying forms of articulation and mobilisation while insisting not on capturing state power but prefiguring in the here-and-now radically different forms of social relations and political culture.

III. LEADERLESS REVOLUTION

The popular vision and praxis of revolution in Egypt was multiple and diverse. As I was told by several participants, it had become a decidedly diverse, decentralised, and horizontal movement refusing to be represented or led by vanguards, be they political leaders, parties, or intellectuals (Bishara, 2011). Even when some political groups, such as Muslim Brotherhood or other newly formed coalitions tried to assume some form of leadership, they were strongly rejected by many people, as for instance manifested in their chants.¹³ The initial revolutionary mobilisation and the post-Mubarak period were marked by multiplicity and fluidity bringing together a range of visions, demands, strategies, processes, and actions on the part of diverse groups of people. This included student activists, workers and trade unions, women, youth groups, professional syndicates, human rights activists, Islamists (who joined later), and many ordinary people who came together while continuing to diverge on many issues.¹⁴

Some viewed the absence of leaders as a reason for revolution's later predicaments (Marfleet, 2014), so that for activist Magdy, "The problem with not having a revolutionary leader was that Brotherhood who had already been very organised, were able to ride on the revolutionary wave". For others, however, "It strengthened the revolution, encouraged participation, minimising the stifling influence of traditional political parties" with which many Egyptians were familiar (Chalcraft, 2012). Nevertheless, what transpired in Egypt, as several observers have suggested (Tripp, 2015; Bamyeh, 2012, 2013a; Schwedler & Harris, 2016), is thus better understood as a leaderless assemblage and convergence of different grassroots groups and networks that had their origins and histories in different struggles, with different backgrounds, each acting according to the depths of change desired and envisioned by them. They occupied different positions within society, as Tripp (2015, xv-xvi) suggests, endowed with contrasting capacities, with different understandings of the origins and timing of political change, working away within their own spheres of meaningful action, each at their own pace of organisation and mobilisation, drawing upon diverse resources and embodying interests that may well be in conflict (also, Sabry, 2013).

This diversity of the revolution, and yet its need for some broadly shared direction, resulted in some difficulties and disagreements between different groups and participants.

¹³ "No Ikhwan and no coalition, a people's revolution, no division" (ثورة شعب مافيش خلاف). See further <https://translatingrev.wordpress.com/2011/04/04/translating-chants/> (last accessed 7 November 2017).

¹⁴ For detailed accounts of some of those diverse activities during the early stages of revolution see Bayat (2017, Chapter 9) and Amar (2011).

Observers noted during this early period many examples of disagreements between different groups and participants, and difficulties for exercising new freedoms and thinking about new possibilities. There were divergent views in relation to the main goals of the revolution, the desired form and extent of change that Egypt needed, and the best strategy and method to achieve them. Regarding the vision of change, for instance, it varied between the overthrow of Mubarak, constitutional change, extensive police reform, opposing Gamal Mubarak inheriting presidency, alleviation of poverty, complete change of state, and so on (Abdalla, 2012; Rennick, 2013). Activist Sameh recounted that after Mubarak promised constitutional amendments and not to run for another term, some people left Tahrir square convinced that this was sufficient and that further protests would be harmful to the country (also, Peterson 2011; Prince, 2014, 116), echoed by many day-labourers whose livelihood had been affected (Winegar, 2016).

Many such disagreements were perhaps inevitable due to the horizontal strategies of the uprising, and more importantly, as Carothers (2013, 2006) has argued, due to the difficulties of political organisation following years of repression. As Soueif (2012, 86ff.) observed, people were working out what they believed in though many of them were not used to working together politically because for a long time anyone who had tried to work together politically was destroyed.

This diversity of the vision and praxis of revolution in Egypt, and yet its need for some broadly shared visions and directions had other consequence too. Not only did it bring disagreements, but also at times it may have resulted in the marginalisation of the visions and demands of certain participating groups. These marginalised visions and demand were often those which had been perceived by other groups as ‘particular’, thus they were to be postponed until the ‘more important’ demands of the revolution were met. For instance, trade union activist Bassem and human rights activist Magdy both noted the diverse class composition of the revolution, and recounted heated debates over strategy and demands between some of the unions who were insisting on economic and social demands, and some of the youth groups who were more concerned with political demands. Despite the crucial role played by workers’ strikes and mobilisations (Aboulenein, 2013; Marfleet, 2013; Bein, 2013), and the fact that demands of many participants were economic in nature (Prince, 2014, p. 15), some other participants and activists, as Abdelrahman (2014, 123) observed, perceived labour protests for economic issues as peripheral to the more significant goals and demands of the revolution, so that workers were at times compelled to silence their ‘factional’ demands for the sake of

revolutionary unity.¹⁵

In a broadly similar way to workers, whilst women may have had a different timeframe, pace, and experience of change in the revolution (Badran, 2014; Hafez, 2014a; Winegar, 2016), the increasing diversity of the praxis of revolution seemed at times to have contributed to the relegation of its gender dimension and thus trivialisation of the experience of, and demands by participating women groups (Pratt, 2013; Winegar, 2012; Al-Najjar & Abousalim, 2015; Abouelnaga, 2016, Chapter 4; Eltahawy, 2011). For instance, as Dina (lawyer and activist involved in many aspects of the women's movement) recounted, despite the strong presence of women in the revolution, some participants were not keen on women's plans for demonstrations on the 8 March (international women day). Some Islamists even went to Tahrir square on the day of the march to stop them, Dina explained, but unlike most other demonstrations, there weren't many revolutionaries around to protect the march.¹⁶

Furthermore, this constantly-evolving, unprecedented eruption of radical multiplicity, difference, and disagreements, along with lack of leaders or a strongly shared ideology, seemed to contribute to a sense of confusion and uncertainty. Not only did the revolutionaries have to continuously endure the incumbent regime's physical violence and stigmatisation tactics. But they also, as Matthies-Boon (2017, 2014) has demonstrated, had to withstand the many uncertainties and confusions that had come with the revolution, its radical questioning of many old, familiar habits and ideas, and its rapid yet unclear direction of change. Such was the situation, as one participant noted, that during every step of the struggle there were people who "were overcome by a general feeling of doubt, worry, and depression." (Prince, 2014, 116). "People had come to the square to join the revolution, but staying on was not as easy," as Lina described,

nobody knew what was going to happen next; is it going to work? What are we to do and what is it that we all want? Are we even going to be still here in the next moment, or hour, or day – alive? The whole thing could be crushed by Mubarak thugs. And, there were people outside the square who were telling us that what we were doing was never going to work, because [in their opinion] Mubarak was super-powerful and because things would never change in Egypt.

¹⁵ On the class dimension of the popular praxis of revolution in Egypt, see further Winegar (2016) and Ismail (2011) who examine the middle-class, aesthetic visions of change following the fall of Mubarak; and El-Meehy (2012) who studies the class dimensions of Popular Committees that proliferated during the revolution.

¹⁶ On politics of gender in modern Egypt, see further Badran (1995), Al-Ali (2000), Baron (1994), and Abu-Lughod (1998).

Similarly, another participant thus wrote of his experience,

At every stage there was a sense that it could all collapse, politically and psychologically; that we would be left with nothing but despair and anger...Being in the square was exhausting, not primarily because of the physical challenges involved, but because of the mental burden of holding and containing [many] contradictory feelings over time.
(Rashed, 2011, 26)

Nevertheless, despite or perhaps because of its intrinsically diverse nature and the many disagreements it gave rise to and confusions it caused, the idea and praxis of revolution in Egypt appeared to gradually adopt a number of broadly common features. Prominent among them were the prevalence of the language of law as well as the evident concern of many participants with, and their efforts for performing, there-and-then, radically different forms of social relations. In what follows I examine these important features of the popular conception of revolution in Egypt, as envisioned and enacted by many participants.

IV. JURIDIFIED REVOLUTION

During the initial stages of the revolution which culminated in the overthrow of president Mubarak, the language of law and ideas of legality gradually gained prominence in the ways different participating groups articulated and understood their struggle. Despite many disagreements, it seemed, language of law had come to serve as a broadly unifying means, as intellectual anchor and point of reference shared by many groups demanding change, among them workers, students, women groups, professional syndicates, and even judges.¹⁷ This doesn't, however, mean a single language of law. Against the backdrop of its prevalence in Mubarak's rule-by-law system and in the struggles against it, and that many people and activists had envisioned change in legal ways (see Chapter 3), during the revolution many different ideas, concerns, and demands were articulated in legal language.

¹⁷ On 30 January a group of forty judges (including Nagi Darbala, president of the Court of Cassation) joined the demonstrations in Tahrir square and presented a declaration before the crowds demanding for Mubarak to step down and for inquiries into government corruption and coercion while arguing that the constitution had become void as a result of the people's uprising (Godberg & Zaki, 2011, 28-9).

Furthermore, in their use of the language of law, the participants in the revolution often tended to emphasise broader, shared legal visions and demands. For instance, the demands of the revolutionaries were increasingly legal in nature. On 25 January, the main demands in Tahrir square, as well as in Suez and several other cities included ending the Emergency Law, amending the constitution, prosecution of corrupt officials, dissolving the Parliament, releasing political prisoners, and Mubarak or his son Gamal not running in the coming elections (Prince, 2014, 145). There were other demands by different groups, but these seemed to be emphasised as they were shared by most groups, thus helping to unite the fight against the regime. By 11 February, these commonly shared demands had expanded in scope but nonetheless remained largely concerned with those legal-constitutional tools through which Mubarak had maintained his rule-by-law political system. Then, the demands articulated by a coalition of several youth groups,¹⁸ or those written on one of several large banners overlooking Tahrir square included,

People's demands: deposing Mubarak; ending the state of emergency immediately; a constituent assembly and a new constitution; a transition government independent from the ruling party; dissolving both illegitimate houses of Parliament, immediately putting on trial those responsible for killing the martyrs; immediately putting on trial those who robbed the nation's wealth.¹⁹

Another instructive example is the emphasis on a conspicuously broad understanding of legal rights as a way to mobilise people and unify the struggle. On the days leading to 25 January demonstrations, activists from April 6 Youth movement continued to distribute thousands of leaflets in several cities, titled "I will protest on 25 January for my rights".²⁰ Meanwhile, as one participant in Cairo recalled (Soueif, 2012, 18), during the initial days when marches were beginning to pass through residential areas, one of their main chants to encourage and mobilise people to join was, "come down from the heights, come down and get your rights".²¹

¹⁸ See the public statement released by the April 6 Youth Movement on behalf of a coalition of several revolutionary youth groups, translated and published by *Jadaliyya* on 8 February 2011, available from <http://www.jadaliyya.com/Details/23666/Statement-of-the-April-6-Movement-Regarding-the-Demands-of-the-Youth-and-the-Refusal-to-Negotiate-with-any-Side> (last accessed 28 November 2017).

¹⁹ See photos of Tahrir Square taken in February 2011 by activist Mona Seif, available from <https://www.flickr.com/photos/89031137@N00/albums/72157625987327382> (last accessed 17 February 2018).

²⁰ *Al-Masry Al-Youm*, 23 January 2011.

²¹ "انزلوا من بيوتكم جايين نجيب حقوقكم".

What these examples show, and what matters for my analysis of the popular imaginaries of revolution and change at this particular juncture in Egypt, is not just the ubiquity of language of legal rights and legality in the revolution. They also show that many organisers and participants seemed to understand such a language, albeit deployed in a broad way, as the language with the widest popular appeal and most capable of mobilising and uniting the otherwise diverse revolutionary struggle.

At the same time, this reflects the above-noted grassroots, leaderless nature of the Egyptian revolution where ordinary people directly engaged with and sought to reclaim the law. It is thus instructive to read, for example, part of a set of guidelines which had been widely circulating among many participating groups during the days before the decisive Friday 28 January *milyuneyya* (million-person march) whereby legal rights were essentially understood, along with Egyptian flag, as what unified ‘all Egyptians’ against ‘division’.

Please bring an Egyptian flag but not any other banner or sign that designates a political party or group or organization or sectarian affiliation. Today is a day for all Egyptians, because we are calling for equal rights and social justice. We do not want divisions.
(Prince, 2014, 52)

In other words, as one of the main discourses of the revolution, the language of legal rights and legality seemed to have increasingly provided a common imaginary which could be understood and shared by many different revolutionary groups in spite of their different histories of struggle, as a rallying point to help mobilise large sections of the population and legitimise the revolution.

Furthermore, it is evident from several accounts of this intense period that, beyond such demands, questions of legality were certainly considered as part of the methods and strategies of revolution. What transpired during the revolution was that within the broader, multiple forms of legal consciousness underlying the revolutionary strategies of different groups, a significant number of participants were insisting – albeit selectively – on observing, as much as possible, certain aspects of legality. It is thus further instructive to read another section of the widely-circulated guidelines among many participating groups for the 28 January *milyuneyya*.

We must exercise self-restraint and must not do anything against the law, subject people’s lives to danger, or tamper with any public or private property. (Prince, 2014, 52)

This seemingly paradoxical concern with legality during the revolution could also be seen in the proliferation of ‘Popular Committees’ (*ligan sha’bi*) especially across Cairo (but also

elsewhere²²) following the withdrawal of the police from the streets after 28 January. These popular committees were formed by ordinary people in many neighbourhoods who joined together and organised themselves to 'protect the revolution' through 'preserving law and order' against the thugs paid by the regime to spread terror (Bremer, 2011; Hassan, 2015; El-Meehy, 2012). These concerns with questions of legality in the praxis of revolution in Egypt, as mentioned before, led some observers to argue that it was lacking in radical visions and thus nothing more than a reformist protest movement. However, as I will suggest later in the chapter (and in Chapter 5), it is possible to understand and analyse the leaderless, juridified praxis of revolution in Egypt in conjunction with its popular prefigurative method (discussed below); a framework which could lead us to very different conclusions about that revolution.

So far, I have suggested that the popular praxis of revolution in Egypt, especially in its early stages in 2011, was largely marked by at least two important, common features. First, it was a diversely organised, leaderless, heterogeneous coming together of different groups and struggles none of whom were willing, or able to assume a leadership role. Secondly, a significant part of the praxis of revolution, with regards to its goals, demands, and methods of mobilisation, were enacted and articulated through discourses of legality and legal rights.

V. PREFIGURATIVE REVOLUTION

The space that the revolution provided for different groups to come together and act collectively seemed, as I discuss in this section, to have helped bring to the fore new, radically different performances of political subjectivity, both in terms of intrasubject, community relations as well as state-society relation and the broader political culture.

Prefiguring New Intrasubject Relations

As several participants in the revolution, including Lina, Bassem, Magdy, and Sameh later described, there had been especially during the early stages of the revolution a strong popular emphasis on inclusion and on embracing diversity and difference. During this period, as Chalcraft (2012) has similarly noted, many different revolutionary groups

²² On the dynamics and activities of a popular committee in an upper Egyptian village following the revolution see Abu-Lughod (2014).

continued in their efforts to form alliances and to cultivate common visions, strategies, and demands, while emphasising participation and consensus. The horizontal coming together of multiple groups and peoples, and the new alliances they sought to forge, as Abouelnaga (2016, 4) has noted, allowed for the eruption and coming together of ideological, class-based, and gendered differences which may have previously been silenced, undermined, or isolated.

There was much emphasis on new forms of being and acting together while changing old habits and ideas. Many Egyptians I spoke to (including ordinary people, activists, and lawyers) shared one thing: their experience of involvement in, or even just witnessing the revolution had personally and significantly changed them and their perspective towards their individual and collective conditions in many ways. There was a considerable change from people saying that at the beginning they were even scared of uttering the words *down with Mubarak*,²³ to a protestor proclaiming that “I felt I was going to end oppression with my voice alone. I wasn’t scared anymore.” (Prince, 2014, 76). Everyone you spoke to, Shenker (2017) similarly observed, had a story of their own personal journey from ‘Mubarak country’ to ‘revolution country’, from one perception of the self and the state to another.

What, therefore, emerged in many popularly occupied public spaces such as Tahrir square was, as described in several first-hand accounts by participants (Bamyeh, 2011b, 2012, 2013a; El Rashidi, 2011c; Prince, 2014; Soueif, 2012), a palpable emphasis on performance of collectivity and community, inclusiveness, consensus and dialogue, solidarity and mutual aid. Thus, whilst Abourahme & Jayyusi (2011) emphasised the revolution’s re-structuring of the contours and barriers of identity in terms of gender, religion, and sect, Bottici and Challand (2012) recognised a “logic of intersectionality and inclusion” in the revolution.

Consequently, these new performances of social relations allowed many participants to re-envision the issue of positionality and adopt multiple and even contradictory positions or alliances (Abouelnaga, 2016, 4). Old categories such as liberal, secular, leftist, Nasserist, or Islamist were soon in crisis as many members of groups and parties associated with such political identities began to feel disillusioned about what they really represented (Marfleet, 2013). Soon, many were thus acting in ways seemingly opposite how their political identities heretofore had been understood (Levine, 2013, 194) while

²³ For a powerful example, see the documentary ‘The Secret Capital’ (2015) by Mukhtar S. Shehata and Samuli Schielke, available from https://www.youtube.com/watch?v=V_mrTfpEI8 (last accessed 13 April 2018).

negotiating their actions with broader environment and affiliations (Hanafi, 2012; Desrues & Kirhlani, 2013).

Violating the organisation's long-established, strict hierarchical tradition, many younger members of Muslim Brotherhood joined the revolution in its early days despite the organisation's disapproval, while many activists from the Nasserist party, similarly, did not keep contact with their party during the early days of the revolution suspecting that it would impose orders on them which they were not willing to follow (Hanafi, 2012). Kemal, too, explained to me that after the overthrow of Mubarak he had twice joined a political party and later quit due to decisions taken by their leaders. Similarly, many activists left the Popular Current party and El-Baradei's Dostour party due to what they saw, respectively, as the party's realigning with old regime figures,²⁴ and "domination by power-seekers."²⁵

Meanwhile, during the early stages of the revolution in Tahrir and elsewhere, it soon became clear that for many participants, the *processes* of occupation and change, there and then, were equally important as the wider goals and demands of the revolution. In the views of many thousands of people joining 'Tahrir revolution', as recounted by Magdy, Nehal, Sameh, and Lina, equally revolutionary were their collective act of occupation itself and its different processes. Sameh had witnessed in those days how for people the contents of their conversations and actions were an important part of the revolution. This included their attention to the everyday, mundane aspects and processes of occupation, protest, and revolution including distribution of food, hygiene, circulation of news, making decisions, and security while ensuring their fairness, inclusiveness, and equality. In their praxis of revolution, many participants appeared to be focused considerably on enactment of change through, to a large extent, a renewed focus on the present.

At the same time, this popular emphasis on revolution enacted as a process of change beginning in the here-and-now, seemed to go together with seeing revolution as a continuing process of change rather than a single event. A significant number (albeit not all²⁶) of the participants in the revolution seemed to espouse such a conception of

²⁴ *Al-Ahram*, 25 February 2013.

²⁵ *Al-Ahram*, 28 March 2013.

²⁶ As noted earlier, there were several such disagreements amongst different groups of revolutionaries. As Winegar (2012) observed, some middle-class Egyptians who had initially joined the revolution came to criticise strikes, sit-ins, and especially demonstrations, as indicating uncivilised behaviour of lazy people who did not want to go back to work. Also, some working-class Egyptians joined in these criticisms, especially those with the sort of jobs that were adversely affected by the ongoing protests (Winegar, 2012).

revolution, perhaps most visually exemplified by numerous *al-thawra mustamarra*, ‘the revolution continues’, graffiti that soon proliferated across the walls of Cairo, Alexandria and many other cities around the country. Speaking about his new understanding of revolution as a result of his involvement in the ‘25 January’ revolution, Sameh therefore explained that,

The events since 25 January made many of us change our ideas. We used to read about revolutions in history with a beginning and end. Now we realised revolution doesn’t have an end. It has up and downs but is continuing in different ways. The problems we are having now don’t mean that the revolution has disappeared. Revolution involves many struggles and steps.

Echoing Sameh’s understanding of revolution as process and continuity, Tarek similarly noted that,

For those in power the revolution was a big moment which is over and everything is under control. For us, it’s a process that began in earnest in Tahrir and will not stop until things are arranged in a way that people think is the right way. This doesn’t mean that for sure the revolution will win in 2 or 5 years. We don’t know that, but we do know that the only choice we have is to continue our fight.

Consequently, for many participants, the revolutionary struggle seemed to comprise precisely of continued processes of collectively performing wished-for changes inspired by the revolutionary ideals of solidarity, mutual help, inclusiveness, tolerance, and to begin to do so in the here and now. Noting such sense of immediacy and involvement geared at acting in the here-and-now, Challand (2013) thus suggests the Egyptian revolution as characterised by a “philosophy of presentism” while Bamyeh (2012, 2013a) proposes the idea of “presentism as a method” to foreground the revolution as an experience in its own right, rather than necessarily as a means to a particular end. This understanding of revolution in Egypt parallels earlier observations by several scholars regarding the presentist orientation of some other pre-revolution phenomena. Whilst Schielke (2012a) for instance noted similar sentiments in Egypt during the occupation of streets at the time of *mulid* festivals, Bayat (2013b, 28) similarly identified in “social nonmovements” of many subaltern social groups what he termed “the art of presence”, denoting the creative attitude to circumventing constraints in the present, aimed at utilising what is available in the here-and-now, while trying to discover new spaces within which to make oneself heard, seen, felt, and realised.

Many Egyptians had been engaged in different forms of struggle and solidarity in the past (Cooke, 2012) and as Bamyeh (2013a) argues the informing sentiments of the revolution

– pluralism, horizontalism, presentism, solidarity, and mutual aid – had for long existed as an alternative form of social and political life. However, as several participants emphasised, the revolution and the occupation of public spaces helped provide the opportunity for a large number of people to publicly manifest those sentiments through enacting and reaffirming their desired forms of community and social relations. Therefore, there was a strong emphasis on performing, for instance, religious solidarity between Copts and Muslims in Tahrir square – e.g. praying together, Christians forming human walls to protect praying Muslims against water cannons (Horschkind, 2012).

Some commentators (Abourahme & Jayyusi, 2011; Challand, 2011, 2013; Horschkind, 2012) have suggested that such performances were a sign of the emergence of new forms of subjectivity, a new Egyptians people, or new religious solidarities. However, what is overlooked in such narratives of ‘novelty’ is that, for instance, the majority of Egyptian Muslims and Christians had been living together peacefully and with mutual respect and solidarity. But this social reality had often been misrepresented by the ruling elite in their attempts to sow division by portraying Egypt as a society in (sectarian, religious, ideological) crisis which thus needed the state for protection and peace. Indeed, that is precisely the symbolic significance of such public performance of religious solidarity in Tahrir: as a public manifestation and reaffirmation of an already existing but sublimated reality. As Coptic activist Sameh explained,

It was not so much the birth of a new mentality as it was the opportunity for people to show, reveal the good in them, and to realise that the good was always there and now could win, against the regime that put people under so much stress all the time and only emphasised the worst of them. That was what people had not imagined for a long time.

This popular emphasis on processes of revolution, and on collectively performing in the present, there-and-then, their wished-for forms of change in society and in the mutual relations between different social groups can be seen as pointing to a prefigurative method (Maeckelbergh, 2009)²⁷. Those practices of revolutionaries were a form of prefiguration, for they seemed to try to actualise (experimentally) in the here-and-now their shared political ideals of diversity, inclusion, and participation in relation to their intrasubject relations, rather than hoping for them to be realised in a distant future. In other words, the means many Egyptians applied in their revolution, as van de Sande (2013, 230) similarly suggests, seemed to embody or mirror the ends they were striving to realise, thus pointing to a prefigurative praxis of revolution.

²⁷ See further my discussion of prefigurative politics in the Introduction chapter, part III above.

Prefiguring New State-Society Relations

Besides popular attempts at prefiguring new inclusive, diverse intrasubject relations through their public occupations, demonstrations, and other activities, many revolutionaries seemed to equally envision and enact a radically different form of state-society relation and political culture. Similarly, with means that were mirroring their desired ends, this focus on reimagining and enacting change in the here-and-now, as I discuss in this section, seemed to be marked considerably by a prefigurative method. Against the hitherto intrusive, paternalistic, seemingly omni-present and omni-potent state, many people seemed to reimagine themselves collectively, as Abourahme & Jayyusi (2011) suggest, as subjects whose existence no longer required the intervention or recognition of the state.

For many revolutionaries, the omnipotence of the state had always been a myth perpetuated by the regime, whose symbolic power was ruptured, as Shokr (2012) noted, once people refused to identify with the ruling elite and publicly reaffirmed and reclaimed themselves as political subjects. Such visions of revolution as closely tied up with, not capturing state power but prefiguring new forms of state-subject relation appeared to manifest itself in a number of ways. Rather than capturing state power, many Egyptians seemed to perceive revolution as the process of demonstrating and reclaiming their collective subjectivity as deserving of being dignified members of a just, democratic society and political system, and capable of being and acting together in a fair and peaceful manner.

This had been, for a long time, what Mubarak regime had patronisingly told them they could not do. Egyptians as political subjects had been undermined or denied by their rulers through sectarian, divisive, patronising strategies of control which sought to make people afraid of one another while depicting the ruler as the all-knowing patriarch without whose authority the ‘selfish, apathetic’ people would destroy the country. Thus, while the new vice president, Omar Suleiman, dismissed the revolution by claiming that “the people of Egypt don’t yet have the culture of democracy”,²⁸ Mubarak continued with his usual patronising tone during his televised speech on 10 February 2011 when he addressed the nation as “a speech of a father to his sons and daughters... to tell you that I am proud of you”.²⁹ Meanwhile, portraying ordinary Egyptians as easily led and lacking power of

²⁸ During an interview with Christian Amanpour of ABC News on 6 February 2011. A Full-length video of the interview is available from <https://www.youtube.com/watch?v=HxXnMDngyCE&t=4m23s> (last accessed 9 May 2018).

²⁹ For a full-length video of Mubarak’s speech, see https://www.youtube.com/watch?v=9_06qCKV3bE (last accessed 9 May 2018).

judgment, the regime continued to deploy their tired narrative that ‘infiltrators influenced by foreign agendas’ had been instigating the youth and inciting lay people to generate chaos.³⁰

Indeed, as noted above, feeling of humiliation had defined the experience of many sections of the population in their everyday interactions with state agents (Ismail, 2006) and, as Ismail (2011, 992) has suggested, in their praxis of revolt (including for instance, their targeting of the police) many Egyptians thus sought to reject such forms of state-society relation and assert a desire for a different mode of government.³¹ Against this backdrop, for many Egyptians, revolution seemed to be precisely about “winning back” themselves (Mahfouz, 2014)³² through performing a different, collective, leaderless form of political subjectivity – and doing so publicly. As activist Lina explained,

For years, the government tried to alienate us from ourselves and our own country. Egyptians had always been kept divided, be it for football teams, or for religion or gender. But, the revolution helped us reclaim the truth of who we are and what we could do. It was like people were discovering themselves and learning how to be together, leaving behind old habits.

As another revolutionary wrote about her vision of revolution later, she perceived revolution as consisting in “[the] realization that We, ‘the People’, could achieve something [that we] were always told we can never achieve.” (Mahfouz, 2016). For many participants, it seemed, this very change, this new radically altered perception of reality, and of their own sense of self, subjectivity, and community was the revolution (Abourahme & Jayyusi, 2011).

Furthermore, the popular reaffirmation of a different form of political subjectivity was equally characterised by a renewed and stronger attentiveness towards and concern with the functioning of the state, as exemplified for instance by two of the main popular chants

³⁰ *Al-Ahram*, 27 January 2011. There were some predominantly middle-class Egyptians who did believe such portrayals of ordinary working-class Egyptians as apathetic and lacking power of judgment. For instance, in my conversation with a middle-class university student from a well-off family he explained that, for him, it was impossible to believe that “all those apathetic, poor Egyptians, who had always been fearful of police, suddenly rose up.” There must have been some hidden hands, he concluded, that provoked them and masterminded their riots.

³¹ For a similar perspective that studies revolution through focussing on attempts at transformation of everyday social relations see Marina A. Sitrin, 2012, *Everyday Revolutions: Horizontalism and Autonomy in Argentina*, London: Zed Books.

³² The words of revolutionary activist, Heba Farouk Mahfouz, taken from her personal weblog, 24 January 2014, available from <http://hebafaroukmahfouz.blogspot.co.uk/2014/01/another-dream-deferred-i-think.html> (last accessed 1 April 2018).

during the revolution: “State Security, State Security! Where’s is the state and where’s the security?” and “the people demand the overthrow of the regime”. However, what was becoming clear from early on was that, as noted earlier, many Egyptians’ visions of revolution did not include plans for capturing the state, and as Abdelrahman (2013) observed, hardly any group was willing or able to espouse such a goal. Instead, revolution for many Egyptians signified overthrowing not just Mubarak and his regime but also the political culture, values, systems of truth associated with and promoted by it. “People marching on the streets” Magdy explained, “were against the values and principles associated with Mubarak’s regime as much as they were against Mubarak himself whom they hated”.

Thus, many graffiti and banners that had appeared in and around Tahrir square seemed to be focused on such a view. For instance, one of those graffiti which was expressing a different vision of state-society relation, while also crucially articulated in a language of legality, read as follows:

Starting TODAY, this is your country. Do not throw rubbish. Do not pay bribe. Do not falsify a document. Do not submit to injustice and tyranny. Complain about any institution that falters in performing its work (Ismail, 2011).³³

Thus, a considerable part of the vision and praxis of revolution concerned itself with the dominant political culture promoted by the regime which, as Challand (2013, 171) has noted, had always encouraged distaste among people for politics, and, as I suggested in Chapter 3, kept many political domains effectively closed to the people. Therefore, after Mubarak, people engaged in the important struggle of addressing the more complex problem of political culture with the view to consolidate and expand their new freedoms. Indeed, for many Egyptians, the real, grounded effort for change began (not ended) with the fall of Mubarak which had helped severely undermine the hitherto existing forms of “sovereign respect” in the country (Goldberg & Zaki, 2011).

Emboldened by the revolution, the dynamics of grassroots politics reinvigorated and people across the country and at many social levels began to demand and enact change. For instance, while labour industrial actions exponentially spread across the country

³³ Of course, as noted earlier in the chapter, there were different visions of change underpinning the revolutionary praxis of different groups. For instance, Winegar (2016) argues that those graffiti and banners may portray a middle-class vision whereby one supposedly exemplary (middle-class) group of citizens was addressing another group that presumably needs civilising. She analyses in the same way the collective street cleaning operations after the removal of Mubarak as forms of “aesthetic ordering” which are linked to particular, middle-class imaginaries of change. See further Ismail (2011) and Schielke (2012, 31).

(Marfleet, 2013), ‘way forward’ meetings attended by ordinary people and activists to implement desired changes proliferated (El Rashidi, 2011c), and university union elections in March witnessed unprecedented levels of mobilisation and participation, as did those of several professional syndicates later (Amar, 2011). Established religious organisations and political parties were affected by calls for change from within (Bayat, 2017, Chapter 8). Meanwhile, the labour movement was reinvigorated as hundreds of new independent trade unions were formed and collective action and strikes became their default strategy (Beinin, 2013; Marfleet, 2011; Alexander, 2012), with many actions based on various legal demands in terms of labour laws, working conditions, wages, and so on (Taha, 2014).

Many significant post-Mubarak political developments, including the resignation of prime minister Shafiq and his cabinet, the criminal prosecution of Mubarak and his close allies, the roadmap for a new constitution, parliamentary and presidential elections, and the eventual handover of power by the military rulers to an elected, civilian government were achieved through such mobilisations including the July 2011 occupation of Tahrir and protests (see Soueif, 2012, 74ff.), Maspero demonstrations in October, Mohamed Mahmoud Street demonstrations in November,³⁴ and so on. This popular view, I argue, points to a popular understanding of revolution not as based on capturing state power but as changing it through reimagining and performing anew the existing state-society relation and the underlying postcolonial³⁵ political culture of the state – that is, enacting the relationship as if it were different in order to make it different. In other words, as Bayat (2017) has suggested, underlying the vision of revolution shared by many participants in the Egyptian revolution was “a desire for meaningful politics”; a vision which was enacted by many, as Marfleet (2011) suggests, through not only seeking to overthrow the dictator but also dictatorship as the dominant form of political culture, and a system of rule and life.

In this sense, people were thus keen on having many political, legal, constitutional structures re-opened and reclaimed anew, rather than ignored and abandoned like before. As Sameh explained,

³⁴ For a detailed account of the battle of Mohamed Mahmoud street, see Ryzova (2011).

³⁵ As explained by Reddy’s notion of the “intrusive-absent” postcolonial state (2016) as the successor of a colonial state with its bureaucratic networks, political institutions, and the laws and judicial systems that were created based on coercion, discipline, punishment, and oppression of the colonised population. See further Badie’s notion of the ‘Imported State’ (2000); Comaroff & Comaroff (2006, 1991); and Mitchell (1991, 2002).

In the months after Mubarak...you could hear many constitutional, legal debates on the street level. It was something totally new for many of us. People wanted to know, to learn about all these complex matters. They felt they had a voice now and so wanted to make it heard.

That care was itself a profoundly new social phenomenon, Bamyeh (2013a) suggests, as it pointed to a popular perspective that no longer saw whatever happened at the level of legal and political institutions as external to the ordinary populace, thus performing a different form of state-society relation which could be seen as prefigurative. As Boggs (1977, 100) remarked, prefigurative forms of politics often involve performing in the present those forms of social relations and human experiences that are seen by the participants as their desired outcome goals. Consequently, while considering such new collective performances of social relations during the early stages of the revolution, Tripp (2013, p. 203-4) suggests that this was the moment when the hitherto 'normal' social relations were being challenged by the people's public, performative political practices. They could thus be seen as acts which were helping prefigure a state-society relation radically different from the past through their "constant enactment [which was] also constitutive of the self and the political subject" (Tripp, 2013, p. 209).

To conclude my argument so far in this chapter, it has been suggested that despite its leaderless, horizontal, and diverse character, the praxis of the Egyptian revolution came to adopt a number of important, broadly shared features. Language of law and legal rights, and legal issues and debates were strongly present during the months before the onset of the revolution, its early mobilisations and ensuing popular praxis, providing a unifying language and intellectual anchor amongst otherwise diverse groups of participants. Furthermore, and rather than the proverbial revolutionary capture of state power by vanguards leading the people, the conception of revolution underpinning many Egyptians' praxis seemed to be marked by a collective focus not just on overthrowing of Mubarak and his regime but also on intrasubject relations and solidarities, as well as state-subject relation and political culture. This was done, I have suggested here, largely through participants' attention to (continuing) processes of revolt in the here-and-now while seeking to reimagine and enact intrasubject and state-society relations, prefiguratively, as if they were different (driven by their wished-for forms of such relations), in order to make them different.

VI. TOWARDS PREFIGURATIVE JURIDIFICATION OF REVOLUTION

Faced with this rather unfamiliar combination of different features which Egyptians have referred to collectively as revolution, marked by juridification, prefiguration, heterogeneity, and absence of leaders or state capture, scholars of revolution and/or law have often tended to overlook or downplay one or the other of these features for the sake of theoretical clarity and closure. On the one hand, the leaderless, popular, “convivial commonness” of the Egyptian revolution (Bamyeh, 2011), with its many voices and visions, and its processual and prefigurative methods, presents a conception of revolution in contradistinction to prevalent (Western) theories of revolution. The latter, as discussed in Chapter 2, have been commonly marked by state-centrism, outcome-dependency, and focus on leaders whereby, in the case of legal theories of revolution, revolution has often been reduced to an unlawful but efficacious change of state and constitution hitherto in force. Nor did the praxis of ‘25 January’ revolution follow the previous prevalent visions of revolution and change in Egypt itself, especially the one under Nasser with its vanguardist, top-down ‘communities of revolution’ and ‘Arab Socialism’ and its homogenising notion of the *sha’ab* (nation) and ‘popular sovereignty’ personified by a charismatic leader (see Chapter 3).

Faced with an unfamiliar praxis of revolution in Egypt, the usual scholarly conclusion has been that it cannot be more than a popular rebellion or protest movement, or at most a “failed revolution” (Goldstone, 2014; Gunning & Baron, 2013; Achcar, 2013). As Schwedler and Harris (2016) argue, despite a plethora of different forms and strategies of activism on the ground, scholars often fall back on restrictive frameworks that approach the revolution in Egypt only in terms of state power versus social resistance, that is, the assumption that all forms of struggle are directed at the state. The actual processes and perspectives of the revolution, as Shukrallah (2013) and Cooke (2013) further argue, are thus consistently left out of the analysis by pundits who recognise only institutional power and change.

However, once we analytically drop the capture of state as the sole target of revolution and the measure of its success – the *sine qua non* and the *raison d’être* of revolution – and release the concept from the entrapments of success-failure binary of the final outcome, an alternative picture emerges. In this picture, lack of plans to capture the state does not necessarily imply participants’ lack of concern with changing the workings of state institutions and their underlying political culture. Instead, the popular conception of revolution in Egypt may be understood as based on people seeking to change hitherto prevalent social relations and political culture (marked by paternalism, division, exclusionary politics) through prefiguring new social relations (marked by diversity,

inclusion, participatory politics) which were publicly and collectively performed in the here-and-now.

On the other hand, faced with a seemingly paradoxical emphasis on and concern with law, legality, and legal rights by many revolutionaries in Egypt, a number of observers have concluded that, as discussed before, it is a sign for lack of quintessential radicalism needed for an otherwise real revolution. Bayat (2017) has thus suggested that previous revolutions were usually inspired by a certain set of ideologies and philosophies that came to inform the radical visions and strategies of the revolutionaries. However, having noted that the popular revolutionary visions in Egypt had been preoccupied with such issues as rule of law, accountability, and legal-constitutional change, Bayat (2017) consequently argues that the Egyptian revolution lacked any such radicalism, associated intellectual anchor, or unifying ideology.

However, following my alternative, participant-driven approach to revolution, I suggest that we need to examine and understand the juridified nature, visions, and methods of revolution in Egypt in a different way. Firstly, as I discussed in Chapter 3, we need to approach the revolution in Egypt and understand its characters based on the particular historical and political context in which law and revolution gained their popular meanings in Egypt.

Secondly, and crucially, the juridified praxis of revolution and change in Egypt needs to be studied, not separately as is the case in most studies, but in conjunction with and as connected with other significant features of that revolution which emerged at the same time, namely its common prefigurative method which was concerned with bringing about radically different intrasubject and state-society relations. Put differently, I argue that the popular juridification of revolution in Egypt cannot be grasped fully without it also being understood as intrinsically connected with, rather than an anomaly of, the common prefiguration and presentism of that revolution. Nor could the shared presentism and prefiguration of revolution be fully understood without them being studied as mutually affected by their partly juridified nature. To sum up, my suggestion here is that in studying the revolution in Egypt, bottom-up forms of juridification and prefigurative methods of change need to be understood and brought together, while being studied as part of the particular political-historical context in which they emerged.

Consequently, the intense focus of the revolutionary movement on legal discourses and institutions could be seen, I argue, as a legacy of the “pervasive legalism of Egyptian politics” (El-Ghobashy, 2016) before the revolution, that is, the prominent role law and legal institutions played in maintaining authoritarian rule and in the grassroots struggles

against it. As my argument in Chapter 3 suggested, legal institutions had played a major role in Egypt's colonial and postcolonial political systems and political cultures as an instrument of social control (Esmeir, 2012; Hussain, 2003), contributing to a rule-by-law political system in recent decades (Arjomand & Brown, 2014; Bernard-Maugiron, 2014) which existed along with a an unbroken, strictly-enforced state of emergency. On the one hand, legal institutions had been central to Sadat and Mubarak regimes' continued political repression and control of the population. On the other hand, those same legal institutions were effectively kept closed to the public and its opinions and demands (see Chapter 3).

This underlies the function of legal institutions and dominant legal culture in shaping the nature and dynamics of repressive political processes in Egypt especially in recent decades, and consequently could explain the political importance of legal actors, processes, and institutions before and since the revolution. Hence the increasing focus on legal activism amongst many of those seeking to effect change or challenge the regime (Rosberg, 1995; Moustafa, 2007; Brown, 2008), and consequently the juridified nature of the revolution in 2011.

At the same time, the diverse vision and praxis of revolution, characterised by the convergence of several struggles, could be seen as having embraced several common elements of activism from the 2000s including their horizontalism and fluidity. Methods of activism adopted by groups such as Kifaya and others, as Chapter 3 noted, were marked considerably by loosely-established horizontal networks with often fluid memberships and no hierarchical leadership structures, which effectively brought together activists from diverse ideological orientations and social groups, based on consensus, cooperation, solidarity, and autonomy (Abdelrahman, 2004b; Hirschkind, 2012; Browsers, 2009). While in many such recent forms of activism in Egypt before the revolution, as Chapter 3 noted, considerable efforts were directed at changing state-society relations and the dominant political culture, hardly any groups were willing or planning to capture state power – a vision and method of change similarly seen in the prefigurative praxis of revolution since 2011 (discussed above).

Therefore, in bringing together both the juridified praxis of revolution and prefigurative methods adopted, it is instructive to examine a few examples from the early stages of the revolution in 2011 (before a more detailed discussion in Chapter 5 in relation to prefigurative juridification during the Post-Mubarak period). While noting that “this is a revolution that's chosen to work...legally” (Soueif, 2012, 87), a participant thus described a revolutionary scene outside the Cabinet building and the Parliament on 10 February, the day before Mubarak was forced from office.

[T]he dominant opinion is against breaking into anything. [For] a few thousand people [surrounding the building] it would have been dead simple to go in and occupy them both. And it's not fear that holds us back... No, we the people were implementing a doctrine of minimum force, minimum destruction. This was a revolution that respected law, that had at its heart the desire to reclaim the institutions of state, not to destroy them. It was very clear who its enemy was: the *Dakhleyya* and State Security and the National Democratic Party. Theirs were the buildings the revolution torched. (Soueif, 2012, 168)

As is clear from this account, the bottom-up, juridified praxis of revolution seemed to also involve popular forms of *illegality* which was understood by participants as in this quotation as part and parcel of the praxis of revolution. Despite drawing on legal references and tools, the popular revolutionary movement continued to completely disregard or defy many other laws (e.g. defying the Emergency Law, breaking the Protest Law, burning police stations, court building,³⁶ and NDP buildings). Yet such forms of illegality were precisely what provided the condition of possibility for the juridification of revolution. Thus, for example, nationwide demonstrations and sit-ins especially during July 2011, in breach of recent laws banning protests, were the main reason why the military rulers finally agreed to go ahead with criminal prosecution of Mubarak and his close allies. In other word, in this example people were breaking one set of laws (which they deemed unjust) precisely in order to make possible the upholding and enforcing of another set of laws (which they deemed necessary for achieving social justice) – that is, breaking protest law in order to demand the enforcing of other criminal laws for the purpose of prosecuting Mubarak.

It can, therefore, be suggested that the juridified praxis of revolution in Egypt was not about making a legal, i.e. law-observing revolution; the view many observers have adopted to dismiss the Egyptian revolution as ultimately co-opted and reformist (see above). Rather, the revolution could be understood as being about new visions of law and legal culture which were enacted prefiguratively through upholding some just laws and yet breaking other unjust laws, saving some institutions and yet burning other legal institutions. On the face of it, the fact that revolutionaries set many courthouses on fire, and yet at the same time were demanding a court to prosecute Mubarak, might seem contradictory. But, they would perhaps become clearer if we understand them as prefigurative forms of juridification which were concerned with reimagining and enacting

³⁶ *Al-Ahram*, 19 September 2014.

in the here-and-now a different law and legal culture.³⁷

It was a prefigurative method which, as I will further discuss in the following chapter, was performed against the systematic corruption of the judiciary and its recent role in the legal intimidation and political oppression and control of the people. At the same time, despite people's grounded experiences to the contrary, they seemed to want to reimagine and enact the legal system as if it were different, in order to make it different. This could be seen perhaps as a reason why one of the popular chants of the revolution was: *They say freedom, they say law... in prisons, they torture all!*³⁸ Understood in conjunction with other examples above, it can be suggested that this chant reflects the same approach: it is not against the law per se, but against a particular form of law and political culture – rule by law – which had been dominant under Mubarak as a means of oppression and social control.

Therefore, informed by the grounded experience of many Egyptians in the past decades of the legal system and its key role in their country's prevalent, repressive political culture, the juridified praxis of revolution can be understood, as will be further discussed in Chapter 5, as partly prefigurative in the sense of people wanting to prefigure a different legal system and political-legal culture through different enactments of law and legality. As will be discussed in the next chapter, the language of law continued its role as one of the main discourses of the revolutionary struggle in the period following the fall of Mubarak. During this period the popular revolutionary movement which had been emboldened by the fall of Mubarak, began to mobilise, organise, and make more concrete efforts and demands to bring about their desired prefigurative and juridified forms of change.

³⁷ Of course, I am not trying to suggest here that all the revolutionaries were following the same vision and set of actions. Nor am I proposing that these two different forms of actions were carried out necessarily by the same group of people consciously engaged in prefigurative forms of action. My suggestion is a much more modest one, offering one possible reading of this otherwise volatile and evolving situation.

³⁸ "قالوا حرية وقالوا قانون ... والتعذيب جوه السجون".

VII. CONCLUSION

Having critiqued the prevalent conceptual and epistemological approaches to the study of revolution, I argued in Chapter 2 for the analytic importance of studying revolution on the basis of the ways in which the participants themselves envision and practice their revolution, and the performative effects of different such conceptions. To do so, I argued, we need to pay closer attention to both the actual practices of revolutionaries during their struggle and the broader political, historical context within which those practices of revolution have emerged and thus taken their meaning and significance for the participants.

Consequently, having considered in Chapter 3 the evolution of the vision of revolution in modern Egypt and the significant role of law in recent forms of authoritarian, rule-by-law politics and the struggles against it, the main part of the present chapter was aimed at examining several aspects of the popular praxis of revolution in Egypt particularly during its early stages. Drawing on my interviews and observations, and other primary and secondary sources, it was noted that the praxis of revolution had been largely diverse and leaderless with no groups willing or able to assume leadership. The chapter further suggested that, despite or perhaps because of many differences and disagreements between participating groups, language of law and legal rights gradually came to be adopted as one of the main discourses of the revolution, whereby many demands, goals, visions, and methods were articulated in a legal language.

Meanwhile, it was suggested, the popular praxis of revolution and its underlying vision of change was increasingly concerned with a renewed emphasis on seeking to bring about radically different forms of intrasubject and state-society relation and political culture – rather than capturing state power. One of the main methods the participants adopted to achieve these objectives, the chapter suggested, was by prefiguring their wished-for social relations and political culture through public performances of those desired changes in the here-and-now, rather than hoping for them to come about in future; that is, enacting social relations as if they were different, in order to make them different.

Having suggested that the revolution in Egypt was marked by both juridification as well as prefiguration, the chapter argued ultimately that a fuller study of that revolution would, therefore, require studying juridification and prefiguration in Egypt not as separate and contradictory feature of the revolution, but as intrinsically related and mutually entwined. It was suggested that juridification of revolution would be better understood if we pay equal attention to its potentially prefigurative aspects, and similarly, our knowledge of

common forms of prefiguring revolution may be extended if we take their juridified features into account.

Consequently, Chapter 5 will take up and adopt this framework in order to examine in more detail the contested politics of law and juridification of revolution in Egypt in the period after the overthrow of Mubarak, followed by Chapters 6 and 7 whereby a similar emphasis on prefigurative juridification of revolution will be adopted to study the practice of activist lawyers in support of the revolution and as part of the contested politics of law since 2011.

CHAPTER 5

CONTESTED JURIDIFICATION OF REVOLUTION

I. INTRODUCTION

Driven by a participants-oriented approach to the study of revolution in Egypt and the politics of law therein, the main focus for the last two chapters was the changing visions and praxis of revolution in Egypt during the decades preceding the ‘25 January’ revolution and during its early stages. Marked by forms of praxis some of which comparable to previous visions and experiences of activism and revolutionary mobilisation (discussed in Chapter 3), the early praxis of the revolution, Chapter 4 suggested, was marked by a number of common features. Among them was a popular emphasis on reimagining political culture and social relations through prefigurative public performances characterised largely by diversity and by inclusionary, participatory forms of politics focussed on the processes of revolt in the here-and-now.

Moreover, and against the backdrop of the recent role of prevalent legal discourses and institutions in maintaining an authoritarian rule-by-law political system and in struggles against it, Chapter 4 suggested that despite such diversity, the movement gradually espoused a largely shared juridified idea of revolution and change. The language of law seemed to be providing a broadly unifying intellectual anchor and common imaginary which was understood and shared by many different groups, and a rallying point which helped mobilise large sections of the population. Ultimately, the chapter argued that a fuller understanding of the revolution in Egypt and the politics of law therein would,

therefore, require an approach which studies those forms of juridification and prefiguration not as separate and contradictory, but as intrinsically entwined. Whilst juridification of revolution would be better understood if we pay attention to its prefigurative aspects, our knowledge about common forms of prefiguring the revolution in Egypt may be extended if we take their juridified features into account.

Consequently, this chapter aims to further chart and analyse the continuing, albeit contested, politics of law vis-à-vis revolution in the wake of the overthrow of Mubarak. This was a particularly crucial period for the revolution, as discussed below, for it witnessed an unprecedented level of juridification of politics by both revolutionaries and the different post-Mubarak ruling elites. On the one hand, the ruling elite, feeling threatened and/or seeing opportunity, seemed to be determined to use legal tools and institutions at their disposal to counter, contain, and redirect the revolutionary movement while seeking to protect and expand their power and interests. On the other hand, inspired by their collective praxis of solidarity and revolution, and emboldened by the ensuing political opening after their astonishing success in removing Mubarak, revolutionaries continued their largely juridified struggle, now envisioning and mobilising for far profounder changes and demands.

With a view to contribute to the broader scholarship on revolution and juridification (see below), the chapter aims to examine those conflicting forms of juridification of revolution during this volatile period through two interrelated sets of questions. First, it asks, what were the ways in which ruling elites attempted to use legal actors and institutions which were sympathetic with them or under their control (most notably, courts) to counter, contain, or influence the revolution and to protect their own powers and interests? Meanwhile, the second question is in what ways did the revolutionaries draw on discourses of legality and certain ideas about illegality through their prefigurative, public performances of change, the forms and nature of their legal demands, and their concurrent collective disregards for many other legal provisions? At the same time, informed by my approach to the concept of revolution as participants-oriented, performative (Chapter 2), the chapter further asks, what might these different practices of juridification help reveal about conflicting visions and conceptions of revolution and law underlying and foregrounded by them, what may have been the performative effects of those different conceptions, and what is at stake politically therein?

To answer these questions, the chapter examines different forms of juridification discussed in the Introduction, namely constitutionalisation of politics, criminalisation, judicialisation, and legal proliferation. The chapter draws mainly on material from my

interviews with activist lawyers and political activists during 2014 and 2015,¹ but also on examples from a number of court cases, statutory provisions, and official decrees from this period to support the arguments and contextualise that material. Equal attention is also given to the broader context of the revolution and related political developments during this period as reported by the Egyptian press or documented by relevant human rights NGOs.

Following some preliminary observations with regards to the context of revolution after the fall of Mubarak, part III of the chapter examines examples from a number of constitutional and administrative court cases and declarations in order to study some of the constitutional efforts by different political elites in their attempts to dominate or influence the direction of post-Mubarak political developments. The latter section of this part, moreover, examines the ruling elite's practices of legal intimidation as a multi-faceted form of counter-revolutionary juridification which involved the increasing use of (or threat to use) the criminal justice system as well as military and exceptional courts in order to intimidate and subdue those involved in the revolution. While considering some such examples of criminal prosecution, it will be suggested that, beyond their readily visible physical suppression of the revolution, practices of legal intimidation since the fall of Mubarak can be seen as marked to a considerable extent by certain underlying visions of revolution, politics, and change often in contradistinction to those shared and enacted by many revolutionaries (discussed in Chapter 4).

Reflecting the contested role and politics of law in the Egyptian revolution following the overthrow of Mubarak, part IV of the chapter looks at counterposing examples of juridification by revolutionaries in pursuit of their desired visions for change. It includes forms of (counter)constitutionalisation, the popular mobilisations during the drafting of the first post-Mubarak constitution in 2012, and (counter)criminalisation, the popular mobilisation for the prosecution of Mubarak and other figures of the old regime during 2011. Ultimately, it will be argued that those contrasting forms of juridification for and against revolution, can be seen as equally marked by a further underlying conflict, namely the contestation over visions and conceptions of revolution and law, and the relation between the two. Ultimately, the findings of this chapter, especially regarding the dynamics of the tension between the ruling elite's legal intimidation and revolutionaries' juridified praxis, help provide necessary understandings for the final part of the thesis (Chapters 6 & 7) which examines the praxis of activist lawyers as part of the broader, contested role and politics of law and lawyering in the Egyptian revolution.

¹ See Appendix 1.

II. BACKGROUND

For many revolutionaries in Egypt, the removal of Mubarak did not seem to mark the outcome but rather a necessary milestone in the ongoing revolution. Emboldened by the force of the popular revolution, their success in removing Mubarak, and the demise of the legitimacy of the state, many revolutionary groups embarked on more concrete and determined efforts to mobilise for their goals and demands and to bring about their desired changes. Mobilisations across the country, including protests, sit-ins, strikes, occupations, and petitions, continued to make a wide range of (legal) demands about many aspects of social and political life of the country (see further Amar, 2011; Bayat, 2017, Chapter 9). Not all revolutionary activities were directed to the working of the state (Chapter 4), but insofar as the transformation of the state was concerned, a considerable part of popular mobilisation appeared to be based on making concrete, often far-reaching, demands (many essentially legal) to be fulfilled by the new rulers on behalf of the revolution (Bayat, 2017; Bamyeh, 2013b).

Most revolutionary groups and participants, however, were not willing or planning to attempt capturing the state. They were, as was suggested in Chapter 4, much more concerned with transforming the working of the state particularly through attempts at changing the state-subject relation and the hitherto dominant political culture underlying the work of many state institutions. Thus, for instance, when several months after the fall of Mubarak, on 9 September 2011, thousands of people were back on the streets marching, on a day popularly designated as ‘the day to realign the revolution’, they marched to the symbols of the entities they most wanted changed including the Supreme Court building (Soueif, 2012, 72).²

Not only did the rise of the revolution lead to the fall of Mubarak, but also it coincided with the further expansion of the discourse of law in the ensuing political struggle. Different revolutionary and counter-revolutionary, old and new, forces seemed to persistently resort to legal language and processes in the intense political struggles that ensued, making law a crucial tool and domain of political and social struggle. Feeling threatened by the revolution and by other elite groups but also seeing opportunities, as discussed below, old and new ruling elites and institutional actors were deploying legal tools at their disposal in their efforts to influence and contain the direction of change and to preserve and expand their powers. The new political environment seemed to be marked by the emergence of different legal ideas, demands, and propositions, initiated by the

² Other destinations included the Ministry of Interior, the Radio and Television building in Maspero, and the Israeli embassy.

people and the rulers, whose underlying visions of politics, society, and change continued to be in conflict. While contestations proliferated over the content and processes of constitutional changes, legislative measures, transitional roadmaps and timeframes, and electoral arrangements, a large number of administrative, constitutional, and criminal litigations continued to be initiated by different actors regarding many aspects of the new political system (discussed below).

Indeed, the level of judicial involvement in the post-Mubarak political conflicts were truly extraordinary, as momentous court cases with controversial, sweeping political issues at stake came to occupy a central place within politics and popular opinion. As discussed below, major constitutional and administrative litigations became a permanent part of political struggles, as the State Council and its Supreme Administrative Court, and the Supreme Constitutional Court were frequently petitioned by different stake-holders to decide on the legality of various key developments. Meanwhile criminal courts were continuously handing down decisions involving activists, citizens, and figures of the old and the new regimes.

The political role of the Judiciary had been key to the dynamics of politics in Egypt in recent decades (Hamad, 2008). Much more so was the case, as I suggest in this chapter, in the conflict-ridden, juridified domain of politics after Mubarak in which winning court cases had increasingly become a major strategy of revolutionary and counter-revolutionary forces in their struggles to propel the country towards the vision and path of change each deemed desirable.³ “Unlike any other similar upheaval in the last two centuries,” as Goldberg (2016) has suggested, “the Egyptian revolution was one in which legality and the interpretive decisions of the country’s highest judges played a dominant role in its outcome.”

With the now all-too-important domain of law and the increasing political significance of the judiciary in post-Mubarak period, it would certainly undermine the legitimacy of government if judges (especially in higher courts) were seen as, even occasionally, siding with activists or other elites against the regime. As a result of the new popular praxis and visions of the subject-state relations which had emerged during the revolution, as noted in Chapter 4, all post-Mubarak ruling regimes were suffering from some forms of legitimacy crisis and inability to fully control the newly-politicised population (Goldberg

³ As mentioned before, I study counter-revolutionary actors as not necessarily trying to return to a pre-revolutionary political setting, but as themselves promoting visions of change driven by their own interests.

& Zaki, 2011), and therefore they did everything in their power to gain legitimacy in the domain of law.

Thus, despite the partial independence of the Judiciary and the Judges' Club⁴ in recent decades, many political forces were naturally keen on affecting the working of judges. All post-Mubarak regimes (SCAF, Morsi, and Al-Sisi) seemed to be following their predecessor in attempting to win over, manipulate, or even intimidate judges.⁵ This included putting pressure on or controlling the Judges' Club leadership and its elections (Aziz, 2016),⁶ exploiting internal power struggles within the Judiciary,⁷ or controlling mechanisms of judges' promotions and secondments. A more recent example for the latter was the Judicial Authority Bill, which despite a strong opposition from many senior judges, was passed in 2017 by the newly elected Parliament, with the encouragement of president Al-Sisi, granting the president the power to appoint the heads of the four highest judicial bodies in the country. Meanwhile, revolutionaries, political parties, and NGOs were continuing to petition courts to challenge many decisions and actions of the old and new regimes, to force state institutions to adopt and implement the demands of the revolution, or to prosecute some figures of the old regime.

⁴ Established primarily to promote the interests of judges, the Judges' Club has been a relatively independent body vis-à-vis the Executive. In fact, on several occasions the club has acted in confrontation with the Executive. Examples from before the revolution include their major confrontation with the regime regarding the judicial supervision of the 2005 elections (for details, see Younes, 2008). On the politics of the Judges' Club before the revolution see generally Said (2008) and Demmelhuber (2009).

⁵ Of Course, such practices by the ruling regime seeking to exert control over the Judiciary was also common during Mubarak period. As Hisham El-Bastawissy, himself a justice of the Court of Cassation stressed in 2008, the independence of the Egyptian Judiciary has been severely undermined since "the state has absolute control over the salaries and pensions of judges, whose monthly income is almost 90 percent composed of incentives and rewards subject to state's discretion." (El-Bastawissy, 2008, p. 274).

⁶ For context, see Said (2008) and Younes (2008).

⁷ Exemplified by the confrontation between the SCC and the Court of Cassation before the first post-Mubarak referendum. As the Constitutional Amendments Committee had entrusted the SCC to hear appeals regarding the forthcoming parliamentary elections, justices from the Court of Cassation released a statement raising concerns about the SCC's independence in the light of its history under Mubarak. After heated debates, the Committee transferred the task from the SCC to the Court of Cassation (see Hashish, 2013).

III. THE RULING ELITE'S JURIDIFICATION OF REVOLUTION

Constitutionalisation of Politics

In a decree issued immediately upon the removal of Mubarak on 11 February, the military 'care-taker' rulers declared the revolution victorious, while insisting that people should now return to their homes and their work, thus granting military police and intelligence officers the power to detain civilians for blocking traffic or going on strike. While demonstrations were still ongoing, the military leadership immediately proposed a number of constitutional amendments, concerning the state of emergency and forthcoming presidential elections, to be voted on in a national referendum in March (see further Dunne & Revkin, 2011). The referendum seemed to be rushed through by the military rulers perhaps to establish some degree of control during a volatile period in which, as noted above, revolutionary mobilisations were still ongoing and expanding across the country. The March referendum was presented to the people by the military as a sign of revolutionary success as well as a source of stability. While it was emphasised that "This is the first real referendum in Egypt's history",⁸ the military, the Muslim Brotherhood and some of the remnants of the old regime were campaigning in favour of the referendum (Stacher, 2013) deploying narratives of anxiety about instability, economic downturn, crime, and insecurity which they claimed would end with the passage of the amendment. At the same time, they were also accusing the revolutionaries, especially those who opposed the constitutional amendments as insufficient and a smokescreen, of seeking to extend the state of chaos (see further Head, 2011).

Nevertheless, finally, a year later, in March 2012, the newly elected Parliament appointed a 100-member Constituent Assembly to draft a new constitution. Various committees were formed by the Assembly tasked with engaging the public, civil society organisations, NGOs, trade unions, etc. in the process of drafting the constitution. However, many observers suggested that this was hardly more than a façade and that none of those committees really took the public consultation seriously (Farouk, 2013). In spite of such discontents by various revolutionaries, many groups were nonetheless mobilising for inclusion or exclusion of particular constitutional provisions or the wording of some articles. For instance, during the drafting of the constitution, as Farouk (2013) explains,

⁸ The chairman of Egypt's Supreme Judicial Committee, as quoted in *The New York Times*, 20 March 2011.

the chapter on freedoms and rights became a significant ground for campaigns by some civil society organisations, for example, demanding that it should state that the term ‘citizen’ refers to both men and women. Similarly, several feminist organisations demanded an explicit statement in the provisions of Article 32 that an Egyptian mother can transmit her citizenship to her children.

Meanwhile, seeking to preserve their powers from the forthcoming civilian government, the military rulers issued a number of ‘constitutional declarations’, including a decree through which they sought to retain some of their legislative powers and a right to veto the provisions of the forthcoming constitution (Roll, 2016). Soon, the newly elected President, Morsi, was doing the same thing to protect his powers by similarly issuing ‘Constitutional decrees’ in relation to a wide range of issues. Indeed, the frequent naming of their declarations and decrees by different ruling elites as ‘Constitutional’⁹ is itself an interesting aspect of the juridification of politics after Mubarak. The Military rulers, later Morsi and then Al-Sisi all continued to call many of their statements in such a way, perhaps seeking to use the force and legitimacy of the title ‘constitutional’ to justify their decisions and protect them during a period of “decreasing sovereign respect” (Goldberg & Zaki, 2011) among many Egyptians.

We may, for instance, look further at the volatile period of 2012 when the constitutionalisation of politics reached unprecedented levels yet. This is the period in which first parliamentary and presidential elections were held. Muslim Brotherhood-affiliated candidates won majority of seats in Parliament,¹⁰ Mohamed Morsi of Brotherhood-affiliated Freedom and Justice Party (FJP) narrowly won the presidential race,¹¹ and a Constituent Assembly similarly dominated by Brotherhood affiliates was formed by the new Parliament to draft a new constitution.¹² At the same time, the Army leadership who had held interim ruling power since the fall of Mubarak were now required to hand over their powers to the newly elected civilian parliament and government, although they continued to try to preserve their power and interests as much as possible (Roll, 2016). Meanwhile, people were continuing to mobilise across the country for the demands of the revolution. And yet, many political and economic elites, feeling threatened by the control of Brotherhood over both the Executive and the

⁹ الإعلان الدستوري

¹⁰ *Al-Ahram*, 22 January 2012.

¹¹ *Al-Ahram*, 24 June 2012.

¹² *Al-Ahram*, 12 June 2012.

Legislative branches of the state, were fighting to preserve their interests, while many ‘secular’ elites and activists were fighting to limit the powers of Brotherhood.¹³

Meanwhile, the process of drafting the constitution during the same period, perhaps better understood as “the battle for the constitution” (Stilt, 2011), was increasingly and fiercely contested, like a zero-sum battle for political domination (Farouk, 2013, 23), as different political elites were engaged in fighting to protect and/or increase their own power and autonomy, “securing their respective territory in the public sphere” (Farouk, 2013, 4). This included, for instance, SCAF resisting both proposed constitutional provisions to bar military trial of civilians and to establish civilian oversight over the military budget,¹⁴ the SCC insisting on its role as the ultimate arbiter, and the Judges’ Club threatening to go on strike unless its desired clauses were included (see further Brown, 2012b).

Within this conflict-ridden, volatile political context, many political contestants and stake-holders (as well as civil society organisations and activist lawyers, as seen further below) continued to petition higher Administrative and Constitutional courts to challenge the legality or constitutionality of many decrees, decisions, or legal provisions, etc., resulting in what Arjomand (2014, 174) refers to as “the intensified judicialization of constitutional politics in Egypt” during this period. Those higher courts judgments thus came to play an essentially decisive political role regarding the direction, configuration, and structure of many major new developments in the country. When the Brotherhood-dominated Parliament appointed a Constituent Assembly in a way to ensure its control over it and thus over the constitution drafting process, other political actors dismayed or threatened by this, petitioned the Administrative Court on the basis that the Assembly should not include Members of Parliament. The chief justices of the Supreme Administrative Court, in agreement with the appellants, effectively dissolved the Constituent Assembly.¹⁵

Meanwhile, a losing candidate petitioned the court to challenge the Elections Law by which the new lower house of the Parliament had been elected (for violating the principle

¹³ For instance, for a first-hand account of some of the contentions (regarding the issues women’s rights) between ‘seculars’ and Brotherhood-affiliated and Islamist members within the Constituent Assembly see Elsadda (2015).

¹⁴ See reports by the Human Rights Watch: ‘New Law Keeps Military Trials of Civilians’ (May 2012), available from <https://www.hrw.org/news/2012/05/07/egypt-new-law-keeps-military-trials-civilians>; and ‘Egypt: Military Power Grab Creates Conditions for Abuse’ (June 2012), available from <https://www.hrw.org/news/2012/06/21/egypt-military-power-grab-creates-conditions-abuse> (both last accessed 8 April 2018). Also, on the role of the military since the revolution, see Roll (2016).

¹⁵ Supreme Administrative Court, Judicial year 66, Case No. 26657, April 2012.

of equal opportunity). Finding the Election Law unconstitutional, the Supreme Constitutional Court (SCC) effectively dissolved the new Parliament.¹⁶ One important implication was that in the volatile, post-Mubarak revolutionary context, challenging new political developments and democratic institutions on grounds of illegality and unconstitutionality led to their dissolution thus leaving an even more undemocratic vacuum.

At the same time, the justices of the Supreme Constitutional Court (SCC) were looking into appeals challenging the legality of the Parliament's upper house (Shura Council).¹⁷ Just as their decision was being finalised, the Shura Council itself (dominated by Brotherhood) decided to introduce the Judicial Authority bill concerned with regulating the Judiciary. It included provisions to lower retirement age for judges which, if approved, would result in the dismissal of 9 out of 11 Chief Justices of the SCC – the same judges who were deciding on the constitutionality of the Shura Council. However, as it was becoming clear that the SCC was likely to dissolve the Shura Council and the Constituent Assembly soon, in November 2012 President Morsi issued yet another 'Constitutional Decree' whereby he declared his own decisions temporarily immune from judicial review, and the Shura Council and the Constituent Assembly immune from judicial dissolution. Proclaiming that "no judicial authority shall have the power to dissolve the Constituent Assembly or Shura Council", Morsi's decree stated that,

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 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.¹⁸

Meanwhile, Morsi's supporters surrounded the SCC premises and effectively prevented the judges from entering the building, forcing the court to suspend its activity.¹⁹ Nevertheless, shortly after the SCC declared unconstitutional Morsi's November decree and dissolved the Shura Council.²⁰

¹⁶ Supreme Constitutional Court, Judicial year 34, Case No. 20, June 2012.

¹⁷ Supreme Constitutional Court, Judicial year 34, Case No. 112, June 2013.

¹⁸ Published in the Official Gazette (46), 21 November 2012.

¹⁹ *Al-Ahram*, 2 December 2012.

²⁰ Supreme Constitutional Court, Judicial year 34, Case No. 112, June 2013.

As these examples, including the major confrontation between president Morsi and the Supreme Constitutional Court,²¹ among many others, show the post-Mubarak struggle over the form and direction of change was marked considerably by “legalization of political battles” (Abu Odeh, 2013). A significant part of this battle was thus in the form of constitutionalisation of politics by different ruling elites who were regularly speaking in a legal-constitutional language and invoking constitutional arguments (Brown, 2012) while seeking to use legal institutions at their disposal (especially the SCC and the SAC) to protect or expand their interests and limit or defeat their opponents.

Legal Intimidation against Revolution

Along with those higher courts which had assumed a key role in post-Mubarak power struggles and political battles, the criminal justice system was playing an equally decisive role as criminal prosecutors and courts were engaged in numerous cases in relation to the ongoing revolutionary struggle. As discussed in part IV below, a significant part of the ongoing revolutionary mobilisation was directed at using the criminal justice system towards achieving some of its goals and demands. Thus, after enormous popular pressure and continuous nation-wide mobilisations by revolutionary groups (Soueif, 2012), public prosecutors initiated a number of criminal proceedings. They included proceedings notably against the deposed president Mubarak himself, his two sons, and six of his close allies (charged with crimes including conspiring in the killing of protestors during the revolution, and embezzlement),²² against several police and security officers for killing or torturing protestors during the earlier stages of the revolution,²³ and a number of business tycoons and old regime officials charged with corruption.²⁴

Notwithstanding these proceedings, and beyond those constitutional and administrative legal struggles noted earlier, an equally significant part of the juridification of politics during this period consisted, as I discuss in this section, in attempts by the ruling elite to

²¹ For further details of the trajectory, dynamics, and effects of this constitutional confrontation see further Arjomand (2014).

²² Cairo Appeal Court (Criminal Division), Judicial year 85, Case No. 17805, June 2016; and Cairo Criminal Court (2011), Case No. 3642, June 2012.

²³ Cairo Criminal Court (2011), Case No. 3958, November 2011.

²⁴ Cairo Criminal Court (2011), Case No. 1061, June 2012. This was proceedings against Sameh Fahmy (Mubarak’s Petroleum Minister) and one of Mubarak’s close allies, business tycoon Hossein Salem, charged with illegal export of natural gas to Israel.

contain and thwart the ongoing revolution through the use of criminal laws. A large number of those involved in the ongoing revolutionary struggle including protestors, activists, workers, students, public figures, grassroots collectives, members of civil society organisations and NGOs, among many others, continued to be hauled into the criminal justice system and were detained, put on trial, or imprisoned. This is a form of top-down juridification which consisted of criminalisation, legal proliferation, and judicialisation (as discussed in the Introduction, part II) which I collectively refer to as 'legal intimidation'.²⁵ It involved using (and making new) criminal laws, criminal courts as well as military and exceptional courts,²⁶ and a wide range of detention powers granted to police, prosecutors, and security forces. It included attempts to intimidate and thus subdue revolutionaries through (the threat of) arrest, recurring detentions, and lengthy imprisonment, and meanwhile dragging them through successive but also hostile and confusing criminal procedures on the basis of dubious charges and thus seeking to frustrate and exhaust them.

Criminalisation of dissent and legal intimidation were not new in Egypt. They had indeed been a common feature of Mubarak's rule as well as his predecessors, under different colonial and post-colonial regimes (see Chapter 3). However, as several activist lawyers who had experience of working during Mubarak era (Wael, Malek, Alaa, Hossam) explained, its intensity, spread, and variety substantially increased since the 2011 revolution. It was reported that during 2011 alone, under the military rule, over 12,000 civilians had been arrested in this fashion and charged with things such as thuggery, curfew violations, damage to property, insulting the army, or obstructing work.²⁷ In the following years, under Morsi and later Al-Sisi, similarly many activists, workers, students, writers, journalists, NGOs, newspapers, satellite channels, and professionals were hauled into criminal courts with charges such as 'harming national security', 'inciting aggression', 'incitement for protest', or 'protesting without permission', 'insulting the president',²⁸ or 'contempt for religion'.²⁹ For instance, in the period between January and

²⁵ Of course, many of the constitutional measures discussed earlier could also be understood as being about intimidation, but I use 'legal intimidation' mainly in relation to the regime's use of criminal law.

²⁶ The 2012 Constitution stipulated military trials for civilians in Article 197, and the 2014 Constitution expanded it through articles 174 and 204 (see further Abd Rabou, 2014). Also, Law no. 136 of 2014 (Law on the Protection of Public Facilities) effectively allowed referring civilians to military courts in cases of illegal protesting around public facilities protected by the armed forces.

²⁷ 'The State of the World's Human Rights 2012', report by Amnesty International (2012, 134).

²⁸ 'The Crime of Insulting the President', report by Arabic Network for Human Rights Information (ANHRI), 20 January 2013.

²⁹ *Egypt Independent*, 11 June 2013

May 2013 alone, during Morsi presidency, at least 3,500 protestors and activists had been detained.³⁰ Meanwhile, with the removal of president Morsi by the Army in mid-2013 and the later designation of Muslim Brotherhood as a 'terrorist organisation' by the government,³¹ began a wave of criminal prosecution against members and leaders of that organisation charged with crimes including engaging in acts of terrorism, inciting violence, or acting against national security.³² Consequently, noting the intensification of legal intimidation by the ruling elite during the post-Mubarak period, El-Ghobashy (2016) has suggested that,

The zeal with which these judges and prosecutors are expanding the infrastructure of legal repression...suggests that political dissidence is not their only target. A broader pacification of the population seems to be the goal, to punish the rampant disobedience and disrespect for authority that ruling elites remember as the revolution.

The role of the criminal justice system and legal intimidation against the revolution was particularly notable in the 2014-2015 period during which I carried out my fieldwork and interviews in Egypt.³³ Since assuming office in June 2014, as Brown & Bentivoglio (2014) noted, president Al-Sisi increasingly relied on the criminal justice system to restore and strengthen the authority of state institutions. During a single week in September 2014, for example, members of a street music group were arrested for 'chanting anti-regime slogans', activists of an outspoken NGO supporting street children were charged, astonishingly, with 'child abuse and human trafficking',³⁴ scores of people were arrested for violating the Protest law after holding protests against poverty,³⁵ and several men who had allegedly attended a same-sex marriage ceremony were arrested, mistreated, and charged with 'debauchery'.³⁶ Meanwhile tens of political prisoners as well as hundreds of

³⁰ *Al-Ahram*, 14 April 2013.

³¹ *Al-Ahram*, 20 August 2014.

³² Including: Giza Criminal Court (2014), Case No. 2210, April 2015 (known as the Raba'a Operation Room case); Giza Criminal Court (2013), Case No. 11818, August 2014 (known as the Istiqama Mosque case). In both cases, several leaders of Brotherhood were sentenced to death or life imprisonment (quashed on appeal later).

³³ The discussion in the following two chapters (6 & 7) is also considerably related to the same topic (legal intimidation) and, therefore, my examination of and findings in relation to the role of criminal justice system in the juridification of revolution aim to further contribute to the analysis in those concluding chapters.

³⁴ *Daily News Egypt*, 10 September 2014.

³⁵ *Daily News Egypt*, 10 September 2014.

³⁶ *Al-Ahram*, 20 September 2014.

activists and journalists outside prisons went on hunger strike against the Protest Law³⁷ and in support of thousands of protestors, activists, and journalist languishing in prisons.³⁸ So much had legal intimidation in the form of arbitrary arrests intensified during this period that one activist thus recounted,

I remember [the period following the election of Al-Sisi as president] as a kind of delirium, when everybody I knew – rights workers, journalists, café owners, gay men – believed we were all going to be arrested at any time... the fear had simply become second nature. (Long, 2015)

Many of those who dared to defy the ruling elite, particularly during this period, were detained for long periods of time, many without any formal charges, through practices of ‘precautionary detention’³⁹ which often led to the situation which is known as ‘recurrent detention’. Under article 3 of the Emergency Law, prosecutors were able to detain any citizen for up to thirty days without charges. Sometimes, before the end of the 30-day period, the detained was transferred to another detention centre and then registered once again for another thirty-day period, which essentially allowed state security forces to lock up anyone they wish for months. With the coming to an end of the Emergency Law, and following the removal of president Morsi in July 2013, the interim president (Adly Mansour) amended, through a decree, section 143 of the Criminal Procedure Code to allow criminal courts to extend the period of preventive detention up to 45 days, renewable for up to 2 years. The decree stipulated no maximum time-limit for preventative detention in cases that included charges punishable by death or life imprisonment. Thus, in many cases, public prosecutors have been able to detain activists, who have been purportedly ‘under investigation’, for long period of time without officially charging them.

A 2016 report by lawyer Hoda Nasrallah,⁴⁰ focusing on four governorates, documented at least 1,464 ongoing cases⁴¹ of pre-trial detention beyond the legally mandated two-year limit. Many of the cases involved charges of protesting without permission, illegal

³⁷ In force since November 2013, the Law to Protect Protest Rights effectively requires those planning any public demonstration to obtain permission from the Interior ministry – something which has rarely ever been granted – while imposing severe punishments for violators.

³⁸ *Al-Ahram*, 15 September 2014.

³⁹ *Habs el-ehtiyati*

⁴⁰ Nasrallah herself is an activist lawyer. At the time of writing the report, she was working for the Egyptian Initiative for Personal Rights (EIPR).

⁴¹ This figure represents only those cases that the EIPR was able to confirm by following their trials, but according to the report, the real figure is likely to be much higher.

assembly, or assault on police personnel or public facilities. According to the report, criminal courts have been applying section 143 of the Criminal Procedure Code electively, while in most cases judges disregard defence lawyers' requests to release the detainee when the two-year limit is reached. The report thus concluded that,

Hundreds of people have been sucked into the vortex of pretrial detention... Detainees have no way to challenge judge's decisions to renew their pretrial detention orders beyond the two-year limit, [or] judges' divergent interpretations of the limit on pretrial detention. Pretrial detention has become a tool of political punishment without trial or the right of defense (Nasrallah, 2016).⁴²

Many activist lawyers I interviewed in 2014 and 2015 stressed that such uses of 'precautionary detention' powers to arrest and detain activists for long periods of time had recently become unprecedentedly widespread. In fact, almost all of the lawyers I interviewed were at the time dealing with some such cases of recurrent precautionary detention. For instance, Nehal (a lawyer working in the legal department of an NGO), explained that,

Since 2013 a large number of people have been detained. Many of them get arrested and nobody knows where they are sent to. Sometimes it takes us months to find out in which prisons they are being kept. At present [September 2014], we think there are over 500 people in detention across different governorates, in relation to breaking the protest law alone. This is a large number. Since January 2014, we have dealt with 60 of them which are cases of prolonged 'precautionary detention', and we are struggling to cope.

At the same time, criminal prosecutors were reportedly colluding with state security forces who were extrajudicially detaining, torturing, and in some cases murdering⁴³ those who dared to defy the regime. In one of the reports amongst several others with similar findings,⁴⁴ it was concluded in 2015 that there had been numerous recent cases of 'forced

⁴² Similar practices by security forces were present in Egypt before the revolution, as shown by the Egyptian Organization for Human Rights' report in 1996 'On Recurrent Detention: Prisoners without Trial'. However, as Nasrallah's report demonstrates such practices expanded and intensified particularly after the 2013 military removal of president Morsi.

⁴³ The intensification of regime's violence (including extrajudicial killing) against any form of dissent since the coming to power of Al-Sisi was thus summed up by activist Heba Farouk Mahfouz in 2016: "Five years ago, we knew there was a chance we could get killed in protests, or that we might survive and build the country of our dreams. Now, each one of us is a 110% sure that we – undoubtedly – will get killed for simply discussing the idea in the street. Now it is not a risk. It is a fact." (Mahfouz, 2016).

⁴⁴ In June 2015, the independent group Freedom for the Brave released a report in which they documented 164 cases of enforced disappearance since April that year, while emphasising that the whereabouts of at least 66 of those listed continued to remain unknown. Available from <https://www.facebook.com/Al7orallgd3an/posts/695600770551785> (accessed 21 February 2017).

disappearance' of activists by Egyptian security forces, with a "clear pattern" of prosecutors failing to investigate such extrajudicial activities:

the people were last seen in the custody of state officials, although state authorities initially denied that the people had been detained or refused to reveal their whereabouts. [In some cases] people's whereabouts were determined days or weeks later either because state authorities eventually acknowledged their detention or because other people saw them in official custody. In three other cases, individuals believed to have been forcibly disappeared by the security forces and in official custody were found dead after a period during which their whereabouts were unknown (Human Rights Watch, 2015).⁴⁵

It is perhaps not difficult to see how the aim of the regime's juridification of politics and legal intimidation of revolutionaries, in its different forms mentioned above, was to control, contain, and silence the increasingly vociferous revolutionary movement through legal means and institutions. We can see that from early on since the revolution the ruling military leaders were attempting to control and contain the revolution and the ensuing political processes through, among other things, criminal and constitutional means (also see Stilt, 2011). The intensification in use and expansion of the domains of criminal law in governance can function as a mechanism to exercise social control (Wacquant, 2009; Shapiro, 1981; Simon, 2007), sometimes, as especially common in colonial regimes, with the view to intimidate and coerce the population by unleashing brute force in the name of the legitimacy of law (Comaroff & Comaroff, 2006).

However, it is also possible to understand different forms of juridification by the ruling elite, mentioned here, as more than merely a set of legal processes and outcomes. In Chapter 2, I emphasised the importance of a performative approach to studying revolution as a concept and of attention to what is at stake politically in different ways it is conceptualised. Consequently, just as the juridification of politics during the recent decades under Sadat and Mubarak were foregrounding and promoting particular visions of society, law, politics, and change (see Chapter 3), juridification of revolution since 2011 too could be understood as underlain by and helping foreground certain conceptions of revolution, law, and change in the broader battle of ideas within the struggles for and against the revolution. Thus, as well as its more visible, physical constraining and

⁴⁵ The report included, for instance, accounts of an incident which had coincided with my own stay in Egypt during 2015. A student named Islam Atito had been chased and apprehended by security forces from inside a university campus. A while later his family were falsely informed that he had been killed during a terrorist shoot-out of a brotherhood affiliated group. But, once his body was released it showed signs of torture. On Atito case, also see the report by the Association for Freedom of Thought and Expression (AFTE), 'Islam Attito: The Story of the Extralegal Killing of a Student' (June 2015).

intimidating of revolutionaries, regime practices of juridification can also be understood, in a performative approach, as helping construct and maintain particular counter-revolutionary forms of politics. In other words, even though it is crucial to pay attention to the material forms of state-sanctioned, legally-sanctioned violence against the revolutionaries, equally so is to try and understand their underpinning conceptual forms of violence against the popular ideas and visions of revolution.

'Revolution' in the Ruling Elite's Juridification of Politics

Although neither a unified nor a centralised set of visions and practices, the ruling elite's intensifying practices of juridification (especially legal intimidation) and their underlying visions can be seen, as I suggest below, as helping construct a certain vision and narrative of revolution, change and its possibility/desirability. The ruling elite's practices of juridification can be seen, I will suggest here, as not just seeking to physically repress and eliminate the revolutionary struggle but also to counter and contain the new, popular ideas and visions of politics and change which had emerged and were performed during the revolution (see Chapter 4). In other words, juridification of revolution can be understood as one of the main tools of the ruling elite in the broader battle of ideas about what revolution means, its desirable forms, and the possibilities of change. Foregrounding the performative aspects of revolution as a concept and its political effects, in what follows I examine further examples of the ruling elite's practices of juridification following the fall of Mubarak with the purpose of suggesting a number of broadly shared visions of revolution and change as underlying those examples.

Immediately after the removal of Mubarak, General Muhsin al-Fangari, a representative of the new 'caretaker' military rulers appeared live on state TV to "salute the martyrs of the revolution" and congratulate the people on their historic victory. The general's military salute, however, was followed by a communique from the Supreme Council of the Armed Forces (SCAF) asking people to leave the streets, end protests, and return to work to allow the army leadership to take care of the rest of their demands. Thus, immediately the Law no. 34 of 2011 was issued by the Council which effectively criminalised workers' strikes, sit-ins, and any other form of protest which were deemed to 'obstruct work'. This was the same law that, as noted earlier, was used as the basis for referring thousands of people to be tried before military courts for crimes related to ongoing protests, strikes, and sit-ins. This practice was followed by virtually all of the regimes that succeeded the military, so that eventually article 73 of the 2014 Constitution

effectively outlawed public protest by insisting on notification given to authorities beforehand. In practice, notification here does not so much mean informing the authorities but, as Abd Rabou (2014) notes, obtaining prior permission – which has hardly ever been granted.

This simultaneous glorification and criminalisation of revolution can be seen as describing and celebrating revolution in a way that was essentially about fixing revolution on a particular time (the initial 18 days culminating in removal of Mubarak), a particular place (mainly Tahrir square), and a particular goal (the removal of Mubarak). In other words, whereas the revolutionary movement featured multiplicity and fluidity, the coming together of different groups, visions, practices, and processes (see Chapter 4), the ruling elite's narrative after Mubarak was based on defining revolution as a set of exceptional, extra-ordinary public space occupations and marches in the past, which had lasted for 18 days and ended 'successfully' with the fall of Mubarak. Such conceptions of revolution, as Tripp (2015, xix) argues, were meant to fix a certain order of things, and to suggest that the key changes have already happened.

Furthermore, I argue that what is at work in this narrative, crucially, is a form of periodisation whereby political actions and events are defined based on the period in which they take place, thus constructing a timeframe which tries to conceal on-going modes of repression and struggle. Defining time into before and after the revolution, regime's linear 'revolution-transition-democracy' narrative thus can be seen as helping condenses long, complex, and multiple histories of struggle (many still ongoing) into an ostensibly single, grand moment of revolution in the past (i.e. the overthrow of Mubarak). In this periodised conception of revolution, the only 'true' revolutionary acts that deserved glorification were, therefore, only those which culminated in, and terminated with, the removal of Mubarak. The figure of the revolutionary thus defined was one that cannot exist in present but always imagined and placed in the past. Consequently, any form of dissent that continued in the present was deemed disruptive to the process of transition to democracy and therefore illegitimate, illegal, and deserving to be crushed. From this perspective, the ongoing revolution was anti-revolutionary.

Once the revolution was defined as having had achieved its main objective and initiated the transition process to democracy, the new ruling elite were quick to portray themselves as the 'guardian' of the revolution to 'protect' it on behalf of the people against its ill-wishers, i.e. those who continued to revolt (Matthies-Boon, 2013). It was, therefore, instructive that one of the first measures which the first post-Mubarak president (Mohamed Morsi) and Parliament concerned themselves with was the Law to *Protect* Protest Right – which effectively banned public protests, as noted earlier. This was done

in the name of protecting the revolution from saboteurs and to stem the tide of chaos. The deputy chairman of the Shura Council's Human Rights Committee claimed that the new law would facilitate "a legal clampdown on saboteurs who infiltrate peaceful demonstrations", while FJP parliamentary spokesman declared that "there is a desperate need for this bill in order to stem the tide of chaos, and we urge police forces to use this legislation to strike with an iron fist against saboteurs and provocateurs."⁴⁶

President Morsi's determination to 'protect' the revolution was perhaps most evident in his five attempts to introduce this new legislation. The first draft law was introduced in March 2012 triggering a wave of protest across the country. The final draft put stringent restrictions on protests and gave state security forces and the police wide range of powers to disperse any demonstration if it broke any of the conditions previously agreed upon, such as the time, place, demands and estimated numbers taking part (see further Sayed, 2013). Meanwhile, in his November 2012 declaration mentioned above, which was officially titled "Constitutional Declaration for the Protection of the Revolution", Morsi sought to claim almost all sovereign powers for himself for the sake of 'protecting the revolution' from the remnants of the old regime. Soon afterwards, he oversaw the passing of the Law for the Protection of the Revolution (2012) which provided for the creation of a new body, the 'Revolution Protection Prosecution' purportedly tasked with bringing to justice those who had committed crimes against the revolutionaries (see further Matthies-Boon, 2013).

Such claims as to protecting the revolution, similar to the SCAF efforts noted above, seemed to promote a temporal, periodised idea of revolution. The idea of revolution underpinning such measures by Morsi and his allies could be seen as based on revolution as only the 18 days that led to the overthrow of Mubarak, whose main goal was achieved when power was transferred from Mubarak to Morsi, and thus needing protection now. Thus, for Morsi and his allies, as Matthies-Boon (2013) noted, defending the now successful revolution meant defending their rule through all means necessary. Not long afterwards, when the military forcefully removed Morsi from office in July 2013, they seemed to justify their action similarly on the basis of 'protecting' the people's revolution against Brotherhood usurpers (Housden, 2013).

This narrative of the supposed hijacking of the revolution by the Brotherhood, however, can similarly be seen as trying to fixate an otherwise diverse revolution. As Rennick (2013, 82) aptly argues,

⁴⁶ *Al-Ahram*, 26 March 2013.

[this narrative] implies that the revolution – the demands of the protestors and the political, social, and economic vision of a new Egypt – has one defined meaning whose parameters are commonly recognized. Categorizing certain groups as upholding the values of the revolution while others oppose them creates a subtext implying that the revolution's 'true' meaning is fixed and known.

Crucially, the narrative of protecting people's revolution by the regime, which all post-Mubarak regimes have deployed, can be seen as underpinned by a strongly state-centric understanding of revolution. Against the common visions and praxis of revolution which, as noted in Chapter 4, was marked by an emphasis on a new, non-paternalistic political culture and state-society relation, this narrative of the army or the president as the guardian of people's revolution essentially reverts back to the very paternalistic political culture that the revolutionaries were seeking to destroy. Thus, following nation-wide demonstrations in mid-2013 which culminated in the removal of president Morsi by the intervention of the military, the narrative of change and revolution that was most strongly deployed by the ruling military leaders was that people wanted to remove Brotherhood to reclaim the previous prestige of the state (Marfleet, 2014). Seeking to undermine and redirect the popular vision of revolution based on limiting the state and radically changing its associated paternalistic political culture, in this narrative of revolution by the military since 2013, as Shenker (2017) notes, the revolution has been defined as strengthening rather than emasculating the state.⁴⁷

Moreover, post-Mubarak regimes' forms of juridification, especially legal intimidation, could be seen as against the largely inclusive popular vision and praxis of the revolution. There were exclusionary lines which drew heavily on xenophobic,⁴⁸ hyper-nationalistic discourses which helped create and maintain an 'us versus them' narrative, with the 'us' denoting the great Egyptian nation as a homogeneous whole, and the 'them' as the malevolent outsiders who always conspire against the faithful 'us'. During the criminal trial of Mubarak and his sons and allies, not only did the unrelenting defendants and their defence lawyers brand the revolution "a conspiracy by foreign enemies of Egypt",⁴⁹ but

⁴⁷ Likewise, announcing his resignation from the army to run for president, Al-Sisi stated "The state needs to regain its might and status, which has suffered much in recent times." *BBC News*, 28 March 2014, available from <http://www.bbc.co.uk/news/world-middle-east-26764201> (accessed 2 July 2017).

⁴⁸ See 'Arrested: Inside My Egyptian Nightmare' by A. Mackell, a first-hand account of his 2012 arrest, interrogation, and smear campaign against him. Available from <http://www.abc.net.au/news/2012-02-17/mackell-inside-egypt-shell-game/3836016> (last accessed 1 August 2018).

⁴⁹ *Al-Ahram*, 20 August 2014. This was the same claim made by the Mubarak regime during the early 2011, insisting that the revolution involved not ordinary Egyptians but orchestrated by 'spies and agents provocateurs of Egypt's enemies: Israel, US, and Iran'.

also in November 2014, the presiding judge of Cairo Appeal Court himself cleared the defendants of all charges while pointing out that, in his view, the revolution had indeed been “a Zionist-US-Brotherhood conspiracy to divide Egypt”.⁵⁰ Likewise, throughout the long-running ‘foreign funding’ case (whereby a number of NGOs and their activists were put on trial charged with having received foreign money illegally) similar divisive, xenophobic narratives continued to be deployed by the presiding judges and state media.⁵¹

Similarly, after the July 2013 removal of Morsi by the army, and to ‘protect the revolution’, Brotherhood was declared an illegal, terrorist organisation,⁵² and in August 2015 president Al-Sisi signed into law a new Anti-terrorism act which assigned a special judicial circuit for terrorism-related cases while introducing severe punishments for terrorism-related crimes.⁵³ This was followed by hundreds of arrests and prosecutions in the name of combating terrorism. The intensified criminalisation of Brotherhood helped maintain a socially divisive discourse which sought to exclude not only Brotherhood members but also many other forms of social dissent. Thus, a leading member of the Revolutionary Socialist party, for instance, explained in November 2013 that,

We don’t go on [Ikhwan] demonstrations. [Their] youth blame us for not joining them and people who support the military accuse us of being part of ‘the Brotherhood conspiracy’. So, ours is a very isolating, indeed lonely kind of experience. It is extremely difficult to maintain an independent line and to keep people active in the struggle.⁵⁴

To conclude, in this section I have suggested that the ruling elite’s forms of juridification of politics following the removal of Mubarak could be understood as aimed at countering the revolution. This was attempted, I have proposed, through not just physical but also conceptual repression of the revolution, as part of the ongoing battle of ideas regarding revolution in Egypt. Although not a unified set of practices and ideas, the ruling elite’s juridified attempts against the revolution could be seen as driven by a broadly identical

⁵⁰ Cairo Appeal Court (2011), Case No. 1227, November 2014.

⁵¹ Cairo Criminal Court (2011), Case No. 1110, June 2013 (known as the ‘Foreign Funding’ cases). The case was originally against 43 defendants from several NGOs and civil society organisations, accused of receiving ‘illegal foreign funds’ for their activities. The case has been ongoing for several years. In April 2018, the Court of Cassation overturned the initial prison sentences against 16 of the defendants.

⁵² *Al-Ahram*, 20 August 2014.

⁵³ The Act assigned the death penalty for several crimes including founding a terrorist organisation or taking up a leading position in one. It imposed up to seven years of imprisonment for spreading ideas that call for and endorse the use of violence.

⁵⁴ Words of activist Sameh Naguib. *Open Democracy*, 8 November 2013. Available from <http://www.opendemocracy.net/north-africa-west-asia/rana-nessim-rosemary-bechler-sameh-naguib/sisi%E2%80%99s-egypt> (accessed 2 July 2017).

conception of revolution based on periodisation of politics, state-centrism, exceptionalism, and outcome-orientedness. At the same time, against the popular praxis of revolution which was characterised by diversity, participation, and inclusive non-paternalistic politics, the ruling elite's different forms of legal intimidation seemed to be underpinned by a divisive, paternalistic, exclusionary vision of society and change. Nevertheless, this was only part of the contested juridification of revolution. In the next section, I will focus further on the juridified popular praxis of revolution in the period after the fall of Mubarak and its underlying visions of revolution, change, and politics.

IV. JURIDIFIED PRAXIS OF REVOLUTION

It was suggested in Chapter 4 that, despite its diverse forms of mobilisation, visions of change, and demands during its earlier stages, the popular praxis of revolution in Egypt was characterised by a strong presence of discourse of law which came to provide a kind of intellectual anchor and unifying rallying point shared and understood by many revolutionaries. Having examined some aspects of the ruling elite's juridification of revolution and their underlying conceptions of revolution and change above, in this part of the chapter, I focus on some of the juridified features of the popular revolutionary struggle during the same period with the view to study some of their common underlying conceptions of revolution and change. This study will help better understand the performative aspects of the contested juridification of revolution in Egypt and its underlying struggle over the meaning and direction of revolution and change. It will also contribute towards the broader aims of the thesis namely to study the relation between law and revolution in Egypt and the politics of law therein.

Many significant political, legal changes that were initiated during this period were not the natural outcome of the overthrow of Mubarak, but as Chapter 4 suggested, the continued popular mobilisation around the country by different revolutionary groups who had come to form alliances and share many visions, demands, and strategies in their efforts to consolidate and expand their new freedoms. This included for instance resignations or removal of many figures of the old regime including prime minister Shafiq and his cabinet, dissolution of the Parliament, new Parliamentary and Presidential elections, a new Constitution, numerous statutory changes, the Military handing over power to elected civilians, and the prosecution of Mubarak and several other figures of his regime.

In relation to statutory changes, for instance, one example related to the Law on Political Parties (1977), one of the important tools in Mubarak's rule-by-law system to prevent genuine democratic politics. Through this law the regime had been heavily controlling and significantly restricting the formation and registration of new political parties as well as the activities of the existing ones (Al-Sayyid, 1993). Once Mubarak was deposed, popular pressure compelled the ruling SCAF to amend that law thus easing the way for the formation, registration, and activities of new political parties⁵⁵ (see further Khatib, 2013). In another example relating to the revolutionaries' struggle against the pillars of Mubarak's rule-by-law system (see Chapter 3), the ruling SCAF were forced to amend, under strong popular pressure,⁵⁶ Article 88 of the Constitution thus paving the way for full judicial supervision of elections through giving the court of Cassation, rather than the Parliament (as before⁵⁷), full jurisdiction on electoral matters.

Similarly, the trial of Mubarak, his allies and sons – popularly dubbed as ‘the trial of the century’ – only went ahead after nationwide demonstrations compelled the public prosecutor to initiate criminal proceedings (Soueif, 2012). On 3 August 2011, millions watched in disbelief the opening of the trial broadcast live on TV. For many Egyptians I spoke to later, watching the public prosecutor's opening statement of the criminal charges against Mubarak and the rest who were kept inside the courtroom cage wearing white prison garments, followed by the recital of further charges brought by lawyers representing the families of the ‘martyrs’ of the revolution, had been some of the most moving, triumphant moments of the revolution (also, Abou-El-Fadl, 2011).

A while later, the strong popular mobilisations during the drafting of the new constitution during the end of year 2012 stunned many observers. Even though some revolutionary groups had decided to reject and oppose this process due to the way it was carried out, it nonetheless led to a wide range of activities by different groups as well as numerous initiatives by different NGOs, political parties, and other civil society organisations. The latter produced draft constitutions,⁵⁸ some of which through collecting public demands

⁵⁵ Law no. 40 of 1977 (Law on Political Parties), as amended on 28 March 2011.

⁵⁶ *Al-Ahram Weekly*, 16 February 2011.

⁵⁷ On the supervision of elections under Mubarak and popular discontent in relation to it, see my discussion in Chapter 3 (p. 81) above.

⁵⁸ Including drafts promulgated by ECESR, the Egyptian Coalition for the Rights of the Child, EIPSR, the Social Contract Centre and the National Council for Women, the EOHR, professors of Cairo University, and the Union of Egyptian Industries, as well as initiatives by youth groups including the *Write Your Constitution* campaign, and online campaigns such as *The Citizen's Guide in Understanding the Constitution*. Mobilisations included demonstrations in front of the Constituent Assembly by workers and peasants (for details of some of these initiatives see further Farouk, 2013).

and then drafting them with the help of specialists, while some political parties not represented in the Constituent Assembly launched their own constitution writing and awareness-raising campaigns. With millions of people mobilising on the streets through demonstrations and sit-ins to make demands regarding the provisions of the new constitutions, as Bamyeh (2013a) suggested, it was a profoundly new social phenomenon whereby so many ordinary individuals actually cared about the constitution and its provisions.

This popular perspective went together with another novelty within the revolutionary struggle, noted by several interviewees (including Sharif and Tarek), namely an unprecedented desire to understand and learn about legal and constitutional matters. Sameh thus summed up the situation,

In 2012, you could hear many constitutional debates on the street level. Do we want a new constitution? Should we just amend the old one? What changes should the new constitution include? How about the place of religion, military courts, different freedoms, women's rights, and many more? But also, clearly, there was a lack of knowledge for those on the streets, and for the young people. It was something totally new for many of us, these types of debates about the constitution. What are we using the constitution for exactly? Many didn't know. But people wanted to know, to learn about all these complex matters. They felt they had a voice now and so wanted to make it heard.

This strong focus of the revolutionaries on legality makes it tempting to see such forms of popular mobilisations (including those demanding new legislative measures, new constitutional provisions, or criminal prosecutions) which they commonly understood as revolution, as misguided. It is tempting to view such juridified visions and praxis of revolution and change as co-opted by the ruling elite's pacifying, "macro-political trade-off strategy" (Abu Odeh, 2013) of allowing increased juridification at the expense of more radical changes.

Taking these developments into account, along with above-noted forms of legal intimidation by the ruling elite against the revolution, it might be tempting to conclude that Mubarak's trial was only a show orchestrated by the regime to move the people's revolutionary struggle to a more manageable and manipulable set of trials and thus suppress other ongoing struggles and more radical demands. After all, it was perhaps difficult to imagine that the Egyptian Judiciary would be willing to provide the revolutionary justice that the people demanded, considering that, as noted above, they

had for long been loyal parts in Mubarak's rule-by-law regime and its legal intimidation of the population.

The juridification of politics, as in here, might thus be seen by some as helping the ruling elite select and focus on certain manageable legal conflicts and portray them as transformative (Phillips 2005) but at the expense of many other important political struggles which are submerged as a result (Merry 1982, 69). Not only that; the trial also provided Mubarak the otherwise unavailable opportunity to defend his legacy and actions and deny, live on TV, the very existence of the revolution, branding it "a conspiracy by foreign enemies of Egypt".⁵⁹

The same could be said in relation to the constitutional drafting process of 2012, noted above. Perhaps, it is not difficult to view the strong popular focus on constitutional provisions as misguided, co-opted, and lacking vision for substantial social change. After all, as noted above, the committees appointed by the Constituent Assembly to engage the people during the drafting process seemed more like a façade, at times, as they did little to genuinely engage the people or take on board their views and demands. Indeed, in many discussions of juridification of politics, as discussed in the Introduction, scholars have often been keen on highlighting the co-opting effects of juridification on social movements. Rittich (2006), for instance, has argued that the terrain of political possibilities following juridification of politics becomes significantly limited to legal values and concepts and the assumptions on which they rest and the range of options available within them. Juridification is thus argued to help move the revolution from streets to courtrooms, constitutional assemblies, and houses of parliament while forcing legal mentality and logic on popular politics. It is therefore, from this perspective that McLarney (2013) views the strong popular focus on constitutionalisation of revolution in Egypt as misguided, since it sublimates many deep-rooted, long-existing systematic inequalities.

These have been amongst the reasons why, as noted before, several observers have rejected Egyptians' reference to their collective struggle as revolution. After all, the *outcomes* of many such juridified popular contestations were anything but revolutionary: neither did the new statutory and constitutional provisions, for instance, lead to a democratic political system in Egypt, nor did the long-running trial of Mubarak succeed in delivering any form of revolutionary justice as he was cleared of all the charges brought against him.

⁵⁹ *Al-Ahram Weekly*, 20 August 2014.

However, the reality of this juridified vision and praxis of revolution, I suggest, may be understood as more complex than the above, common narrative allows. In relation to the trial of Mubarak, this narrative overlooks the fact that for a long time the Military rulers were strongly reluctant to initiate criminal proceedings against Mubarak and it was only after many demonstrations across the country that they went ahead with it (Soueif, 2012). At the same time, the trial became part of a continuous, hugely contested struggle for meaning and narrative, beyond a single narrative. Of course, many Egyptians seemingly perceived the forthcoming outcome of the trial effectively as a verdict on the outcome of the revolution. Mubarak's trial was perceived by many, as Abou-El-Fadl (2011) observed, "as a barometer of the fortunes of the January Revolution as a whole."

For many other Egyptians, though, the putting of Mubarak on trial, something unimaginable in the past, was an actual proof regardless of its final outcome for what the people had been able to achieve collectively. Some Egyptians thus seemed to perceive the trial itself as an achievement of the revolution. As a shopkeeper in Cairo explained to me in June 2014,

Everybody knows that judges are with Mubarak. How can they not be? But, what matters to me is that it is the first time in an Arab country that a president was removed and tried by his own people. Saddam doesn't count because he was removed by the Americans.

Furthermore, and more importantly for my analysis here, we could read the popular mobilisation and focus on the trial, not separate from, but as suggested before, in conjunction with and in the light of other revolutionary practices of people at the same time – that is the processual, prefigurative methods of the revolution in their focus on political culture and state-society relation.

As my argument in Chapter 3 suggested, language of law and legal institutions were central to Mubarak regime's rule-by-law system, and yet they were effectively closed to the public. Therefore, the revolutionaries were keen, as examples in Chapter 4 and this chapter suggested, on having legal-constitutional debates, structures, and institutions re-opened and reclaimed. Revolution was envisioned and enacted, it was suggested, by a popular desire for an inclusive, participatory, pluralistic, and tolerant political-legal culture and a meaningful politics unlike the prevalent autocratic, paternalistic, and exclusive politics of Mubarak regime. Many participants, Chapter 4 further argued, were keen as much on prefiguring in the present those wished-for forms of state-society relations as they were with broader goals and demands of their revolution in future. The mobilisations demanding the prosecution of Mubarak could be understood in the light of

and as part of this popular conception of revolution which had been focused much on prefiguring a different political culture.

Although it has been seen by some Egyptians as a more trustworthy branch of state (Yingling & Arafa, 2014, 48), the Egyptian Judiciary as a whole is a body that has for a long time been plagued by nepotism, and according to El Chazli (2014) often mainly concerned with protecting and expanding its own social and political group interests, influence, and power. The selection process of recruiting new judges has often been characterised by favouritism and nepotism,⁶⁰ while their legal processes, have been, as Auf (2013) (himself a senior judge) notes, largely marred by overlapping jurisdictions, ambiguities, favouritism as well as many poorly drafted legislations. Against the backdrop of a legal system which, despite affording activists some space for contesting the regime (Chapter 3),⁶¹ had for long been largely closed to the people and part of legal intimidation and social control of the population, people were now collectively seeking to enter into those institutions by compelling them to follow the wills, not of the ruler, but of the people.

The prosecution of Mubarak was a popular demand that for it to be carried out the political-legal apparatus would have had to act in contrast to its long-standing basic logic and *raison d'être* – an intrusive-absent system with colonial roots designed for social control and legal intimidation of the population – and, therefore, to change fundamentally. Rather than distaste for legal-constitutional matters which had always been promoted by the ruling elite, this approach to political-legal culture, as Bamyeh (2012, 2013a) has suggested, pointed to a popular perspective that no longer saw whatever happened at the level of legal and political institutions as external to the ordinary populace.

Egyptian praxis of revolutionaries could, therefore, be understood as in part seeking to prefigure a different political-legal culture by reclaiming the law and legal system through demanding it to work radically differently, by prosecuting the same person they were loyally serving for a long time. They could be seen as seeking to make a robust entry and

⁶⁰ According to reports, a quarter of those who were appointed judges in 2013 were sons of judges; this figure does not include relatives of judges (*Al-Shorouq*, 7 December 2013).

⁶¹ As Moustafa (2007) suggests, the mutual relationship of support between higher courts (such as the Supreme Constitutional Court and the Supreme Administrative Court) and activists produced a desirable outcome not only for activists who succeeded occasionally to stop regime's abuses, but also for the judges by strengthening their position and influence, and expanding their corporate power vis-à-vis other branches of the state.

repossess legal institutions which they saw as their long stolen “assets”⁶² and in the process contest, defamiliarise, redefine the same domain as they bring other purposes and imaginations to it. In other words, it can be suggested that this juridified praxis of revolution in Egypt was much more than merely the people striving for “legal fixes” to their problems (D’Souza, 2012, 71), something that many scholars dismiss as misguided and counterproductive (Spann, 1994), and marginalising substantive issue of social justice thus masking reality (Kneen, 2009, 3). Instead, the juridified praxis of revolution in Egypt could be understood as seeking to change the very contours of what had been hitherto the dominant, taken-for-granted ‘reality’ through prefiguring a different political-legal culture as part of their bigger dreams for their country. Thus, as one of the participants in the revolution reflected on the popular demands for the prosecution of Mubarak,

Some will tell you that Mr. Mubarak’s being in that cage was all a show scripted by a military government that would not ultimately permit the imprisonment of one of its own. Some will tell you that it was unrealistic, even delusional, to have ever expected justice for those killed by Mr. Mubarak’s security forces during the revolution. Surely, though, the whole point of revolution is to be unrealistic — since the reality, up until 2011, was that death was the only way we got rid of our dictators, either by natural causes or by assassination. In that context, the belief that people deserve freedom and justice appears a delusion.⁶³

Meanwhile, Alaa Abdelfattah, one of the well-known figures of the revolution noted in 2011 that, in their demands for the prosecution of Mubarak, the families of the martyrs were not merely in search of justice for justice could not bring back the martyr.

[T]heir search is for a dream that gives meaning to their sacrifice; for a happy ending to a story that includes their suffering. The shuhada [martyrs] chose to fight the regime even though they knew that summarising their problem in ‘the regime’ was a myth. But it’s a myth fed with belief and sacrifice; a gamble that reality can be changed. They are not stupid, [just as] the poor naturally know that...the law courts alone never established justice for the poor.⁶⁴

⁶² In a statement released by the members of the April 6 Youth Movement, they proclaimed “Egypt is now ruled by the valiant Egyptian people... let us continue to protect ourselves and our Egyptian assets against the destruction and thuggery of the terrorist regime.”, *Jadaliyya*, 8 February 2011, available from <http://www.jadaliyya.com/Details/23666/Statement-of-the-April-6-Movement-Regarding-the-Demands-of-the-Youth-and-the-Refusal-to-Negotiate-with-any-Side> (last accessed 2 June 2018).

⁶³ Mona Eltahawy, ‘The Stinging Insult of Hosni Mubarak’s Release’, *The New York Times*, 28 March 2017.

⁶⁴ Ala Abdelfattah, ‘الحلم أولاً’ (The Dream Comes First), *Al-Shorouq*, 24 June 2011.

V. CONCLUSION

The chapter was concerned with the role and politics of law in the revolution during the post-Mubarak period; that is, the juridified battle over the meaning, visions, and direction of revolution and change. Having examined political history of the vision of revolution and change in Egypt it had been suggested in Chapter 3 that legal institutions played a major role in Egypt's colonial and postcolonial political systems as an instrument of social control, contributing to a 'rule by law' system (Arjomand & Brown, 2014; Bernard-Maugiron, 2014; Brown, 1997) which existed along with a parallel system of military and emergency courts maintained by the almost unbroken state of emergency since the 1960s. It was also noted that the state embrace of liberalism and 'rule of law' since the 1980s contributed to the emergence of legal activism among those seeking to effect change or challenge the regime (Rosberg, 1995; Moustafa, 2007; Brown, 2008). This underlies the significance of law in shaping the nature and dynamics of political processes in Egypt especially in recent times, and consequently could explain the political importance of legal actors, processes, and institutions before and since the revolution.

Within this context, the chapter thus sought to map out and examine some aspects of the contested juridification of revolution after the fall of Mubarak, and the underlying conceptual battles over the meaning and direction of revolution and change. The ruling elite's practices of legal intimidation and constitutionalisation was suggested as not only seeking to contain the revolution but also promoting a fixed, state-centred, periodised, and exceptional vision of revolution and change often in contradistinction to the popular praxis of revolution.

Furthermore, in Chapter 4, I had suggested that we need to study popular juridification of revolution and the common prefigurative aspects of the praxis of revolution not as separate from one another, but as significantly intertwined, so that each could be studied in the light of the other. Thus, looking at the popular mobilisations for the prosecution of Mubarak in 2011 and during the drafting of the constitution in 2012, the chapter ultimately suggested that these popular forms of legal mobilisation could be seen as driven by acting against the very closure of political possibility and of legal institutions through seeking to prefigure a different political-legal culture based on values of inclusion, diversity, participation, and pluralism.

Beyond providing a much-needed addition to existing scholarship on juridification (see Introduction) through examination of little-explored practices of juridification in Egypt, the chapter provided a number of other contributions to the extant scholarship. It sought to extend the scholarship on juridification and the role of law in authoritarian contexts

with the view to challenge the common approach which treats legal institutions and actors merely as tools in the hands of those regime (Moustafa & Ginsburg, 2008). Approaching juridification as a domain of struggle situated within specific social and political relations of power, the chapter emphasised the significance of the historical, sociopolitical, and legal conditions within which it acquire its particular meaning and significance (Huneus, Couso & Sieder, 2010, 5), thus challenging such narrow, normative, formalist approaches to juridification adopted particularly in studying authoritarian context.

Furthermore, as with the broader aim of the thesis, the chapter offered a different approach to the study of the Egyptian revolution and thus our approaches to the concept of revolution. It did so through focusing on popular, seemingly paradoxical, juridified conception of revolution, that is, a praxis of revolution based on juxtaposing law and radical social change through *prefigurative juridification* of revolution. This approach to the study of Egypt's juridified revolutionary struggle can equally provide helpful insights for our broader understanding of the potentials and predicaments of those (radical) social movements that may choose to draw on legal means.

Consequently, this approach to juridification and prefiguration will be further extended in the following Chapters (6 and 7) with the aim of studying the practice of activist lawyers as situated within this juridified, prefigurative battle for revolution and change in Egypt.

CHAPTER 6

THE PRAXIS OF ACTIVIST LAWYERS AND THE JURIDIFICATION OF REVOLUTION

I. INTRODUCTION

After an overview of the evolution of the vision of revolution and change in modern Egypt as well as the juridified character of the recent forms of authoritarian politics and the struggles against it (Chapter 3), I examined some aspects of the popular praxis of the Egyptian revolution during its early stages in 2011 (Chapter 4). In the leaderless, inclusionary process of framing and pursuing their revolution, many Egyptians seemed to imagine and articulate their otherwise diverse ideas about society and politics, and their demands and visions about desired forms of change through a considerably legal language. It was further suggested in Chapter 4 that the effects of that revolution could be seen as going beyond overthrowing a political regime to the new ways in which Egyptians reimagined and performed, prefiguratively in the present, their wished-for intrasubject and state-society relations.

Consequently, Chapter 5 focused on the contested nature of the juridification of revolution after the fall of Mubarak in order to examine the ways in which legal discourses and methods were taken up and deployed in the struggles for and against the revolution. It was suggested then that legal discourses and methods (particularly in the forms of constitutionalisation and legal intimidation) had been employed by different ruling elites to gain hegemony over others elites, and in their attempts to contain and redirect the

revolutionary movement. Meanwhile, examining a number of examples from the popular juridified praxis of revolution (including nation-wide mobilisation for the prosecution of Mubarak and his allies in 2011, and those during the drafting of the Constitution in 2012), I suggested that focusing exclusively, as is often the case, on their concrete, strictly legal outcomes, may provide an analytically inaccurate and incomplete picture of the dynamics and potentials of those processes of revolutionary-legal struggle in Egypt. In its stead, I suggested that those bottom-up forms of juridification and the prefigurative methods of change adopted by many revolutionaries could be understood and studied as, not distinct, but largely intertwined forms of revolutionary praxis. This framework thus led to my suggestion that the juridified praxis of revolution in Egypt could also be understood as popular attempts at reimagining and prefiguring a new politics and legal system, and political-legal culture, in contradistinction to Mubarak's exclusionary, paternalistic, unequal, and authoritarian rule-by-law system.

One particular group which played a considerable role in those juridified processes of revolutionary struggle were activist lawyers. As I suggested in the Introduction, many activist lawyers in Egypt occupied a particularly interesting, crucial position at the intersection of revolution and law where they continue to work within the domain of law while seeing their role as part of the revolutionary struggle and with commitment to its visions and demands. Their position thus made their legal praxis all the more interesting particularly in relation to ways in which they construct and maintain specific forms of revolutionary-legal imaginaries, practices, capacities, and attachments. In this final part of the thesis, in the current chapter and the next one, my aim is to venture further into studying some of those prefigurative, processual aspects of the popular, juridified visions and praxis of revolution in Egypt through examining the work of activist lawyers as part of them.

Following the conclusions of the last chapter as well as those critiques of normative positions-taking noted in the Introduction (McCann, 2006; Mahmood, 2005), here my aim consists in studying activist lawyers not merely in relation to their mainstream, oft-discussed, concrete legal 'achievement', but the processual, prefigurative, and supra-legal aspects of their praxis within the broader popular revolutionary struggle. I am, therefore, not keen on limiting my study to questions about, for instance, what legal arguments those lawyers deployed in representing or defending revolutionaries in courts, or whether and to what extent they ultimately were able to 'win' (legally speaking) those cases. Instead, my aim in the chapter is to examine their praxis insofar as it relates to the broader utopian-prefigurative forms and processes of revolutionary-legal struggle in Egypt, which could help shed lights on other, hitherto overlooked, yet integral aspects of their work. In doing

so, the chapter seeks to study the visions of revolution and law their praxis helped prefigure or construct, the kinds of power relations and political projects it presupposed and enabled, and consequently the possibilities, potentials, and perhaps limitations such visions and practices may have helped bring about.

Consequently, the chapter seeks to answer a number of related questions, namely what were the ways in which the praxis of activist lawyers helped imagine, think about, or perform revolution and change, while pointing to new ways and modalities of being and acting together; in what ways have their particular forms of praxis, especially during the post-Mubarak period, helped make visible or create ruptures in the ruling elite's counter-revolutionary narratives and visions of change; and how has their praxis mattered for the contested juridification of revolution especially in relation to its popular, prefigurative and utopian features? To answer these questions, I mainly draw on material from my interviews with a number of activist lawyers as well as my general observations during my two visits to Egypt in summers of 2014 and 2015.¹ As a result, the analysis and conclusions provided here are very much based on and informed by the specific social, legal, and political situation in Egypt during the 2014-15 period and the work of activist lawyers in the same period.

It is, nevertheless, vital to emphasise again that, on a basic conceptual level, in keeping with the revolutionary, legal visions adopted by many revolutionaries in Egypt (discussed in Chapters 4 & 5), I similarly treat law and revolution not as distinct domains but as inherently entangled. Nor does the chapter, therefore, pretend to study, say, what law and lawyers do for the revolution and revolutionaries understood as entirely external to them. Instead, my preoccupation here is to look closer at the ways in which the praxis of activist lawyers mattered for that enormous popular struggle in Egypt which was understood by the participants as revolution, and was already being envisioned and performed by them, as I suggested, in a considerably juridified as well as prefigurative manner.

It will, therefore, be proposed that the praxis of many activist lawyers during this period particularly matters for the broader revolutionary movement. Examining several features of their legal praxis in this chapter (and the next one) brings to the fore a number of important potentialities and perhaps possible limitations in relation to the ways in which those lawyers imagine the nexus between revolution and law and how such visions inform their important forms of legal practice which I define broadly as *prefigurative legal praxis*. Prefigurative legal praxis will thus be defined as characterised by two key features. Inspired by the popular visions and demands of the revolution, it is a *process-oriented* form

¹ See further Appendix 1 below, and the section on Methodology in the Introduction chapter above.

of legal support and representation which is driven by an emphasis on continuity, perseverance, and solidarity performed in the here-and-now. At the same time, it is a utopian form of legal praxis which, while aware of its grounded experience of the legal system to the contrary, insists on prefiguring a different political-legal culture (characterised by visions of the revolution) through enacting legal-institutional processes and spaces *as if* they were otherwise.

Ultimately, my contention is that due to this particular approach to lawyering and revolution, enquiring into these aspects of the praxis of activist lawyers in support of the revolution and its protagonists, though perhaps an unusual enquiry, reveals a set of visions, perceptions, and practices that can provide further insights into some of the less explored aspects of the encounter between law and revolution in Egypt – and perhaps elsewhere. The chapter, therefore, seeks to contribute to the existing scholarship in two ways. Firstly, as with previous chapters, it aims to provide a different approach to studying the juridified, revolutionary struggle in Egypt in its current predicaments – and revolutions in general. Secondly, it aims to offer a different approach to studying the work of activist lawyers in revolutionary Egypt – and in similar contexts.

II. BACKGROUND ON ACTIVIST LAWYERING IN EGYPT

While pointing to the contested nature of the juridification of revolution in Egypt, it was noted in Chapter 5 that different legal discourses, understandings, and methods played a key role in the popular visions, demands, and praxis of revolution, as well as in the endeavours of different post-Mubarak ruling elites to contain, redirect, or dispel the revolutionary struggle. It was suggested that many popular visions of revolution, politics, and law which emerged with the revolution seemed to be radically different from longstanding prevalent discourses of law and political-legal culture sanctioned and promoted by the past and present ruling elites. A significant part of this new, bottom-up revolutionary-legal culture was, as Chapter 5 suggested, manifested in the ways many Egyptians seemed to reimagine law and legality in their dealing with legal actors and institutions and the demands they made of them as part of their revolutionary struggle – what I referred to as prefigurative juridification.

From the outset, as will be discussed below, many activist lawyers became actively involved in these various juridified forms of grassroots struggle² especially those which concerned the courts. Many lawyers were engaged in defending and supporting those revolutionaries (including protestors, activists, workers, students, women movements) who had been detained since the revolution on the basis of criminal charges – a process of legal intimidation which as Chapter 5 showed intensified during 2014-15 with the rise to power of General Al-Sisi. In the meantime, a large number of activist lawyers were actively involved in representing different groups of revolutionaries in courts in their legal claims and charges against many members of the old and new ruling elites, old and new ministers and presidents, and businessmen and companies associated with them, against police officers, state security, etc. Many such key parts of the revolution would perhaps hardly materialise in the way they did were it not, at least to some extent, for the work performed by many activist lawyers as legal experts committed to the revolution. Egyptian revolutionaries had embraced a largely juridical vision of revolution and change, and thus activist lawyers were an integral part of it.

However, this integral role of activist lawyers in the revolution has surprisingly not been reflected satisfactorily, if at all, in the recent scholarship about the Egyptian revolution, or about legal mobilisation or cause lawyering. Generally, as noted in the Introduction, scholarship on the work of activist lawyers in contemporary Egypt is seriously limited. With regards to Egypt, there has been some attention to the work of human rights activists and NGOs (e.g. Abdelrahman, 2007, 2004b) and the role of lawyers and the legal elite in the public domain (Shalakany, 2013, 2006, 2001; Agrama, 2012, Ch. 6; Al-Tawil, 2007; Reid, 1981; Ziadeh, 1968; Al-Sayyid, 1988), nevertheless, surprisingly little attention has been given specifically to the work of activist lawyers.

Much of this conspicuous scholarly absence of activist lawyers seems to stem from a number of common analytic confusions due to which activist lawyers have often been considered as indistinguishable participants in the human rights movements and thus not deemed to merit specific analytic attention. However, they are a distinct group within the human rights movement, and are certainly not limited to it. Not all human rights NGO activists engage in legal work, neither do all activist lawyers work for or with human rights

² Of course, as was discussed in Chapter 3, particularly since the beginning of the 2000s activist lawyers were involved in different political, legal struggles against the Mubarak regime (for one example see Elmusa & Sowers, 2009). However, as different respondents (including Sharif and Kemal) explained, with the intensification of legal intimidation and the broader juridification of politics since the revolution, the scale and intensity of lawyers' involvement in the broader struggles for change significantly increased.

NGOs. Many activist lawyers work for human rights NGOs, others sometimes cooperate with them, and yet some others work independently from them. Although all the law centres and NGOs I visited were run as not-for-profit and none were charging fees, most lawyers and interns who are employed by human rights NGOs do get paid. However, many activist lawyers were not employed in this way; rather they often work with different NGOs and law centres on the basis of individual cases for which they may or may not (demand to) get paid. On the other hand, some independent lawyers I interviewed (e.g. Sharif, Laila, and Nesreen) divide their professional life between working as ordinary lawyers and as pro bono activist lawyers, and fund the latter through the income earned from the former.

So, the picture that emerges is that of blurred boundaries within a community where cooperation and formations do not always follow a stable pattern. Several lawyers interviewed had moved between different law centres and NGOs or were employed by more than one at a time (e.g. Wael, or Hisham who I met twice and in two different NGOs). Sometimes lawyers from different organisations work together on particular cases, meanwhile some independent lawyers may pull their income from ordinary legal work to set up centres where they do part-time activist legal work, and yet many activist lawyers know each other closely, have worked together in the past, and sometimes help each other out if needed beyond organisational boundaries. On top of these changing, blurred professional boundaries, there was the ever-present possibility that at any moment any of these human rights NGOs or law centres could be raided or temporarily shut down by state security, or their assets frozen and their activities suspended by a court order³ (several centres I visited had previous experiences of this), whereupon their lawyers may move to other similar organisations or transfer their cases and clients to them.

The analytic misperception with regards to activist lawyers has been further amplified perhaps by the variety of titles used in Egypt (and outside), sometimes misleadingly, to refer to those lawyers. Sometimes they are referred to collectively as *el-hoquqiyeen*⁴ (i.e.

³ For instance, on the security raid, shut-down, and assets-freeze of the Nadeem Centre for the Rehabilitation of the Victims of Torture, see the public statement that was released by the Egyptian Initiative for Personal Rights (EIPR), available from <https://eipr.org/en/press/2017/02/nadeem-center-forcibly-shut-down> (last accessed 26 February 2018). In another example, in December 2013, armed state security agents raided the offices of the Egyptian Centre for Economic and Social Rights (ECESR), detaining and assaulting staff members during a nine-hour ordeal (*The New York Times*, 19 December 2013). Furthermore, for details in relation to the Hisham Mubarak Law Centre being threatened with judicial investigation, see a report by *Mada Masr*, 30 July 2015, available from <https://www.madamasr.com/en/2015/07/30/news/u/hisham-mubarak-law-center-threatened-with-judicial-investigation/> (last accessed 8 February 2018).

⁴ الحقوقيين

those who work in human rights), or as *el-muhamdeen el-hoquqiyeen*⁵ (human rights lawyers). At other times, an activist lawyer may be referred to as *el-nashet el-qanouni*⁶ (legal activist), or even simply as *el-muhami*⁷ (lawyer). Yet, all of these terms have been used interchangeably. Nevertheless, this variety can also reflect the blurred boundaries on the ground where it is actually difficult to precisely delineate the domain of the activist lawyers' work. For instance, referring to an activist lawyer, as many do, as a 'rights lawyer' does not reflect the complexity of their position because not all the legal work they take up is, strictly speaking, related to 'rights' – in whichever way defined. Those lawyers working for NGOs might refer to themselves as 'rights lawyer' more readily (e.g. Wael, Tarek, and Malek) than others who may prefer to refer to themselves just as 'lawyer' (e.g. Laila and Alaa).

However, activist lawyers' own views ought to be approached with caution due to several analytical difficulties. Some activist lawyers may refer to themselves as rights lawyers but this could be based on specific forms of professional legal consciousness characterised, as discussed below, by an expansive notion of rights which might in practice include many other areas of law, at times becoming almost synonymous with justice (e.g. Hossam, Sharif, and Kemal). They might also use the 'rights lawyer' title not because they only work on human rights cases but as a badge of honour to distinguish themselves professionally from other, ordinary lawyers. This latter use of the term might be because in popular parlance in Egypt lawyers who work on non-ordinary cases including human rights, public interest cases, strategic litigations, political cases, defending activists, legal aid for the unprivileged etc. are generally referred to as 'rights lawyers'. Yet, other activist lawyers may not at all like to use such titles because they find them superfluous, as imposing limits on their otherwise extensive perceptions of activist legal work (e.g. Sharif). For instance, despite working mainly for a human rights NGO, Dina seemed to find the 'rights lawyer' title as more limiting than helpful, and viewed her legal work following the revolution as instead driven by "raging against everything that is wrong *including* violations of rights and freedoms" (my emphasis).

Nevertheless, as a valuable tool available to them, activist lawyers do draw on and invoke the language of rights when they find it helpful for individual cases. Hardly a homogenous group with similar interests, capacities, expertise, or political outlooks, activist lawyers may engage in different types of legal work, including but not restricted to protection of

⁵ المحامين الحقوقيين

⁶ النشطاء القانونيين

⁷ المحامي

rights, according to their own perceptions of necessity, potentiality, effectiveness, or viability of a legal activity at a specific time. Therefore, one needs to be cautious with taking such titles at their face value because as we can see above the relation between activist lawyering and human rights is much more complex than what those titles can demonstrate. Crucially, so far as my study of activist lawyers in Egypt is concerned, this brief set of observations shows that they are not identical to the human rights movement or the human rights NGOs and, therefore, a more accurate and faithful study of their work requires them be understood analytically as separate from (though significantly overlapping) with human rights movement in Egypt. In fact, none of the existing, commonly used professional titles could fit and accurately describe their praxis in either Arabic or English language, hence my use of ‘activist lawyers’ which is not as common as ‘cause lawyers’⁸ (in English) or ‘rights lawyers’ (in Arabic), both of which somewhat inaccurate in this case.⁹

On the other hand, these blurred boundaries between activist lawyering and human rights movement seem to be partly the result of specific historical trajectory of the development of activist lawyering and human rights movement in Egypt. The latter is a movement whose inauguration in the late 20th century coincided with, if not triggered by, the revival of the discourse of ‘rule of law’ under Sadat (Chapter 3), and whose founders consisted mainly of lawyers and consequently whose common parlance drew on a predominantly legal language. As noted in Chapter 3, this hybrid movement of activist lawyering and human rights activism went on to assume a key role in many forms of pre-revolution activism in Egypt (particularly, in its middle-class variation), and contributed considerably to the revolution and its popular juridified praxis.

Indeed, 2011 was not the first time that Egyptian lawyers were involved in a revolutionary struggle. In the beginning of the 20th century, lawyers including Sa’ad Zaghloul and his allies assumed the leadership of the nationalist movement against the British occupation which led to the 1919 revolution (Shalakany, 2013; 2006). It was a revolutionary movement which was led mainly by lawyers and articulated largely through legal language (Ziadeh, 1968). Sadat’s revival of the discourse of the *Siadat el-Qanoun*, rule of

⁸ As Munger (2010, 97) has remarked, the term ‘cause lawyer’, as for instance used by Sarat & Scheingold (1998, 2004, 2006) has on many occasions been understood within the context of a liberal rule of law in economically developed and politically stable democracies, and thus largely reflects the experience in the ‘Global North’. In other societies, the place of lawyers who pursue social change might be very different, and the law may be no more than a means for transformation of the social order, redistribution of power, or changes in existing law.

⁹ Also see Gobe & Salaymeh (2016) who use ‘activist lawyers’ as an umbrella term to refer to different groups of lawyers involved in the Tunisian revolution of 2011.

law, since the 1980s (Chapter 3), once again provided a space for lawyers in public and political debates. Soon, 'rule of law' became the single most unifying slogan shared by many strands of Egyptian opposition groups, professional associations, intellectuals and civil society activists – regardless of their ideological difference (Shalakany, 2006).

The state's formal embrace of political liberalism exemplified by Sadat's *Infitah*, open door policy, and rule of law discourse were devised mainly to attract foreign investment (Mustafa, 2007)¹⁰. As a result, the necessity of safeguarding the 'image of Egypt' as a modern state afforded the newly emerging activist lawyers and human rights activists some powers vis-à-vis the state as they invoked rule of law and rights (Elsadda, 2015), challenging the regime in relation to a range of issues such as emergency laws, political prisoners, torture, minimum wage, and so on. This, as Chapter 3 suggested, helped mainstream and solidify the language of legality and human rights as part and parcel of the public discourse (Shalakany, 2006).

Lawyers were amongst the first groups who established centres to provide legal aid and protection of human rights during the late 1980s and throughout the 1990s and the 2000s. Law centres such as the Office of Legal Aid for Human Rights and the Hisham Mubarak Law Centre as well as human rights NGOs such as the Human Rights Association for the Assistance of Prisoners, Egyptian Initiative for Personal Rights (EIPR), or the Egyptian Centre for Social and Economic Rights (ECSER) were providing legal aid and support to prisoners, workers, students, protesters, and victims of torture and many others (Shams El-Din, 2015).¹¹ Moreover, since the mid-1990s, despite the absence of democratic governance, the Egyptian state's integration in the international setting, with human rights conventions and bilateral treaties, provided further, though still limited, space for lawyers and afforded them significant political leverage vis-à-vis the regime (El-Ghobashy, 2008).

¹⁰ Although, see Goldberg & Zaki (2011, 26) who find this a matter of dispute and disagree with Moustafa's explanation.

¹¹ Shams El-Din provides a detailed account of the trajectory of several law centres and human rights NGOs which emerged since late 20th century, and gives helpful accounts of several campaigns and legal cases they were involved in.

III. ACTIVIST LAWYERS AND THE REVOLUTION

Against this backdrop, and with the rise of the revolution and the fall of Mubarak, many activist lawyers became increasingly involved in a wider range of issues and various forms of grassroots struggle especially those which concerned the courts. Many lawyers were engaged, as mentioned above, in representing, defending, and supporting different groups of revolutionaries including protestors, activists, workers, students, women movements, and professional syndicates who had been subjected to different forms of legal intimidation by the ruling regime. In response to the enormous wave of legal intimidation, intensified especially during the 2014-15 period, many law centres and human rights NGOs that I visited had allocated significant amount of their resources to dealing with numerous cases of arbitrary arrests, precautionary detentions, and prosecution of activists and protestors while providing legal aid and criminal defence for those who had been criminally charged.

The work of activist lawyers as part, and in support of the revolution did not, however, belong to only after the fall of Mubarak. They also played an important role in the days leading to the 25 January demonstrations and during the early days of the revolution. Hossam, for instance, recounted how his legal work immediately before the revolution, helped release many activists who were amongst the organisers of the demonstrations on 25 January.

Before 25 January, we knew there were going to be important demonstrations on that day. A few weeks earlier, we were involved in a case in relation to a demonstration where several activists had been arrested by the state security. Some of those activists in prison had been making plans for 25 January and were worried that they may not be released before the 25 January demonstrations; some of them were even crying. We really did our best and managed to get them all released before the day.

This crucial form of support for the revolution also continued during the early days of the revolution when many protestors were arrested. Activist lawyer Dina thus explained that,

during this period, I felt that I shouldn't just go to the square for simply chanting and protesting. Many people were being arrested and needed help, also some were killed inside prisons. On the eve of the 25 January the police arrested many protestors. So, on the 26th and 27th I was in prosecution offices looking for those comrades who were arrested. From early morning until late at night we were looking for arrested people, while at the same time, we were trying to encourage people to demonstrate on Friday 28th. I felt this [legal support work] was my revolution.

Furthermore, as will be further examined in Chapter 7, many lawyers I interviewed during the 2014-15 period were involved on a routine basis in providing legal support for activists, especially those related to prolonged precautionary detention which had become a prevalent form of legal intimidation (see Chapter 5). Their provision of legal aid and criminal defence during this period also included support for many other vulnerable groups including the LGBT community, Syrian refugees, football fans, and members of the outlawed and widely prosecuted Muslim Brotherhood. This was not limited to Cairo. For instance, activist lawyers from the office of the Hisham Mubarak Law Centre in Aswan, as Laveille (2016, 150-1) has shown, were an important part of the local activist community and continued to play a crucial role in defending political detainees, including revolutionaries and Islamists.

Furthermore, a number of activist lawyers were involved in the processes of representing different groups of revolutionaries in courts in their criminal charges against members of the old and new ruling elites including the presidents themselves as well as ministers, against the police and the state security, and against individual businessmen and companies who were closely related to the old ruling elite. It included, several lawyers I interviewed who were representing the families of those who had been killed during the revolution as well as injured protestors in their criminal charges against, notably including, ex-president Mubarak, his Minister of Interior Habib el-Adly and his aids, against several local governors and police officers, and later against deposed president Morsi. It also included pushing criminal charges against Mubarak and his family, and some of their closed allies for corruption and embezzlement, and to place barriers between them and their money.¹²

Meanwhile, activist lawyers were increasingly vociferous during this period in their judicial review applications to Administrative and Constitutional courts in order to challenge a wide range of laws and policies, and decision and actions of different state institutions of the old regime and the new ones, notably including the use of the Military courts to prosecute civilians,¹³ electoral laws and supervision of elections,¹⁴ and the right

¹² Cairo Appeal Court (Criminal Division), Judicial year 85, Case No. 17805, June 2016; and Cairo Criminal Court (2011), Case No. 3642, June 2012.

¹³ e.g. Supreme Constitutional Court, Judicial year 17, Case No. 72, November 2014 (challenging the constitutionality of the Law on Military Judiciary, Law no. 25 of year 1966).

¹⁴ e.g. Supreme Constitutional Courts, Judicial year 37, Case No. 15, March 2015 (challenging section 25 of the Law on Regulating the Exercise of Political Rights 2014 which regulates the creation of electoral constituencies).

to strike for workers.¹⁵

Furthermore, the post-Mubarak revolutionary period witnessed an exponential increase in people pursuing their different, previously neglected or violated, rights in courts – a process in which activist lawyers were an integral part. It seemed that the recent experience of revolution and its considerably juridified nature had a role to play here. As noted in Chapter 4, the ‘reality’ of the experience of the relation between people and state agencies and agents before the revolution, for many ordinary Egyptians, could best be summarised as humiliation (Saad, 2006). The revolution, the popular emphasis on reimagining and performing a different state-society relation and political culture (discussed in Chapter 4) seemed to have significantly affected many people’s perception of that hitherto taken-for-granted ‘reality’. No longer were such humiliating treatments by the police, security forces, and state officials acceptable to many people. Thus, as El Naggar (2012) shows, unlike the past, when faced with such treatments, for instance, in police stations and detention facilities, many citizens would later challenge violation of their rights through litigation before the courts. Sharif, similarly, remarked that the revolution had ruptured the seemingly inviolable image of the state for many people who were now prepared to challenge it. He also explained that with the wider awareness of laws and rights that the revolution had brought with itself, many people were now more prepared to come forward and challenge the regime through the legal process.

And yet, as several of the interviewed lawyers described, their persistent, growing involvement in all kinds of legal challenges against many old and new state institutions and officials seemed to provoke an increase in state crackdown on their activities. This was particularly evident since the ascent of General Al-Sisi as lawyers have been increasingly subject to arrest, mistreatment, assault, or harassment by the police, the security apparatus, the military, and the judges.¹⁶

¹⁵ e.g. Supreme Administrative Court, Judicial year 59, Case No. 19485, July 2015 (regarding the right of government employees to peaceful strike).

¹⁶ For a detailed account of different forms of intimidation by the regime against activist lawyers, see ‘Violations Against Lawyers’, a report promulgated by the Egyptian Initiative for Personal Rights (EIPR), October 2014, available from <https://eipr.org/en/press/2014/10/violations-against-lawyers-another-obstacle-path-criminal-justice> (last accessed 3 December 2017). Also, for instance, on the imposition of travel ban against several lawyers including Ahmed Ragheb (in November 2016), see <https://www.frontlinedefenders.org/en/case/travel-ban-against-ahmed-ragheb> (last accessed 27 July 2018). In another example, during late 2015 alone, around two hundred lawyers were arrested or charged for defending Islamists and Muslim Brotherhood members or leaders (*Egypt Independent*, 22 October 2015).

IV. ACTIVIST LAWYERS AND REVOLUTIONARY-LEGAL VISION

In order to understand different aspects of the work of activist lawyers, and thus to answer the questions set for the chapter, one necessary and fruitful point for consideration is their visions of professional legal work and of law in general. Several activist lawyers I interviewed had been political activists before becoming professional lawyers (e.g. Kemal, Amr, and Nehal). Some seemed to see the legal route as facilitating and enabling a better, more effective route to engaging in activism, thus understanding lawyering essentially as part of broader forms of activism. This implies that they may not limit their activities to only lawyering, and may engage in other forms of activism which they deem necessary in different times and places. Thus, it is instructive to note that for instance, according to Laveille (2016, 75), the initial demonstration in the city of Aswan on 25 January 2011, mainly involved Kifaya activists along with lawyers from the local branch of Hisham Mubarak Law Centre. Echoing similar views expressed by Kemal, Amr explained that,

We are in a battle that requires different tactics at different places. Sometimes you need to be just a lawyer, like when you are in court. Sometimes you have to be a political activist, like when you join labour strikes. At other times you need to be just a protestor or agitator, like when we were distributing leaflets in the streets to encourage people to join the 25 January protests.

Amr's vivid description of his activism, however, was not reflected in the views expressed by some other activist lawyers I interviewed. In fact, when I asked them what they saw as their main role, most of them insisted on being a lawyer first and foremost, not a political activist or a revolutionary. Laila, for instance, seemed to believe it important to emphasise her role as mainly providing support and protection for activists, thus describing her job as "not bringing about revolution, but protecting it". There appears to be a contradiction between these two descriptions given by different activist lawyers. However, one has to approach the latter group's words with caution, for understanding the complexity of the situation they are in could perhaps put some of their comments in a different perspective. Much of the professional capital that allows these lawyers to carry out their legal work in prosecution offices, prisons, police stations, and above all in courts, comes from their ability to create and maintain a professional profile as a lawyer, first and foremost.¹⁷ This professional capital is precisely what allows them to help, support, and protect activists and revolutionaries – to the extent that a lawyer could help an activist within an otherwise essentially unjust legal system. Therefore, Laila's careful emphasis on her professional

¹⁷ Regarding the debate on the politicisation of legal profession versus professional neutrality, and their respective benefits and disadvantages see Scheingold & Bloom (1998).

legal role as above everything else could perhaps be better understood in the light of the vital importance of their professional capital necessary to be able to help revolutionaries, especially considering the increasing crackdown on their activities.

This point becomes clearer when we note that, despite their common affirmation of their role as lawyers only, the kinds of visions and activities that many lawyers expressed and recounted during other parts of the interviews looked unmistakably more comparable to Amr's expansive description of lawyering than that of Laila's. Listening to their views, at times, I had to keep reminding myself that the respondent was indeed a professional lawyer, not a radical revolutionary – pointing further to the intrinsically entwined relation between law and revolution in the Egyptian revolution. Emblematic of their commonly shared anti-regime consciousness, most of them talked about their desire for the new regime to be overthrown while accusing the Judiciary of systematic corruption. Nehal, for instance, stated that,

The main objective for all of our governments has been to perpetuate itself, to stay in power by any means possible, by suppressing ideas for change or by violating peoples' rights. Mubarak was like that and yet he was removed, SCAF did the same thing and yet they had to step down, Morsi did the same thing and yet he was removed, and now Sisi is doing that and he will hopefully be overthrown.

Similarly, activist lawyer Mahienour El-Masry, in her letter from Demenhour prison where she was serving a two-year sentence for 'protesting without permission',¹⁸ insisted that,

I refuse all kinds of amnesty, because the regime is the one that's supposed to ask for amnesty from the people. I will not leave my prison until the Protest Law is abolished completely. Down with all traitors ... Military junta, remnants of the old regime, Muslim Brotherhood (El-Masry, 2014b).

Other lawyers went so far as to affirm their anti-capitalist views as a communist (Kemal) or socialist (Nehal¹⁹). Thus, for many of them legal work was seen as a helpful means in their broader political struggles and commitments. "As a socialist, I am against the exploitation of the poor and the workers, and against global capitalism," Sharif stressed, "so, I try and use my legal knowledge to support the poor and the oppressed."

The vision of revolution and law that often emerged in activist lawyers' comments seems to entail that they understood that the revolution had been possible only because of the

¹⁸ See Introduction, page 13 above.

¹⁹ She had been a student activist during her studies, publishing clandestine leaflets about socialism.

‘illegal’ collective action in the sense that it was breaking unjust, oppressive laws – a form of illegality they were not only supportive of but took part in (most lawyers interviewed had taken part in the initial protests, strikes, and occupations, which were all considered illegal under the Emergency Law). However, a distinction was often made between those unjust laws and the laws which they saw as just and protective of people and their rights, the violation of which they did not support even if done by the most revered revolutionaries. Thus, while activist lawyer Mahienour El-Masry emphasised that “lawyers have to choose whether they want to serve justice or to serve law”,²⁰ Sharif who is the director of an independent law centre “committed to the objectives of the revolution” stressed that,

You can’t have a revolution without illegal actions. We participated in the revolution and are committed to supporting the revolution and revolutionaries. But we offer no support to the revolution if it begins to go against justice, against people and their rights... If any of the revolutionaries try to abuse their power, we will be against them.

Distinguishing between law, justice, and rights, he is effectively saying that as a lawyer he has, in principle, no allegiance to the law unless and to the extent that it is just. But at the same time, he will be against anything including the revolution itself if it is against justice and rights. This vision of revolution seems to be based on a perception of law, as Hossam echoing the views of others stressed, not as an embodiment of justice, but as inherently political and a reflection of the balance of power at any one time.

This vision of revolution and law seemed to be reflected in the activities of many activist lawyers. All of those I interviewed had taken active part in the early, 18-day protest and occupation stage of the revolution whose main strategy of popular mobilisation, as noted in Chapter 4, was largely legal, and its main demands included a set of far-reaching legal-constitutional changes. Their involvements varied between helping with the occupation of Tahrir (Malek, Nesreen, Alaa, Nehal), visiting various police stations to try to release detained protestors, so that “they could go back to Tahrir” (Dina, Tarek), as local organisers in their town outside Cairo (Sharif), distributing leaflets on the streets and encouraging workers to go on strike (Kemal), using their office as a space for activists and journalists to meet, take shelter, and organise during the initial 18-days (Hossam, Amr, and Hisham), recording reported cases of casualties and documenting detentions of protestors (Amr with his colleagues).

²⁰ ‘Comrade Mahienour El-Masry Accepts the Ludovic Trarieux Award’, *The Revolutionary Socialists*, 31 October 2014, available from <http://global.revsoc.me/2014/10/mahienour-acceptance-speech-in-florence/> (last accessed 2 December 2016).

The idea of deploying law as a tool of revolutionary struggle and change seemed to continue in the lawyers' praxis. Some emphasised that the experience of involvement in the revolution had changed and inspired them. Their praxis thus needs to be understood in the light of this significant, new knowledge and experience inspired by recent, vivid memories. Some stressed that they try in their practice to draw on Tahrir experience as a compass to guide their behaviour, and as one lawyer explained, "to reconstruct the spirit of *Tahrir*" in the present. Dina noted that,

the revolution made me realise that we need to work a lot harder to achieve a real revolution. I realised that unlike superficial change, creating radical change is very difficult, as it takes years and we should continue to prepare and reach for it.

I asked Amr about the potential limits of legal work for achieving what he saw as revolutionary goals. Perceiving legal work as essentially a continuing process – not a single outcome – of reaching towards broader, more fundamental social aspirations and desires, his words seem to suggest that for him legal work may have many *obstacles* but no *limits* precisely because the struggle for justice is a continuing struggle which has no limits;

We face many obstacles, but what we are doing cannot have a limit. There is a powerful camp which is trying to dominate everything, and we try to stop them...It is a problem when there are people in prison without trial, and we fight against it until we have some justice, and then we shall see what the next problem, step is. In principle, our work never ends.

V. PREFIGURATIVE LEGAL PRAXIS

Based on my discussions so far in relation to the work of activist lawyers as part of the revolution and their particular visions of law and revolution, my aim for the rest of this chapter, and the next chapter, is to focus further on some aspects of their praxis which I broadly refer to as *prefigurative legal Praxis*. The reading of their work I offer below is based on understanding it as a form of legal praxis driven by a revolutionary-legal vision, and as characterised by at least three distinct yet interwoven features. Firstly, it is marked, I argue, by a shared emphasis on continuity, perseverance, and steadfastness in the here-and-now. Secondly, it is propelled by a discernible attention to the legal processes (rather than only their outcomes) in order to provide further support and act in solidarity with their revolutionary clients. Thirdly, it is a form of legal practice, I suggest, which could be

seen as driven considerably by the utopian-prefigurative features of the broader revolutionary movement. In their legal praxis, I propose, activist lawyers could be seen as striving to prefigure a different legal system (inspired by the utopian visions of the revolution) through enacting legal spaces and processes they engage with as if they were otherwise. In what follows I focus on the dynamics and significance of activist lawyers' practices of solidarity as part of their legal work in support of the broader revolutionary movement, and some of their utopian-prefigurative undercurrents. The next chapter will continue with the study of the utopian-prefigurative features in the praxis of activist lawyers through focussing on some of its important *everyday* aspects particularly in relation to their emphasis on notions of continuity and endurance.

Legal Praxis as Solidarity

As noted in Chapter 4, the popular 25 January revolution encompassed a number of different, long-standing struggles and movements with different objectives, strategies, demands, and visions for change, who nevertheless joined together (despite some problems) in a largely inclusionary manner. The ruling elite's juridified attempts to contain the popular revolt, as noted in Chapter 5, consisted partly in promoting divisive, exclusionary, normative perceptions of change and society. On the one hand, there was the hyper-nationalistic, xenophobic forms using a skewed notion of national unity that framed revolution as a foreign conspiracy, and dissent and opposition as disloyalty and treason (De Smet, 2014). There was the internal, 'divide-and-conquer' tactic, with more intensity after July 2013, to alienate and divide the diverse revolutionary movement on the basis of social class, ideology, religion, gender, sexuality, etc.

This latter strategy often involved pitting different revolutionary groups against each other through invoking a set of arbitrary dichotomies such as Islamist versus secular, 'political' versus 'economic' struggles, or the ballot box versus street protests (Abdelrahman, 2014). In July 2011, for instance, in a reference to workers demonstrating and organising sit-ins in several cities across Egypt, General El-Fangari of the ruling SCAF called on all Egyptians to put the country's overall welfare above what he described as "sectional interests".²¹ At the same time, as noted in Chapter 5, it involved attempts at isolating and subordinating non-conforming new subjectivities and identities that emerged during the revolution through the promotion of a singular, homogenised image of the nation. "A

²¹ *Al-Ahram*, 12 July 2011.

result of many years of dictatorship is the suspicion and distrust of others, which can paralyse any form of collective work”, Dina noted, “and since the 25th of January, the regime has been trying to aggravate these deep-rooted sensibilities and make people divided again”.

Meanwhile, the vision of revolution and change by some of the middle-class activists and public figures, as mentioned in Chapter 4, were inadvertently contributing to this divisive strategy. For instance, in relation to the ‘economic versus political’ divide, as Abdelrahman (2014, 123) observed, the workers and peasants were seen as engaged in narrowly focused, ‘factional’ economic struggles, whereas some pro-democracy activists saw themselves as engaged in the more important issues of changing the constitution and the regime. For some of the middle-class supporters and participants of the revolution, as exemplified by the words of a well-known journalist and public personality, “the revolution was ignited to seek freedom, and freedom comes before bread...the people revolted for their pride and integrity, not necessarily for their bread.”²²

Within such divisive, exclusionary social environment enforced by the ruling elite in contradistinction to the largely inclusionary popular praxis of revolution, the work of many activist lawyers in support of revolutionaries seemed crucial. Pointing to a different, more inclusionary approach to social relations, they continued to provide legal support for many excluded or silenced groups, including for instance, for women protestors who had been subjected to virginity tests by the army,²³ for several groups of homosexual men accused of ‘corrupting the nation’s morality’ and subjected to torture,²⁴ for workers fired for going on strike,²⁵ or for university students charged with protesting or for promoting atheism in campuses.²⁶

²² Ibrahim Eissa, *Tahrir newspaper*, 4 July 2011.

²³ Administrative Court, Judicial year 65, Case No. 45029, December 2011 (on the application of Samira Ibrahim and others who had been subjected to virginity tests during their detention by the military, the court declared such a practice illegal). On the politics of sexual violence against women by the regime during the revolution see further Hafez (2014b).

²⁴ For instance, see ‘The Trap: Punishing Sexual Difference in Egypt’; a report by the Egyptian Initiative for Personal Rights (EIPR), published in 2017, documenting many such cases of violation of LGBT rights in Egypt in the past few years, available from <https://eipr.org/en/content/police> (last accessed 1 June 2018). EIPR have been supporting and providing legal representation for many victims of such violations.

²⁵ For instance: Supreme Administrative Court, Judicial year 59, Case No. 19485, July 2015 (regarding the right of government employees to peaceful strike).

²⁶ For instance, lawyers from The Association for Freedom of Thought and Expression (AFTE) have in the past few years providing legal support and representation for students detained or prosecuted for such ‘crimes’.

The issues of class, sexuality, and religion, however, have proven more complex than others. On the one hand, as Abdelrahman (2014, 128) suggests, sometimes activists engage with working-class Egyptians based on preconceived ideas about how they need to be 'helped', and thus adopt a rather paternalistic approach when attempting to support or mobilise them. For instance, this could be seen, as Abu-Lughod (2014) shows, in some middle-class activists' emphasis on fostering 'awareness' or helping 'enlighten' when working with non-literate rural women or parents. In the same way, some sections of middle-class activists might deem the workers and the peasants and their demands for instance for socioeconomic rights as secondary to political rights.

Pointing to this problem, a number of activist lawyers I interviewed (Wael, Kemal, Amr) noted that they had specifically dedicated much of their efforts to workers' problems, labour laws and regulations, and economic rights. Sharif who had been similarly taking up many such cases, recounted with visible pride that among the first cases he had taken up as a new lawyer were to successfully represent in the local court of a rural town tens of extremely poor donkey-cart drivers who were being harassed by the municipality officials, and a dozen women factory workers who were being underpaid by their employers. He lamented that,

[many revolutionaries] focus on civic and political rights, like campaigning against the Protest Law, but not enough on social justice. Even when they try to engage with social justice issues, they still concentrate on such issues as workers' right to strike, but without paying equal attention to their other basic rights such as the right to earn a decent wage.²⁷

On the other hand, despite the efforts of many activist lawyers and human rights NGOs to provide legal support and representation for the LGBT community and for atheists and those expressing alternative religious views, some others seemed to prefer to stay away from many such cases and seemed reluctant to express public support for LGBT rights, or be seen publicly as supporting them.²⁸ My respondents Hisham and Amr both

²⁷ Similarly grappling with the issue of class, in one of her letters from prison while serving a two-year sentence for allegedly organising an unauthorised protest, activist lawyer Mahienour El-Masry thus addressed her colleagues: "We must not forget our main goal in this battle of ours... Alongside chanting against the Protest Law, we must work to bring down the classist order, and organize ourselves, engage with the people, and talk about the rights of the poor and our solutions for them... we must call for the freedom of the poor, so that people do not feel that we are distant from them." (El-Masry, 2014a).

²⁸ Homosexuality has not been specifically criminalised in Egyptian laws, however, vaguely defined and interpreted 'public morality' laws, such as Law no. 10 of year 1961 (Law on Combating Prostitution, Incitement and its Encouragement), have often been used to prosecute LGBT community especially gay men for 'habitual practice of debauchery'. See further 'The Trap: Punishing Sexual Difference in Egypt'; a report by the Egyptian Initiative for Personal Rights (EIPR), published in 2017, available from <https://eipr.org/en/content/police> (last accessed 1 June 2018).

mentioned that some law centres and human rights NGOs feel that publicly supporting and representing such cases might harm their otherwise positive public reputation in more conservative sections of society and thus adversely affect their other activities in support of those communities. Hisham further noted that there had been several recent occasions when, as part of the regime's efforts to regain its legitimacy by portraying itself as the guardian of the nation's morale, the state-controlled media depicted activist lawyers and human rights activists supporting prosecuted homosexual men as 'promoting debauchery' and 'conspiring to corrupt the nation'.

Consequently, under continuous state crackdown as well as scapegoating and stigmatisation by media, a minority of lawyers and human rights NGOs seemed to have come to the conclusion as to prioritise what they saw as more important and thus avoid certain sensitive cases of sexual rights (e.g. LGBT rights) and religious freedoms (e.g. atheism). It nevertheless seems to remain a contentious issue which continues to divide the activist community. Amr for instance was strongly critical of such prioritisation while Hisham said that he understood why sometimes such decisions would have to be made to save the organisation operating under an intolerant and oppressive regime, and that the one to blame is not the activists but the regime. As Abdelrahman (2007) had previously noted, the attacks on human rights organisations, and the relative success of the Egyptian regime in tainting their public image (accusing them of being agents of the West, corrupting the nation etc.) pressured some activists to modify their priorities in order to preserve their public legitimacy and reputation, rather than acting based on the importance of the issues they wanted to engage with (see further Said, 2003, quoted in Abdelrahman, 2007). Thus, during the years before the revolution, several rights organisations avoided working on cases relating, for instance, to the criminalisation of homosexuality, with some coming out strongly against any involvement in such cases (because of the cultural specificity of Egypt, they argued) (Said 2003), or even some announcing that they were against homosexuality (Seif al-Dawla, 2015), while others stressed that such issues were not their priority since there were other more pressing issues to deal with (Abdelrahman, 2007, 294-5).²⁹

Nevertheless, situated in an authoritarian political system, especially after July 2013 (as noted in Chapter 5), which was encouraging homogeneity and punishing deviance and difference, many activist lawyers seemed intent on proactively working with, defending,

²⁹ See further the observations and reflections by Aida Seif al-Dawla (the founder of the Nadeem Centre for the Rehabilitation of Victims of Violence and Torture) in 2015 in relation to this issue whereby she strongly criticises those human rights organisations who fail to support the LGBT community in Egypt (Seif al-Dawla, 2015).

and representing social groups who were subordinated, stigmatised, and violated. Activist lawyer Emad Mubarak's words exemplify the approach and experience of many activist lawyers within this oppressive, divisive context:

At one point, we were accused of being affiliated with the Muslim Brotherhood, because we defend Brotherhood-affiliated students. Although, we've also faced accusations from the Muslim Brotherhood, because we defend students with [religious] opinions they find shocking. When we go to court for cases such as those dealing with insults to religion, many lawyers detest us for defending someone they perceive to be an atheist or unbeliever.³⁰

Moreover, in doing such legal works in support of revolutionaries, many respondents seemed to be paying as much attention to the processes of legal representation as they did on their outcomes. As will be further discussed in the next chapter, many lawyers saw representation and defence of detained revolutionaries and other prosecuted social groups in itself, regardless of its legal outcome, as crucial for the continuation of the revolution and its struggle for a better society. As Chapter 7 will suggest, defending groups such as protestors, striking workers, students, women activists, gay men, atheists and others required the presence of lawyers, as both Nesreen and Hossam explained, in legal spaces such as police stations, prisons facilities, prosecution offices, and court houses which were often hostile towards those groups, and it required dealing with legal actors including police officers, prosecutors, and judges who often treated such detainees with contempt if not outright abuse and harassment. Not only the accused revolutionaries but their lawyers too, as noted in the quotation above, were routinely treated with contempt and sometimes subjected to harassment.

Such systematic hostility of legal spaces, actors, and processes (not to mention legal texts which provide the basis for this hostility in the form of legislation) highlights the significance of the praxis of activist lawyers in defending those groups. In an environment where arrested revolutionaries were systematically detested and abused, the importance of a lawyer who steps in and tries, despite all the hostility, to protect the accused from mistreatment while expressing solidarity based on shared commitment to the revolution,

³⁰ 'Human Rights in Focus, a Series of Conversations: Emad Mubarak', *Mada Masr*, 19 April 2015, available from <http://www.madamasr.com/sections/politics/human-rights-focus-emad-mubarak> (last accessed 8 December 2017).

can hardly be overstated.³¹ In their legal praxis in such systematically exclusionary and oppressive legal spaces, many activist lawyers seemed to espouse and enact a vision of law (based on solidarity, inclusion, and commitment to the revolution) profoundly different from those prevalent within such legal spaces.

Activist lawyers could, therefore, be seen as using the opportunities provided by their legal work not only for struggling against various forms of social control, including misogyny, homophobia, stigmatisation of the poor, and morality politics, but also as using the legal process itself (beyond the outcome of individual cases) as an opportunity for protecting, expressing solidarity with, and bringing together different struggles on the basis of those common revolutionary visions (mentioned in Chapter 4). Such understandings of the potentials of the legal process for the broader revolutionary struggle, and legal praxis as a form of inclusive solidarity was evident in the work of many activist lawyers. This was, for instance, what many observers recognised in the work of the late activist lawyer Ahmed Seif.³² In his legal work, Long (2015) recounts,

He worked with religious fundamentalists, with accused ‘terrorists,’ with religious minorities, with liberals of all stripes, with LGBT people, with feminists. He constantly looked for common ground between disparate but cognate ways of resisting state control, digging for a deep politics where joint action could begin: in similar visions of social transformation, in congruent loathing of arbitrary power, in shared experiences of torture.

As suggested earlier, many activist lawyers interviewed seemed to envision and practice legal work as that which is following but also part of the revolution. As one human rights activist, Hossam Bahgat, remarked,

our role was not, as we were sometimes led to believe, to represent the people, to give them voice, where we are either litigating on their behalf in courts, or training them and raising their awareness. [T]hat idea for me came to an end in January 2011. [Our] role as human rights activists is not to help those that fight, to help those that protest, we are part of this movement.³³

Their inclusionary practice of legal solidarity, I therefore suggest, seems not only to follow such revolutionary-legal visions but also to point to a form of legal praxis with important

³¹ See Chapter 7 below for further discussion of this crucial aspect of activist lawyers’ work in relation to their everyday legal support work.

³² See my account of his funeral in the Introduction above.

³³ See Bahgat’s speech in 2013, available from <https://www.youtube.com/watch?v=b8ytcPnAEHU> (last accessed 22 February 2018).

political undertones and potentials. As William Quigley suggested in relation to lawyers working for social change,

If there is a first principle of radical change, it is the principle of solidarity. Radical change only comes about by working with people; it is never the result of working for people... Working in solidarity means that we must constantly challenge racism, paternalism, patriarchy, homophobia, classism, nationalism and all of the other violent divisions hard-wired into ourselves and our systems. (Quigley, 2006, 149)

My argument so far is that the work of many activist lawyers described above can be understood as a form of legal praxis which is equally focused on the opportunities provided by legal processes and is characterised by revolutionary-legal solidarity. At the same time, by standing up for the rights of subordinated social groups, the praxis of activist lawyers helps envision, demand, and thus normalise a place for those groups in the new political order and in its underlying image of society and desired future, against the exclusionary, divisive vision of revolution and change underpinning the ruling elite's juridification of revolution (discussed in Chapter 5).

Legal praxis as Utopian-prefiguration

It was suggested in previous chapters that the popular praxis of revolution in Egypt was largely characterised by at least two key features. Firstly, as Chapter 4 suggested, many revolutionaries seemed to be willing less to capture and fundamentally change the state, and more to change prevalent political-legal culture and social relation. Secondly, as Chapter 5 suggested, there was the insistence by revolutionaries on making legal demands many of which looked considerably unlikely to succeed. For instance, fulfilling the popular demand for the prosecution of Mubarak and his close allies would require a thorough investigation and an unbiased legal procedure from the same public prosecution office and criminal courts system who had been systematically developed for decades, as noted in Chapter 3, as an apparatus to protect Mubarak and his regime through legal intimidation of the population – a requirement that seemed very unlikely to be met. Many revolutionaries seemed to be aware that such revolutionary-legal demands may not lead to the exact revolutionary outcomes they desired. Yet, as seen in Chapter 5, they continued to insist on demanding the prosecutions of Mubarak and his political allies, his sons, and a number of local governors, state officials, and police officers – something that the Egyptian criminal justice system by and large had not been built for and simply had no precedent for.

Those popular, juridified demands, however, consisted not only of mobilisation by people to force the public prosecutor to open criminal investigation, but also importantly of activist lawyers (including most of those I interviewed) who stepped in to represent, for instance, the families of the martyrs of the revolution or those injured during the revolution, as part of the process. As lawyers Dina, Sharif, and Hossam (who had been involved in these latter processes) explained, during the process activist lawyers had engaged in range of activities all of which were crucial to fulfil this important demand of revolutionaries. It included gathering evidence, obtaining official records from otherwise hostile public bodies, interviewing witnesses, organising sometimes a large number of claimants with similar grievances, and submitting their dossiers to the court with the view to fill many gaps and shortcomings in the investigations carried out by the otherwise reluctant public prosecutor. This was the case in activist lawyers' representation of hundreds of injured and killed protestors as part of criminal prosecution against Mubarak and his Interior Minister, as well as prosecution in 2013 against president Morsi, several governors, police officers, and prison officials. In other words, the bottom-up forms of juridification of revolution seemed to consist in people and lawyers working hand-in-hand and complement each other: people mobilising and demonstrating continuously to demand those unprecedented revolutionary-legal demands, and lawyers stepping in, taking those demands to the courts, and representing them.

One common way to analyse this aspect of the juridified praxis of revolution in Egypt has been to focus on its concrete legal outcomes and thus, as noted in Chapter 5, dismiss it as misguided and failure. One reason for such dismissals, I suggest, is the problematic, outcome-oriented framework adopted by many studies of activist lawyering and legal mobilisation, who put much of their focus on the legal outcome of activist lawyers' litigations in support of movements or causes. While Scheffer (2005, 80) has critiqued the approach of scholars who reduce a complex process involving different lawyers, settings, relations, temporalities, and spaces to merely their supposed outcome and only its legal outcome, Ziegler (2010, 279) suggests that such outcome-based measurements can only offer a fundamentally inadequate, incomplete account of the relationship between law and social change. Consequently, McCann (2006, p. 31) concludes that clear legal victories in courts or other official institutions are indeed not necessary to effective legal mobilization.

Another reason for much emphasis on the outcome of legal mobilisation and activist lawyering is that many such studies, as noted in the Introduction, adopt a normative approach to their study of activist, or cause lawyering, often positing lawyers' work in support of causes or movements as either transgressive or co-opted by the state, or as

either counterproductive or beneficial for the movement (McCann, 2006). While Roznai (2013, 370-3) contends that lawyers are always anti-revolutionary, Froissart (2014) argues that because legal mobilisation against authoritarian regimes takes place within the existing authoritarian political-legal system, it ends up acknowledging both the legitimacy and limitations of that system, and eventually contributes to its structural reproduction. Meanwhile, Brown-Nagin (2003) emphasises the adverse effects of change-oriented litigation on social movement efficacy and strategy, while Teubner (1998, 394) contends that pursuing social, political struggle by means of legal mobilisation through courts is ultimately counterproductive as it leaves such conflicts only postponed and thus unresolved.

However, as I further suggested in the latter part of Chapter 5, another way to approach this juridified praxis of revolution in Egypt is to bring it analytically together with another equally prominent aspect of the praxis of revolution, that is, its prefigurative aspect. In the context of the work of lawyers, Cain & Harrington understand ‘prefigurative legal practice’ as “practices that envision alternative power relations and articulate new meanings sometimes woven into conventional legal practice” (1994, 8). In studying the work of lawyers such an approach would entail going analytically beyond the legal outcomes of their work, paying attention to its process, underlying visions, and its supra-legal aspects, and crucially to the ways in which their ongoing forms of practice could help point to and prefigure a different, more desirable political-legal system. From this perspective, and unlike the approaches critiqued above, activist lawyering is understood and studied as “a process, not an achievement.” (Quigley, 2012, p. 204). Thus, in studying the efforts of para-legals against abuse of power by the police in apartheid South Africa, while highlighting their struggles over processes rather than only legal outcomes, Schärf (1994) argues that a crucial part of their efforts could be seen as struggling to envision and prefigure an alternative, post-apartheid idea of legality.

Consequently, my suggestion here is that one way to read this particular aspect of the praxis of activist lawyers, noted above, and the broader juridification of revolution of which it has been an integral part, is as a bottom-up utopian-prefiguration of the legal system driven by new visions and performances of political-legal culture and state-society relation. It can be understood as characterised by reimagining and enacting in the here-and-now the nature, attributes, and purpose of law (legal-institutional processes, spaces) as if they were otherwise (characterised by visions and desires of the revolution) – rather than hoping to have them realised in a distant future as part of the so-called ‘transition to democracy’ promised by the new ruling regime. In making this argument, I propose those lawyers’ praxis as characterised by at least two intertwined features: driven by the popular

visions and desires of the revolutionary movement, they help make concrete yet utopian-prefigurative legal demands on the existing political-legal system, and in the process, help point towards and open up new ways for reimagining and prefiguring that system, and broader state-society relations and prevalent political-legal culture.

The common understanding among activist lawyers I interviewed (and generally many ordinary Egyptians I spoke to) was that the Egyptian legal system was by and large unfair and by default manipulated and controlled by the ruling elites. Their views of legal actors such as prosecutors, court officials, and judges is that for the most part it has been a corrupt, self-serving, and nepotistic group. Hisham, Amr, Nehal, and Kemal specifically noted that in their view they had no doubt that many judges (especially ordinary judges within the criminal justice system) do take direct orders from the Executive.³⁴ This is what is known amongst many activist lawyers (and amongst many people who come in contact with the legal system in Egypt) as ‘telephone justice’. There are some principled judges here and there, they often said, but institutionally the Judiciary is corrupt and manipulable.

Yet, despite such commonly shared views, and despite losing most of the cases they represent in courts in support of revolutionaries, many lawyers interviewed emphasised on continuing to put much effort into protecting detained activists in police stations and prisons, taking their cases to courts, representing and defending revolutionaries and other subordinate social groups, or getting involved in the unlikely prosecution of many officials from Mubarak and Morsi regimes.

As I will suggest in the next chapter this can be seen as, partly, their efforts for continuing the revolutionary-legal struggle and helping revolutionaries endure legal intimidation. However, this cannot fully explain such persistent attitude towards ordinary trials, many of which they knew beforehand that they would most likely lose. My suggestion is that this attitude can equally be understood as activist lawyers’ utopian-prefigurative approach to legal praxis, in the sense that by insisting on doing such legal works and making such unfamiliar, unlikely-to-succeed demands from the existing legal system they were seeking to perform and prefigure a different legal system – inspired by the utopian visions of the revolution. And they did so through acting, while aware of their grounded experience of the legal system to the contrary, as if the existing legal system (as a main component of

³⁴ Thus, during her trial for ‘protesting without permission’, activist Sana Saif told an investigating judge that she would not participate in the ‘charade’ of answering his questions because he lacked any independence from the regime (see further El-Ghobashy, 2016).

Mubarak's rule-by-law political system) were radically otherwise, thus seeking to change it in the process.

Weeks (2011, Ch. 5) has proposed the idea of "utopian demand" as concrete, substantial demands which are unlikely to be realisable in the existing institutional and ideological configuration, because for them to be considered feasible, a number of shifts in the terrain of political discourse must be effected. In this sense, Weeks (2011) has further argued, a utopian demand prefigures, in a fragmentary form, a different world in which the vision that the demand promotes would be considered as a matter of course both practical and reasonable. Meanwhile, it is not just the content of such demands that is important. The very practice of demanding them, Week suggest, is in itself equally important.

Consequently, my point is that, regardless of the outcome, both the making and the content of these unfamiliar, unprecedented demands (e.g. prosecution of two heads of state and numerous other top-ranking officials, police officers, security forces, etc.) from the legal system by activist lawyers is in itself a form of prefiguration. It is so in the sense that through making such 'utopian demands' they could be seen as seeking to persistently enact and thus normalise a vision of political-legal culture and state-society relation that had not been deemed commonly as realistically possible under Mubarak's authoritarian rule-by-law regime. Regardless of their concrete legal outcome, the very making of such demands by people and activist lawyers, their treating them prefiguratively as a matter of course, radically undermines the ruling elite's long taken-for-granted, paternalistic, exclusionary, authoritarian vision of the state-society relation in Egypt.

Granting primary analytic value to activist lawyers and their situated and specific understanding of what law and legal practice mean for them, I suggested that in their practices in courts, police stations, and prisons they seemed to espouse a vision of law radically different from those prevalent within such domains. We noted that through their work in those legal formal spaces they seemed to understand as essential part of law and legal processes purposes and qualities that are not shared by institutional participants. This reading of their praxis thus can imply that in the praxis of activist lawyers, and the broader popular revolutionary movement, juridification is effectively used utopian-prefiguratively as a means towards what it presently is not, a utopian vision of law as if it has the capacity to fulfil that which is desired of it. In other words, the popular juridification of revolution seems to be driven by an idea of law which is valued for something that it is presently not but could potentially be. Their vision of the nature, characteristics, and the purpose of law (as related to its participants, processes, and spaces) seemed to be at odds with the ways they had been for long imagined and practiced by

those legal-institutional actors (prosecutors, judges, prison officials), through formal legal processes, and within legal-institutional spaces (court rooms, prisons, police stations).

VI. CONCLUSION

Often informed by prevalent conceptions of revolution (Chapter 2), there has been much scholarly emphasis, as noted in Chapter 3, on studying the Egyptian revolution based on such forms of action and agency as those that involved street protests, sit-ins, strikes, and occupations as well as other forms of collective disobedience by different social groups e.g. students and workers. Consequently, many such scholarships declared the Egyptian revolution ‘dead’, ‘failed’ once those familiar, more obvious types of revolutionary actions subsided under the new ruling elite’s waves of repression and legal intimidation. However, this focus has largely overshadowed other, equally significant, continuing modalities of praxis that might follow different logics, and which therefore require other analytic approaches to study. The praxis of many activist lawyers in Egypt, as was argued in this chapter, can be seen as one of these different forms of praxis.

In this chapter, I argued that the praxis of activist lawyers, as part of the broader bottom-up, juridified praxis of revolution in Egypt, can be read as characterised by at least two distinct yet intertwined features. Their legal praxis, I suggested, can be understood as a form of solidarity envisioned and enacted in a largely inclusionary manner. At the same time, it can be seen as driven by utopian-prefigurative demands which, despite grounded experiences to the contrary, seeks to reimagine and enact the legal system as if it were otherwise, and thus to change it in the process.

Conclusively, the praxis of activist lawyers can be approached as based on at least two intertwined forms of acting. Their praxis features *acting on the collective self* which involves legal praxis of solidarity which is not directed to the state institutions and actors as such but towards the collective self. they use their access to the domains of law (as a lawyer) to perform forms of legal support which strive to use legal processes and spaces as an opportunity to express solidarity with the revolutionaries and other subordinated social groups, and in the process develop or reinforce shared visions and grounds for a better society and politics, despite and beyond the existing repression of the revolutionary movement.

This form of legal praxis as solidarity, as will be discussed in the next chapter, continues to strive towards creating and maintaining (utopian) spaces in the here-and-now, in which to continue and endure collectively, while envisioning and enacting different, counter-normative forms of society in the light of the recent experience of revolution. That is, a utopian-prefigurative performance of society which does not presuppose commonality or identity as a condition of belonging.³⁵ The praxis of those activist lawyers looks perhaps increasingly reminiscent of the revolutionary praxis in Tahrir square which was characterised, as discussed in Chapter 4, by inclusionary performances of social relations and celebration of difference in contradistinction to the regime's old homogenising, exclusionary discourses of politics and society. Pointing to a new visions and performances of politics and society, the popular vision and sense of belonging to community seemed as no longer defined by the lines of inclusion and exclusion drawn by the ruler. What we saw in Tahrir, and in the praxis of activist lawyers, could be seen as the concomitant emergence of processes characterised by a logic of heterogeneity. That is, processes which involve the denial of the exclusionary, paternalistic vision of politics and change maintained by the ruling elite, and at the same time, the assertion of a new heterogeneous, inclusionary praxis of revolution and change through which a new politics emerges.

At the same time, the praxis of activist lawyers is characterised by *acting on the governing elite*. This involves making particular forms of utopian-prefigurative demands in the process of legal representation. Through their legal support, activist lawyers ask constantly for the protection and inclusion of excluded and subordinated groups and subjectivities in the political order and in the identity of the nation. But due to its fundamentally exclusionary nature the state simply cannot fulfil these demands in its current form. It would require a radical transformation of the political space. This form of legal praxis based on inclusionary solidarity therefore is a *taking up* of a place in the political order that is not the existing political order and can thus be seen as characterised by a utopian-prefigurative reimagining of the very foundation of the repressive political system. In an authoritarian setting where the system of governance is largely founded upon creating and maintaining an exclusionary, seemingly homogenised image of the nation ostensibly guarded and represented by the ruler, then, insisting on, invoking, and trying to normalise heterogeneity and difference can have profound social and political potentials. In other words, it is a form of prefiguration whereby present reality is treated on the basis not of what it is, but of a present potentiality within it which one actualises.

³⁵ Also see similarly Agamben's notion of the "coming community" (1993).

Addressing the legal system in a utopian-prefigurative manner, activist lawyers can be seen as demanding from it the currently-impossible, a demand the making of which itself could become the very opening of possibility.

CHAPTER 7

THE EVERYDAY LEGAL PRAXIS OF ACTIVIST LAWYERS

I. INTRODUCTION

After an overview of the evolution of the vision of revolution and change in modern Egypt as well as the juridified character of the recent forms of authoritarian politics and the struggles against it (Chapter 3), I suggested in Chapter 4 that in their praxis of revolution, many Egyptians drew on discourse of legality to articulate their otherwise diverse visions of change, goals, and demands. It was further suggested in Chapter 4 that the effects of that revolution could be seen as going beyond overthrowing a political regime to the new ways in which Egyptians reimagined and performed, prefiguratively in the present, their wished-for intrasubject and state-society relations.

Consequently, Chapter 5 focused on the contested nature of the juridification of revolution after the fall of Mubarak in order to examine the ways in which legal discourses and methods were taken up and deployed in the struggles for and against the revolution. It was suggested then that legal discourses and methods (particularly in the forms of constitutionalisation and legal intimidation) had been employed by different ruling elites to gain hegemony over others elites, and in their attempts to contain and redirect the revolutionary movement. Meanwhile, examining a number of examples from the popular juridified praxis of revolution (including nation-wide mobilisation for the prosecution of Mubarak and his allies in 2011, and those during the drafting of the Constitution in 2012), I suggested that focusing exclusively, as is often the case, on their concrete, strictly legal outcomes, may provide an analytically inaccurate and incomplete picture of the dynamics

and potentials of those processes of revolutionary-legal struggle in Egypt. Instead, I suggested that those bottom-up forms of juridification and the prefigurative methods of change adopted by many revolutionaries could be understood and studied as, not distinct, but largely intertwined forms of revolutionary praxis. This framework thus led to my suggestion that the juridified praxis of revolution in Egypt could also be understood as popular attempts at reimagining and prefiguring a new politics and legal system, and political-legal culture, in contrast to Mubarak's exclusionary, paternalistic, unequal, and authoritarian rule-by-law system.

Aiming to further examine the juridification of revolution, and the politics of law and lawyering in Egypt, Chapter 6 consequently focused on the role and significance of the work of many activist lawyers in relation to, and as part of, the juridified, utopian-prefigurative praxis of revolution. The analysis in Chapter 6 led towards a number of further conclusions. Rather than considering only, as is often the case, the strictly legal aspects of the practice of activist lawyers and asking essentially normative questions about its concrete outcomes, the chapter emphasised the analytic importance of paying attention to the *supra-legal* aspects of activist lawyers' praxis and its *processes*, as part of the broader revolutionary struggle in Egypt. As this chapter will show in more detail, in their particular forms of legal praxis in support of the revolution, many activist lawyers interviewed often perceived those supra-legal aspects of their works as an indispensable, crucial part of what they understood as their role as lawyers. The chapter, therefore, seeks to venture further into studying the supra-legal, processual aspects of activist lawyers' praxis. Whereas the focus in Chapter 6 was on lawyers' role within broader forms and dynamics of the contested juridification of revolution, the analysis in this chapter is centred particularly on some of the *everyday* processes of lawyers' praxis – which remain equally largely absent from scholarship on juridification and legal mobilisation.

Many studies of the work of activist lawyers and human rights groups have approached them as a form of, and to the extent that it relates to 'advocacy' (Ansolabehere & Valle de Bethencourt, 2017) – i.e. aiming to influence and reform state institutions through media campaigns, publishing reports, initiating strategic or public interest litigation, raising public awareness, and so on. Many activist lawyers in Egypt certainly do engage in advocacy work, which they understand as a necessary and important part of their efforts to reform the state and to protect rights and freedoms. But, as the previous and the present chapters argue, politically and analytically there are other, equally significant dimensions and potentials to their practice than such common scholarly approaches allow. My focus here is thus largely based on some of their everyday practices and processes which do not relate, at least directly, to those advocacy parts of legal practice. This should not be

understood to imply that the everyday and the broader advocacy aspects of activist lawyers' work are entirely distinct domains of praxis. They overlap a great deal and mutually affect one another in different ways – which is another reason for my emphasis here on examining everyday aspects of lawyers' practice. Rather, it is an analytic framework adopted to allow me to follow and attend to their everyday processes and practices.

My aim in this last substantive chapter of the thesis is thus to close my study of the revolutionary juridification of politics in Egypt by opening up a new, ground-level window into some of the everyday features of the praxis of activist lawyers – their complexities, contingencies, potentials, challenges, and possible limitations. I aim to do so by going beyond questions about concrete legal outcomes of the cases they work on and legal campaigns they get involved with. Therefore, my analysis here is not limited to questions about, for instance, what legal arguments those lawyers deployed in defending revolutionaries in courts or whether and to what extent they ultimately were able to 'win' (legally speaking) those cases. My preoccupation in this chapter is, while being attentive to their particular material condition, to follow some of the everyday practices, concerns, and routines of those lawyers and try to tease out some of the underlying visions, perceptions of reality, and political projects that their forms of praxis presuppose, enable, strive towards, prefigure, or helps construct.

Continuing with material from my interviews in 2014 and 2015 with a number of Egyptian activist lawyers and political activists,¹ I draw on Cooper's notion of *everyday utopia* (2014) as an analytic approach which helps with paying attention to, and bringing together, both the everyday and the utopian-prefigurative in the work of activist lawyers. Ultimately, it will be argued that enquiring into the everyday praxis of those activist lawyers in support of the revolution and its protagonists reveals a set of visions, perceptions, and practices that can provide further insights into some of the less explored aspects of the encounter between law and revolution in Egypt. More specifically, examining several features of their everyday legal support and lawyer-client relationship reveal a number of important potentialities and possible limitations in relation to the ways in which those lawyers imagine the nexus between revolution and law, and how such visions inform the everyday aspects of their legal practice as part of the revolution, which I defined in Chapter 6 as *prefigurative legal Praxis*.

¹ See further Appendix 1 below, and the section on Methodology in the Introduction Chapter above.

II. UTOPIAN PREFIGURATION AND THE EVERYDAY

In earlier chapters I argued for the analytic importance of adopting a prefigurative framework for studying the popular, juridified praxis of revolution in Egypt and the role of activist lawyers therein in particular. It was suggested then that, in the light of the particular material conditions and the contested politics of law and revolution in Egypt, such an approach can provide fruitful means to pay attention to the utopian and the prefigurative, as a way of engaging with grassroots practices of revolution and juridification that is concerned with and attuned to the visions and desires for the possibility of new, better forms of both politics and law. I further suggested, in Chapters 5 and 6, that the utopian-prefigurative, juridified praxis of revolution in Egypt could be seen as helping underlie and catalyse political and legal transformation through striving to create their wished-for change in the present by performing law and politics as if they were otherwise (while knowing that they are not yet so).

Continuing with this emphasis on the utopian-prefigurative undertones and potentialities of the juridified praxis of revolution in general, and the work of activist lawyers in particular, in this chapter I draw on Cooper's notion of *everyday utopia* (2014) as a framework to engage with the everyday, supra-legal, processual, and non-advocacy aspects of the work of activist lawyers in Egypt. It goes without saying that, similar to my earlier reading of revolution and juridification as utopian-prefigurative, what follows here is based on my own reading of the praxis of activist lawyers, and not necessarily on any explicit claim by them to have intended to create everyday utopias.

As discussed in the Introduction, as praxis-oriented sites which are substantially embedded in what they criticise, Cooper's everyday utopias are characterised, above all, by their ability to bring together, paradoxically, the utopian and the everyday through performing regular daily life in a radically different fashion (2014, 2). In this sense, merging pragmatism with utopianism, their emphasis is on "what is doable and viable given the conditions of the present" (4) while striving to take those everyday activities beyond their conventional parameters, to reveal "more desirable but also *viable* alternative" (5) in the process, thus "they anticipate something beyond, and other to what they can currently realize." (4). Importantly, Cooper's everyday utopias are not sites which focus on campaigning or advocacy. Rather, foregrounding prefiguration in the ways in which everyday concepts are imagined and performed, participants strive towards "creating the change they wish to encounter, building and forging new ways of experiencing social and political life." (2).

However, despite their analytic value noted above, thinking about the ‘everyday’ with regards to activist lawyers in Egypt and adopting the ‘everyday utopia’ as a framework require some caution and further clarifications. My understanding of the notion of ‘everyday’ in the context of the work of Egyptian activist lawyers is somewhat different from the ways it is often deployed in scholarship on everyday politics (e.g. Bedford, 2016; Elias & Roberts, 2018; Hobson & Seabrooke, 2007; Gardiner, 2006; Lefebvre, 2002; de Certeau, 1998) and including Cooper’s. Typically understood as “forces, tendencies and possibilities that are immanent in the here and now, in the pragmatic activities of daily existence” (Gardiner, 2006, 2), most perceptions of the everyday include elements of routineness and normality which are associated with mundane and often taken-for-granted aspects of the daily life of ordinary people and in largely ordinary, unexceptional situations.

The way I employ the notion of the everyday in studying activist lawyers in Egypt is in at least two ways different from this understanding. My use of the everyday relates, not to ordinary people as is often the case, but *professionals* who can be considered as generally belonging to elite, middle-class strata of their society.² It is thus about the everyday aspects of their professional life; that is, processes, challenges, ethical tendencies, and potentials within their daily routines and day-to-day activities as professional lawyers. Furthermore, and perhaps more importantly, I study the everyday aspects of professional practices of activist lawyers, not in an ordinary setting as is usually the case, but in the exceptional, extraordinary context of the ongoing, constantly evolving, revolutionary struggle in Egypt. It is a situation that is made even more volatile and exceptional by the fact that, as noted in Chapter 6, their everyday professional activities have increasingly been made difficult to carry out under the state’s incessant crackdown and intimidation, frequent security raids and confiscation, and the permanent possibility of their arrest or the closure of their offices.

Therefore, what I am examining is the everyday aspects of the professional work of activist lawyers within an unstable, volatile, exceptional setting. However, as I discuss later in the chapter, despite being located in such an unstable setting, there appeared to exist a level of day-to-day ordinariness and routineness in their work while they seemed to perceive, paradoxically, the continued volatility of their conditions as a given nature of their routine, daily work. In other words, what I am studying is perhaps best summed up

² This thesis has not been concerned with the otherwise important relation between class and everyday praxis of lawyers. This can be regarded, as I mention in the Conclusion, as one of the limitations of my analysis which could be further expanded in other future studies. On the question of class and its relation to the generation of the everyday, see for instance Lefebvre (2002) and de Certeau (1998).

as ‘the everyday in a state of crisis’ (Shevchenko, 2009). This specific meaning of the everyday – its professional and exceptional nature – is key for my study of the work of activist lawyers in the rest of the chapter.

III. EVERYDAY PRAXIS OF ACTIVIST LAWYERS

In Chapter 6, I examined some aspects of the praxis of activist lawyers during the 2014-2015 period as part of the broader, juridified praxis of revolution in Egypt. Likewise, in this chapter my focus is on the same period during which I carried out my interviews in two visits, and the analysis given is largely driven by the broader political context of this period. As noted in Chapter 5, with the removal of President Morsi in mid-2013 and coming to power of General Al-Sisi, there ensued an unprecedented, intensified level of what I collectively referred to as legal intimidation against political activists, labour movement, student unions, other civil society organisations, independent media, members of Muslim Brotherhood, and others mainly through the use of criminal courts and exceptional military courts. As discussed in Chapter 5, many were detained for long periods of time without any formal charge through practices of recurrent precautionary detention.

Although, one of the main strategies of all post-Mubarak regimes had been to use precautionary detention and mass imprisonment to stop popular dissent, the 2014-15 period witnessed, as majority of lawyers I interviewed noted, a clear intensification of such seemingly legalised forms of repression (see further Nasrallah, 2016). It was reported that by March 2014 security forces had detained at least 22,000 people³ while other figures claimed that over 41,000 people had been arrested with many of them given prolonged prison sentences; hence referring to Egyptian activists as the “Generation Jail” (Amnesty International, 2015). Moreover, the majority of interviewed lawyers who were involved in such cases (as well as several recently published reports, noted earlier⁴) stressed that this unprecedented level of crackdown on dissent was further aggravated by the ways in which detainees were being mistreated and often tortured by state security or prison officials as well as by the deteriorating conditions of holding facilities and prisons.

³ ‘Egypt crackdown brings most arrests in decades’, *Associated Press*, 16 March 2014.

⁴ Including Seif al-Dawla (2015) and Human Rights Watch (2011a).

With the increased political repression and legal intimidation, a prevalent sense of deep frustration and hopelessness was evident, especially during my visit in 2014, expressed by those who had been involved in the revolutionary struggle. Many seemed to find it hard to remain optimistic and stay committed to their visions of revolution while being heavily silenced, physically alienated, tortured, and marginalised by the ruling elite, the security apparatus, the Judiciary, and the state-controlled media. As activist Lina explained,

people have been trying to hold on to the spirit of the square but then look at what those in power are doing to us. Many people are frustrated and disillusioned because while they were still thinking about the perfect city, like Tahrir, they suddenly faced a wall. Imagine you are running and then you face a wall, a physical wall.

In response to this new, enormous wave of criminal arrests, legal intimidation, and imprisonment, many law centres and human rights NGOs I visited had allocated significant amount, if not almost all, of their resources to dealing with arbitrary detention and supporting those imprisoned. “Our primary operation these days”, Nehal (a lawyer working for a human rights NGO) said in August 2014, “has become to try and release people from prisons”. In fact, the majority of activist lawyers I interviewed during this period were involved on a routine, daily basis in dealing with such cases of arbitrary arrest and prolonged precautionary detention.

The everyday routines of activist lawyers dealing with such cases especially during this period, as different interviewees described, were characterised by numerous challenges. For much of their days, as several lawyers I interviewed explained, they were constantly moving between various police stations, different prison complexes, and several prosecution offices across (if not, outside) Cairo. It involved, first, trying to find out which agency had detained the activist and then to locate where he or she were being kept. However, on many occasions this supposedly simple, first step could in itself take up to weeks for, as Sharif and Dina stressed, police or prison authorities were routinely denying to have arrested or to be holding the missing activists, or else they were moving the arrested activist between different detention centres to make it difficult for lawyers to locate them.⁵ This in itself has since become a routine intimidation tactic used by state security forces, which activist lawyers commonly refer to as ‘forced disappearance’⁶ whereby activists would suddenly go missing for weeks or sometimes months. Thus, as

⁵ Also, similarly see the first-hand account given by Mackell (2012) of his arrest and constant forced movement between police stations and prosecution offices to avoid lawyers.

⁶ See Chapter 5 above, under ‘Legal Intimidation Against Revolution’.

Laveille (2016, 151) observed in relation to activists in the city of Aswan, many of them had in their mobile phones an already written SMS, which would be sent automatically to lawyers from Hisham Mubarak Law Centre if they were arrested.

Once the arrested activist was found, the lawyer would then have to spend considerable time and effort, within places such as detention facilities and police stations which were often hostile towards both activists and their lawyers, to establish the details of the arrest and the grounds on which the arrest had been made. This was another part of the process that, according to several lawyers interviewed, were often made deliberately confusing and inconsistent by the police and prosecution authorities mainly in order to exasperate and get rid of the lawyer chasing the case.

Indeed, on many such occasions, as Sharif, Dina, and Laila recounted their personal experiences, when the lawyers appeared to persist, they would be verbally and at time physically abused, harassed, or intimidated by officers.⁷ Stressing that many lawyers had been subjected to assault and verbal abuse by security personnel, while finding it difficult to obtain relevant official documents relating to their cases and to meet their clients privately, a 2014 report by the Egyptian Initiative for Personal Rights noted that,

in September 2014, police personnel assaulted lawyer Yasmine Hossam at the gates of a court house during the trial of colleague Yara Sallam. She was punched, dragged by the hair and arms, verbally abused and inappropriately touched. Earlier this year, lawyer Amr Imam, was threatened at gunpoint in a police station after inquiring about a number of detainees arrested from a demonstration. He was hit in the chest with a rifle butt and asked to leave or else risk being shot. (EIPR, 2014)

Nevertheless, if despite all these difficulties the lawyer were eventually able to get access to the detainees and their files (which was nevertheless denied them on many occasions), only then could they actually begin their effort to release the detainee, or if not, frequently visiting them to try to ensure that they were not mistreated or tortured. Eventually, if and when formal charges were made against the detained activist (which, according to Laila, could again take up to months), the lawyer could begin the actual process of legally defending the accused in criminal courts.

This was a common part of the everyday professional legal work many activist lawyers were carrying out during the volatile sociopolitical conditions of 2014-2015. Even so, there were, furthermore, the routine, daily problems associated with ordinary criminal

⁷ Also, see the account given by activist lawyer Mohamed Abdel Aziz regarding the officials of the Police Academy in Tora Prison harassing lawyers while preventing them from visiting detained political activists or attending their court hearings (published in *Tahrir* Newspaper, 22 October 2014).

courts in Egypt, as both Laila and Nehal described, namely files going missing, cases getting mixed up, defendants not sent to their hearing by the prison officials, judges constantly postponing the hearing, prosecutors using false or no evidence in preparing their cases, judges being often suspicious of both activists and their defence lawyers and at times intimidating them during the hearings, or sometimes lawyers not being allowed to enter the court building due to animosity by security officials.⁸

Due to these routine problems many activist lawyers faced during their day-to-day legal work in support of revolutionaries, as Nehal for instance noted, they were simply unable to cope with the sheer number of such cases. Nevertheless, it was very clear throughout my interviews that many lawyers I spoke to saw their role during this period as helping to protect revolutionaries so much as possible, despite such difficulties, through their arrests, detention, trials, and in prisons. This idea of protecting activists as much as possible, seems at times to have gone even further, beyond what is ordinarily understood as providing professional legal support. For instance, late activist lawyer Ahmed Seif famously⁹ helped hide two activists who were running away from state security. During the early period of the revolution, activist Hind el-Nafaa who had been one of the organisers of the demonstrations outside the Cabinet Office went and hid in Seif's house and effectively lived with his family for a while. Earlier, as the state security were looking for Mohamed Abdel-Aziz, one of the defendants in a case known as Sarando in 2007, who had been accused of inciting farmers to sabotage land, Ahmed Seif who was his lawyer, effectively took him to his office to hide there for several days (Mohamed went on to become an activist lawyer himself).

Furthermore, along with the everyday challenges faced by activist lawyers in the process of providing legal support for activists lies another basic problem. As was noted in Chapter 5, most forms of legal intimidation (e.g. arbitrary arrests, recurrent precautionary detentions, and criminal prosecutions) have been carried out to exhaust, intimidate, and silence revolutionaries by effectively dragging them through lengthy, unfair, bewildering legal processes, mistreating them throughout the process, and frequently locking them away in prisons for months or years. This consequently meant that in many such cases,

⁸⁸ Similarly see the statement by activist lawyer Ahmad Seif in March 2014 regarding the many problems during the process of defending 25 activists arrested for 'protesting without permission' including: sending arrested activists to criminal court with incomplete investigations, unclear charges, lack of evidence, and without specifying the District or date of hearing; procrastination by the Prosecution, the harshness of the administration of the prison toward the activist and their lawyers. Available from <https://www.facebook.com/ahdafsoueif/posts/483120325150565> (last accessed 1 August 2018) (translated by Ahdaf Soueif).

⁹ This is now a matter of public knowledge, and it was recounted to me by lawyer Sharif.

regardless of how much time and effort lawyers put in to release an activist from precautionary detention or to challenge the criminal charges in court, the outcome would be the same and the detained activist would most likely continue to be kept in recurrent detention or eventually sentenced to prison. In other words, as Hossam, director of a law centre involved in similar cases, explained,

We take up many such cases, including arbitrary detention of protestors, imprisonment of activists, torture in prison, mistreatment of workers, and so on, which we know will most likely lose, regardless of our efforts or arguments

Following these observations, the questions that emerge with which the chapter seeks to engage are two-fold. Firstly, what do everyday praxes of activist lawyers in this period tell us about their underlying visions and ways of imagining revolution and law (and the relation between them), and in what ways such visions of revolution, law, and everyday legal praxis could be seen as mutually effective while evolving as a result of new challenges and opportunities (and with what possible limitations)? Secondly, in what ways do the kinds of ethical predilections and political projects that the everyday praxes of activist lawyers enabled or pursued may have helped open up new (political, conceptual) possibilities in (studying) the broader juridified revolutionary struggle in Egypt? Thirdly, the question, following my discussion in Chapter 6, is in what ways such perceptions of law as a current means and component of the ongoing revolutionary struggle informed, were manifested in, and put into practice by those lawyers' everyday legal support work.

IV. EVERYDAY PREFIGURATIVE LEGAL PRAXIS

Concerning these questions, I aim to argue in the rest of the chapter that, mindful of the particular context of legal intimidation in Egypt, we can understand some of those everyday forms of the praxis of activist lawyers described above as in some ways striving towards enacting and performing visions of revolution and law inspired in part by their direct experiences of the early days of the revolution. I will further argue, drawing on the utopian-prefigurative approach described before and Cooper's notion of everyday utopia in particular, that some aspects of the everyday praxis of activist lawyers in support of revolutionaries can be understood as *everyday* manifestations of what, in Chapter 6, I referred to as prefigurative legal praxis. Cain and Harrington (1994, 8) understand 'prefigurative legal practice' as "practices that envision alternative power relations and

articulate new meanings sometimes woven into conventional legal practice”. In studying the everyday work of lawyers such an approach would entail going analytically beyond the legal outcomes of their work, paying attention to its day-to-day, routine processes, underlying visions, and its supra-legal aspects, and crucially to the ways in which their ongoing forms of everyday practice could help point to and prefigure a different, more desirable political-legal system. From this perspective, activist lawyering is understood and studied as “a process, not an achievement.” (Quigley, 2012, p. 204). Consequently, with regards to the work of activist lawyers in Egypt, by everyday prefigurative legal praxis, I mean to suggest in what follows that it can be understood as an everyday, process-oriented form of legal support, driven by ideas of continuity and endurance, that aims to perform, in the here-and-now, acts of solidarity in protecting revolutionaries, while, in the process, prefiguratively reimagining and performing legal procedures and spaces *as if* they were otherwise – characterised by qualities and attributes envisioned and desired by the revolutionary movement.

Everyday Legal Praxis as Continuity

One of the themes that emerged recurrently in conversations with different activist lawyers (especially Hisham, Hossam, Amr, and Sharif) about their day-to-day legal work, in 2014 and 2015, was their variously phrased emphasis on notions of *continuity*, *endurance*, *steadfastness*, or *perseverance*. Their emphasis on continuity appears to relate to two forms of struggle which they seemed to commonly envision as essentially interwoven. It relates to the importance of their ability to continue to provide daily legal aid for revolutionaries and to persist in the face of intimidation by the regime. At the same time, it relates to the importance of the ability of the broader revolutionary movement and its many activists to continue to fight for the visions and demands of the revolution, and to preserve in the face of increasing intimidation by the regime.

Indeed, as noted in the previous section, the majority of activist lawyers interviewed essentially saw their legal praxis as part of the broader revolutionary struggle, and therefore, understood the continuity of their legal praxis and that of the broader popular revolutionary movement as interlinked parts of the same struggle. “We firmly believe in *muqawamah*, resistance”, Amr explained, “and continuing the resistance is more important than anything else.” Similarly, Laila said that, “compared to many methods of the state to repress the people, what we do, though I appreciate it, is very little. But, for now that is what we can do, and it is vital that we should continue it.” Not only did many

lawyers highlight the importance of continuation and perseverance in their daily work, but, as we can see here, some seemed to essentially understand the need for continuity as perhaps the most fundamental, most crucial part of it during that period in particular.

During my visit to Cairo in 2014, on 22 September, I attended an event commemorating the life of late activist lawyer Ahmed Seif who had recently passed away. His son, well-known political activist Alaa Abdel Fattah, who had just been temporarily released from prison where he was serving a protest-related sentence, talked about his father's life and work as a lawyer. In summarising Ahmed Seif's most emblematic attitude during his decades-long legal work, Alaa, interestingly, recounted his father as always saying,

All that is needed from us is to insist on justice. We don't necessarily have to be victorious or even strong. We just have to insist on justice and hold on to that.

Thus, it seems, to understand the praxis of activist lawyers during this period requires us to understand it in terms of the ways in which it could help with the day-to-day continuity and steadfastness of both the legal and the revolutionary struggle in the present. This perspective based on *continuity*, as I discuss below, can help provide better ways to study everyday aspects of activist lawyers' approach to legal work, including the reasons for which they take up cases, the ways in which they interact with vulnerable activist clients and with hostile officials, their frequently collective forms of representing activists in courts, as well as their perception of the very meaning of the everyday itself.

It was noted earlier that, during this period, many activist lawyers were constantly involved with cases of arbitrary arrest, precautionary detention, or criminal prosecution of activists which were, legally, almost certainly hopeless cases. They were taking up many cases which they knew were unlikely to achieve any legal result. Independent lawyer Nesreen, for instance, explained that since the coming to power of General Al-Sisi many prosecutors and judges in criminal courts seemed to have already made their decision (or the regime has made the decision for them) to help keep things quiet by locking up activists for a while until the state consolidates its power and control. As a result, she noted, "they have almost stopped following set legal procedures or even listening to defence lawyers' arguments." Hisham, who had been involved in defending several well-known activist during this period, similarly noted that in many such cases,

No longer does the judge even pretend to be impartial, nor to be paying attention to what we say during the hearing. He has decided how to deal with the revolutionaries before receiving individual cases. The message they are sending to us in the process is that: we despise what you do, and those you are defending, and what you say makes no difference.

Nevertheless, both Nesreen and Hisham stressed that this would not stop them from insisting on doing their job in prosecution office and during the hearing in support of the detainees. Hisham summed up his view as “for us, it matters that the fight must continue, no matter the outcome”.

Moreover, a number of activist lawyers interviewed explained that when working on more important cases, including some of those cases unlikely to legally succeed, sometimes they worked in groups, when dealing with prosecutors, researching for the case and preparing their defence, and when attending court sessions. Indeed, it was not unusual to see a group of 5 or 10 lawyers representing an activist defendant, attending their hearings, and even addressing the court one after the other collectively. The group of lawyers who collectively worked on these cases often consisted of both experienced lawyers as well as less experienced ones and interns. It was pointed to me by lawyers from one law centre that their ethos of collective work extended to some of daily decision-making processes in the law centre whereby all members of staff had a say regardless of their position. In one example, there was usually a general meeting held once a week, attended by all support staff, interns, and lawyers, where they decided, among other things, which new cases to take up. “We see ourselves as a legal centre that does not belong to any particular person, but to the society”, explained Hossam (director of the centre),

our main mission is to serve people through protecting their rights and freedoms and those who fight for them. We only take up cases that serve this purpose. So, it is a major decision that should be made collectively in the general meeting by all who work here, lawyers, staff, and volunteers.

This collective form of lawyering and representation was often done in cases with more political, legal, or symbolic significance. For instance, this included cases when the accused was a well-known revolutionary (e.g. criminal defence for Alaa Abdel-Fattah, Ahmed Douma, or Ahmed Maher), when defending striking workers, when representing victims of torture in their collective criminal charges against the police or prison authorities, or when representing the families of those revolutionaries who had been killed during protests (as mentioned earlier). But this ethos of collective legal practice was not only aimed at providing a better legal defence/representation. After all, many such cases, as noted above, were unlikely to succeed in terms of their legal outcome i.e. securing the release of a detained activist or the conviction of the police officer. This collective form of representation seemed to be, at least partly, enacted as collective solidarity with the affected revolutionaries, performed by lawyers in the same space (i.e. court, prisons,

police stations) in which those revolutionaries were being intimidated, mistreated, and oppressed. As Kemal explained,

Sometimes we work in groups of 10, 20 lawyers. We prepare and plan together regarding what we are going to say and on how many lawyers to be there. Sometimes, some of the lawyers who go to court don't even get a chance to speak in front of the judge. But that's ok. We *continue* this as a collective show of power in court, as *solidarity* for our comrades. (My emphasis)

What this implies is that, during this period of intensive legal intimidation where outcomes of many cases were at least unclear if not predetermined, lawyers seemed to be putting much focus on the *process* of their legal aid work. In other words, whereas they were not able to determine or influence the outcome of the cases they took up (through their legal arguments etc.), they seemed to be nevertheless determined to use the possibilities that the *process* of legal representation and the space of court afforded them. Thus, what they seemed to be using the legal process/space for was also to show strong, collective solidarity with the detained activists and “to let them know”, as Kemal said, “that they are not forgotten”, that they are still part of the revolutionary struggle even though they are physically absent from the public domain. In other words, what activist lawyers were doing in the process seemed to be directed not only at winning cases but also specifically at using that opportunity to help activists endure and preserve in difficult times, thus turning the oppressive space of court, temporarily, into a place for collective solidarity, perseverance, and for reminding one another of the bigger dreams and ongoing struggles.

This understanding of the significance of the legal process and the importance of continuity and endurance seemed to thus drive the focus of many lawyers towards a different professional and temporal imagining of their role as lawyer. Professionally, they appeared to have adopted a different, much more expansive approach to what everyday legal work (in such volatile conditions) involved whereby, temporally, they seemed to pay specific attention to the exigencies of the present situation and the needs of activists in the here-and-now. This expansive professional, present-oriented perception of legal work could be seen, for example, in late lawyer Ahemd Seif helping his clients hide in his office and his house (mentioned above), or lawyer Mahienour El-Masry's efforts to take food provisions to workers who had gone on strike (illegal under emergency laws) and been forcibly locked inside the factory before being arrested (Marroushi, 2014). “For lawyers working on these cases, it is simply not enough to only provide standard legal support”, Sharif pointed out,

With us, being a lawyer includes many other roles. He might have to become a counselling advisor for the prisoner to keep them psychologically healthy; he might have to endure bullying and intimidation by prison officials while insisting on regularly visiting the prisoners to protect them from being mistreated. None of that is possible without the lawyer being there and always prepared to negotiate in any possible way with different officials.

As noted earlier, with the increasing level of legal intimidation during this period in Egypt, activist lawyers faced many obstacles in their day-to-day work when dealing with the arrest of activists (including obtaining confirmation of their arrest, locating their holding facilities, obtaining the official details and grounds for their arrest, getting access to them in police custody or prison, defending their cases and so on), and, their work often exceeded ordinary legal work. Nevertheless, their already expansive responsibility towards their activist clients were further amplified by the fact that, on many occasions, the lawyer was the only person who due to their professional-legal standing and after many difficulties could get access to the detainee (of course denied on many occasions). That is because, as Nesreen and Sharif explained, in order to further isolate and torment detained activists, police or prison officials on many occasions did not allow family members to visit them or take clothes, food, money, or other necessities to them. This made lawyers' day-to-day work even more significant in terms of using the opportunity (albeit uncertain) their professional standing afforded them to help detained activists preserve in and endure such hostile, isolating conditions.

Based on my discussion so far, we might therefore conclude that within the oppressive spaces of legal intimidation, the praxis of many activist lawyers can be seen as helping create, there-and-then, temporary, everyday counter-spaces and counter-relationships within which to endure and preserve in the face of a military regime that meant to subdue those who dared to pursue the dreams of the revolution. Indeed, some other studies have pointed to this crucial aspect of the work of activist lawyers, as it can provide not just a form of, but a "forum for rebellion" (Meranto, 1998), and to constitute an ontological space for resistance (Bailey, 2009), which could work to increase movements' confidence and sophistication (McCann, 1994; Abel, 1995).

In such context, endurance is arguably revolutionary in that it can help produce new conditions of possibility for not just surviving but also performing other, everyday ways of being together. For many activist lawyers, revolution is thus understood as a continuous process of struggle. This conception is closely related to what we observed in this chapter in relation to their emphasis on steadfastness and endurance, as it points to revolution in terms of its potential for continuity rather than as a break and rupture. It is

the construction and nurturing of counter-hegemonic professional and social relationships through forming relationships intended neither by counter-revolutionary discourses, nor by hegemonic forms and logics of legal institutions and procedures, and legal practice.

Everyday Legal Praxis in the State of Crisis

So far, I have argued that thinking about the praxis of activist lawyers from the perspective of continuity and endurance can help better understand at least part of their approach to taking up cases, and to working collectively, and to do so as everyday manifestation of solidarity. This attention to continuity can also provide a useful lens, as I argue below, to think about and examine the specific ways in which those lawyers seem to understand the meaning of the everyday itself. It is a particularly pragmatist imagining of the everyday which, I suggest, is itself a significant basis for their practices of everyday legal solidarity noted above.

It was noted in the beginning of the chapter that attention to the particularly exceptional and volatile political conditions in Egypt in the post-Mubarak period is essential to my understanding of the notion of everyday in studying the everyday praxis of activist lawyers. It was a situation that was made more volatile and exceptional, especially during the 2014-2015 period, by the fact that their daily professional activities had increasingly been made difficult to carry out under the state's incessant crackdown and intimidation. As Nehal (working for a human rights NGO) summed it up,

We, and many colleagues in similar organisations, work under the permanent possibility that we ourselves get arrested on the basis of some fabricated charges, and that the organisation gets shut down.

Activist lawyers were working within an unstable, hostile, and thus exceptional setting. None of the lawyers interviewed, however, seemed to perceive this ever-present possibility of state security raids, intimidations, or arrest and closure as unusual or exceptional. Rather, there appeared to exist a level of day-to-day, ordinariness, and routineness in their work, for those activist lawyers I interviewed seemed to understand their exceptional, extraordinary material conditions, in a pragmatic way, as that which is expected, the norm. Thus, for instance, Nehal described as ordinary, expected aspect of her professional legal work the prospect of visits/raids by state security who frequently harass the staff, and confiscate, if not destroy, case files, documents, computers, and other office equipment. Indeed, faced with such frequent, unforewarned raids and temporary closures,

especially during 2014-15 period, some of the law centres and human rights NGOs that I visited looked conspicuously minimalistic for they had opted to maintain offices with minimum equipment, decorations etc.

What emerges in many activist lawyers' legal praxis can thus be understood as a different, perhaps paradoxical perception of the everyday in the sense that the continued extraordinariness and volatility of their conditions was understood by them as precisely an intrinsic nature of their routine, daily work – i.e. the everyday in the state of exception. Those continuous raids, arrest, and intimidations were carried out in order to ultimately subjugate activist lawyers and human rights NGOs, and to make them limit or even abandon their activities. Lawyers' understanding and enactment of the everyday – i.e. treating intimidation and volatility as the ordinary – undoubtedly requires much effort directed towards steadfastness and continued perseverance on the part of the activist lawyers. However, this common imagining of such exceptional conditions as routine, everyday and acting upon it accordingly, can be seen as a form of everyday pragmatism¹⁰ which could potentially neutralise and defeat the purpose for which such intimidations are carried out. In other words, my suggestion is that within the material conditions of Egypt's ongoing revolutionary struggle, activist lawyers' pragmatist conception of the everyday itself can be understood as a continuing form of resistance.

Other scholars have highlighted everyday forms of resistance and transformation in the context of Egypt. Bayat's notions of "social nonmovements" and "quiet encroachment of the ordinary" (2013b) and Dabashi's idea of "delayed defiance" (2012) focus on everyday aspects of the economic and political struggles of subaltern social groups, while Mahmood (2006) and Abu-Lughod (1998) emphasise the everyday ethical practices in the realm of women's daily lives. However, this scholarship is often concerned more with the contingencies and potentials of what those different social groups do in their everyday life, and much less, if at all, with the ways in which they imagine and understand the very nature and contours of the domain of the everyday itself. Studying the everyday praxis of activist lawyers within the particularly exceptional, volatile material conditions they work in, I argue, can help point to another way of studying the (transformative) potentials of the everyday by examining how the very idea of the everyday is understood – what is imagined as included or excluded within the realm the everyday, what is imagined and enacted as ordinary, routine. In the case of activist lawyers, the pragmatist expansion of the realm of the everyday in their legal work to include the possibility of intimidation,

¹⁰ Although based in very different material conditions, Cooper (2014) similarly underlines the role of everyday forms of pragmatism as an important feature of some of the sites (e.g. lesbian bathhouses, etc.) which she analyses as a form of everyday utopia.

arrest, and closure as a routine component, although it might appear as a docile form of consenting to repression, can in this context be seen arguably as a form of resistance through neutralising the intended effects of such forms of harassment.

This reading might become more apparent if we understand it in the light of what I pointed to at the outset of this section, namely the need to study activist lawyers' everyday praxis on the basis of their emphasis on continuity and perseverance. If what matters the most to many activist lawyers is the ability to continue their everyday support for the revolutionaries and thus the continuation of the revolutionary struggle, then their normalisation of regime harassment as part of their everyday could be seen as a pragmatist form of prioritising what is more important to them, while in the process seeking to neutralise the intended effects of those forms of intimidation. Ultimately, in a political system which seeks to silence dissent and resistance by making them atypical, exceptional, illogical, and unreasonable (through many forms of intimidation), it is counter-hegemonic and politically promising when many activist lawyers practice resistance as that which is ordinary and normal by treating state intimidation as a given, everyday aspect of it.

This argument takes us to the final part of the chapter which aims to build upon what has been discussed so far to argue that the everyday praxis of many activist lawyers in Egypt can be understood as a utopian-prefigurative form of legal practice.

Everyday Legal Praxis as Utopian Prefiguration

Having granted primary analytic value to the praxis of activist lawyers and their specific, situated visions and understandings of law and legal practice, it was suggested that in their everyday practices in courts, police stations, and prisons they seemed to espouse visions of law radically different from those which were prevalent within those formal-institutional domains of law (a point which was also suggested in the latter part of Chapter 5 in relation to the broader juridified forms of revolutionary struggle in Egypt). Their visions of the nature, characteristics, and the purpose of law (as related to its participants, processes, and spaces) seemed to be at odds with the ways they were imagined and practiced by many legal-institutional actors (e.g. prosecutors, judges, prison officials), through formal legal processes, and within legal-institutional spaces (e.g. court rooms, prisons, police stations). Through their day-to-day legal support work in those formal legal spaces, it was suggested, many activist lawyers seemed to understand as essential part of law and legal processes purposes and qualities that were not shared by those institutional participants.

Consequently, following my proposition to approach the popular praxis of revolution in Egypt as a form of prefigurative juridification (Chapter 5), and the work of activist lawyers as part of it as a form of prefigurative legal praxis (Chapter 6), we could similarly approach the everyday praxis of those lawyers as a practice of prefiguration. As discussed in the Introduction, rooted in the existing conditions and predicaments of their society, prefigurative practices are often focused on (processes of) actions and relations in the here-and-how but also characterised by the contours of the desired alternatives they wish to bring about (Scholl, 2016; Maeckelbergh, 2011; van de Sande, 2014). Thus, in previous chapters, I approached as a form of prefiguration those bottom-up, juridified practices of revolution in Egypt whereby law and politics were reimagined and enacted in the here-and-now as if legal and political institutions, processes, and spaces were different, that is, as already characterised by the ideals of the revolution, rather than hoping to have them realised in a distant future.

Following my discussion in Chapter 6, the prefigurative aspect of the everyday work of lawyers can be seen in their enacting and treating those legal spaces and processes on everyday basis as if they were different, while knowing that they are not. This includes envisioning and enacting those legal spaces and process as being about inclusiveness, solidarity, equality, and justice. This can also be seen as a form of prefiguration in the sense that it is a form of everyday legal practice that seeks to normalise those alternative, desired qualities and meanings of law that in the current, dominant state of affairs are deemed and treated as undesirable.

A usual form of legal practice might be understood as triggered by the arrest of an activist, then the lawyer beginning to use her professional expertise and abilities through the legal process to support the activist, and if successful to proceed to free him so that he could go back to continuing his activism. However, in the context of the increased legal intimidation of revolutionaries in 2014-2015 in Egypt, the praxis of activist lawyers seemed to proceed in the opposite direction as some kind of 'legal praxis in reverse'. Once an activist was arrested, the process of legally supporting him in prisons and court rooms itself turned into instances of activism and collective forms of solidarity in the here-and-now, rather than waiting for the activist to be released so that the struggle could continue. This could be seen, for instance, in instances when lawyers would locate the detained activist and mobilise a group of activist to gather outside the detention facility to express solidarity with the detainee, help him or her endure the hostile detention, pressure the officials to either release the detainee or treat her with less hostility – thus turning a police station or a detention facility into a temporary space of solidarity and collective struggle in the here-and-now. In one example amongst many, following the arrest and

interrogation of several activists and a journalist in Mahalla in 2012, local activist lawyers effectively turned the occasion of the arrest into a local mobilisation outside a police station, so much so that the officials were trying to move the detainees to different facilities in order to avoid the lawyers and the increasing size of the gathering.¹¹ This also shows the ways in which lawyers' work and support really mattered on the ground, and made a difference for those who were arrested and mistreated.

Approached from this perspective, the everyday legal work of activist lawyers can be understood as helping problematise and defamiliarise the prevalent visions of the relation between law and revolution as distinct, if not opposite, domains. When activist lawyers effectively bring the revolutionary struggle into the day-to-day spaces and processes of law they arguably complicate and blur the everyday spatial-temporal domains of law and of revolution. Their praxis thus complicates, in a prefigurative way, ideas about where law and revolution spatially-temporally begin and end on everyday level, by crucially taking the revolutionary struggle into precisely the spatial-temporal domain of law; a domain which maintains its legitimacy and oppressive authority by portraying itself as bracketed from the domain of revolution.

Furthermore, bringing together this understanding of the praxis of activist lawyers and Cooper's notion of everyday utopia (2014) can help us pay more attention to some of the underlying utopian traces and features in the everyday praxis of those lawyers. While crucially embedded within a broader political and legal environment which is increasingly oppressive and hostile, those lawyers can be seen as striving collectively towards creating and maintaining other, radically different, everyday counter-spaces, counter-relations, and expectations precisely within such oppressive spaces as courts and prisons. They can be seen as acting on a daily basis, in the here-and-now, to nurture those alternative spaces and relations which are essentially driven by the same ideals that were fundamental to the revolution itself: things don't have to be this way, and another way of being and acting together is possible, not in future but in the here-and-now, and despite all that wants to convince or force us to the contrary. As Sharif concluded,

This place has not been only a legal centre, but a space [...] inspiring lawyers, activists, and others to get together to organise and to coordinate. It has been a space for all of us who want a better Egypt to come together, organise, and remind each other of our hopes for our beloved country.

¹¹ See 'Arrested: Inside My Egyptian Nightmare', a first-hand account given by Austin G. Mackell. Available from <http://www.abc.net.au/news/2012-02-17/mackell-inside-egypt-shell-game/3836016> (last accessed 1 August 2018).

At the same time, despite its important, promising aspects, it is possible to think about some potential limitations in terms of the everyday praxis of those activist lawyers I studied here. Although, some of those potential limitations noted below might be better understood not as limits of their work but limits of my own study – something that could certainly provide the grounds for further study of their work. One question relates to the tension that was noted as a significant feature of lawyers' praxis during this period. The tension was generated by the fact that many ordinary criminal judges seemed to have already decided how they wanted to deal with activists (i.e. sentence them to prison for often several years in order to allow the state to consolidate its power), and therefore almost entirely neglect lawyers' defence in support of the defendants. What should the lawyer do here? Put their main focus and efforts on preparing (a most likely irrelevant) legal argument in defence of the detained, or instead direct their focus on publicising and politicising the case, and on collective solidarity in the courtroom.

Furthermore, if the lawyer opts for the latter, could it perhaps have any adverse effect on the defendant? For instance, would doing so further upset the already-hostile judge and make him hand down an even harsher sentence. Indeed, one activist lawyer remarked that the fact that she herself was little known politically helped her at times to provide better support for her activist clients, while criticising some other lawyers who might overtly politicise their cases resulting in 'unprofessional practice' (Afify, 2015). In relation to this tension, Polikoff (1996) has thus argued that sometimes the legal and activist roles of a lawyer have to be completely separated. When a person is supposed to serve as 'officer of the court', she suggests, activist behaviour might damage the lawyer's legitimacy and thus affect the client (also similarly see Froissart, 2014, 256).

On the other hand, in the context where there are far too many cases of arbitrary detention, criminal prosecution etc., and comparatively very little financial and human resources available to activist lawyer, they would inevitably have to make choices as to which cases to take up. Even though they all said they would take up 'losing' cases, but how, and on what basis, do they choose between too many of those losing cases? This understandable tension could potentially lead to the risk of the activist lawyer substituting – or perhaps even mistaking – legal work with political activity by choosing cases on the basis of the extent of their political and symbolic value as part of the broader revolutionary struggle, not according to the predicament of the individual detainee.

This tension is at the heart of a long-running scholarly debate on the role of activist lawyers and the ways in which they might strike a balance between serving clients and

their own broader causes, or prioritise one over the other. Greenberg (1994, 107) distinguishes between “impact-oriented public interest” lawyering, which is sometimes criticised as not fully responsive to the special needs of individual clients, and “the traditional form of client-centered lawyering [based on] representing a client, doing the client’s bidding and representing only the client’s interests, irrespective of the needs of society or groups within it”. Some scholars have thus emphasised the client-centred approach as more empowering and more effective for social change (Alfieri, 1992), while others insist on the significance of lawyers linking the defence of individual victims with those of people in the same situation and broader issues that affect society as a whole (Froissart, 2014, p. 259; Richard, 2012, 4). Meanwhile, others have suggested that such bipolar framework as either client-driven or cause-driven may not reflect what may always have been a much more complex continuum of human relationships between activist lawyers and clients (Russel, 1995, also Felstiner & Sarat, 1992), thus seeing as more effective and humane a more collaborative, less hierarchical relationship between lawyers and clients (Russel, 1995, 1187; also, Lopez, 1992).

Nevertheless, in the context of Egypt, the fact that the activist lawyer may be more concerned with the process than the likely-unsuccessful outcome (as noted above) can further affect the kind of cases he or she would take up. The lawyer may opt to prioritise to spend his or her all-the-more precious little time, perhaps understandably from a political perspective, on well-known activists (due to their political capital and symbolic value), to the detriment of those who are little known. Thus, it is possible – and indeed some activists have already been drawing attention to this¹² – that, for instance, less-known activists from poverty-stricken or rural areas who do not appeal as widely to urban activists get almost forgotten during their detention, mistreatment, and imprisonment; or the same with religious activists who might inspire much less attention among largely secular activist community. Even worse, although many activist lawyers actively support LGBT activists, such approaches to legal praxis has in the past led certain human rights NGOs to refrain from defending LGBT community because of the continuing social hostility towards the issue in many parts of the society (see further Chapter 6).

¹² For instance, in June 2011, in a widely-debated weblog post titled ‘the poor come first’, Mohammed Abo El-Ghait provocatively posted photos of several youngsters whose clothes and hair style looked much like those worn by youngsters coming from extremely poor neighbourhood (referred to condescendingly as ‘Sarsageyya’ by many middle-class Egyptians). He then ‘shocked’ the readers by saying that those were some of the martyrs of the revolution. He complained that those martyrs and their photos were rarely ever mentioned or displayed when there is a celebration of the martyrs of the revolution, whereas middle-class activist and martyrs receive all the attention. Available from <http://gedarea.blogspot.co.uk/2011/06/normal-0-false-false-false.html> (last accessed 8 February 2018).

V. CONCLUSION

In previous chapters, I discussed some aspects of the popular, grassroots visions of change in Egypt's 25 January revolution which I understood as characterised by juxtaposing law, prefiguration, and revolution. Chapter 6 focused on some aspects of the significant role of activist lawyers within that juridified revolutionary struggle. The aim for this chapter in turn was to further examine the praxis of activist lawyers by focusing on some everyday aspects of their work during the 2014-15 period.

I began by arguing that the notions of continuity and endurance which were frequently emphasised by different lawyers can be seen as providing a useful perspective to study and analyse the everyday praxis of activist lawyers in terms of their processes (rather than their strictly legal outcomes). It was argued that their continuous efforts in taking up losing cases and working on them collectively, and their expansive understanding of the everyday in the state of exception, should be seen as directed towards helping the revolutionaries endure and preserve in the face of the ruling regime's increasing level of legal intimidation. Consequently, it was argued that the everyday work of many activist lawyers can be approached as a form prefiguration when they envision and enact, in the here-and-now, legal-institutional processes and spaces as if they were otherwise. Meanwhile, their work was argued to be able to help provide, on a day-to-day basis in the here-and-now, certain forms of utopian counter-spaces and counter-relations which were inspired and driven by the broader visions and ideals of the revolution.

Indeed, one conclusion of my argument in this chapter could be that both the work of activist lawyers and the popular praxis of revolution in Egypt (discussed in Chapter 4) share at least one important feature: a large part of their significance lies precisely in their ability to connect between the everyday and broader visions of radical transformations, between the mundane and the monumental. As Chapter 4 suggested, the popular praxis of revolution in Egypt was concerned as much with broader, formal-institutional change as with new everyday collective performances which sought to prefigure different, more desirable forms of social relations and political culture. Tahrir square was an exceptional, extraordinary moment, but also significantly a space which was characterised by participants' concerns with the ordinary and the everyday. This included, for instance, quotidian routines, organisations, and concerns regarding food provision, sleep arrangements, check points, evening debates, news circulations, setting up tents and clinics, rubbish handling, provision and distribution of sanitary facilities and medicine. It was the ordinariness of Tahrir, perhaps more than anything else, that became the basis of its extraordinariness as new relations, knowledges, and realities were imagined and enacted in relation to the everyday, in the here-and-now. Similarly, as we noted in this

chapter, in an oppressive environment where the idea of resistance was portrayed as atypical, exceptional, and illogical, it was the day-to-day, ordinary character of activist lawyers' praxis in support of revolutionaries that was the source of much hostility towards them. Indeed, as Cooper (2014) notes in relation to everyday utopias, it may be the everydayness of their activities more than anything else that makes them seen as unsettling (4), and their embeddedness within wider society that generates their critical, productive potential (8). In other words, many activist lawyers' everyday practice can be interpreted as a form of utopianism geared towards re-approaching prevalent, taken-for-granted social and political narratives of 'reality' in post-Mubarak Egypt, whereby similar to Cooper's everyday utopias, they "bring about (or seek to bring about) new forms of normalization, desire, and subjectivity" (Cooper, 2014, 5).

CHAPTER 8

CONCLUSION

I. RESEARCH PROBLEM

The idea for this project was initially conceived due to my dissatisfaction with the prevalent ways in which Egypt's 25 January revolution had been (and continues to be) approached, (mis)understood, and written about. My discontent was specifically rooted in two observations. Firstly, as discussed in Chapter 3, there was a terminological-conceptual split between the views of many Egyptians themselves who understood their struggle predominantly as a *revolution* (Prince, 2014) and numerous (Western) scholars who commonly dismissed it as one (Achcar, 2016). Since 2011, one of the central scholarly debates on Egypt has been concerning whether the uprising was a 'revolution', and – often concluding that it was not – what caused its failure to become one. Of little concern, it seems, have been the grounded experiences and visions underlying the ways Egyptians understood and performed their revolution, the historical and political backdrop against which they chose to name their struggle a revolution, and their aims in doing so.

Secondly, as discussed in Chapters 4 and 5, the popular praxis of revolution in Egypt seemed to be marked by a strong language of legality in its diverse forms of mobilisation and collective performances, and its various goals and demands. Faced with this

unfamiliar, seemingly paradoxical, *juridified* vision and praxis of revolt, various observers saw it as yet another reason for rejecting the participants' claim to be engaged in a revolution. Understanding revolution as signifying a desire for modernisation and (Western) democracy (Khosrokhavar, 2012), some deemed formal rule of law, protection of property, and legal certainty as the ultimate horizon of possible change (de Soto, 2011), which they saw as nonetheless failing to materialise in Egypt. Others, in contrast, underplayed the uprising's juridified characteristics and demands as indicating a lack of quintessential radicalism needed for an otherwise real revolution (Bayat, 2017), thus seeing it as co-opted by liberal discourses of legality. Both groups have thus been dismissive of the role of law in the praxis of revolution in Egypt. Beyond normative comments and conclusions on the either necessary or counterproductive role of law in revolutionary mobilisation, there seemed to be little scholarly attempt, once again, at understanding the grounded experiences, visions, and forms of enactment by the participants themselves and the meanings and roles they attached to law in their revolutionary praxis.

Despite their other differences, the common starting point for much of this scholarship was often their respective preconceived theories about what a revolution, and its relation to law, ought to look like, against which the Egyptian revolution was measured and ultimately found wanting. As a result, this scholarship has told us more about prevalent (Western) conceptions of revolution and their associated theories of law and revolution, than it has about the revolution in Egypt, its particular trajectory, its forms of praxis and their underlying visions of revolution and law. It has contributed little to our understanding of the *Egyptian* revolution and much more to our understanding (and affirmation) of Western theories of revolution and juridification. This is especially unfortunate since the very idea of revolution and what it means has been a key contested issue inside Egypt particularly since the overthrow of Mubarak.

Going beyond those prevalent approaches, I wanted to know more about the meanings and visions Egyptians themselves attached to their praxis of revolution, and its markedly juridical character. I wanted to understand how they came to espouse such visions of revolution and change, and the ways in which those visions played out in their revolutionary praxis since 2011. At the same time, my aim was to use the revolution in Egypt as a case study through which to reflect on and complicate the existing scholarship on revolution, on juridification of politics, and on the relationship between law and revolution. This included reflecting on the meaning, implications, and significance of when revolution is envisioned and enacted in a considerably juridified manner, and at the same time, on when discourses and language of law and legality are understood and

deployed based on and driven by revolutionary ideals and their underlying utopian desires.

To do so, the thesis focused on the contested forms of juridification of the revolution by both the revolutionaries and the ruling elite, and in particular on the role and significance of the praxis of activist lawyers against this backdrop as a case study for how law and revolution come together. This is due to activist lawyers' remarkable position at the intersection of revolution and law as they continue to work within the domain of law and yet many of them have been committed to the revolution through seeking to preserve its gains, push for its demands, and protect its protagonists.

The thesis has, therefore, been driven by mutually related empirical and conceptual enquiries in relation to three problematics namely revolution, juridification, and activist lawyering. It has sought to reflect on and complicate some aspects of the current scholarship on revolution, and to use its conceptual and methodological conclusions for studying the revolution in Egypt. At the same time, it has sought to use the empirical findings from the work of activist lawyers in Egypt for reflecting on revolution, juridification, and the relation between revolution and law. Consequently, the main questions driving this research project have been: what conceptions of revolution were underlying the popular juridified praxis of revolution in Egypt, the ruling elite's counter-revolutionary forms of juridification, and the praxis of activist lawyers in support of the revolution; what do they tell us about, and how do they matter for this revolution and its grassroots forms of legal mobilisation; and what does it add to our understanding of revolution and juridification, and the relation between them.

To answer these questions, considering the scarcity of empirical material on activist lawyers in Egypt since the revolution, and for a fuller examination of their legal practice and their views on lawyering and revolution, I spent summers of 2014 and 2015 in Cairo. The approach, analysis, and conclusions of the thesis have thus been based mainly on material from my interviews with a number of activist lawyers and political activists, as well as examples from a number of court cases, statutory provisions, and administrative decrees during this period. Attention has also been given to the broader context of the revolution and related political developments during this period as reported by the Egyptian press or documented by relevant human rights NGOs.

II. SUMMARY OF MAIN ARGUMENTS AND FINDINGS

In engaging with the intertwined problematics of revolution, juridification, and activist lawyering in relation to the Egyptian revolution, the thesis first focused on the existing scholarship on the study of revolution and examined some of its prevalent conceptual and epistemological features, with the view to develop the theoretical interlocutor for the rest of the thesis. In doing so, I emphasised the analytic significance of paying attention to the politics of the concept of revolution and its performative aspects, that is, what different 'revolutions' do and perform, how they are taken up and help produce different material effects, and how they could help constitute particular political technologies that shape political possibilities. As the first step in studying the politics revolution and law in Egypt, I explored some common features of the existing scholarship on revolution and suggested that a considerable part of this literature has been marked by particular, unsatisfactory conceptual models and epistemological methods (Chapter 2). This argument thus suggested that the ostensibly universal concept of revolution underpinning much of this scholarship has for long been informed by the historical trajectory of the so-called Western 'Great Revolutions' and thus characterised by a conceptual model which remains largely state-centric and outcome-dependant based on an extraordinary, swift, and totalising event of social and political transformation. Largely following this model, scholarship on law and revolution in particular has been marked considerably by strong formalism and teleology whereby revolution is often conceptualised as unlawful but successful and efficacious change of state and basic constitutional norm.

However, I suggested that this common conceptual model has become increasingly inadequate for studying new revolutions due to at least two problems. Firstly, it no longer reflects the qualitatively different practices of many new social struggles and revolutions around the world. Secondly, it tends to overstate and reify a number of analytic factors including the place of the state as the sole target of revolution and its purported distinction from society, as well as the reform-revolution dualism, and the possibility of total transformation/domination. As a consequence of this prevalent conceptual model, I further suggested, the epistemological methods often used in studying new revolutions have led to a largely Eurocentric scholarship marked by normative debates on definitions of successful/failed revolutions, an epistemic division of labour, and the primacy of (Western) theory over the phenomena under study.

Suggesting that these common features of the extant scholarship on revolution, and on law and revolution, may be inadequate for making sense of the juridified praxis of revolution in Egypt and the practice of activist lawyers in support of it, I proposed an alternative approach. In this alternative, de-colonial approach which has been followed

throughout the thesis I proposed to treat revolution as an essentially contested, historically contingent concept which ought to be studied from within the specific socio-political context it has emerged in, and on the basis of its own situated visions and forms of praxis (Chapter 2). I thus proposed to take as the starting point of analysis participants' own ideas of revolution while emphasising the performative character of revolution as a concept and what is at stake politically in the different ways in which it is imagined and enacted by different actors involved in a revolutionary struggle. Refocussing attention on the "cultural embeddedness and situated meaningfulness" of revolution (Theodossopoulos, 2014, 416) through studying the visions and practices of the participants, and their performative effects, could afford a more central analytical place to such processes and their specific dynamics. Meanwhile, understanding revolution as performative helps with examining what political effects, outcomes, and practices different ideas of revolution by different actors may have helped (or sought to) bring about. It also, crucially, helps highlight what practices of different revolutionary and counter-revolutionary actors can tell us about their underpinning visions (consciously taken up or not) of revolution and change. Chapter 2 consequently concluded that this performative, participants-driven approach to the study of revolution can provide a more helpful, fruitful framework to study the politics of law and lawyering in the Egyptian revolution.

One of the main conclusions of this argument was that a revolution should be studied from within the specific historical, socio-political context in which it has developed its particular aspirations, meanings, visions, and forms of praxis. Following the observation – seemingly paradoxical – that discourses of law and legality were prevalent in the popular praxis of the Egyptian revolution, any serious study of that revolution, therefore, needs to examine the specific ways in which law had come to occupy such a prominent role therein, and the dynamics of how it was deployed in the contested struggles both for and against revolution. Consequently, the thesis focussed on the Egyptian revolution and the politics of law and lawyering therein taking a longer historical look at the evolution of the vision of revolution and change in modern Egypt and the shifting role and politics of law in it.

Unlike Nasser's 'communities of revolution' in which law and legal institutions were rather marginally relevant to politics, I suggested, under Sadat and later Mubarak, legal discourses and institutions came to play a key role as part of the broader, albeit contested, visions of society, politics, and change (Chapter 3). While foregrounding certain visions of modernising change and politics, a substantial part of the ruling elite's efforts to maintain power and social control during this period was increasingly invested in

juridification of politics through reviving discourses of legality while bringing legal institutions to the centre of an increasingly exclusive, authoritarian political system. In this “rule by law” (Bernard-Maugiron, 2014) political system, largely based on a ‘rule of law’ rhetoric, the decisions of the relatively independent constitutional and administrative courts enabled the ruling elite to overturn Nasser’s socialist-oriented policies and implement controversial neoliberal policies with minimum political cost or popular backlash. This also helped the regime to use administrative courts to police the state bureaucracy itself, while increasingly relying on emergency laws and the criminal justice system to further consolidate social control and silence any form of political dissent. Meanwhile, I further suggested that a parallel development with juridification of authoritarian politics was the expansion of grassroots forms of legal mobilisation and consequently the key role of discourses of legality and rights in many recent forms of activism especially since the 2000s.

Within this important context of the modern vision of revolution in Egypt and the key role of law in both authoritarian politics and the struggles against it, I thus focused on the popular praxis of the ‘25 January’ revolution. Examining several examples from popular forms of mobilisation, their public performance and demands, during the early stages of the revolution (including during the occupation of Tahrir Square, public marches and demonstrations), I proposed that, due largely to its prominent role in recent forms of grassroots activism, language of law and rights seemed to provide one of the main unifying rallying points for different groups who joined that otherwise diverse, leaderless revolution (Chapter 4). Against the backdrop of decades of ‘rule by law’ under Sadat and Mubarak, and inspired by their many recent experiences of legal mobilisation against it, I argued that for many revolutionaries in Egypt law was not understood as incidental to their visions of change towards a better society and to their methods and praxis of revolution, but rather as an integral part of them.

Nevertheless, along with a considerably juridified conception of revolution, the popular praxis of revolution in Egypt seemed to be marked also by another, equally significant, feature. Rather than seeking to capture state power, the praxis of revolution and its underlying vision of change, Chapter 4 proposed, seemed to be concerned largely with bringing about radically different forms of intrasubject and state-society relations and political culture. The utopian desire for a different, better world (common in all revolutions) which had brought many Egyptians together in streets and squares across the country seemed to be largely oriented towards radically new forms of social relations and political culture characterised, among other things, by inclusion despite difference,

diversity, solidarity, and participatory politics in contradistinction to Mubarak regime's paternalistic, exclusionary, divisive, and nepotistic politics.

Taking these historical observations into account, the praxis of revolution and its underpinning visions, I argued, can be seen as comparable and thus better understood when we pay attention to how they contained elements of both continuity and change compared to the visions of revolution and law in the past. During the decades before the revolution Egyptian people had been oppressed by both the language of 'revolution' (under Nasser) and by the language of 'law' (under Sadat and Mubarak). Therefore, through their praxis of revolution in 2011 they summoned both languages of revolution and of law but this time envisioning and enacting them in ways which were radically different from the past. Whereas Nasser's 'revolution' had turned into a top-down, homogeneous, authoritarian utopian project in the name of which rights and freedoms were eroded, and due processes of law suspended, the popular '25 January' revolution sought to bring back utopianism but this time with an emphasis on legality, as well as diversity and autonomy – revolution envisioned in a juridified way. Whereas Sadat-Mubarak's 'law' had turned into a juridified forms of authoritarianism in which legal institutions turned into tools of social control to prevent change, the popular '25 January' revolution sought to re-imagine and enact law and legal institutions, as if they were otherwise, to bring about meaningful change and radically transform the hitherto paternalistic, undemocratic forms of political and legal culture – law envisioned in a revolutionary way.

Crucially, however, one of the main methods the participants adopted to achieve these utopian, revolutionary visions, Chapter 4 suggested, was by seeking to prefigure those desired social relations and forms of political culture through public performances of those changes in the here-and-now, rather than hoping for them to come about in future. Thus, another key conclusion of Chapter 4 has been that the popular praxis of revolution in Egypt was considerably prefigurative in terms of method: participants actually enacting social relations as if they were different, in order to make them different.

Consequently, based on the finding that the conception of revolution in Egypt was marked, among other things, by both juridification and utopian prefiguration, one of the major arguments of the thesis has been that a fuller, more faithful study of that revolution would require studying juridification and utopian prefiguration not as separate and contradictory, but instead as intrinsically related and mutually entwined. I have thus argued that the juridified praxis of revolution in Egypt would be better understood if we pay equal attention to its utopian features and prefigurative methods, and similarly, our knowledge of common utopian forms of prefiguring revolution may be extended if we

take into account their juridified aspects. This analytic perspective has thus been adopted with the aim of providing a better understanding with regards to the dynamics of the contested juridification of revolution in Egypt as well as the praxis of activist lawyers as part of that contestation.

The popular, juridified visions and praxis of revolution, on the one hand, and the ruling elite's use of different legal tools against the revolution on the other, turned the domain of law, legal discourses and institutions into a contested domain marked by conflicts over visions of revolution and change. The period after the fall of Mubarak was in particular a crucial period for the revolution, as Chapter 5 has shown, for it witnessed an intensification and expansion of juridification of politics by both revolutionary and counter-revolutionary forces. The ruling elite, feeling threatened and seeing opportunity, intensified the use of legal tools and institutions at their disposal to counter, contain, and redirect the revolutionary movement while seeking to protect and expand their power and interests. At the same time, inspired by their collective praxis of solidarity and revolution, and emboldened by the ensuing political opening after their success in removing Mubarak, many revolutionaries continued their largely juridified struggle, now envisioning and mobilising for far profounder changes and demands.

Through examining example from a number of constitutional and administrative court cases and declarations from this period as well as several statutory provisions, and criminal prosecutions and prolonged detentions of revolutionaries, I suggested that the ruling elite drew on different forms of juridification including constitutionalisation, judicialisation, legal proliferation, and criminalisation (as defined in the Introduction). On one hand, different political elites resorted to higher administrative and constitutional courts in their efforts to dominate or influence the direction of political developments. On the other, all post-Mubarak regimes (the military, Morsi, and Al-Sisi) intensified their practices of legal intimidation which involved the increasing use of (or threat to use) the criminal justice system as well as military and exceptional courts in order to intimidate and subdue those involved in the revolution. While considering some such examples of legal intimidation, I proposed that beyond their readily visible physical coercion of the revolution, ruling elite's forms of juridification mostly shared, crucially, certain underlying visions of revolution, politics, and change often in contradistinction to those shared and enacted by revolutionaries. The conception of revolution underpinning the ruling elite's juridification of revolution seemed to be marked broadly, as Chapter 5 showed, by strong formalism and state-centrism, reducing diverse forms and processes of struggle to no more than a single, extraordinary but momentary, event of change defined

exclusively by its 'outcome' and within a periodised revolution-transition-democracy narrative, and based on an exclusionary vision of society.

Meanwhile, examining some juridified aspects of the popular revolutionary struggle, including popular mobilisations during the drafting of the constitutions in 2011 and 2012 and those demanding the criminal prosecution of Mubarak and his allies in 2011, I further proposed that they seemed to be informed, in contrast to ruling elite's forms of juridification, by a different underlying conception of revolution. Revolution was broadly imagined as ongoing processes which were not always directly targeted at changing the state but also consisted in new, bottom-up, inclusive, public performances of social relations and political-legal culture in the here-and-now (Chapter 5). Following my emphasis with regards to understanding juridification with attention to its crucial prefigurative and utopian features, these popular forms of legal mobilisation could be approached, not as separate from, but in conjunction with and in the light of other revolutionary practices of people at the same time – that is the processual, prefigurative methods of the revolution in their focus on political culture and state-society relation. A significant part of this juridified praxis of revolution consisted in making utopian forms of legal demands (Weeks, 2011). These were revolutionary demands which their very act of being demanded and their visions for change were based on prefiguring legal institutions, processes, and spaces (how), against the very closure of political possibility and of legal institutions through seeking to prefigure a different political-legal culture based on values of inclusion, diversity, and participation.

Against the backdrop of a legal system which, despite affording activists some space for contesting the regime, had for long been largely closed to the people and part of legal intimidation and control of the population, I argued, people were now collectively entering into those institutions by compelling them to follow the wills, not of the ruler, but of the people. In other words, the prosecution of Mubarak was a popular demand that for it to be carried out the political-legal apparatus would have had to act in contrast to its long-standing basic logic and *raison d'être* – an intrusive-absent system with colonial roots designed for social control and legal intimidation of the population – and therefore to change fundamentally. Rather than distaste for legal-constitutional matters which had always been promoted by the ruling elite, this approach to political culture pointed to a popular perspective that no longer saw whatever happened at the level of legal and political institutions as external to the ordinary populace. Egyptian revolutionaries could thus be seen as seeking to prefigure a different political-legal culture by reclaiming the law and legal system through demanding it to work radically differently, by prosecuting the same person they were loyally serving for a long time. They could be seen as seeking to

make a robust entry and repossess legal institutions which they saw themselves as excluded from and in the process contest, defamiliarise, redefine the same domain as they bring other purposes and imaginations to it.

One particular group which played a considerable role in those processes of juridification of revolution were activist lawyers. Following from the analysis of the contested juridification of revolution, in the latter part of the thesis I focused specifically on the praxis of Egyptian activist lawyers with the view to examine their key role and significance within the post-Mubarak, juridified context of the revolution. I did so through venturing further into studying *processual, supra-legal* aspects of juridification of revolution in Egypt through examining the praxis of activist lawyers, especially as part of those utopian-prefigurative forms of struggle. This study of activist lawyers within the contested domain of law and revolution concluded that the praxis of many activist lawyers particularly mattered for the broader revolutionary movement, due to the ways in which they imagined the nexus between revolution and law, and how such visions informed their common forms of legal practice as part of both the broader revolutionary struggle and in their everyday legal work.

I found that the praxis of many activist lawyers in Egypt was a considerably process-oriented form of legal support and representation driven by an emphasis on continuity, perseverance, and solidarity performed in the here-and-now. At the same time, while aware of its grounded experience of law to the contrary, it was a form of legal praxis which insisted on reimagining law and on treating legal-institutional processes and spaces as if they were otherwise. The main argument here was that considering the emphasis of those lawyers on continuity, and on the processes of legal praxis in support of the revolution, the praxis of activist lawyers could be understood as a form of prefigurative legal praxis (Cain & Harrington, 1994). That is, a *process-oriented* form of legal support, driven by ideas of *continuity and perseverance*, that aims to perform, in the *here-and-now*, acts of solidarity in protecting revolutionaries, while, in the process, *prefiguratively* reimagining and treating law and legal-institutional actors and spaces *as if* they were otherwise—characterised by qualities and attributes envisioned and desired by the revolutionary movement.

III. IMPLICATIONS AND CONTRIBUTIONS

Beyond providing a much-needed addition to existing scholarship on juridification through examination of little-explored practices of juridification in Egypt, the thesis aimed to provide a number of other contributions to the extant scholarship. It sought to extend the scholarship on juridification and the politics of law in authoritarian contexts with the view to challenge the common approach which treats legal institutions and actors merely as tools in the hands of those regime (Moustafa & Ginsburg, 2008). Approaching juridification as a domain of struggle situated within specific social and political relations of power, the thesis thus emphasised the significance of the historical, sociopolitical, and legal conditions within which it acquire its particular meaning and significance (Huneus, Couso & Sieder, 2010, 5), challenging such narrow, normative, formalist approaches to juridification adopted particularly in studying authoritarian context.

Furthermore, the thesis sought to offer a different approach to the study of the Egyptian revolution and thus our approaches to the concept of revolution. It did so through focussing on popular, seemingly paradoxical, juridified conception of revolution, that is, a praxis of revolution based on juxtaposing law and radical social change through prefiguration juridification of revolution. This approach to the study of Egypt's juridified revolutionary struggle can equally provide helpful insights for our broader understanding of the potentials and predicaments of those (radical) social movements that may choose to draw on legal means, as well as the lawyer who participate in those revolutionary struggles.

Therefore, bringing juridification and prefiguration together, considered in the light of my findings in relation to juridification of revolution and the praxis of activist lawyers in Egypt may have further implications for the existing scholarship on legal mobilisation in general and activist and cause lawyers in particular, in Egypt and other similar contexts. Below, I discuss some of these potential implications.

My study of the utopian, prefigurative juridification of revolution in general, and the work of activist lawyers in particular, helped make visible a significant and potent domain of practice, politics, and change. Much of the current scholarship on juridification and cause lawyering, however, shares a rather limiting vision of what meaningful practice and change is. Attention is often paid to the possibility and extent of legal mobilisation and of lawyers' achievements in reforming institutional frameworks and practices, thus treating formal institutional change as the main aim and domain of legal mobilisation and of 'meaningful' political change (Moustafa, 2007; Brown, 2008). Such formal-legal perspectives, as the findings of this thesis show, might fail to capture the complexity of

bottom-up juridification, legal mobilisation in Egypt (or other autocratic regimes) especially when their activism is directed at the everyday level of change, and/or is not necessarily and directly targeted at the state.

Furthermore, many scholarly approaches to studying bottom-up juridification and legal mobilisation, and of activist lawyers are outcome-oriented. The main focus is often whether and in what ways the legal mobilisation or the work of lawyers can bring about a particular outcome e.g. how convincing and innovative their legal arguments are vis-à-vis judges and whether they succeed in winning cases for their underprivileged or activist clients (Ziegler, 2010; Quigley, 2012). The processes of their work are often seen as either analytically insignificant or only relevant insofar as they relate or contribute to the final (legal) outcomes of lawyers' work. The processes *as such* do not carry much analytic weight worthy of further study. With normative, success-failure frameworks, they often tend to focus on legal *outcomes* of activist lawyers' work and thus ask question about, for example, how lawyers' work may ultimately reproduce structures of domination within authoritarian system (Froissart, 2014).

These are of course important questions. It is necessary to highlight the legal outcomes of popular legal mobilisation or of activist lawyers' praxis, as is to study aspects of authoritarian, imperfect context in which they work. However, the problem with such perspectives is that, with their underlying outcome-dependent perspective, they may inadvertently overlook or distort what are sometimes more complex and perhaps analytically valuable processes of grassroots legal mobilisation, bottom-up juridification, or activist lawyering. Processes which may not (be able or necessarily try to) achieve concrete, far-reaching, and formal result, but are nonetheless significant instances of political action. For instance, as noted in Chapter 4, the sheer involvement of many Egyptians in street mobilisations and debates about the drafting of the Constitution in 2012, though perhaps less consequential in relation to the final text of the Constitution, was in itself a novel and important process worthy of study. Focusing solely on the strengths or weaknesses of Constitutional provisions regarding, for instance, women's position or human rights, though necessary, may overlook the political implications of the genuinely felt involvement of many people even if it remained at the level of street debates.

This understanding may lead us to recognising a more basic limitation of many studies of legal mobilisation and cause lawyering, namely their analytic emphasis on considering only what can be understood as 'legal' (whichever way defined). The underlying analytic framework in many of the studies mentioned above is driven by an interest in studying activist lawyers only to the extent that they are *lawyers*, and insofar as it relates to their

'legal' effects, strategies, and achievements. It is an approach that understands them as activist *lawyers*, but hardly as *activist* lawyers. They are seen primarily as *lawyers* who get involved in some form of activism, yet rarely as activists who, for certain political considerations, might have chosen the law as the tool and domain of their struggle. This "occupationist orientation", as Cain & Harrington (1994, 1) have noted, leaves under-theorised many important aspects of the specific place of lawyers in society. A framework which prioritises the law/lawyers over activism/activists, I thus argue, fails to adequately reflect the complex dynamics of the praxis of activist lawyers in Egypt (and perhaps in similar contexts).

Many activist lawyers and human rights NGO workers in Egypt had been political activists for some time before becoming trainee lawyers or interns with law centres and NGOs. Indeed, many seemed to have chosen the route of law and human rights because they had found it a more viable and often effective, and less risky form of activism for affecting change, where most other possible avenues of genuine political activity were aggressively shut off by the state. This is the political trajectory embarked upon by many activist lawyers,¹ including several of my respondents (e.g. Nehal and Kemal).

The well-known story of the late veteran activist lawyer, Ahmed Seif (who was seen by many as the godfather of activist lawyering in Egypt) is an exemplary case which points to the limits of this. After years of political activism, Seif decided to study law while spending prison term for his activism, and not long after his release, he started working as a lawyer, and indeed went on to help establish several law centres in Egypt.² Therefore, to understand the complexities of activist lawyering in Egypt (and in similar contexts) we may need to transcend this methodology, expand our focus beyond the legal aspects of activist lawyers' praxis, and study them, as I have done in this thesis, as activists as much as lawyers.

¹ For another similar example of a political activist (Tarek Hussain) becoming an activist lawyer, see 'From Political Prisoner to Rights Defender: The Story of Egyptian Tarek Hussein', *Egyptian Street*, 6 June 2017. <https://egyptianstreets.com/2017/06/06/from-political-prisoner-to-rights-defender-the-story-of-egyptian-tarek-hussein/> (last accessed 19 April 2018).

² *Amnesty International*. 2008. 'Interview with Egyptian Human Rights Defender Ahmad Seif El-Islam'. 10 December. Available from <https://www.amnesty.org/download/Documents/56000/mde120242008en.pdf> (last accessed 10 July 2018).

IV. LIMITATIONS AND SUGGESTIONS FOR FUTURE WORKS

In terms of its methodology, findings, and conclusions, there are limitations that may affect their validity or generalisability. Due to the difficulties with observation, access to lawyers, or access to other actors, my study is based on a rather limited number of activist lawyers' reflections on their own work. Further research could benefit from speaking to a larger number of activist lawyers, also through sustained observation of their work with clients, activists, state officials etc. in different places. Similarly, although all my lawyer respondents were based in Cairo, some of them were frequently involved in cases which were based outside of Cairo. Nevertheless, interviewing lawyers from other cities would have certainly enhanced the breadth and depth of my analysis. The Cairo-based nature of my field work could thus be seen as a limit of my thesis, and one fruitful, possible suggestion for further studies would be to focus on activist lawyers outside Cairo.

Moreover, my approach in this thesis has largely been based on the views of lawyers themselves; however, future research would benefit from studying juridification of revolution and the role of lawyers from the specific perspective of revolutionaries, activist, and other underprivileged social groups who might seek those lawyers' support and are represented by them. One fruitful analytic benefit of this approach would be to help better understand the effects of the politicisation of legal activism by lawyers which I briefly critiqued at the end of Chapter 7. Similarly, further research would benefit from engaging in more detail with the ways in which activist lawyers approach and deal with sensitive cases in relation to issues of religious freedom and sexual rights (as I briefly critiqued in Chapter 6).

APPENDIX 1

LAWYERS

Name	M/F	Age group	Affiliation	Interview date
Alaa	M	40s	Independent	2015
Amr	M	20s	Law centre	2014
Dina	F	40s	Human Rights NGO	2014
Hisham	M	40s	Law centre	2015
Hossam	M	40s	Law centre	2014
Kemal	M	30s	Human Rights NGO	2014
Laila	F	30s	Independent	2015
Malek	M	40s	Human Rights NGO	2015
Nehal	F	30s	Human Rights NGO	2014
Nesreen	F	30s	Independent	2014
Sharif	M	30s	Independent	2014
Tarek	M	40s	Human Rights NGO	2015
Wael	M	40s	Human Rights NGO	2014

ACTIVISTS

Name	M/F	Age group	Interview date	
Ahmed	M	19	2014	Student activist
Bassem	M	50s	2015	Trade union activist
Lina	F	20s	2014	Student activist
Magdy	M	30s	2015	Rights NGO activist
Sameh	M	30s	2014	Coptic Christian, blogger

TABLE OF STATUTES

Law no. 162 of year 1958 (The Emergency Law)
Law no. 10 of year 1961 (Law on Combating Prostitution, Incitement and its Encouragement)
Law no. 25 of year 1966 (Law on Military Judiciary)
Law no. 40 of year 1977 (Law on Political Parties)
Law no. 34 of year 2011
Law no. 107 of year 2013 (Law on Demonstrations)
Law no. 136 of year 2014 (Law on the Protection of Public Facilities)

TABLE OF CASES

Supreme Constitutional Court, Judicial year 3, Case No. 353, June 1986.
Supreme Constitutional Court, Judicial year 4, Case No. 31, May 1987.
Supreme Constitutional Court, Judicial year 4, Case No. 98, May 1988.
Supreme Constitutional Court, Judicial year 5, Case No. 191, April 1989.
Supreme Constitutional Court, Judicial year 13, Case No. 11, July 2000.
Cairo Criminal Court (2011), Case No. 3958, November 2011.
Administrative Court, Judicial year 65, Case No. 45029, December 2011.
Supreme Administrative Court, Judicial year 66, Case No. 26657, April 2012.
Supreme Constitutional Court, Judicial year 34, Case No. 20, June 2012.
Cairo Criminal Court (2011), Case No. 1061, June 2012.
Cairo Criminal Court (2011), Case No. 3642, June 2012.
Supreme Constitutional Court, Judicial year 34, Case No. 112, June 2013.
Cairo Criminal Court (2011), Case No. 1110, June 2013.
Giza Criminal Court (2013), Case No. 11818, August 2014.
Cairo Appeal Court (2011), Case No. 1227 November 2014.
Supreme Constitutional Court, Judicial year 17, Case No. 72, November 2014.
Supreme Constitutional Courts, Judicial year 37, Case No. 15, March 2015.
Giza Criminal Court (2014), Case No. 2210, April 2015.
Supreme Administrative Court, Judicial year 59, Case No. 19485, July 2015.
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