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THE UNEXPECTED TRIALS OF EGYPTIAN LEADERS: IS IT A QUESTION OF LAW OR POLITICS?¹

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At the risk of sounding apathetic and unenthusiastic, it should be noted that in every revolution the best day is the day on which the revolution is acknowledged and declared a success. From that point, on it goes mostly downhill because the accumulated problems of the past come rushing to the fore, demanding instant resolution, with anger, frustration, disappointment, and hope all mixed together and competing for attention. It always takes time for revolutions to simmer down and for life to fall into a normal routine. As is generally well-known, revolutions are never tidy; instead, they are messy, chaotic, and unpredictable. Hopes are frequently destroyed—though some remain—and the reality of the situation and an appreciation for what needs to be done makes for a rude awakening. The magical days in January 2011 and June 30, when Egyptians from all walks of life came together in Tahrir (“Liberation”) Square to demand the end of Mubarak and Morsi’s presidency have long passed. But the memory of those days will remain in the nostalgia of Egyptians. It was a glorious period for the entire world to witness. Tahrir Square was a revealing and dramatic look at the revolution that transformed the modern history of one of the world’s oldest civilizations. But the revolutionary light has been turned off in Tahrir Square and the extraordinary feeling of elation of people from many diverse backgrounds has faded away after the seemingly impossible dream of removing Hosni Mubarak from the presidency was achieved. The challenges ahead are not

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likely to diminish these hopes. But then, many a revolution have been taken over or co-opted by others, and the peoples' hopes are crushed and dashed. This is the unfortunate case of Egypt's "revolution" of January 2011. Democracy as a process may have succeeded, but freedom, human rights, and the rule of law will surely be lost. These trials are Egypt's most significant step yet toward establishing the principle that "no leader is above the law." It is obvious that the outcome of the Mubarak and Morsi trials were not to satisfy the general public, and it is feared that a backlash against the judiciary will occur. Already the integrity and independence of the judiciary is being questioned by many sectors of the Egyptian public. The danger is likely to be that demands for such trials shall constrain judicial processes, reduce the rights of the defendants, and have serious harmful effects on the rule of law in Egypt. Not to be overlooked, Mubarak and Morsi's trial will have significant physiological and sociological effects on the Egyptian people and Arabs throughout the region, and send a clear message that rule of man has ended and rule of law has returned. Historically, Morsi and his predecessors were regarded as untouchable and irreproachable pharaohs who governed the country with absolute power. Yet, this mode of governance, which has existed in Egypt and the Arab world thus far, could end with outcome of Mubarak and Morsi's trials. "It is unclear what the social impact of these trials will be, but it is [likely] that it will contribute to a shift in the Egyptian and Arab psyche that had always revered authority, shunned dissent, and rejected the questioning or criticism of those elders who wielded power." One should bear in mind that the Islamic model of leadership emphasizes "khuluq" or behaving ethically towards all (Muslims and non-Muslims) alike. Firmly grounded by his faith in God, and mindful of his role as a trustee, a Muslim leader is expected to be just, behave righteously, strive towards self-improvement, and never break his word. He is to consult with others, especially in areas where he is not competent. He is expected to bear adversity patiently, and remain forever humble. Hopefully, historians and political analysts will record the significance of these trials. It was the first time that a two head of state was forced to resign by peaceful popular demand and was put on trial for at least some of his faults and misdeeds. For the lawyers and policymakers working on the front lines of this issue today, it is important to recognize the current debates which still open the floor and the door for help to develop the norms that will guide and bind the national and global community in its response to this sort of liability in the future. Correspondingly, a coherent national and international solution for this sort of responsibility in the light of global implications not only in Egypt but throughout the whole Middle East is a sector ripe for reform for the so-called "The Arab Storm not Spring." When all is said and done, some will say the glass is half full while others will say it is half empty. The author believes the glass to be half full. The uprising has achieved some successes but Egypt has a long way to go, not only to achieve democracy and the rule of law, but also to attain economic development and to regain its place as the leader of the Arab World and an important contributor to peace and stability in the region.

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INTRODUCTION

Mohammad Morsi's election into office as a president was Egypt's first attempt at a free, transparent, and fair election in its modern national history. Out of the 26 million people who voted in Egypt Morsi received a little more than 50% of the votes against his competitor Ahmad Shafiq, the previous prime minister under Hosni Mubarak's dictatorship.² On June 30, 2012, Morsi was sworn in as President of the Republic.³ During his presidency, he affirmed and declared his executive decisions beyond judicial review, giving him complete legislative powers until a new constitution enacted his powers as inalienable. In 2012, Morsi pushed a pro-Islamist constitution through a prevalent referendum that was passed with less than thirty per cent (30%) of the general vote.⁴ As Egyptian people committed to secular democracy, and a believer in the Islamic values, which consider common and universal, it could not appear in an optimistic way on the future

² See *Celebration in Egypt as Morsi Declared Winner*, AL-JAZEERA (June 24, 2012), <http://www.aljazeera.com/news/middleeast/2012/06/201262412445190400.html>. See also *Morsi Wins Egypt's Presidential Election Muslim Brotherhood Candidate Declared the Official Winner with 13.2 Million Votes in Second Round*, INFO WARS (June 24, 2012). Available at http://www.upi.com/Top_News/World-News/2013/03/11/Morsi-children-to-lose-US-citizenship/UPI-91331363014619 (last visited June 26, 2014).

³ *Id.* See also David D. Kirkpatrick, *Named Egypt's Winner, Islamist Makes History*, THE N.Y. TIMES, June 24, 2012.

⁴ See Abdel-Rahman Hussein, *Mohamed Morsi Indicates Judicial Decree Will Be Limited*, THE GUARDIAN, Nov. 26, 2012. Available at <http://www.theguardian.com/world/2012/nov/26/mohamed-morsi-decree-sovereign-matters> (last visited June 26, 2014).

of an Egyptian theocracy governed by the Muslim Brotherhood (“MBs”), even their democratic growth to power had to be respected.⁵

On January 25, 2011, the Egyptian people took to the streets, specifically *Tahrir* (Liberation) Square and in 18 magical days, with the help of social media which helped enable their cause and reach out to a wider audience, the people managed to overthrow the thirty-year iron-fist corrupt tyrannical regime of Hosni Mubarak.⁶ The fundamental reason that unified the people of Egypt was a desire for democracy, freedom, specifically freedom of speech, to able to terminate corruption, bring back rule of law and end sixty years of military authoritarianism that had misused power and exploited the people of Egypt.⁷ After the fall of Mubarak and the election of Morsi, on June 30, 2013, millions of Egyptians went back to the streets to preserve the identical principles and values of January revolution along with their expression of their dissatisfaction of the MB’s government policies under the removed President Mohammad Morsi.⁸ This time Egyptian dissatisfaction arose out of trying to defend their country from becoming a theocratic autocracy under the Muslim Brotherhood.⁹ Had a constitution—either it be the abrogated 1971 or the *de facto* 2012—been in effect, an impeachment process would have been possible option. As a result, there wasn’t a constitutional procedure in place through which impeachment or removal could have been tracked or made possible.¹⁰ Legally speaking, whether this establishes legitimacy for the Egyptians to demonstrate against the government for the second time for the birth of the *third republic* is a query of legality dominating over legitimacy. Nonetheless, whether that is adequate or appropriate for the army to be in favor and cogently remove the first elected president is both an enquiry of

⁵ See *Egypt Election Results: Mohammed Morsi, Muslim Brotherhood Candidate, Announced President*, THE HUFFINGTON POST, June 24, 2012.

⁶ For further discussion on the causes of the January 25th Egyptian Revolution, and its events, see generally Mohamed ‘Arafa, *Towards a Culture for Accountability: A New Dawn for Egypt*, 5 PHOENIX L. REV. 1 (2011).

⁷ *Id.* See generally Mohamed ‘Arafa, *Towards A New Anti-Corruption Law in Egypt After Mubarak: A Comparative Study Between the United States Foreign Corrupt Practices Act, Egyptian Anti-Bribery Law, and Islamic Law*, LAMBERT ACADEMIC PUBLISHING (2013). Available at <https://www.lap-publishing.com/catalog/details/store/gb/book/978-3-659-39614-4/towards-a-new-anti-corruption-law-in-egypt-aftermubarak?>

⁸ *Id.* See David D. Kirkpatrick, *A Vague Role for Religion in Egyptian Draft Constitution*, THE N.Y. TIMES, Nov. 9, 2012.

⁹ *Id.* For a full account of information regarding the interpretation of Islamic law, see Mohamed ‘Arafa, *President Mursi’s Egypt Arab Spring: Does Egypt Will Continue to Be a Civil State or under the Umbrella of Islamic (Sharie’a) Law and Islamism?* 9 US-CHINA L. REV. 6 (2012).

¹⁰ See David D. Kirkpatrick, *Army Ousts Egypt’s President: Morsi Is Taken Into Military Custody*, THE N.Y. TIMES, July 3, 2013.

constitutional legitimacy and legality—(bearing in mind the difference between them, as legality means a formal, political along with legal process, and legitimacy reflecting the advanced constitutional values and principles).¹¹ The author believes that due to the scrambled constitutional condition, both sides (Deposed President Morsi and the military) were in part wrong and partly right.

In this regard, there are geopolitical outcomes to such a *status quo*, its further most impact would be to join the revolutionary dedication prevailing in other Middle Eastern countries that have gone through what has been—obliquely—called the “Arab Spring,” in Western literature and that in turn may strengthen the victories of Islamic movements.¹² To be clear every revolution raises questions of legitimacy and legality.¹³

Past and present revolutions have shown genuine claims, complaints, and goals, but these objectives are seldom achieved through the validity of a lawful process because, had such a process existed, then the legitimacy of these claims, grievances, and goals would have been addressed.¹⁴ Instead, revolutions are the ultimate resort to achieve, by means of popular protest and sometimes by force what a lawful, constitutional, and legal process failed to achieve.¹⁵ Throughout Egyptian history, the one device that has continuously held Egyptians together is the commonsense of “Egyptianhood” as Egyptians love their nation and are loyal to their nation and they are as much a part of Egypt now as they were in the Pharaohs’ days.¹⁶ This comprises Muslims and Coptic Christians, intellectuals and blue-color workers, urban and rural, rich and poor.¹⁷ Egypt as a nation has developed when the general public sees itself as unit that gathers in solidarity and moves back when its individuals have been estranged.¹⁸ If no

¹¹ See generally Ingy Hassieb, *Egypt President Mohamed Morsi’s Removal Sparks Celebrations*, LOS ANGELES TIMES, July 3, 2013. See also Samer Al-Atrush, *Egypt Army Ousts, Detains, President Morsi*, FOXNEWS, July 3, 2013. Available at <http://www.foxnews.com/world/2013/07/03/egypt-army-ousts-detains-president-morsi/#ixzz2ffpdDOsD> (last visited June 26, 2014).

¹² See *Egypt: Threat of Escalating Street Violence*, HUMAN RIGHTS WATCH, July 7, 2013. Available at <http://www.hrw.org/news/2013/07/07/egypt-threat-escalating-streetviolence> (last visited June 27, 2013).

¹³ See generally Khaled Abou El Fadl, *The Collapse of Legitimacy: How Egypt’s Secular Intelligentsia Betrayed the Revolution*, ABC RELIGION AND ETHICS, July 11, 2013.

<http://www.abc.net.au/religion/articles/2013/07/11/3800817.htm> (last visited June 27, 2014).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ ‘Arafa, *supra* note 7, at 7.

¹⁷ *Id.*, at 3. See also M. Cherif Bassiouni, *The Fight for Democracy in Egypt’s Liberation Square: Background Paper*, CHI. COUNCIL ON GLOBAL AFF., 1 (Feb. 10, 2011). Available at

http://www.thechicagocouncil.org/UserFiles/File/Events/FY%2011%20Events/02_February_11/EgyptBackgroundPaper110207.pdf. (last visited June 27, 2014).

¹⁸ *Id.*, at 2-3.

charismatic leader has appeared in Egypt to unite the folks for Egypt's public welfare, then may be the individuals will have the political growth and reasonable sense to reach to that concern on their own.¹⁹

In this respect, civil trials of leaders are more important than Military trials, in other words, illegal custody (arrest) or illegitimate detention in non-criminal form or efforts to prosecute President Morsi along with those who worked with him during his presidency infringes both the principles of legitimacy and legality designed by the Egyptian criminal law along with the supreme principles of international law and international human rights law.²⁰ In case of eventual prosecution, Morsi and his consultants (collaborators) will be under the category of "political prisoners."²¹

It should bear in mind that, transitional justice and the access to it entails various instruments to implement such as commissions of truth, inquiry, and reconciliation, offering the victims compensation, memorialization, and the like. These are all temporary and extraordinary policies and standards, they have nothing to do with the current regular justice's administration in Egypt and should be reinforced and maintained by rule of law-oriented strategies.²²

Most analysts seem to have overlooked the convergence significant factors to occur in the upcoming period of time. One of the most significant is the judgment in the over ruled case of former President Mubarak known by media as the "Trial of the Century" and the start of President Morsi criminal trial.²³ It should be kept in mind that these sorts of criminal trials will divide Egypt further and likely excavated its polarization, as it will generate demonstrations and riots.²⁴

Against this succinct backdrop, this article will examine the facets of the leadership during the Egypt's authoritarian technical bureaucrats, Hosni Mubarak and Mohammad Morsi. The article will explore not only the meaning of this liability in the technical sense, but will also inspect the legal

¹⁹ *Id.*, at 2.

²⁰ See generally AHMAD 'AWADBELAL, MABAD'EKANUN AL-'UQUBAT AL-MASRY: AL-KESM AL-'AMM—NAZRAYIAT AL-GRIMA AH AL-JINAI'AH [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK 1: THE THEORY OF CRIMINAL OFFENCES] (Arabic/English Source 2004).

²¹ See THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, (*opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 and *entered into force* Mar. 23, 1976). Available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (last visited June 27, 2014).

²² *Id.*

²³ See generally Mohamed 'Arafa, *Mubarak Criminal Liability: Is it a Fair Trial after Revolution or a Drama Serious?* 1 CONTRAPONTO ELECTRONIC J. OF SOCIOLOGY GRADUATE PROG. FEDERAL UNIV. OF RIOGRANDE DO SUL (UFRGS, Brazil 2014). Available at <http://seer.ufrgs.br/contraponto>.

²⁴ *Id.*, at 5.

framework, which is based on the fundamental rules of accountability, and applying the framework to modern trials of leaders in the Arab Middle East. Furthermore, this article will provide the main rules and principles of the leadership's liability through comparing this concept under Islamic law, constitution, and the domestic law (Egyptian Penal Code). Finally, this article looks to the future of this responsibility in light of recent developments throughout the whole Middle East. As this introduction makes clear, the Arab Uprisings have given rise to legal and political chaos. This discontent could be improved by restructuring new laws in numerous sectors to boost the societies in Arab countries, and to propose a new statute governing leader's accountability.

I. MUBARAK, MORSI, AND THEIR RÉGIMES CRIMINAL LIABILITY IN EGYPTIAN CRIMINAL LAW

Egyptian society has become extremely divided and diverged specially with their former leaders' criminal responsibility. No one can really evaluate how deep the political, economic, legal, and social gaps are or what outcomes or consequences they may have in the upcoming future.²⁵ These outcomes are assuredly a risky signal for a community that necessities to be unified to face and optimistically to overwhelmed a crowd of existings.²⁶ If this division endures, social separations will excavate and political constancy will be vulnerable, there by averting the conclusive leadership and broad-based maintenance required underlining these matters.²⁷

Within the perspective of reconciliation, transitional justice, and to guarantee the fair, transparent trial for Egypt's former presidents, it is essential to establish a credible national commission of inquiry and truth—by the Human Rights Council for example—and make their reports available online to the general public.²⁸ This is necessary in order to determine the facts and establish responsibility and criminal culpability.²⁹ In this regard, the commission should have all the pledges of independence, and obtain the collaboration of the current régimes and assistances from all political forces in Egypt as well as the international community comprising

²⁵ See Dina Ezzi, *UN General Assembly Delegation Will Focus on Egypt's Future*, AHARAMONLINE, Sept. 24, 2013.

²⁶ 'Arafat, *supra* note 24, at 51—52.

²⁷ *Id.*

²⁸ See *Egypt Reconciliation Difficult But Necessary: EU*, FOXNEWS, Sep. 19, 2013, <http://www.foxnews.com/world/2013/09/19/egypt-reconciliation-difficult-but-necessary-eu/>.

²⁹ *Id.*

domestic and global civil society.³⁰ This body should involve individuals of highest degree of transparency, fairness, honesty, reliability, integrity, competence, and experience and be given the measures, resources, and assurances of freedom of action to attain a reasonable, neutral and unbiased actual-finding and valuation of what happened and occurred to ascertain the reality of the facts as well as a determination of where liability (criminal blame) lies mostly concerning the international criminal accountability for what could be acknowledged as crimes against humanity and torture; and ruins of universally protected human rights within the principles of the criminal justice system and the norms of the humanitarian law.³¹

A. *Former President Mubarak's Overrule (Retrial)*³²

1. The First Criminal Hearings (First Verdict): Brief Backdrop

This is not a case about the murder of one or 10 or 20 national civilians, but a case of an entire nation. This case gave rise to the idea of liability without fault or responsibility, known as the great doctrinal debate material, and different views and trends in legislation. In this respect, it should be noted that Egypt had already begun to make strides and progress in the movement towards democracy, as shown by the event on August 3, 2011, when the unthinkable happened.³³

Hosni Mubarak appeared in “a normal criminal court, namely the Fifth Felonies Circuit of the Cairo Court of Appeals.”³⁴ The court was presided over by a civilian natural judge, which ensures, or at least gives a *prima facie* showing, that the former President will enjoy basic due process guarantees of fair criminal proceedings.³⁵ The Egyptian Public Prosecution charged Mubarak with three criminal offenses.³⁶ Further, to the allegation of premeditated murder against demonstrators during the uprisings against his reign, Mubarak stands accused of separate cases of financial corruption and

³⁰ *Id.* See also Hafez Ghanem, *Egypt Needs Truth and Reconciliation*, BROOKINGS INSTITUTE, Aug. 16, 2013, <http://www.brookings.edu/research/opinions/2013/08/16-egypt-democracy-truth-reconciliation-ghanem>.

³¹ *Id.*

³² This section does not address in-depth the first trial of Ex-President Mubarak as it has been already discussed in full account of details in part one in the author's article referred to in FN 24.

³³ 'Arafa, *supra* note 8, at 30.

³⁴ 'Arafa, *supra* note 8, at 31.

³⁵ 'Arafa, *supra* note 24, at 56-57. See also *Protests Erupt Across Egypt After Surprise Mubarak Verdict*, COMMON DREAMS, June 2, 2012 (Mubarak's sons and assistant ministers of interior acquittals causing outrage).

³⁶ See *Egypt Court to Deliver Mubarak Trial Verdict on 2 June*, BBC NEWS, Feb. 2012, <http://www.bbc.co.uk/news/world-middle-east-17120915> (last visited June 27, 2014).

misuse of power.³⁷

In the first verdict, Mubarak was convicted to life imprisonment for *failing* to stop the killing of protesters during the uprising that forced him from power.³⁸ Furthermore, the Court recited that the documents presented by the public prosecution are insufficient and lack the essential material evidences of proofing which part had the responsibility for shooting the protestors directly with live ammunition, weapons, guns, rifles, etc... which led to their killing and serious bodily injuries.³⁹ Moreover, the Court detailed that the Interior Minister *purposefully* disregarded to make urgent decisions and take precautionary measures to keep his Ministerial spot and protect Mubarak for keeping his presidential position according to the law and constitution.⁴⁰ Furthermore, the Egyptian Criminal Code (No. 58 of 1937) does not encompass a theory of command responsibility, which is only found in the Military Code.⁴¹ In other words, the Egyptian Criminal Code does not include a general theory of criminal accountability and punishment for the act of *omissions*, unless specific (private) criminal intent (intending a definite criminal result) can be proven and established for the failure to act.⁴² In the same vein, the Court said since it was very difficult to arrest the real perpetrators for the intentional homicide and its attempt, the judge acquitted several lower-ranking security officials of criminal responsibility for the same deaths. This decision gave rise to questions about the chain of command, as the Chief Justice criticized and blamed the prosecution for failing to provide concrete tangible evidence that police

³⁷ See *Mubarak to Be Charged for Corruption, Protester Deaths*, CNN WORLD (May 2011). See also *Mubarak and Sons Charged with Corruption, Deaths of Protesters*; (May 2011), and *Hosni Mubarak*, THE N.Y. TIMES, (Updated: Jan. 5, 2012).

³⁸ For further details of the charges against the former Egyptian President and his co-defendants, see Paul Owen and Jack Shenker, *Mubarak Trial—The Defendants and the Charges*, THE GUARDIAN, Aug. 3, 2011. Available at <http://www.theguardian.com/world/2011/aug/03/mubarak-trial-defendants-charges>.

³⁹ See generally David D. Kirkpatrick, *New Turmoil in Egypt Greets Mixed Verdict for Mubarak*, THE N.Y. TIMES, MIDDLE EAST, June 2, 2012.

⁴⁰ See *Mubarak Is Responsible for What Happened Because He Was the Supreme Chief of Armed Forces*, AL-SHROUK (Mar. 19, 2011). Available at <http://www.shorouknews.com/contentdata.aspx?id=412078> (on file with author).

⁴¹ Hazel Haddon, *Lawyers Critique Handling of Mubarak Trial: Legal Eagles Say Flaws of Egypt's Justice System Are Evident in Proceedings Against Former President*, AL-JAZEERA, Aug. 26, 2013. <http://www.aljazeera.com/indepth/features/2013/08/201382684919627867.html>.

⁴² See *Hosni Mubarak to Stand Trial, Prosecutors Say*, LOS ANGELES TIMES, May 25, 2011. Available at <http://www.articles.latimes.com/2011/may/25/world/la-fg-egypt-mubarak-20110525> (last visited June 27, 2014).

officers killed protesters.⁴³

2. The Over rule of the Trial of the Century and its Resuming: The Final Appeal (Ongoing Verdict by the Supreme Court of Cassation)

On August 21, 2013, a Cairo criminal court ordered deposed President Mubarak released from detention in a corruption case that alleged he embezzled funds for the presidential palaces and for renovations in the palace. The court decided to put him in jail for three years imprisonment in connection with this criminal blame.⁴⁴ As part of a criminal settlement for crimes against the public interest according to the Egyptian Penal Code and Criminal Procedural Code, Mubarak repaid the state general's budget several million dollars for the gifts (watches, belts, jewelry, etc.) received.⁴⁵ Additionally, under the emergency law imposed at this time period and due to security reasons, the deputy military commander issued an order that Mubarak should be put under house arrest, as it is a sensitive issue and would be a threat to the national security.⁴⁶ In addition, the criminal court overturned the sentence of life imprisonment on the grounds that the public prosecution lacked tangible and concrete evidence and failed to verify and prove the marchers were killed by the police security forces.

Mubarak still faces a re-trial over his participation in the killing of protesters during the popular uprising in 2011 according to the criminal complicity and conspiracy theories of the criminal law. However, numerous Egyptians observe his release as yet another attempt to terminate the revolutionary condition that began in January 2011 and to reinstall Mubarak's old régime.⁴⁷ On February 11, 2011, when Mubarak resigned two popular national priorities have been taking precedence: (a) prosecute Mubarak and his cronies, and (b) seek to recover Egyptian assets stolen and sent abroad by the corrupt oligarchy of Mubarak. To this day, an estimate in

⁴³ See LAW NO. 58 of 1937 (Egyptian Penal Law, as amended by Law No. 95 of 2003), *Al-Jarida Al-Rasmiyya(h)* [THE OFFICIAL GAZETTE], August 1973, at arts. 112, 116, 40, 230, 235, 17, & 45, (Egypt). [hereinafter EGYPTIAN PENAL CODE].

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See generally Matt Bradley and Tamer El-Ghobashy, *Mubarak to Be Placed under House Arrest after Release: Prosecutors Have 48 Hours to Challenge Decision*, THE WALL STREET J., Aug. 21, 2013. Available at

<http://online.wsj.com/article/SB10001424127887324165204579026572361918800.html>. See EMERGENCY LAW NO. 162 of 1958, *Al-Jarida Al-Rasmiyya(h)* [THE OFFICIAL GAZETTE] (Egypt). See also Daniel Williams, *Egypt Extends 25-Year-Old Emergency Law*, THE WASHINGTON POST. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/30/AR2006043001039.html>.

⁴⁷ See Abigail Hauslohner and Mary Beth Sheridan, *Egyptian Court Orders Mubarak Released from Prison*, THE WASHINGTON POST, Aug. 21, 2013. Available at <http://t.co/3V2Ik5WwWZ>.

regards to amount of assent and money stolen and smuggled abroad by corrupt officials are still unknown.⁴⁸ In this regard, some political activists see Mubarak's release as a sign of a reviving the old autocratic régime and at this point the general public demanded a "popular trial" for Mubarak's criminal acts—mainly corruption accusations and killing demonstrators during the January 25th uprising.⁴⁹ The Supreme Court recently decided a final retrial of Mubarak's verdict regarding the protest's killing's crimes.

Over the past three years, the Attorney General's office has compressed and broadened corruption crimes against Mubarak on a continuing series and systematic basis.⁵⁰ The criminal justice system has ordered district attorneys to establish more criminal evidences in a case in which Mubarak is accused of misappropriating public funds.⁵¹ Mubarak's counsels denied the charges, saying this case was politically invented to keep him in custody for public opinion considerations.⁵²

B. Former President Morsi and the Muslim Brotherhood's Trial

Criminal trials are being arranged for the Islamist removed President Mohammad Morsi and his leadership. The legal operation against Morsi, who has been arrested, detained, and held *incommunicado* since his people overthrew him on July 3, 2013.⁵³ In this regard, Ex-President Morsi, who is presently still under investigation and faces potential criminal prosecution for certain crimes to be decided by the Supreme Court. The Egyptian Public Prosecution in the first verdict was leading interrogations and was revisiting charges against Islamists, including the former President Morsi and many of his allies, as well as senior members of the MB.⁵⁴

Prosecutors referred Morsi (on the grounds of *renvoi*) and the top of

⁴⁸ See 'Arafa, *supra* note 8, at 102-105. For further discussion on 'Ezz steel monopolization, see generally Hany Abdel Massih Eskander Ghaly, *Competition Law and Policy in Developing Countries: The Case of the Egyptian Steel Monopoly* (May 2011). See, e.g., LAW No. 3 of 2005 promulgating the LAW ON THE PROTECTION OF COMPETITION AND THE PROHIBITION OF MONOPOLISTIC PRACTICES and *Its Proposed Amendments in January and June 2008*, <http://www.globalcompetitionforum.org/africa.htm> (last visited June 27, 2013).

⁴⁹ Bradley and El-Ghobashy, *supra* note 47.

⁵⁰ *Id.*

⁵¹ See *Egypt to Put Ex-President Mubarak under House Arrest Following Release from Prison*, ASSOCIATED PRESS, FOXNEWS, Aug. 21, 2013.

⁵² *Id.*

⁵³ See Sarah El Deeb, *Egypt's Morsi to Be Tried for Inciting Violence*, ASSOCIATED PRESS, Sep. 2, 2013.

⁵⁴ See generally M. CHERIF BASSIOUNI, *THE PURSUIT OF INTERNATIONAL CRIMINAL JUSTICE: A WORLD STUDY ON CONFLICTS, VICTIMIZATION, AND POST-CONFLICT JUSTICE* (2010). See also Edward Yeranian, *Trials Postponed for Top Egyptian Political Leaders*, VOICE OF AMERICA, Aug. 25, 2013, <http://www.voanews.com/content/egyptian-muslim-brotherhood-trial-delayed/1736483.html>.

MB's (top assistants and leading members of his Freedom and Justice political party) to criminal court that stand accused of similar criminal deeds faced by his predecessor, Hosni Mubarak on charges of inciting deadly violence and clashes on the camped protest outside *Al-athedia(h)* the presidential palace that took place on December 4, 2012, in which the criminal court punished him by twenty years in jail.⁵⁵ Furthermore, Morsi along with his presidential staff have been accused and convicted of ordering their supporters to attack peaceful demonstrators outside the palace.⁵⁶ It has been reported that criminal debriefings and cross-examination process by district attorneys revealed that Morsi had requested the Republican Guard and the Interior Minister to ask the security forces (police) to break up the sit-in and deal with the situation but they dreaded a bloodshed and declined to obey orders to attack demonstrators and thus, his aides summoned their devotees to vehemently break up the protest.⁵⁷

Furthermore, Egyptian prosecutors alleged Mr. Morsi of *al-takhabor* (conspiring) with the Palestinian terrorist radical organization *Hamas* and Lebanese *Hezbollah* radical organization to escape jail (jailbreak) during Egypt's uprisings against Mubarak in early 2011 via "hostile acts" comprising the kidnapping and killing of police officers and soldiers.⁵⁸ The *al-niybah al-'maah* (public prosecution) cited that Morsi face trial for homicide, attempted murder, attempted manslaughter, insulting the judiciary, and spying (espionage) in the service of a foreign group—a criminal act that would be equivalent to *al-kihienah al-'ozomah* (high treason) and should carry a sever criminal penalty of maximum life sentence or death in aggravated circumstances according to the Egyptian criminal justice system.⁵⁹ Recently, Egyptian criminal court has upheld a death penalty and life imprisonment against Morsi in a fair criminal trial stemming from his escape from prison during the 2011 uprising that forced Mubarak from power and conspiracy with terrorist organizations. To be compatible with Egyptian criminal law, the verdict was referred to the grand *Mufti* (top

⁵⁵ Hussien, *supra* note 6 & El-deeb, *supra* note 54.

⁵⁶ *Id.* See generally Eric Trager, *Shame on Anyone Who Ever Thought Mohammad Morsi Was a Moderate*, THE NEW REPUBLIC, Nov. 26, 2012.

⁵⁷ See Matt Bradley, *Egyptians Mass as Morsi Accused of Murder Protesters Mount Huge Rival Gatherings; Death Toll From Clashes With Security Forces Rises*, THE WALL STREET J., July 27, 2013.

⁵⁸ *Id.* See also Robert F. Worth and Kareem Fahim, *Egypt Military Flexes Muscle Against Morsi Amid Rallies*, THE N.Y. TIMES, July 26, 2013. Available at <http://www.nytimes.com/2013/07/27/world/middleeast/egypt.html>.

⁵⁹ *Id.* See also Egypt Announces Criminal Investigation Against Morsi: Complaints of Spying, Inciting Violence, and Ruining the Economy are First Step in Criminal Process, Allowing Prosecutors to Begin Investigation that Can Lead to Charges, REUTERS, July 13, 2013.

religious leader), to be confirmed within the Islamic principles and this outcome can still be challenged in Egypt's highest appellate court. The ousted President also faces charges of attempted impact on the court trying former presidential candidate Lt. General Ahmad Shafiq (former Prime-Minister and Aviation Minister under Mubarak last government), and interfering in the Attorney General's affairs.⁶⁰ Before the court's rulings, it has been reported that Morsi declined to respond to the questions elevated by the *Qadi Al-tahaqiq* (investigators/allegation judge), or to sign the interrogation report, which is acknowledged to be a clue that he does not identify the criminal inquiry. During his trial sessions, he claimed that he was "the legitimate president of the republic and what happened was a military coup" and then the prosecution in the case demanded the maximum penalty which may vary from life sentence to death penalty for the defendants and said: "These acts were committed with the terrorist aim of terrifying the public and spreading chaos...Morsi and other leading Brotherhood members have plotted with foreign groups to undermine the Egyptian state and its institutions."⁶¹

In addition, investigations are supposedly going to be opened into sources of the MB's funding and other emerged organizations and groups, which would comprise funding from *Qatar* as well as governments and individuals from the Gulf countries.⁶² The district attorney's office has instigated inspecting alleged bribes and kickbacks in which the United States has paid to the MB's.⁶³ These camouflaged bribes have been received and paid as monthly "disguised gifts" listed in the document amount to inducements paid by the Islamist government to senior members of MB's in Egypt, including an approximate annual payment.⁶⁴ Of course, these investigations will be a way of disassembling the "terrorist" MB's organization along with other groups' political assemblies. Furthermore, within current government documents and military evidences entered into

⁶⁰ *Id.* See Dave Jolly, *Egypt Should Put Obama On Trial With Morsi*, GODFATHER, Sep. 5, 2013. Available at <http://godfatherpolitics.com/12421/egypt-put-obama-trial-morsi/>, <http://godfatherpolitics.com/12421/egypt-put-obama-trial-morsi/#ixzz2gAz8E7cP>.

⁶¹ *Id.* See also *Egypt to Put Ex-President Mohammed Morsi on Trial: Charges Stem from Deadly Dec. 5 Protest Outside his Palace*, THE ASSOCIATED PRESS, CBC NEWS, Sep. 1, 2013.

⁶² Jerome R. Corsi, *Evidence U.S. Bribed Muslim Brotherhood Officials: Document Surfaces Ahead of Criminal Trial of Ousted Leaders*, WND POLITICS, Aug. 24, 2013. Available at <http://www.wnd.com/2013/08/evidence-u-s-bribed-muslim-brotherhood-officials/#WlrKUKZ4XhIXptsF.99>.

⁶³ *Id.* See also Kris Zane, *Obama's Secret \$8 Billion Bribe to The Muslim Brotherhood*, THE WESTERN CENTER FOR JOURNALISM, July 18, 2013. Available at <http://www.westernjournalism.com/obamas-secret-8-billion-bribe-to-the-muslim-brotherhood/>.

⁶⁴ Corsi, *supra* note 63.

legal accuracy, proof, and verification, the criminal offense awaiting this illegal foundation's members including the exiled President will likely be interpreted as "capital" criminal offenses and severe criminal performances, with death by dangling or life imprisonment the likely criminal punishments according to the general principles of Egyptian penal legal system.⁶⁵ All in all, in one case, an authoritarian military ruler was deposed; in the other a democratically elected leader with autocratic (theocratic) tendencies was toppled.

II. LEADER'S ACCOUNTABILITY IN THE SUPREME CONSTITUTIONAL VALUES AND ISLAMIC (*SHARIE'A*) LAW PRINCIPLES: IS THAT AN EVENHANDED PROSPECT?

A. *Impeachment Process of the President within the Supreme Constitutional Standards*

According to the supreme constitutional principles within the Egyptian legal framework, the Head of State cannot be removed from power except by the approval of the majority in the People Assembly, other than that, there are no constitutional procedure to remove any President from the office.⁶⁶ This principle has been confirmed in Egyptian Constitutions through Egypt constitutional and legal history, especially within the latest *de facto* 2012 Constitution subject to amendments.⁶⁷ In the light of these constitutional standards and legal legitimacy, the only cases in which the President of the Republic should be impeached are as follows: if he/she violates the constitution, commit a criminal act that conveys a certain level of criminality within the boundaries of the criminal legislations or treason and the equivalent acts related to the national security or public interests of the State.⁶⁸ In either of these cases the Speaker of Parliament will act as an interim President or if dissolved, the Chief Justice of the Supreme Constitutional Court will be installed as "Interim President."⁶⁹

⁶⁵ See Eugene Fisher and M. Cherif Bassiouni, *Storm Over the Arab World: A People in Revolution* (1972), at 28.

⁶⁶ See Adel Mohamed, *In Egypt, An Impeachment by the Masses, Not a Coup*, NEWS OBSERVER, July 8, 2013. Available at <http://www.newsobserver.com/2013/07/08/3017414/in-egypt-an-impeachment-by-the.html#storylink=cpy>.

⁶⁷ *Id.* See also Michael O'Hanlon and Tamara Wittes, *A popular Impeachment in Egypt: Column*, USA TODAY, July 4, 2013. Available at <http://www.usatoday.com/story/opinion/2013/07/04/michael-ohanlon-and-tamara-wittes-on-what-next-in-egypt/2489419/> (last visited June 28, 2014).

⁶⁸ Articles 151 and 152 of the *de facto* 2012 Constitution governing this issue. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Dec. 27, 2012, at arts. 151, 152, 153, & 154 (Egypt).

⁶⁹ *Id.*

By the same token, why can't the events of June 30, 2013 and July 3, 2013 be characterized as a "military coup" or a "counter-revolution" from a legal and constitutional perspective. In this domain, the author argues that the *al-qwatal-mosselhaa(h)* (Egyptian military) was assisting the general public (public demand) impeach or remove a President in the lack of any legal frame or the non-existence of any measures to do so.⁷⁰ The removal of former President Mohammad Morsi represents a great deal of confusion among the West even in the Arab World, but in very simple terms, the coverage of the events was not based on a full understanding of the facts in an objective terms, of Egypt's history or of the recent policies that led to this dramatic action.⁷¹

As is generally known, Morsi was the first democratically elected President according to official results of the general voting. As previously stated and analyzed, the Egyptian Constitutional charter states that impeachment of a felony or treason against the leader is to be based on a criminal motion signed by at least one-third of the members of the House of Representatives and the impeachment decision is to be issued only by a two-thirds majority of the Parliament's members.⁷² Since there was no Parliament at that time, as in June 2012, Egypt's Supreme Constitutional Court dissolved the Parliament, citing a misapplication and the unconstitutionality of rules for the independent candidates and the law of political rights provisions.⁷³ Given the absence of a legally and constitutionally adequate instrument to impeach the sitting President, millions of Egyptians turn out to protest against him asking to step-down, as national campaign called *tamarod* (repel), collected approximately 22 million petitions asking that the sitting President resign and for new earlier elections to take place after the failure of achieving the goals and purposes of January 2011 uprisings which ousted former President Mubarak.⁷⁴ Furthermore, the military is submitting to the rule of law, installing the chief justice of the Egyptian Supreme (High) Court to serve and act as a temporal President until new elections are held in which happened.⁷⁵ This sort of

⁷⁰ *Id.*

⁷¹ See William Dermody and Sarah Lynch, *The Egypt Semantics Debate: Is It a Coup? A Civil War?* USA TODAY, Aug. 16, 2013. Available at <http://www.usatoday.com/story/news/world/2013/08/16/egypt-coup-civil-war/2665313/> (last visited June 28, 2014).

⁷² See Kirkpatrick, *supra* note 4.

⁷³ See *Egypt Court Orders Dissolving of Parliament: High Court Rules Entire Parliament Should Be Dismissed Because of "Constitutional Violations"*, ALJAZEERA, June 14, 2012.

⁷⁴ Kirkpatrick, *supra* note 9 & Hassieb, *supra* note 12. Various international and local media and reports declare that this was the largest demonstration in national human history.

⁷⁵ *Id.*

impeachment cannot be described as a “*coup d’ état*” in a technical and traditional legal sense.⁷⁶ It was just the military extension and assistance of the motivation and will of nearly thirty million Egyptians who have unequivocally designated they have lost self-confidence and trust in their leader but needed any device to act on that sentimentality.⁷⁷ The author can claim that this is not a “military coup”, but a “democratic (popular) coup.”

B. Impeachment Process of the President in the Islamic Law Principles (Sharie‘a)

Leadership in Islamic law is based on two fundamental principles, *al-amanah* and *al‘dl* (trustworthy/honesty and fairness) as a general norm.⁷⁸ Often, it takes the form of an unambiguous contract or pledge between a *wali/hakem/imam* (leader/Head of State) and his *al-mahkomeen* (followers/general public) that he/she will try his/her best to guide them, to protect them and to treat them in transparent and objective way, fairly, and with justice.⁷⁹ The Prophet Mohammad’s (PBUH) example, then, is what both Muslim leaders and general public seek to emulate.⁸⁰ According to him, leadership in Islam is not earmarked for small elite rather, depending upon the situation, every person is the “shepherd” of a flock, and occupies a position of leadership.⁸¹

Islam—as a religion of peace—however often misapprehended and misconstrued, has a very inclusive model of leadership and better governance that is focused on belief, confidence, faith, trust, and valuable ethical ideals according to *Allah* (God).⁸² Hence, the motivation of leadership in *Sharie‘a* law is on doing good things and the performance of positive and constructive activities for the sake of God and the whole of humanity based on the source of law.⁸³ According to Islamic law, the two crucial roles of a leader are those of servant-leader and guardian-leader.⁸⁴

⁷⁶ See U.S. Opts Not to Define Egypt Ouster as a Coup; Tensions Rise Ahead of Planned Protests, CNN, July 25, 2013.

⁷⁷ See Rebecca Collard, *Coup or Not, Egyptians Love the Military: Decades of State-led Affection for the Army Has Made Many Egyptians Comfortable with the Military Takeover*, GLOBAL POST, July 30, 2013.

⁷⁸ See generally W. WARNER BURKE, DALE G. LAKE, AND JILL WAYMIRE PAINE, ORGANIZATION CHANGE: A COMPREHENSIVE READER (J-B Warren Bennis Series) (2008).

⁷⁹ See generally MUHAMMAD AL-BURAEY, ADMINISTRATIVE DEVELOPMENT: AN ISLAMIC PERSPECTIVE (1985).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² RAFIK ISSA BEEKUN AND JAMAL A. BADAWI, LEADERSHIP: AN ISLAMIC PERSPECTIVE (1999), at 8.

⁸³ *Id.*, at 2.

⁸⁴ *Id.*

First, the leader is the servant of his followers (“*sayyid al-qawm khadimuhum*”).⁸⁵ He/she is to pursue their prosperity, public interest, and welfare and guide them to achieve good, decent, and upright.⁸⁶

By the same token, The Prophet Mohammad (PBUH) has underscored a second foremost role of the Muslim leader: to safeguard his community against autocracy, dictatorship, and oppression, to reassure God-consciousness and *taqwā*, and to endorse, equality, fairness, and justice.⁸⁷ In Islamic law, legitimate power is associated with one’s position in the organization and Islamic values and morals dishearten Muslims from dynamically pursuing positions of power.⁸⁸ Campaigning for a place of influence may infer that one is charmed with the position for one’s own progression (development) or some other self-serving reason.⁸⁹ A leader who has authority might also regulate organizational and managerial rewards, comprising pay raises, anticipated work assignments, or promotions.⁹⁰ By treating public officials on equal basis, the Prophet’s companions became the most outstanding Islamic leaders in Islam.⁹¹ A leader in a power also controls and regulates both group and collective punishments and preventive measures as Islamic law identifies the legitimacy of coercive supremacy, but proposes that it should not be used to compel or force followers towards *ithm* (sinful) acts or evil deeds.⁹²

The cornerstone of Islamic moral personality is *iman* (faith/belief) in God. It entails belief in the unity (Oneness) of God and the Prophethood of Mohammad (PBUH).⁹³ A leader with a robust *iman* will recognize himself/herself and all his/her assets and possessions as belonging to the Creator.⁹⁴ A leader with a stable, steady, and balanced *iman* will not excuse responsibility for his/her actions except under *darourah* (necessity) case which is acceptable as general justification principle in Islamic law, and will continue emphasizing upright conducts.⁹⁵ Islamic law states that, a society including organizations and associations might have to select between a

⁸⁵ *Id.*, at 4.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*, at 3.

⁸⁹ See ABOU AL-HUSSEIN MUSLIM IBN AL-HAJJAJ IBN MUSLIM IBN WARAT AL-QUSHAYRI AL-NISABURI, [hadith 3.3, 1013], <http://www.usc.edu/org/cmje/>.

⁹⁰ BEEKUN & BADAWI, *supra* note 84, at 12.

⁹¹ *Id.*

⁹² For further discussion in this regard, see generally MUHAMMAD ANISUZZAMAN AND MD. ZAINUL ABEDIN MAJUMDER, LEADERSHIP: WESTERN AND ISLAMIC: A CONCEPTUAL AND AN EXPLORATIVE STUDY (1996).

⁹³ *Id.*

⁹⁴ *Id.*, at 6.

⁹⁵ *Id.*, at 7.

strong Muslim with weak leadership and managerial skills and a strong leader with moderate/fragile Islamic understanding.⁹⁶ A leader with insufficient professional knowledge or inadequate expertise can destroy and collapse an organization whereas a skilled leader may develop and improve the progress and out comings same organization.⁹⁷ Therefore, the criterion is even if the skilled leader is not a strong Muslim, his shortcomings can be made up through *shoura* or the consultative (counseling) method of decision-making.⁹⁸ On the other hand, all-inclusive, internal awareness of his/her obligation towards Him and this knowledge of his/her liability towards Him is *taqwā*.⁹⁹ When pervaded with *taqwā*, a person's frame of mind—his/her views and opinions, feelings, and proclivities—will reflect Islam within a better understanding to apply the notion of leadership's responsibility in positive law based on the main ideals of governance, accountability, and management in Islamic law.¹⁰⁰ Hence, there are topmost six structures identified by Muslim scholars to the classical Islamic model, that the leader must have (a) trustworthiness; (b) motivation; (c) competence; (d) patience; (e) humility and modesty; and (f) the willingness to seek consultation.¹⁰¹

Moreover, Islamic law, as one of the three main global legal systems together with common and civil law presents the structural legal framework for a community by preserving the legal relations among persons and taking care as well as safeguarding the interests of one person from being attacked by another.¹⁰² It protects the public peace and individual security when an individual is blamed of an offense by defining the linkage between the individual and the State.¹⁰³ From the Islamic criminal perspective, any Head of State or leader should be subject to impeachment according to the most important fundamental principles laid down in *Sharie'a*: (i) the principle of individual "uniform" criminal accountability; (ii) the principle of legality of crimes and punishments; (iii) the principle of non-retroactivity of the

⁹⁶ *Id.*

⁹⁷ On the governance system in Islamic law and public administration, see MOUSTAFA ABOU ZIED FAHMI, FAN AL-HUKUM FI AL-ISLAM [PRINCIPLES OF GOVERNANCE IN ISLAM] 155—166 (2003).

⁹⁸ See 'ABD ELGHANY BASSIOUNI ABDU ALLAH, 'USUL 'ILM AL-IDRAAL'AMA: DERASAH LE 'USULWAMABADE'E 'ILM AL-IDARAAL'AMA FI AL-ISLAM WA AL-WALAYEAT AL-MOTAHEDA AL-AMRICIYAWAFRANSAWA MASER WALEBENAN [PRINCIPLES OF PUBLIC ADMINISTRATION: STUDY OF THE GENERAL PRINCIPLES OF PUBLIC ADMINISTRATION IN ISLAM, THE UNITED STATES OF AMERICA, FRANCE, EGYPT, AND LEBANON] 84—101 (2006).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, at 12.

¹⁰² See Louay Safi, *Leadership and Subordination: An Islamic Perspective*, 12 AMERICAN J. OF ISLAMIC & SOCIAL SCIENCES 2204—223 (Summer 1995).

¹⁰³ See M. CHERIF BASSIOUNI, THE ISLAMIC CRIMINAL JUSTICE SYSTEM 56 (1982).

criminal laws; (iv) the principle of *al-mousawaah* (equality) and the non-existence of immunities; and (v) the principle of the presumption of innocence and the rights guaranteed to the accused during the indictment and the criminal trial.¹⁰⁴ Furthermore, the principles, which regulate evidence and standards of proof in any legal system, reflect the intellectual achievement and cultural values of its society. Hence, the Islamic “criminal evidence” rules seek to balance and harmonize “the rights of the accused” within the rights of the whole community.¹⁰⁵

Observing the three objectives of punishment (justice, general (and private) deterrence, and rehabilitation or retribution) under *Sharie’a*, as it retains the traditional penalties of deprivation of liberty and pecuniary sanctions in addition to other punishments which are designed to instill morality against the leader in case of indictment.¹⁰⁶ According to Islamic criminal law, the success of criminal and penal policies in any society if the leader is found guilty and subject to criminal accountability is measured by the degree to which they harmonize these goals. Thus, reformation of the offender must be considered during the punishment stage, to the degree it is compatible with the actual sanction imposed.¹⁰⁷ With regard to the investigation of the criminal act, it is subject to the general rules for indictments in Islamic criminal procedures, taking into consideration the rights of the accused regarding searches, seizures, eavesdropping, interrogation, and pre-trial preventive detention.¹⁰⁸ Furthermore, the rights of the accused during a criminal trial include the adoption of legal evidence, a trial before a competent, fair, and impartial jury, the right to counsel for his or her own defense, the right to speak or remain silent, and the right to appeal an erroneous conviction.¹⁰⁹

III. HEADS OF STATES AND LEADERS’ ACCOUNTABILITY TODAY AND FUTURE: CONCLUSIONS AND POLICY RECOMMENDATIONS

Mubarak and Morsi’ landmark cases were hastily investigated, presumably, due to the public demands for immediate action. These historical civilian and fair trials of the century are Egypt’s most substantial phase yet toward launching the principle that “no leader is above the rule of

¹⁰⁴ *Id.*, at 57.

¹⁰⁵ *Id.*, at 58.

¹⁰⁶ *Id.*, at 263, 66—67 & 93—95.

¹⁰⁷ See Mohamed ‘Arafa, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?* 18 GOLDEN GATE ANNUAL SURVEY INT’L. & COMP. L. J. 158, 189—195 (2012).

¹⁰⁸ BASSIOUNI, *supra* note 104, at 122—237.

¹⁰⁹ *Id.*, at 231—262 & 92—100.

law and justice and there is rule of law not rule by law or by man.” The inquiry arises with numerous jurists and legal scholars in Egypt concerning the charges brought and whether the evidence presented in court in these cases can sustain a conviction. This places the judges in a difficult position if they are to act conscientiously in applying the law. They may find many of these persons innocent of the charges brought against them. Alternatively, they may respond to the pressures of public opinion and convict persons who on a technical legal basis should not be convicted of the crimes charged based on the evidence presented. It is apparent and understandable that the general consequences and outcomes of these trials was not sustaining the general public or adequate that enough to persuade and calm them down after more than thirty years of dictatorship, and it may be apprehensive that a harsh criticisms and backlash against the judiciary the whole legal system occur. By this time, the reliability, credibility, and independence of the Egyptian judicial system are being questioned by several segments of the Egyptian general public. The threat is probably to be that asking for such criminal historical trials over and again shall restrain and put many pressures and political burdens with respect to the judicial processes, diminish the rights of the defendants among a civil, fair, and neutral criminal trial, and would have severe destructive effects in enhancing democracy and the rule of law in Egypt.

Not to be overlooked, Mubarak’s trial will have significant physiological and sociological effects on the Egyptian people and Arabs throughout the region. Historically, Morsi and his predecessors were regarded as untouchable and irreproachable pharaohs who governed the country with absolute powers. Yet, this mode of governance, which has existed in Egypt and the Arab world thus far, could end with outcome of Mubarak and Morsi’s trials.

Optimistically historians and political analysts will record the implication and significance of Presidents Mubarak and Morsi historical trials not only through the Middle Eastern World but all over the globe for sending imperative messages and lessons concerning the leadership’s accountability and its basic elements. It was the first time that two Heads of State was forced to resign by peaceful popular demand and was put on trial for at least some of their faults and misdeeds. It is clear that both leaders should have been prosecuted for the unfair treatment of the general public including torture and brutality that they have reinforced for many years. Likewise, many will ask why so many publicly known policies and practices of corruption and abuses of power ordered by Mubarak or Morsi, or known to have taken place by his consent or acquiescence were not

prosecuted, and this also remains an unanswered and equivocal query.

To conclude, for the lawyers, politicians, policy and decision makers working on the front lines of this issue today, it is important to recognize the current debates for help to develop the norms that will guide and bind the national and global community in its response to this sort of liability in the future. The revolutions has achieved some successes but Egypt has a long way to go, not only to achieve democracy and the rule of law, but also to accomplish economic development and to regain its place as the leader of the Arab World and an important Skeleton contributor to peace and stability in whole the region. Correspondingly, a coherent national and international solution for this sort of responsibility in the light of global implications not only in Egypt but throughout the whole Middle East is a sector ripe for reform for the what so-called the “The Arab Spring” or might be “The Arab Fall or Storm?”

CONCLUSION

Things can never go back to precisely what they were. Things have happened, red lines have been crossed, prohibitions have been violated, and we can't just put the genie back in the bottle. Politics is back in Egypt. People respire, think, discourse politics all the time. The uprisings opened up huge inquiries about things like the role of the military and the correlation between religion and politics, and they exploded in Egyptian's faces. But something in *Tahrir* that has never been done in the Egypt's modern history, going all the way back to the pyramids. Dictators have been toppled, even though it is not sure yet if the regimes are toppled or not. The existing regime is anxious of individuals fully recognizing their personal own power. But thousands of millions of people took to the streets during the uprising and they were asking an essential question—whose state is this? Understanding the complex chronicle between an (uprising 2011) and a (popular coup 2013) is indispensable to restore the January 2011 thrust. The purpose is to approach this deterioration from a pragmatist perception and to give an internal scope and for the sake of straightforwardness the emphasis has only been on the two regimes—as chief thespians—without other variables. Numerous other attitudes, stages, and agencies—comprising international actors—need to be deliberated for a reasonable account. If we learn from our mistakes, the more mature and miles closer to actual democracy, freedom, and justice.