2013

Of Law and the Revolution

Lama Abu-Odeh
Georgetown University Law Center, la34@law.georgetown.edu

Georgetown Public Law and Legal Theory Research Paper No. 12-129

This paper can be downloaded free of charge from:
https://scholarship.law.georgetown.edu/facpub/1047
http://ssrn.com/abstract=2142545


This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: https://scholarship.law.georgetown.edu/facpub
Part of the International Law Commons, Judges Commons, Law and Politics Commons, and the Rule of Law Commons
Of Law and the Revolution

Lama Abu Odeh

[This paper is not a “political science”, nor a “history”, nor a Jurisprudence paper. It is more of an “analytical” paper that uses argument and conceptual analysis with a view to heightening contradiction, tension and ambiguity on the relationship between revolution and law, specifically as it has transpired in the aftermath of the Egyptian “Revolution”]

Introduction

The Egyptian revolution is proving to be a very legal one. That is not to say that the revolution’s demands have been legalized, nor that Egypt’s law has been revolutionized, rather, the forces that have come to the fore since the toppling of Mubarak in Feb 2011 have chosen law as the privileged form through which to bargain with each other. The density of the legal back and fro has been overwhelming: constitutional amendments, constitutional supplementary declarations, parliamentary laws, legislative amendments, military decrees, court trials, constitutional court decisions overturning laws passed, conflicting decisions from various courts, presidential decrees, emergency laws annulled and then reclaimed in another form; in fact so much so, that to trace the historical unfolding of the Egyptian revolution, one would be wise to use the Gazette and law reports as one’s primary guide through the maze of events. It is hard to miss the fact that in the case of Egypt, no sooner the public space opened up for the political as an autonomous sphere – one that is only possible through genuine democratic practice- than that sphere became annexed by the legal.

Legalizing the Political and Politicizing the Legal

Ironically, just as the political forces turned to law and its institutions to mediate between them and arbitrate their raging battles, in the way legal institutions can be expected to, the Egyptian judiciary left its chambers and marched unto the public space, turning itself into a public interlocutor, holding press conferences, appearing
in TV talk shows, making statements to the foreign press, explicating and defending its decisions to the public, cajoling, forswearing, asserting, threatening, seemingly participating directly in the political argument apace in Egypt since the event of the revolution, sometimes openly privileging one side to the other (see Justice Tahany Jebaly’s dangerous confession to the NYTimes as an extreme form). So while the political forces have legalized their bargaining maneuvers, the judiciary politicized its role, so that whatever cover of “law” the political forces sought to acquire from the judiciary, the judiciary seemed to refuse to grant it, as if by denying itself the veneer of “objectivity and neutrality”, the public performance that sustains its high social status and privileges per judiciary, it has chosen to blow the cover of the political forces, call their bluff so to speak!

The public watched the national judiciary closely and longing for a just and “revolutionary” resolution of the persistent political uncertainty and angst hanging over the skies of Egypt since the revolution like a stubborn dark cloud, and which it had idealistically hoped “law” could clear, quickly surmised this was the “corrupt” judiciary of Mubarak – dependent, abject, self-interested, incompetent, etc. Having failed to provide the “revolutionary” answer to the political stuck-ness of post-revolutionary Egypt, the judiciary quickly turned itself into the very cause for revolution.

It was a bit more complicated of course. The judiciary’s performance had sufficient nuance, its failure to satisfy “revolutionary” desire in the law interspersed with some successes that some lawyers kept coming back knocking on the courts’ gates. Sometimes, it seemed that what was driving litigants was not any faith in the courts themselves, rather an idealized rule-of-law state that they hoped would suddenly metamorphose before their eyes if only they kept the hope up and kept coming back.

The legalization of political battles and the public scandal of the Egyptian judiciary’s failure to return the “revolutionary” answer that the public longed for seemed to
have turned every newly politicized Egyptian citizen into a lawyer. If the rule-of-law had to be out there but the judiciary refused to “pick it up”, then by Jove, Ahmad and Adel were going to (invariably bearded), and they were going to tell anyone who bothered to ask, and in legalistic terms mind you, how the court had failed to rule legally (how it failed to take its own jurisdiction when it should have, how it took jurisdiction it shouldn’t have, how it upheld the bad law about military trials, and overturned the good law about parliamentary elections). There is something very exciting about this popularization of legal talk, which one can see as a form of a people “taking law into their own hands”, the layman demystifying the rule of the “expert”, an in-your-face busting of social hierarchy with all its concomitant privileges. Thus in a very short period of time, one witnessed in the case of Egypt, an interesting way of assimilating the limits of the rule of law state, not through critique as happens in the case of Western countries where the rule of law is “thick”, rather through an overturning of hierarchy, where every citizen becomes the judge and legal language is popularized, its technical mystifying quality flattened, made simple and accessible as it is digested by the lay mind.

What Would a “Proper Judiciary” Have Done?

Was there something that the Egyptian judiciary could have done differently? Could it have carried the day and arbitrated the conflicts between the political forces in an “objective and neutral” manner as was expected of it? Could it have done it in a way that was persuasive to the contending parties, and that allowed the judiciary to claim the mantle of “autonomy” and separation from the executive and the legislative?

Many decried the behavior of the Egyptian judiciary as symptomatic of a pliant judiciary, a residue from the “ancien regime”, one that refuses to drop old habits, that has simply replaced the old master of “Mubarak” with the new one of “SCAF”. Many were persuaded that if the judiciary had behaved in a more autonomous
fashion, the outcome of the legal battles would have looked altogether different, landing more squarely on the side of the “revolution”.

But this argument seems to ignore the fact that a judiciary that is available to act independently is one that has already been buffeted by a solid and robust political sphere, one whereby the political forces would not have felt compelled to legalize their primary political battles in the first place. In such a sphere, political forces bargain with each other politically following background rules of bargaining that are known to all; whether those rules were legal in the formal sense or merely customary. In other words, an independent judiciary is only possible when the judiciary intervenes to settle disputes among political players only marginally and only when there is confusion either about the background rules of political bargaining themselves or a dispute about how to interpret the outcome of bargaining once it has taken place (even if each and every one of those cases has high stakes). In these cases, the judiciary, no matter how high the stakes, can intervene to shift the interpretation of the background rules or change the political outcome by privileging one side over the other through its decision while still appearing “objective and neutral”. It can do all that while not appearing as if it were an actual participant in the political dispute. Of course, there will be a great deal of grumbling from the losing side that will accuse the court of acting “politically” as happened in Bush v Gore but courts usually survive the day because of the marginality of such cases in the overall dock of the court. Of course courts especially constitutional ones like the US Supreme Court deal with a great deal of cases with high stakes and many that have massive political consequences such as the litigation over “Obamacare”, but the instances in which political arguments are settled outside courts are enormous and that one continuously hears about in the news. Politics happens as of course, its basic outline clear to all the participants. When this happens and courts are spared the burden of delineating the outline itself in a society that aspires to be “democratic” then courts can “get away” with it. They can get away with acting “independently”.
In short, an independent judiciary can exist when there is already a lot of politics going on. The quality of “independence” in a judiciary is not only a function of the personal “virtue” its members would either enjoy or fail to. Independence in the judiciary is a function of the social organization of the state, just as corruption of state officials is a function of the economic and social organization of the state.

Under the Dictatorship

Of course such conditions were far from prevalent under the dictatorship of Mubarak, where the judiciary as an institution was absorbed into the machinations of power of the ruling regime. There have been periods and instances where the judiciary fought the dictatorship: the High Administrative Court’s anti-Mubarak rulings are famous and the period of the nineties in the life of the Supreme Constitutional Court when the court took seriously the bill of rights in the Egyptian constitution and issued many rulings that pushed for more democratic representation in the system is a period that excited many Egyptians. Overturning laws that cement repression or declaring illegal state actions that smack of unfairness, abuse of authority or corruption, and in the past twenty years there has been several of those, does indeed signal gestures of independence by the judiciary. But such acts of defiance, against a background of dictatorial rule and interspersed with contrary acts of “compliance” by the same judiciary, signal less a thick judicial sphere that is acting “legally” and more of a “political” sphere in which the judiciary is carefully calculating its position, counting its gains and losses and basing its judicial interventions accordingly. Because the stakes are high for the judiciary itself when it stands up in the face of the repressive regime, its discrete acts of opposition signal a deliberate political act of its own, as if underneath this veneer of upholding rightness and legality it is acting no differently than the other political actors, using the tools available to it, law and legal discourse, to scurry in and out of the political scene. And since underneath the thin veneer of legality, there is a thick and overbearing political consideration, one loses the sense that what is being undertaken is a legal interpretive activity, a judge reading the law objectively and
neutrally, as the rule of law ideology would have him do. In other words, one might describe those acts as “independent” but not exactly “judicial” even though they are issuing from a judiciary and in the form of court decisions. What is gained in acts of “independence” by the “judiciary” is lost in the performance of “a separate judicial sphere” because the element of calculation in the issued ruling is transparent when judged within the overall context of the behavior of the particular court over time. It is as if to be independent, the judge has to cease being a “judge” altogether!

Something parallel to that happens in the collective mind of the judges’ national audience. Contemptuous of the dictator’s law and longing for justice and vindication from an alternate “father”, it turns to the judiciary for respite. Not much attention is paid to the laws themselves, to the nature of judicial activity, no interest in comprehending the machinations of interpretations, the judicial interpretive ethos that the judge sees himself as obeying even if only on the surface of his consciousness. For the judges’ audience, “standing for” becomes synonymous with “adjudicating”, “rightness and justice” becomes synonymous with “law”. Thus law loses its most basic quality: “textuality” and judicial activity loses its most basic feature: “interpretation”. It doesn’t matter how interpretively persuasive the judge in a given instance might be, as long as the decision doesn’t correspond with the “rightness and justice” of the situation, the judge is not acting independently. So the audience might feel vindicated and rejoice with delight at the specter of an “independent” judge (the judge opposing the dictator), and the judge might savor the popularity, but what has been lost in this moment of joint elation is the idea of “judiciary” itself. It’s not just when the judiciary is compliant that it ceases to be a “judiciary” in the proper sense, the same happens when it is exactly the opposite: when it acts independently.

After the Revolution
While SCAF has replaced Mubarak as the remainder “authoritarian” representative, the dictatorship no longer acts with the same robustness it had before the
revolution. New political forces have come to the fore as a result of the revolution, especially the Islamic ones, whose absence was notable during the time of the dictatorship. The loosening up of the political sphere should on principle allow the judiciary room to maneuver as it doesn’t have to be beholden to one dominant dictatorial force, and could therefore avoid being absorbed in the political machination of the time. At least such a possibility is open to an “independently”-minded judiciary, which I will define here as, “inclined to be politically opposed to the trappings of dictatorial rule”, which could conceivably emerge from the bosom of the present judiciary. (After all, it is not uncommon to hear in Egypt, “There is no independent judiciary here, though there are independent judges). 

Different Logics
But this “born-again” judiciary finds itself confronting paradoxical and contradictory demands, which even it were to call upon its most “independently” minded judges to meet, it’s hard to see how it could possibly manage. It has to delineate the contours of the political sphere anew, while acting “independently” of it. And while it’s at it, it has to perform “interpretive fidelity” to the legal materials, as defined by the “rule of law” ideology” without which it cannot establish its “judicial-ness”, i.e., its autonomy as a sphere of the state. And on top of all that, its decisions have to correspond to a revolutionary expectation of “rightness and justice” to make it all worthwhile in the end.

Looked at more closely, two of those demands, “judicial-ness” (interpretive fidelity to the legal materials) and independence (from the political sphere) belong to the “rule of law ideology”, while the third, rulings that “correspond with rightness and justice” belong to the idea of “revolution”. This last one assumes that the judges’ fidelity is to the ideas of “rightness and justice”, principles that mobilized the people to Tahrir Square. Whatever legal materials are before them, judges should interpret those materials in light of those principles. In other words, in order to comply with the principles, the judiciary has to immerse itself in the “politics” of revolution,
forego interpretive fidelity to the legal materials for the benefit of fidelity to principles.

“Rule of law” and “Revolution” therefore belong to two different “logics” that are in tension with each other, even though, the one, “rule of law”, is often the historical genealogical descendant of the other, “revolution”; and even though, and here’s the rub: The demand of the revolution has been the “rule of law” state.

The Logic of Revolution

Arguably, revolution is the rule of law before the “fall”, or the big bang if you like. It is when all the spheres are condensed in one, where their implosion has yet to occur as independent spheres, where the text has yet to separate from “principle” and acquire its maddening interpretive quality, where the “rule of law” state has yet to be birthed. At this conjoined moment, the screams on Tahrir, “Life, Freedom, Social Justice” yield their meaning without textuality intervening between their intention and their words, when the revolutionary “subject’ is there to inform us of what they mean, not in the sense that informing us is occurring “orally” rather than in a “written” fashion (although that too!), rather that the enormity of the event in its earth shattering transformation leaves no ambiguity as to what is desired. It is when all that is utopian is real.

At that moment “law” doesn’t belong to the “rule of law”. It is something altogether different as it is the simple working out in deductive fashion of the meaning of “Bread, Freedom, and Social Justice”! It is when “deduction” is most transparent, determinate, and necessary made stable by revolutionary desire that infuses the air. The revolution hovers as a meaning stabilizer working as direct inspiration to “law”.

Not only does revolution remove the barrier of textuality from its project of self-projection unto the future, it also dismantles all those other past texts that bedeviled its subjects with its sadistic indeterminacy used by power to stabilize their
oppression. Law that is good combined with law that is bad, a civilian court with an emergency one, a democratically legislated law that is also a dictatorial one, text upon text in which legality, as indeterminate textuality, produced them determinedly and always as “criminals”.

The Revolution, as the set of principles that ”end all texts”, begins as a criminal act against the state, in which one’s criminality in the eyes of the state and its law is rudely and fearlessly returned back to the state with, “J’accuse!” The accuser (the state) becomes the accused and the accused (the Revolutionary) becomes the accuser. In this fashion, by staring the state “in the eye” when she had always been stared down by the state, the Revolutionary puts the state in its “proper” place. We all remember that famous lunge on the bridge over the Nile, when the multitude lunged forward towards the riot police stacked up with their latest riot gear supplied by the good offices of the United States, and much to their surprise and everybody else watching, the police bolted back in fear. At that moment, the state with its towering authority crumbled and the alienated powers of the collective projected unto the state were returned back to their original owners with a vengeance so sweet history had to record. Indeed, after that “bolt”, the rest was history!

The Revolution is therefore doubly an “outlaw”/”law-that-is-out-there”: it eliminates the legal texts of the state it “puts in its proper place” and it reduces law into principle eliminating the textuality that typically haunts the gap between law and principle in situations that are not revolutionary.

The Logic of the Rule of Law

Law is politico phobic within the Rule of Law. Its utopianism lies in its insistence on a clean and clear separation from the political. For the “subject” of the rule of law— the judiciary— Revolution smacks of the sphere of the political, where the messiness and ambiguity of power and resistance take place. It therefore cares not for
Revolution as an event in new time, only what Revolution has managed to pass in legislative texts. The universals of Revolution yield no definite answer the judiciary wishes to read. What principles Revolution may have enunciated have turned into legal rules and that is the stuff of the “rule of law’.

And even though legal rules are framed in the shape of “universals” – generalities addressing all, the equality of the rules is only formal: rules, whatever their content might be, apply equally to all, no exception. The equality opened up by the universals of revolution are on the other hand deep and cut through the formal flesh straight to the substance of the bone: they are an invitation to “bread, liberty and social justice” to all, no exception.

And while Revolution challenges the authority of the state by putting it in its “proper place” so that revolutionary subjects can take back whatever power they have projected unto it, the “rule of law” puts the power back in the state. Unlike Revolution it is invested in exaggerating the power of the state, because it speaks with the authority of the state outside of which it yields no meaning. Indeed it affirmatively uses the power of the state to sanction and punish.

And unlike Revolution that presages a clarity of meaning of what the subject of the Revolution wants, the “rule of law” relies on written legal texts, created through legislative compromise. Ambiguity, gaps and conflicts are inherent to the text and interpretation with all its frustrating pursuit of the “intent of the legislature” is what haunts the subject of the “rule of law’.

Revolution-Transition-Rule of Law

If all went well with Revolution, the common wisdom says, the transition from Revolution to Rule of law would have been smooth, with the demands of revolution embodied in new legislative texts and an honest independent judiciary. So what puts Egypt at this conjunction of Revolution and Rule of law, stuck right in the teasing
middle, its various contending parties using the “Rule of law” to litigate “Revolution”, and “Revolution” to put “Rule of law” on trial? Is the trouble with the Egyptian Revolution itself that it did not yield a smooth transition? Perhaps one shouldn’t call it a revolution after all? Is the trouble with the very notion of “transition”, the assumption that Revolution yields a transition that is in effect an interruption in time and situation that eventually yields new legal texts and new judiciary? Or is the trouble with the idea of the “Rule of law” itself and the imagined respite it would deliver the Revolutionary once it is in full bloom?

What is interesting, if not indeed ironic, is that the transitional situation in which Egypt finds itself, which is experienced as persecutory, is in some ways the envy of countries where the rule of law is “thick” and dominant. To be able to judge the “rule of law” by the universals of Revolution, not so remote in memory and not made invisible by legislative texts, is an enviable position to be in. To have law appropriated and mastered with confidence by the layman whereby the role of “judiciary” is eliminated altogether is the dream of progressives in such countries! One might push the “critical” point even further and argue that the idea that the “rule of law” will deliver a respite for the revolutionary and a resting place for the “Revolution” is itself a form of false consciousness. No such place exists. One can get an honest and independent judiciary, and legislation passed by an elected legislature and a “counter revolutionary” situation prevails nevertheless. Enemies of revolution can as easily sneak right back through “proper” law and independent judiciary as they can through military uniforms and anti-riot gears. And once they do, they are in fact much more tightly locked in having acquired the legitimacy of the “rule of law”. At the end of the day, aren’t visible displays of unjust power better than those that are invisible?

“Revolution/transition/Rule of law” is an expression of a time sequence that has captured the imagination of Egyptian revolutionaries. There is nothing unrealistic or irrational about it. Put in simplest and most vulgar of terms, it is an expression of a perfectly legitimate desire to have a proper and functioning state. No sooner than
Revolution “sizes up” the power of the authoritarian state, showing the limits of its projected authority and the hollowness of its inside through its acts of resistance and challenge, than it seeks to seize state power to prop it up again, this time on new terms, the terms of the “rule of law”. The trouble is that this time sequence, rational and realistic, is also highly indeterminate. The indeterminacy plagues each one of its terms: Revolution, transition, Rule of Law as events that are disruptive of time and situation. The indeterminacy of the first term “Revolution” implicates the other two terms making the whole sequence indeterminate.

Indeterminate Revolution?

As soon as we ask the question: was what happened in Egypt a “Revolution”? We find that our interpretation of the time sequence in the aftermath of the overthrow of Mubarak, or what I call here “transition”, indispensible to our answer whatever that answer might be. And if that time sequence was pregnant with law and legalism(s), then our interpretation of that seem to also play a role too.

A possible answer to the question is: What happened in Egypt was not a Revolution, after all! Yes the spectacle of the crowds in Tahrir, persistent, passionate, creative and brave was stunning and wondrous; the moment in which Mubarak in the face of the crowds’ persistent chants “Leave” finally conceded “his throne” was indeed spectacular, but all that didn’t amount to a “Revolution”. What happened was simply a “tap” on an already imploding state. The failure of the police to contain the gathering crowds was a signal of the weakness of the state, already apace for several years before that crowning moment of spectacle. The crowds simply witnessed what those administering the state had known all along and considered its collapse to be a question of time only. Why a “tap” on an imploding state doesn’t amount to “Revolution”? Well, because it had no “proper” subject. While a kind of media-generated consensus on calling it a revolution quickly formed, there was no “force” that could step up briskly and forcefully after the fall of Mubarak to “draw out” the
consequences of the chant “Bread, Liberty and Social Justice”. No force could, because we have seen with the benefit of time after the fall, that no force did.

There was indeed a group of people who called themselves “The Revolutionary Bloc” and the interpretation they offered of “Bread, Liberty and Social Justice” which they often supported with their “bodies” in several altercations with the police in the aftermath of the overthrow of Mubarak, was most “revolutionary”. But their spin proved solitary, utopian, overdrawn, unwarranted by the public event that had happened, namely, state implosion followed by a dictator’s concession. The “subject” necessary to tap an imploding state was very different from the one required to create a rupture in situation, in -time. The one requires a condensation of rage, otherwise diffuse, which quickly finds its release in the achievement of the object at hand: the removal of the dictator. The other nurtures its resentment and rage in the service of a universal idea whose consequences it bleeds out over time. It amounted to a revolutionary demand before the “Revolution”. The crowds had already departed!

Law in the Shadow of the Fall

If one adopts the pessimistic take on the above interpretation one would have to eye with suspicion the law-filled time in the aftermath of Fall (of Mubarak). The legal density of the back and fro that I described in the opening paragraph of this paper can only be “suspect” law. It is so in a double sense. It is neither a species of the Rule of Law nor is it a species of Revolution. It is not of the former because it cannot effectively project state authority without which the Rule of Law may not be performed persuasively. The state has imploded and left the void in its tracks. To the contrary all those law-acts appear like a manic scramble for state authority, a lot of law to make up for the absence of the state. As if the aggregate of state (legal) acts, be it in the form of law or legal decisions, can bring an imploded state back to life!
Arguably, the scramble for the state, the desire to put the fragments back together, against the background of the Fall (rather than the Revolution), can be attributed to both those who “tapped” the imploding state and those whose authority with the implosion was lost. For the latter, legalizing their power, even as a thin veneer as was the case under the dictatorship, was too hard to resist. Indeed, it was business as usual. For the former, the “sizing up” of the state may have been so terrifying that the dread of the void soon displaced the pleasure of overthrowing a dictator. The desire for state authority quickly reinstated itself. The one maybe acting in sinister fashion claiming power back through law while the other well intentioned looking for good authority through law and litigation; but it is this conjoint desire for the state that fills the post-Fall time with dense law-acts.

This kind of Rule of Law performance would take place outside the constraint of the universal: no Revolution, after all, had taken place. A dictator fell revealing the weakness of the state he presided over. This was no productive rupture that would set forth a new situation working under the constraints of different norms. Authoritarian law can be reinstated punctured by certain legal concessions with a view to accommodating the condensed-now-diffuse rage of the demonstrators. Military trials of demonstrators can continue while a reorganization of the police and the Ministry of Interior is conceded to the public to make it more “transparent” and less arbitrary. Trial of the fallen dictator takes place but in civilian courts and only for crimes committed in Tahrir. The dictator is “under arrest” but is spending his time in a military hospital for “health reasons”. The usual practice of managing the state is back: splitting the difference and then splitting again within the original split, and so forth. This time the difference is being split between the two pressing considerations of on the one side the exigencies of cementing state power back without radically reorganizing the terms of its practice, and on the other accommodating public discontent. The absence of revolution makes resurfacing of this state managerial style less outrageous though not yet of course, given its manic overcompensating quality. Repeating with intensity what had been the case before produces an air of urgency rather than normalcy. A state had just imploded!
Law in the Shadow of Revolution

The above interpretation can be given a more nuanced and optimistic spin by insisting that while all the above was true, that Tahrir was no more than a tap on an imploding state and that the revolutionary bloc that emerged afterwards was guilty of an “overbearing” reading of the flash event of Tahrir, that nevertheless this reading could match the event through willful operation and diligent political work that insists on projecting Revolution backwards and forwards: “It was a Revolution therefore it is therefore it will be!” By tirelessly drawing out in the minds of Egyptians the consequences of that moment in Tahrir when they had “sized up” the power of their state, insisting that the distance between “sizing up” the state and ceasing it was a very short one, and that Egyptians can run, walk or crawl that one last mile, but that they do is a must. Revolution it will be!

If one adopts this more optimistic spin of what happened in Tahrir one would have to see the law-filled time in the aftermath of the “Revolution” as more complex with the conflict of interests between those who lost and those who gained heightened as each is now laboring under the constraint of the universal unleashed by “Revolution”. For those who lost, law becomes a means through which the universal is blocked. The tendency of the “Rule of Law’ to siphon off any political influence outside its domain is most convenient for those purposes. For those, the introduction of law, any law: good law, bad law, early on in the process is a means for derailing the normative pressure of the universal given the self-referential and extreme textuality of the law. The faster one moves towards law and legal performances, the sooner one departs from revolutionary times. The latter calls upon the state to respect the radical egalitarianism of the collective in Tahrir, the former counters with its own textually constrained notion of egalitarianism which will inevitably fall short.
For those who won the move to law is desired in a double but ultimately contradictory sense. On the one hand, the “Rule of Law” with all that it implies is one of the enunciated goals of the Revolution. As I mentioned earlier, the desire for the “Rule of Law” is part of the desire for a decent and functioning state that most Egyptians covet. On the other hand, law is seen as a means to utilize the porous quality of the law at this early stage to infuse it with the universal to which it lives in temporal proximity, to insist that that law should echo as much as possible the commands of the universal and that its textuality should be interpreted under its constraint. These are contradictory desires on the part of the revolutionary camp because to have the one, politico-phobic Rule of Law, they need to give up the latter, law constrained by the universal, and vice versa.

To have the “Rule of Law” in a state that labored for decades under dictatorships is itself so revolutionary that attributes of revolution are given to those of Rule of Law mistakenly and in idealizing fashion. Beginnings as presaging birth of the new have their political aesthetics and collapsing differences through idealization might be one of them!

Note how attributing the quality of “Revolution” to the removal of Mubarak and the implosion of the authoritarian state sharpens the degree of conflict between the forces of the old and the forces of the new and makes law-acts that would otherwise appear as run-of-the mill, difference splitting, state management styles appear more assaultive and deliberate. For they become more than a scramble for state authority, they are attempts at containing the revolutionary tide. Given the inherently conservative nature of the Rule of Law as a sphere that blocks the political, the early entry into the Rule of Law domain very soon after the event of Tahrir would seem to transport political conflicts yet to be worked out in the domain of the political into the more secure (for the old forces) domain of the law. Not because the judiciary is not independent, still acting to please the old political forces as the Revolutionary wisdom has it, but because it might choose to become independent from politics precisely then by blocking off the influence of the Revolution as an event that
constraints its interpretation of law. By doing that it would be most faithful to its judicialness and therefore most persuasive in its Rule of law performances. On the revolutionary side, on the other hand, this early immersion into law while it promises teasingly of a Rule of Law coveted universe, it amounts to an invitation to law before the maturation of the universals of the Revolution. The worst that could happen to Revolution, with weak revolutionary subjects, whose Revolution teeters between self-inflicted implosion and revolutionary act, is to be inducted into the Rule of Law before they have worked out the Revolutionary implications of their act. It is the entry into the ‘written” when they have barely had time to enunciate the words of Revolution.

Law in the Shadow of Democracy

That what happened in Tahrir was indeed a revolution but a very specific one, a popular Revolution for democracy, is by far the most popular interpretation of the events in Tahrir. This interpretation while insisting on the revolutionary nature of the Tahrir events, limits the range of the universals to be read out of them into one, namely, “Democracy”. Indeed, what else could be read out of the toppling of a dictator but the desire for political freedom, the freedom to choose one’s representatives? Democracy according to this interpretation enters as a mediating term between Revolution and the Rule of Law whereby the former is overridden by the choices democracy yield (the populace elect their political representatives): they come to stand in for whatever revolutionary potential there was; and the latter is treated as a species of democracy (elected representatives pass laws that are applied by an independent judiciary) and one of its organic effects.

Democracy is inserted here with its own logic that is independent of that of Revolution and the Rule of Law. A Revolution for Democracy is one that subordinates all its potential universals to the one of “choice”. “Choice by the greatest number” is its most privileged term that functions as its sole universal. The arrangements that put democracy in place are designed to mine the consequences of
this one solitary universal: “choice”. It is form to Revolution’s content; procedure to Revolution’s substance; nihilism to Revolution’s faith. Nothing to scoff at as choice is an expression of freedom the practice of which is highly revolutionary in the aftermath of a dictatorship.

Perhaps the most corrosive effect Democracy has on Revolution is that the democratic choice by the populace comes to “seal” the otherwise indeterminate events in Tahrir by offering their own retrospective interpretation of those events. That their choice might fall on a party (the Muslim Brotherhood) that had “hedged” Tahrir rather than participated un-ambivalently in it, one whose reaction to those events could best be described as “obscure” and at worst antagonistic, is even the more sobering for those insisting on flying a narrative-balloon above Tahrir with the word REVOLUTION inscribed on it. Alarming still is the way the democratic choice suggests that what had happened was more of “tap on an imploding state” rather than Revolution – the tectonic plates moved and the next political force standing in line popped up, before they settled down again. No universals were reported from the scene.

While on the other side the Rule of Law is considered as an organic effect of the practice of Democracy, the latter can have no less of a corrosive effect on the Rule of Law, seen as its twin, than it does on Revolution. The legalization of dictatorial rule, or law as a means to practice authoritarian governance, was without doubt a burdensome legacy that Egyptians seem happy to see go with the departure of Mubarak. But the choice of the populace can turn and negate itself quite willingly by choosing a supreme authority such as God to oversee their worldly choices. While the legislative machinery produced by the first elections has not yet yielded enough legislation for us to judge how Rule of Law under the reign of Democracy will fare in Egypt, there are indications that unelected institutions such as Al-Azhar will be given supreme authority over Parliament to pass Sharia muster on laws passed in earthly democratic institutions. This is no less of a Rule of Law except that it’s one
whereby the worldly lawgiver has delegated willingly (some of) its powers to another for guidance.

While the choice of Democracy can have a double corrosive effect: one retrospectively on how to understand the events of Tahrir and one prospectively on the Rule of Law, all of this is not altogether without limit. A commitment to Democracy and the Rule of Law in the aftermath of the toppling of a dictator would seem to drag with it a constellation of ideas, universally settled, about what they mean. The uneasy relationship between Democracy and Rights is a staple of such constellations, inherited from Revolutions other times in other places. If the choice of Democracy has the power to eliminate other universals from Tahrir it nevertheless has to contend with universals imprinted in the institutions of Democracy, “Rights” being the most basic. This would allow for a possible destabilization of Democratic choice and its legislative embodiments this time not from an outside of Democracy, Revolution in Tahrir, but from its deep inside through the settled legal traces of Revolutions elsewhere that have become legally “universalized”.

“Rights” open to interpretation and allowing for possible constellations of “liberties and entitlements”, that move from radical to liberal on the political spectrum, can function as the medium for the return of Revolution on different terms (now speaking the language of universals). This time it comes from inside a settled discourse with its debates already drawn out in other contexts. It can become legitimate oppositional language diffuse revolutionary forces can latch on to, to compensate for their initial weakness. The drafting of a new Constitution after the fall of the dictator becomes this compensatory event that through the language of Rights utilized now with some urgency, given the particular “choice” of Democracy, allows for the universals of Tahrir to be revisited, recited, and rehashed.
Conclusion

By the time I finished writing this paper, Morsi, the Muslim Brotherhood first democratically elected president of Egypt had disbanded SCAF (Supreme Council of Armed Forces). SCAF had taken over the state in the aftermath of Mubarak’s fall and assumed the role of the caretaker of the transition to Democracy. SCAF’s rule was considered highly suspect given the heightened resort to law to cement military control over the country. SCAF was generally regarded as representing the network of interests that were prominent under Mubarak now seeking to re-establish power on new terms. The ease with which the dismantlement of SCAF took place and the almost complete absence of opposition to the fact is hard to interpret at this point. Some argue that Morsi’s act is tantamount to finishing an unfinished revolution. A daring act that would not have been possible if it were not that the spirit of “Tahrir” and the multiple violent encounters with the army by the revolutionary forces in its aftermath. It was the Revolution that inspired, produced, and directed its own final act. Others opine that while the political representative of the interests has been removed, the network itself has not been eliminated. They argue that the Muslim Brotherhood seeks to replace its own network in its stead or alternatively seek to edge its own network inside the old one and create a new “partnership”. This analysis relies on the fact that the Brotherhood is adopting the same economic policies of the Mubarak regime (with minor differences) and is already showing signs of authoritarian control over political opposition. The fact that such policies will aggravate the already difficult lives of the struggling masses and threaten to send them back on the streets again with a renewed round of repression from the state in response, means that little has changed in Egypt.

Such kind of arguments raise the specter that haunts Egypt and which I have tried to capture in this paper, namely, the indeterminateness of what happened in Egypt that led to the fall of Mubarak, a question that cannot be settled without an interpretation of the events that followed the fall and the law-acts that permeated this time sequence. One can either use the language of “revolution-over-time” or
revolution-counter-revolution-back-to-revolution sequence or "popular revolution" to describe what happened and remains unfolding. What causes the indeterminateness is what the left has come to call "the weakness of the Revolutionary forces", or what I call the ambiguity of the Subject of Revolution. It is my view that Egypt lives within the gravitational field of Implosion, Revolution, and Popular Revolution for Democracy, all at the same time and this indeterminateness will not be settled anytime soon.