

# ‘I Heard it All Before’\*: Egyptian tales of law and development

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**ABSTRACT** *This article provides a brutally condensed history of the Egyptian legal elite, tracing their rise to power following the introduction of legal reforms in the late 19th century, their fall in the 1950s, and the possibility of a renewed elite status based on ‘rule of law’ reforms introduced since the 1990s. I argue that ‘rule of law’ reforms had a considerable effect in raising the profile of Egyptian legal practitioners and empowering them as instrumental decision makers on multiple questions of public concern. In particular, I argue that the history of the Egyptian legal elite makes it very difficult to either embrace the rule of law as a panacea or dismiss it out of hand as a colonial ploy.*

The ‘rule of law’ is curiously popular in the Arab Middle East today—if not as a reality on the ground, then certainly as a hegemonic slogan raised by an increasingly bizarre collection of odd bedfellows. Egypt is a particularly good example of this phenomenon. Over the past decade or so a diverse set of local and international voices has gradually come to rally under the same mantle, each with a different reason, in demanding ‘rule of law’ reforms from the Egyptian government. The World Bank says it’s good for development and the Bush administration says it’s good for democracy. Egyptian human rights organisations are joined by their international associates in naming and shaming rule of law violations, aided in this by a booming industry of ‘rule of law’ publications spanning academic scholarship, UN Development Programme (UNDP) Arab Development Reports, position statements issued by funding agencies and policy documents developed by concerned think-tanks. Over the past year, the ‘rule of law’ has also become the single most unifying slogan shared among the splintered platforms of Egyptian opposition groups, whether secular or Islamist, as well as among a bevy of professional associations, intellectuals and civil society activists. While the latter are all deeply hostile to the World Bank and Bush administration, they also all happen to share a common enthusiasm for the same slogan.

Egypt had its first taste of ‘rule of law’ reforms back in the late 19th century, and the parallels between then and now are intriguingly familiar. A severe debt crisis in 1876 saw Egypt go bankrupt and its finances put under

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*\*Madonna, ‘Sorry’, Confessions on a Dance Floor, WEA International, 2005.*

the control of an internationalised *Caisse de la dette*, with Great Britain and France overseeing the nation's budget to insure fiscal responsibility and regular payments to its creditors. Concurrently a civilian legal system was transplanted from Europe, complete with French inspired codes, a modern judicial system and a new secular law school. In today's terms, Egypt was a 'failed' state that adopted 'rule of law' reforms as part of a larger internationally backed programme to save its floundering economy. A century later Egypt went through another deep financial crisis, its Paris club of creditors agreed to \$10 billion loan write-off, and in return the country embarked on an IMF-overseen economic restructuring package. The 'rule of law' was part of it again.

In drawing the above parallels I do not mean to make an old-wine-new-bottles argument in which the 'rule of law' features twice as a colonial instrument deployed to serve the enduring interests of global capitalism. This is not my point here. Rather, I am interested in tracing the effect 'rule of law' reforms have had in raising the profile of Egyptian legal practitioners and empowering them as instrumental decision makers on multiple questions of public concern. What the elite did with its new-found powers is therefore deeply significant in assessing the rule of law as a strategy for economic development and political emancipation. In particular, I argue that the history of the Egyptian legal elite makes it very difficult to either embrace the rule of law as a panacea or dismiss it out of hand as a colonial ploy.

Accordingly this article provides a brutally condensed history of the Egyptian legal elite from the late 19th century to the present day.<sup>1</sup> There are three stages to the narrative. First, the legal reforms of 1876 onwards allowed a new elite of lawyers to rise into power by century's end. Within a couple of decades these lawyers managed to cajole and bully their way into taking charge of the nationalist movement, to outmanoeuvre competition from Islamic law scholars and foreign lawyers alike, to set the political and cultural tone of Egypt until the mid-20th century and, in the interim, to rule as a coterie of ministers and government officials, as well as writers, journalists, artists and above all intellectuals of varying liberal stripes.<sup>2</sup> In doing so, the legal elite dovetailed a nationalist project of independence from British occupation with a 'liberal legality' project of political and economic governance. In the process they actively participated in developing a new modern Egyptian identity: the nation was reinvented as neither Ottoman-Islamic nor Pan-Arab, but rather as singularly 'Egyptian' with complicated roots to both legacies.

Second, the lawyers' fall from grace in the mid-20th century is contemporaneous with the failure of the above 'law and identity' project. Following a military coup in 1952 a variety of political and economic factors conspired to replace the lawyers with a new elite of military officers and technocrats. The nation's identity was reinvented again: this time Egypt shifted towards a secular Pan-Arab nationalist project combined with a Third World/import-substitution vision of economic development. These shifts in nationalist identity and development strategy left the lawyers without

intellectual contribution or political leadership in the ensuing new mixture of socialist laws and Arab nationalism that came to identify Egypt throughout the 1950s and 1960s. And the legal profession's standing suffered greatly: once dubbed the 'college of ministers' for the inordinate number of its graduates rising into political prominence, Cairo University Law School has since then been dismissed as the 'university garage', a dumping ground for the least capable high school students who can not secure admission anywhere else.

Finally, the return of the 'rule of law' into prominence today has once again opened a space for Egyptian lawyers to become active participants in national debates over the public good. Their chances of rising to prominence largely depend on the lawyers' facility in combining methodologically innovative projects of legal reform with an equally creative project of nationalist identity formation. Perhaps the most creative contribution comes today from the Muslim Brotherhood and its lawyers, dovetailing an Islamist interpretation of Egypt's identity with a legal project of returning the *Shari'a* back into the scope of judicial application. However, the Brothers are also competing with three other players in the Egyptian legal profession: corporate lawyers, judges and human rights lawyers. Each of these players is increasingly empowered by the rising demand for 'rule of law' reforms in the public sphere and, while all are committed to a skeletal notion of the rule of law, this agreement conceals deeper divisions over the details of required legal reforms and development strategy. Of no less significant is the lawyers' disagreement in answering the nationalist 'who-are-we?' question.

This article proceeds on fairly chronological lines to recount the rise-fall-return narrative required to substantiate the above claims. To give it a more linear texture, I tell the story through the history of Cairo University Law School, the faculty of law from which the profession's elite mostly graduated.<sup>3</sup> Since the 'rule of law' features prominently throughout these pages, I will first start by detailing the different meaning associated with the slogan since its rise in the early 1990s onwards, and then move on to telling the story. I admit that it is overly ambitious to condense over 100 years of the profession's history into an article limited by a sombre word count, and apologise if the narrative sounds rushed and possibly harried at times. Nonetheless, I hope this historical condensation has the saving quality of making the rise-fall-return cycle all the more striking.<sup>4</sup>

### **Rule of law *redux*: and when they were up they were down**

Over the summer of 1952 Egypt went through a constitutional crisis that paradoxically demonstrated the strength of its ruling elite of lawyers, while concurrently spelling out their last days in power. A band of army officers had just taken charge of the country in a swift and bloodless military coup, forced King Farouk into abdication, and now had to deal with a Regents' Council ruling the country on behalf of an infant crown prince. Under the country's liberal constitution, the Regents should have pledged allegiance

before parliament, but the latter was suspended and the army officers were loath to calling it back for a swearing-in ceremony.

It took an administrative court decision to resolve the crisis, and the decision was authored by none other than Abdel-Razzak Al-Sanhuri (1895–1971), the Arab world’s foremost jurist, and a law professor, minister and judge in his native Egypt. As the uncontested scion of the country’s ruling legal elite, Sanhuri argued that the Regents could deliver their oath before the cabinet, thus providing the army officers with a much-needed cover of constitutional legitimacy. Two years later, Sanhuri famously clashed with Colonel Nasser, the *de facto* leader behind the coup. The clash all-too-symbolically signalled the downfall of lawyers from the ranks of Egypt’s ruling elite. The clash also provides a convenient watermark for the collapse of the ‘rule of law’ during in the ensuing military-republican era.

Four decades later the ‘rule of law’ started making a comeback as a popular slogan, with multiple meanings that depended on who was leading the chant. From 1991 to 2001 the slogan struck Egyptian ears as largely related to things economic, while from 9/11 onwards the rule of law expanded to denote things democratic as well. To trace the beginning, one must strain the memory back to the heady years following the end of the first Gulf war, when Bush the father announced a ‘new world order’, and a budding Israeli–Palestinian peace process gave the impression of a ‘New Middle East’ emerging on the back of regional economic integration. Egypt had joined the US-led coalition which pushed Iraqi forces out of Kuwait in 1991, and in return was rewarded with a gradual debt write-off of \$10 billion from the Paris club of creditors. In return the Egyptian government formally agreed to an IMF-overseen economic reform programme, with macroeconomic restructuring so seemingly successful that Egypt was whimsically referred to as ‘the tiger on the Nile’.<sup>5</sup>

The ‘rule of law’ thus first assumed prominence as part of the IMF/World Bank set of economic reform admonitions—in this case to adopt a series of legal reforms intended to underpin Egypt’s transition to market economy. Largely equated with ‘good governance’ in the private sphere, the rule of law entailed a commitment to property rights, strong contract and tort regimes, plus a new regulatory framework incorporating global ‘best practices’, all combined with an ‘anti-corruption campaign’, particularly intended to bolster a clean and efficient judiciary. Socialist laws from the Nasser era were dismantled, and Civil Code provisions governing free market relations were reactivated. Egyptian judges were sent abroad for professional training, computers were installed at local courts, and a host of new laws was passed to govern everything from commercial arbitration to capital market regulations. The ‘rule of law’ was on.

Yet by January 2001 the promise of economic prosperity underpinned by legal reforms had largely faded. Regionally the Israeli–Palestinian peace process was all but dead, and the notion of an integrated Middle East economy seemed fanciful, if not outright absurd. Egypt’s on-again-off-again embrace of market reforms also went into a slump as the government balked at politically precarious decisions on privatisation and

fumbled with plummeting macroeconomic indicators. Although Egypt remained formally committed to 'rule of law' reforms as a necessary support to its economic restructuring programme, the slogan had clearly lost much of its lustre.

The tragic events of 9/11 ushered in their aftermath a second and more expanded meaning to the 'rule of law', an expansion that ensured the slogan's continued relevance to both Egypt and the larger Arab Middle East today. Instead of merely denoting private law reforms as a requirement for economic development, the slogan today has expanded to signify a larger and more fuzzy notion of 'democracy'. Internationally two major policy shifts allowed this to happen. First, the World Bank signalled that it was re-imagining development as a 'comprehensive, holistic framework' with 'structural, social and human aspects' added to the earlier neoliberal formulation, which largely imagined development in macro-economic indicators such as 'GDP statistics, interest rates, reserves statistics, and percentage growth statistics'. In its rule of law sensibility the Bank now included the protection of 'human and property rights', and added new fields of legal reform such as 'personal rights laws' next to the predictable bevy of laws governing contracts, torts, bankruptcy and the like.<sup>6</sup> The slogan's expansion to include 'second generation reforms' with a clear 'social' commitment was further solidified when the Bush administration went public with its 2002 'National Security Strategy for the United States'. This document openly claimed 'America must stand firmly for the nonnegotiable demands of human dignity: the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance; and respect for private property'.<sup>7</sup>

On the national level the 'rule of law' has also transformed into perhaps the single most unifying slogan shared by the many strands of Egyptian opposition groups, professional associations, intellectuals and civil society activists. Though split between seculars and Islamists, liberals and Arab socialists, these diverse actors are nonetheless united today in their shared demand for the 'rule of law' as a solution to national problems. Mobilised by opposition to the Iraq war, and possibly encouraged by Western pressure on the Mubarak regime to reform, what these diverse actors share is a highly skeletal notion of the rule of law, namely, a 'rights-based' conception of the state where 'public power is regulated by general norms (fundamental or constitutional laws) and must be exercised within the framework of the laws which regulate it, while citizens have secure rights of recourse to an independent judiciary in order to establish and prevent any abuse or excessive exercise of power'.<sup>8</sup> Understood in these basic liberal terms, the Egyptian opposition has now also joined the chanting ranks of 'rule of law' supporters.

The above developments have allowed Egyptian lawyers once again to assume an important role in public debates over the nation's future. Yet, after five decades in the political wilderness, the profession appears either too disorganised or too divided by internal strife to take advantage of the 'rule of law' and its renewed popularity. Perhaps most tellingly, the legal profession continues to suffer from a status-crisis, its prestige never having recovered

fully after the downfall of 1952. While marrying your daughter to a lawyer may not be as shameful as it was in the late 19th century, today's discerning parents would nonetheless still worry should one of their brighter children decide to enrol in law school—and very few would blame them.

### **An Egyptian *fin-de-siècle***

The buildings at Cairo University Law School carry a look shared by many others across Cairo, the familiar charm of a decaying colonial structure combined with a modern-kitsch twist that tells of recent forays into its upkeep. The place has an instantly recognisable Cairene feel to it, in this case featuring Palladian-inspired columns and restrained neoclassical references, with images of an ancient Egyptian god for academic logo, combined with the recent additions of cheap granite floors, peeling paint in a variety of odd colours, and a smattering of plastic potted plants here and there. By the time the Law School had settled at these premises in the late 1920s it had already existed for some 90 years, moved from one address to the other, had changed its name on multiple occasions, and had its educational mission furtively expanded over the years. The School has not changed address since then, and by the 1950s it had also shed its older reputation for name changing and finally settled on the one it currently carries.

The law library collection features books stamped with a multiplicity of emblems, a subtle reminder of the School's changing fortunes. The older books carry stamps of the 'Khedival Law School', while an odd one here and there is stamped with 'The Egyptian University' emblem, others declare they belonged to the 'Sultanian Law School' or 'The Royal Faculty of Law', while the majority are stamped either 'King Fouad I University' or 'Cairo University'. The dusty bookshelves are dotted with Native and Mixed Court reports in French, English and Arabic. Pictures of past deans adorn the wall, each sporting a last name of foreign or local extraction, and mimeographs of lectures by a host of visiting professors all indicate this once was a highly cosmopolitan space of legal education.

The beginnings were decidedly humble: the Law School started its life as a languages institute established in 1838 by Mohamed Ali Pasha, yet another part of a state-led modernisation project that never went as well as originally hoped for. Pasha ruled Egypt for the first half of the 19th century (1805–48), and most historians continue to use largely positive terms in accrediting him with all things 'modern', from raising a 'modern' army, which secured Egypt's autonomy from the Ottoman Empire, to digging the 'modern' irrigation canals that multiplied the nation's agricultural productivity.<sup>9</sup> Ignoring the human cost involved, he took the country through the staple variety of social and economic upheavals associated with 'modernisation' and somewhere in the process realised what his project sorely needed was a new type of state functionary.

Thus the first mission of Egyptian students was sent to France in 1828; some of those who came back had studied natural law, international law, public law, political economy, statistics and administration. The religious

head of the mission was Sheikh Rifa'ah al-Tahtawi, an Islamic legal scholar trained at al-Azhar University and eventually charged by the Pasha to set up and direct the new School of Languages. Opening its doors in 1836, the School graduated a host of leading government officials, while Tahtawi directed Arabic translations of the French Civil, Commercial and Procedural Codes. But the School of Languages was not intended to graduate legal practitioners as such, and the legal profession remained largely as it was before the latter's establishment: based on Islamic law education at Al-Azhar University to prepare students for the twin roles of *qadi* (judge) and *'alem* (legal scholar), all in the context of Islamic *Shari'a* courts.

The Islamic legal system was kept pretty much intact, although the Pasha did tweak it here and there with specialised courts, commercial councils and a variety of edicts intended to facilitate trade and impose law and order. Lawyers simply did not exist in the sense we know today. Rather, litigants were expected to present their cases personally, or employ the drafting and oral skills of the much maligned *arda'halgy* and *wakil*, two informal professions whose occupants hovered around government buildings, peddling their draughtsmanship skills and knowledge of the system at a negotiable price. Their shady reputation for swindling and forgery haunted the new breed of secular trained lawyers who started graduating in the late 19th century, their work initially confused with this earlier manifestation of their new profession.<sup>10</sup>

The next change in the School's fortunes came three decades later. Sitting at his grandfather's throne, Khedive Ismael (1863–79) was no less committed to catching up with Europe than the Pasha was. New railways and telegraph lines mushroomed, the primary and secondary educational systems were revamped, the government bureaucracy solidified, and by the inauguration of the Suez Canal in 1869 the nation's finances and trade were fully integrated into the global capitalist system.<sup>11</sup> All this was couched in the Khedive's aesthetic fantasies of a Parisian style 'modernisation'. Cairo received its first urban planning intervention in centuries, with Haussmann-inspired *grands boulevards* intersecting at multiple *rond points*, a new public park modelled after the *Bois de Boulogne*, and a new opera house, with Verdi commissioned to compose its inaugural performance. The latter was based on a libretto telling of earlier and largely imaginary Ancient Egyptian conquests in Africa as an operatic salute to the Khedive's more contemporary, if equally mercurial, imperial drive to Egypt's south.

The School of Languages had shut down during the reign of the Khedive's uncle, Abbas Hilmi I (1849–54), a man who seemed to have had his fill of his father's 'modernisation' schemes and spent his brief reign unrolling many of them. On the other hand, the new Khedive was a modernising state builder, bent on staffing his new bureaucracy like his grandfather before him. And so the School reopened its doors in 1868, this time under the more expansive name of the School of Administration and Languages. This makeshift approach to reinventing the School was reflected in the Khedive's choice of its founding dean. Victor Vidal, a French trained engineer, was already in Egypt imparting his technical skills to Egyptian engineering students after

he had come to the Khedive's attention during the Paris Exposition of 1868. But Vidal also happened to carry a law degree that tickled the Khedive's multi-tasking sensibilities: deciding the man would better serve as founding dean of the newly reopened School of Administration and Languages, he summarily moved him from engineering to law.

Dean Vidal's official task was to set the curriculum with an eye on graduating civil servants and government functionaries, and so he split the school into two principle departments, 'administration' and 'languages'. His mission was not to graduate lawyers or judges—the former were as yet unknown professionally, while the latter continued to receive an Islamic legal education to work as *qadis* in the *Shari'a* courts. Yet a brief glance at the courses taught in the 'administration' department confirms that this was obviously a law school, although one with a much-muddled curriculum. Students would study 'Egyptian Civil Law as compared with leading European legal systems' along with 'Natural Law, Roman Law, Commercial and Maritime Law, Accounting and Bookkeeping, Procedural and Criminal Law'. Added to this was a baffling host of language courses in 'Arabic, Turkish, Persian, French, Italian and Latin'.<sup>12</sup>

This muddled curriculum reflected the even more muddled state of the country's legal system. Seeking to encourage commercial relations with Europe, Ottoman Sultans had made a habit of signing treaties allowing foreign traders to have their commercial disputes heard before the 'consular courts' of their own nationality. As part of the Ottoman Empire, Egypt was bound to these 'legal capitulations', and by the late 19th century these had peaked into a jurisdictional puzzle, featuring 17 consular courts, each vying with the other to apply its own national laws to disputes involving mixed nationals living in Egypt. A solution of sorts came with the establishment of the Mixed Courts in 1876, a unified court system that replaced the myriad consular courts and claimed exclusive jurisdiction over all disputes involving foreigners in the country. Sitting at the bench were Egyptian and foreign judges representing the different capitulatory nations, and a series of French-modelled codes was especially drafted for the Mixed Court's application.<sup>13</sup>

In the interim things had gone sour for the Khedive: originally touted as 'Klondike on the Nile' in the 1860s, Egypt's finances soon ran into trouble and the country was declared bankrupt in 1876.<sup>14</sup> International intervention first happened as an economic programme designed to insure the Khedive would repay his loans to his European creditors. When the Khedive proved unreliable, he was removed from power, an even deeper international crisis ensued, and the country fell under British occupation in 1882. A few months later the Egyptian cabinet pushed ahead with earlier plans to establish a 'modern' court system modelled after the Mixed Courts and dealing exclusively with civil, commercial and criminal disputes between Egyptian litigants.

The 'Native Courts', as they came to be known, were thus born in 1883, and historians since then have debated the government's rush for their establishment only months after the occupation. While some find in the

courts a native elite's desire to place a check on looming British colonial powers in the administration of Egypt, others dismiss the courts as a *compradora* ploy, while a third find the whole affair a betrayal of the nation's Islamic law heritage and its replacement by foreign adopted laws. Whatever the reasons, the Mixed and Native Courts gave Egypt its first experience of the rule of law: the Khedive's finances were separated from the state budget and the courts threatened not to hear any cases raised by the government until it enforced judicial decisions to its detriment. An independent judiciary that stood in opposition to the government emerged, and from the start it was invested in placing a check on the powers of the state by applying a set of modern laws codifying liberal principles of private law governance. Since agricultural land was the most important collateral to Egypt's loans, the courts were particularly invested in protecting property rights and enforcing contractual agreements. At a more symbolic level the Mixed Courts also played an important role in raising the profile of judges and lawyers into an elite calling, bound by strict professional rules, and invested in an emerging separation of executive and judicial powers.<sup>15</sup>

Between the establishment of the Native Courts and the emergence of British occupation, the School of Administration and Languages changed its name for yet a third time. It now received a royal acronym, finally managed to get the word 'law' into its title, and for the first time expanded its formal mission to graduating the judges and lawyers necessary to staff the Native Courts. Now called the 'Khedival Law School', the curriculum was changed in 1886 to include an elementary section designed to graduate court and government functionaries after two years of studying Arabic and French, history, geography, bookkeeping and procedural law. An upper section was also created, requiring a further three years of study in the nation's newly codified legal system.<sup>16</sup>

### **Nationalism to the rescue: 1882–1919**

In their eventual march towards elite status graduates of the new Khedival Law School had to compete with graduates of two other law schools, each claiming a piece of the country's multi-jurisdictional pie. On the one hand, Al-Azhar University continued to graduate judges trained in Islamic law who then moved on to working before the *Shari'a* courts—although the latter's jurisdiction was radically curtailed following the establishment of the Native Courts and thereon limited to hearing disputes involving family law and Islamic endowments only. A new *Qadi* School was established in 1907 to graduate *Shari'a* judges and lawyers, but then abolished in 1928 and its educational mission transferred back again to Al-Azhar University.

On the other hand, a new French law school was established in 1890, and put under the direct supervision of the French Ministry of Foreign Affairs, with professors sent from France (who were offered salaries that far exceeded what an Appeals Court judge would receive in Paris). Graduates of the *École libre de droit* worked as lawyers before the Mixed Courts, offering an

alternative model of lawyering as a prestigious and financially rewarding profession. At first almost exclusively composed of Europeans, with a smattering of Levantine Arabs, the Mixed Courts' lawyers unionised early into the country's first bar association, vigilantly guarded their turf, and for their services received much higher fees than those charged by their Khedival Law School colleagues working before the Native Courts.

Accordingly, graduating from the Khedival Law School did not initially appear as a certain road to assuming elite status. Graduates who sat as judges at the Native Courts were joining a brand new judicial body with unclear future prospects, while those who decided to become lawyers had to fight off the shameful reputation of the earlier professions that many confused them with. Moreover, Khedival Law School graduates faced competition from the better organised foreign lawyers working before the Mixed Courts, and concurrently had to deal with the older elite of Azharite trained judges, who were understandably hostile after the Native Courts had radically truncated the jurisdiction of their own Islamic *Shari'a* Courts.

With their disgruntlement initially confined to hushed opposition, the Azharite elite at best became tough negotiating partners in the various legal reform projects championed by Khedival Law School graduates, and at worst set out to question the very legitimacy of the Native Courts and the new civil, commercial and criminal codes it applied. This was a serious charge indeed, dismissing the new legal system as a non-Islamic aberration with suspect colonial roots, and therefore calling into question the Islamic loyalties of the lawyers and judges working in its ranks.

Nationalism came to the rescue on all of the above challenges. By monopolising the leadership of the Egyptian nationalist movement, Khedival Law School graduates managed to glorify the image of the 'native lawyer' invested in defending the case for Egyptian independence in the modern terminology of international law, and in the process reversed the traditional stigma haunting the honourable nature of their profession. Moreover, by intellectually developing a new project of nationalist rebirth, contributing deeply to the invention of modern Egyptian nationhood, and providing on-the-ground anti-colonial leadership, the lawyers banked on their nationalist credentials to push through a variety of domestic legal reforms that eventually led them to prevail over their Mixed and *Shari'a* Courts colleagues.

Egyptian military officers had allied with the Azharite elite to stage a disastrous rebellion that eventually culminated with the British occupation in 1882. Both were the only native elite the country had known, and they were either ruthlessly crushed after the occupation or shamefully reneged on their nationalist activities in the ensuing trials. Egypt thus entered a leadership vacuum that left it without an obvious nationalist elite to oppose the occupation. Moreover, there was a need for an alternative type of leadership, one that could present Egypt's demands for independence internationally and deploy various types of opposition at home. The military officers and the Azharite elite were by turns incapable or unwilling to fulfil this role, and native lawyers moved in with alacrity to fill the vacuum.

It is very difficult to resist experiencing the Egyptian nationalist movement as anything but a modern legal artefact: the leadership was almost exclusively composed of lawyers, the discourse consequently heavy on legal references, and the events leading up to the popular revolts of 1919 have the eerie feel of an attorney–client relationship going through a crisis of representation. If a single man is to be credited here, then it must be Mustapha Kamel Pasha, a child prodigy turned into the nation’s lawyer, and whose extreme intelligence, ambition and single-mindedness made him Egypt’s uncontested nationalist hero. Collapsing to death in 1908, Mustapha Kamel was barely 34 years old, but the Khedival Law School had already become the most troubling hotbed of Egyptian nationalism, with colonial reports describing its students as almost entirely adherents of Kamel and his Nationalist Party. His death was followed by one lawyer after another leading different nationalist wings until the end of the First World War. By then the press had settled on using the legalistic ‘Egyptian Case’ as shorthand for describing the nation’s aspirations to independence, modernisation and progress.

Kamel had studied law at both the French and Khedival Law Schools, ostensibly because he wanted to master the international law discourse necessary to present the ‘Egyptian Case’ before Western audiences objecting to the British occupation, particularly in France. At home he also relied on legalese to set the fiery tone of his widely popular speeches against the British, thus dovetailing the nation’s ‘legally valid’ demands for independence with concurrent cries for parliamentary elections and the activation of a liberal-oriented constitution. In the process Kamel constantly berated the British for a variety of domestic legal infractions, while embarrassing them abroad by widely lecturing on their illegal occupation across Europe.

Fortunately for Kamel and his followers, Egyptian identity had been a murky affair up to the British occupation in 1882, and only thereafter did it become discursively ripe for modernist reinvention. The country was formally part of the Ottoman Empire, the Sultan was also Caliph to Egypt’s Muslims, and Egyptians were technically Ottoman subjects with religious loyalties to the Sublime Porte. Yet Egypt had been practically independent since 1805, and the Egyptians had been ruling themselves long enough to experience successive whims for a separate national identity. Kamel was singularly adept at playing out this tension to his advantage. At home he rallied local support by appealing to a native sense of ‘Egyptian-ness’ that had nothing to do with Ottoman identity or loyalties to the Muslim Caliph. And just when ‘Egypt for the Egyptians’ became the nationalist *cris de coeur*, Kamel would turn around and use Egypt’s international status as an Ottoman territory to contest the legality of British occupation, or flaunt Egypt’s ties to the Ottoman Caliph to ignite religious opposition to the British at home.

The Egyptian nationalist movement soon started to bicker along these lines: was the nationalist goal an independent Egypt in which Christian and Muslim subjects would enjoy equal rights of citizenship, was Egypt part of a larger Muslim nation under an Ottoman flag, or was the latter option merely a necessary strategic manoeuvre in opposing British occupation? The First

World War put a formal end to this question, however. By declaring war on the Ottomans, the British also declared Egypt an independent country under British protection. The formal head of the state changed his title from Khedive to Sultan, thus underscoring his independence from the Ottoman alternative—and, of course, the Law School followed suit and changed its name for the fourth time round, going for eight years under the absurdly grandiose title of the ‘Sultanian School of Law’.

World War I ended with the lawyers clamouring for Egypt’s independence. Saad Zaghloul Pasha and his allies demanded that Egypt be represented at the Versailles peace talks—Zaghloul, of course, being third in a successive line of lawyers to lead the nationalist movement. When the British questioned the men’s credentials to speak on behalf of Egyptian interests, they responded like good lawyers by drafting a standard power of attorney giving them the right to defend the Egyptian Case at Versailles, and then circulated the document in a nation-wide signatures drive, the scope of which Egypt has yet to experience again. When the British reacted by arresting Zaghloul and his gang, the Sultanian Law School students went on a strike that quickly snowballed into a nation-wide phenomenon and was soon followed by forays into violent resistance. Egyptian historians have since settled on calling these events the ‘1919 Revolution and they also settled on fixing a date to commemorate it, namely the day law students went on strike. Could this perhaps be explained by the fact that the leading historian of modern Egypt was himself a graduate of the same Law School, who also took his part in the Revolution?<sup>17</sup>

### **Experimenting with liberalism: 1919–52**

Leadership in the 1919 revolution certainly raised the lawyers’ profile—even though the final outcome did not meet their demands. The British unilaterally declared Egypt independent in 1922, but with four reservations that allowed them constant intervention in the country’s politics. A liberal constitution was adopted in 1923, and the Sultan dropped his title for the modern-looking ‘King of Egypt’. Ever sensitive to its nomenclature, the Law School went through its fifth name change in 90 years. The bizarre ‘Sultanian’ adjective was finally dropped and the new ‘Royal Law School came to replace it.

Between adopting a Belgian-inspired constitution in 1923, and the military coup that suspended its application with Sanhuri’s blessing in 1952, Egypt went through what historians now call the ‘liberal experiment’. Having provided nationalist leadership, the lawyers moved on to the business of ruling under the liberal principles they codified, but then split around, and thereby showed little respect for in practice. Juggling party loyalties with appeasing the British and placating the King, the lawyers oversaw an avowedly liberal constitution systematically falling hostage to despotic measures and dysfunctional politics. With minor exceptions they mostly got carried away with personal infighting and paid only lip service to the principles of liberal governance they otherwise bandied about in public. In a

way the political elite of this liberal experiment were certainly responsible for the ensuing loss of faith in the 'rule of law' that went to legitimate Nasser's autocratic regime thereafter.

On a more positive note lawyers did make a highly formative contribution to the liberal experiment between 1923 and 1952, a contribution best discerned in their intellectual engagements and legal reform projects. Aside from rotating over ministerial seats or staffing elite positions in the government, they had also branched out into journalism, literature, poetry and the arts, excelled at endless translations of European classics in liberal political thought, questioned patriarchy in the first Arabic book by a feminist lawyer, and set out to push the limits of acceptable critique whenever the religious establishment was involved.<sup>18</sup> Censorship thus became a thorny issue under the new liberal constitution—whether caused by outcries of hurt Islamic feelings or precipitated by an aggressive attack on the ruling government, lawyers spent the 1920s and 1930s engaged in one battle after the other over the pages of newspapers and in the hallways of courtrooms, in the process popularising 'rights discourse' and setting down legal principles that endure to this day.

Towards solidifying their professional ties, graduates of the Khedival/Sultanian/Royal Law School followed the example of their Mixed Courts' colleagues and had established the Native Bar Association by 1913. The Bar served a dual professional and political role: with its members required to obtain a *License en droit* degree, membership in the Bar Association was by default closed off to the *Shari'a* Courts crowd, thus further demonstrating that an Azharite training in Islamic law would not garner a place among the new legal elite. Moreover, the Bar Association became a political force to be reckoned with, its members generally protected from government bullying by constantly waving the spectre of another Bar-supported strike, a risky possibility that threatened to freeze government activities on several occasions.

As for competition from legal professionals working before the Mixed Courts, the lawyers deployed nationalism once again to spearhead a legal reform project intended to unify the Egyptian judiciary under the Native Courts' jurisdiction. The Mixed Courts were attacked as a colonial vestige detracting from the nation's sovereignty and independence. With British assistance a treaty was negotiated in 1937 and signed by the different countries whose nationals enjoyed jurisdictional privileges under the Mixed Courts system. Under this treaty the Mixed Courts were given little over a decade to continue functioning, after which they would be abolished and their jurisdiction transferred to the Native Courts. The *Shari'a* Courts faced a similar fate barely a decade later, their separate structure abolished altogether, and their jurisdiction over family law disputes finally transferred to the Native Courts.

The lawyers and judges working before the Native Courts naturally heralded the above developments as a sign of the strongly independent and highly professionalised nature of their profession. Sanhuri drafted a new civil code to replace the mixed and native varieties, a code that soon became the

model for legal reform projects across the Arab world. Special issue stamps were printed and commemorative coins were minted, all to celebrate the unification of the Egyptian legal system under the Native Courts mantle. This was a moment of deep nationalist pride, a moment unlike any before or since, a moment when Egyptian lawyers graduating from the interchangeably named Law School were firmly and undeniably in power. Yet the end of their elite status was just around the corner.

### And then there were none: 1952–68

The changing fortunes of the legal elite in Egypt can be neatly traced in the concurrent rise and fall of the different headdress options adopted by its diverse members. The Mixed Courts' lawyers mostly took to wearing Western style hats that went along with their largely foreign stock, while the Azharite elite continued to sport the '*Emama*, a white turban with a red felt fez at its centre, instantly signifying their education in Islamic Law. By contrast, graduates of the Khedival Law School (and its ensuing 'Sultanian' and 'Royal' varieties) systematically wore the *Tarboush*, an Eastern Mediterranean phenomenon with disputed Greek/Turkish lineage, redesigned in the late 19th century to a firmer texture and more refined proportions. While the Native Courts' elite wore it in a way that distinguished them from colleagues working before the Mixed and *Shari'a* Courts, the *Tarboush* was certainly not limited to lawyers and judges—rather, it had become required headdress for any self respecting member of the emerging Egyptian middle class. With the abolition of the Mixed Courts in 1949 and the systematic confining of the Islamic courts to an ever more cramped legal space, Egypt entered the second half of the 20th century with the *Tarboush* as the undisputed headdress of its ruling legal elite.

The victory of the *Tarboush* over the Western hat and Azharite turban did not last for long, however. On 23 July 1952 a band of self-designated 'Free Officers' in the Egyptian army staged a *coup d'état* that eventually came to be called the 1952 Revolution. The military beret thus entered the headdress scene, its relation to the *Tarboush* initially ambivalent, then openly hostile. Eventually the military government got around to declaring the *Tarboush* a reactionary vestige of the *ancien régime* and decreed its total abolition from public space. Those who continued to brandish the *Tarboush* were at best perceived as elderly gentlemen incapable of keeping up with the times, and at worst enemies of the Revolution, with suspect loyalties of the feudal/colonial/capitalist variety.

Between the *Tarboush* and the military beret the Royal Law School naturally did not miss a beat: by now existing under different names for almost 120 years, the place went through its sixth and final name change. By the mid-1950s it had become 'Cairo University Faculty of Law', and so it continues to call itself today. Its students and faculty no longer wear the *Tarboush*, its Azharite-trained professors of Islamic family law have given up on the turban as well, and the School's fortunes have been in steady decline since then.

The shift from ambivalence to open hostility regarding the *Tarboush* also characterised the military regime's relation to the lawyers and judges who wore it. From 1952 to 1954 a careful wait-and-see period ensued, with the Free Officers claiming loyalty to liberal principles of governance and thus placating the lawyers, the latter using the coup to settle old political scores that had split them internally before it. Thus the Bar Association offered public statements of support to the 'blessed movement', and Sanhuri issued his controversial court decision providing the military regime with constitutional legitimacy, largely to spite political enemies from the dominant Wafd Party—an act he came to regret barely two years later.

Things came to a head in March 1954. The Free Officers disagreed on whether the military should return to its barracks and a new constitution provide Egypt with a republic governed by parliamentary democracy; the liberal wing lost and Colonel Nasser's group won. Its budget slashed in half earlier, the elected board of the Bar Association openly sided with the losing party, was consequently suspended, and a pro-Nasser coterie appointed in its place. As for Sanhuri, he received a bloody beating from a pro-Nasser mob that gathered at the steps of his court, was summarily wrapped up in a carpet by his fellow judges, and from his hospital bed the next morning went on to officially accuse Nasser of orchestrating the mob attack and refused to see the Colonel when he came to pay a visit at the hospital.

Sanhuri's over-dramatised beating on the steps of the court signalled the emergence of a new *modus vivendi* between judges and the military elite: as long as they refrained from political engagement, the government seemed willing to leave the judges alone and instead create 'exceptional courts' to deal specifically with the cases whose outcome it sought to control. Judges thus became the only professional group in Egypt not to be enlisted as obligatory members of Nasser's Arab Socialist Union, the latest name in the single-party outfits governing the state. And so the judiciary remained largely independent, while the government satisfied itself by enlisting the services of select judges willing to sit in its Revolutionary Court, People's Court, Treason Court, or whatever new security court was formed as the case may be. This comfortable arrangement broke down, however, after Egypt lost the Six Day War in June 1967. The Judges Club, a representative body elected by members of the judiciary, started to make noises that linked the country's staggering defeat to the absence of the 'rule of law', blatantly demanding the implementation of liberal principles of government as a first step towards reconstructing the country and its ruling institutions. Nasser responded with the infamous 'Massacre of Judges'—while none of the judges was actually killed, those agitating politically among them were either fired or transferred to alternative administrative jobs.

Once feared for the state-debilitating strikes its members staged when provoked by the government, the Bar Association now crumbled into a mere extension of the many-named single parties Nasser used to rule Egypt. Unlike the 'liberal era' preceding it, where lawyers dominated the political elite, the military regime now increasingly relied on officers, engineers, doctors and a variety of technocrats to staff its ministerial posts. At best lawyers were

dismissed as technically ill-equipped to address the nation's socialist drive for modernisation. Worse, their liberal commitment to the protection of private property, combined with their political prominence before the Revolution, served to cast them as intuitive opponents of Nasser's economic and political policies.

Moreover, the almost complete nationalisation of the private sector, combined with ensuing import-substitution policies championed by the state, conspired to deprive lawyers of the rich clientele that had allowed them financial security in their private practices. Elite status could still be attained, but only by joining the judiciary or becoming a senior civil servant at one of the legal departments of the many government agencies. In search of more lucrative career options many Egyptian legal professionals ended up joining a mass exodus of lawyers, judges and law professors who moved to work in the newly independent and staggeringly wealthy petro-dollar states of the Gulf. Although the public taste for legal education had been waning before the Revolution, the above developments only served to intensify this phenomenon, as the young increasingly drifted to the schools of engineering or commerce in search of a better paid career and possible inroads to political prominence.

Perhaps most damaging of all, the lawyers remained ideologically aloof from the nation's new identity project. Their turn-of-the-century predecessors were instrumental in inventing Egyptian nationalism, moulding it into a liberal project of governance, differentiating it from the Ottoman-Islamic variety, and thereafter leading the nationalist movement based on the singularity of something called 'Egyptian-ness'. Fifty years later the name of their Law School had finally stabilised, but the nation itself went into a cycle of name changing and flag swapping. Egypt became the United Arab Republic after it united with Syria in 1958. The union broke down three years later, but the country stuck with its new name. The question 'united with whom, then?' was irrelevant, for the country had now discovered its moving spirit was neither Ancient Egyptian nor Ottoman-Islamic, but that it was rather the very heart of the Arab Nation, embarking on a socialist drive for development, with strong Third World allegiances, even stronger Soviet military assistance, and above all a commitment to the Arab cause.

Unlike their precursors 50 years earlier, the lawyers now stood largely at the intellectual and political margins as they watched Egypt reinvent itself yet again. This is not to say the lawyers made no intellectual contributions, for here and there one stumbles in the Cairo Law School library on doctoral dissertations with titles such as 'Socialist property law' or 'The unification of Arab private law'. Moreover, lawyers remained a useful tool to Nasser's regime, becoming *tarzeyet qanun*, or 'legal seamstresses', who drafted the necessary laws to implement Nasser's economic and political policies. An elite of sorts persisted, largely composed of judges and senior government lawyers. The problem, however, is that lawyers made no original contribution to Egypt's new identity drive, and accordingly cannot claim the Nasserist legacy of Arab nationalism and social justice as their own. In this they stand

in stark contrast to the earlier legacy of the 1919 revolution and its ensuing liberal regime, both of which are closely linked to the legal profession and many of whose heroes can be claimed as their own.

### **Return of the repressed: 1971 – 2005**

In figuring out the extent to which Egyptian lawyers enjoy any elite status today, one is forced to recount yet another story of name-changing and flag-swapping. Succeeding Nasser as president of the United Arab Republic, Sadat soon dropped the country's quizzical claim to unity from its official name and opted instead for the more straightforward 'Arab Republic of Egypt'. By default Nasser's eagle was dropped from the national flag and swapped for another emblematic bird of prey. More concretely for the current fortunes of lawyers and judges, Sadat's commitment to economic and political liberalism and his policy of giving a free hand to Islamist ideologues laid much of the groundwork that explains the current status of the legal profession.

In seeking to distinguish himself from Nasser, Sadat publicly committed himself to the 'rule of law' in a highly dramatic fashion. He was shown in newsreel after newsreel burning the wiretap recordings taken by Nasser's secret service, physically demolishing cell doors in an infamous political prison and, of course, reinstating the judges Nasser had fired in the 1968 'massacre'. His commitment to the independence of the judiciary was coupled with the eventual reinstatement of multiparty politics in Egypt for the first time since the military coup of 1952. Of course, when opposition went too far for Sadat's taste, he reverted back to the old system of trial through exceptional courts or summarily putting his opponents in prison by decree.

To counterbalance the leftists, whose allegiance harked back to Nasser's era, Sadat maintained the legal ban on the Muslim Brotherhood but also gave the organisation a green light for *de facto* engagement in the nation's politics. More importantly, he amended the constitution to officially declare Islamic law a principle source of the nation's legislation. He was assassinated by Islamic fundamentalists barely a year later, but his amendment to the constitution lives on, offering Islamist lawyers a constitutional platform to voice their demand for the return of Islamic *Shari'a* today.

Along with the rule of law came a new taste for the market economy and a new-found commitment to the protection of private property. Sadat gradually turned his back on the import-substitution policies of the Nasser era and substituted them with a hazy vision of a market economy fuelled by export-led growth. His 'Open Door' policies thus produced two new economic players that were absent in Nasser's time: the rich Egyptian businessman with political ties to the ruling party, and the local office of the multinational company with ensuing foreign direct investment statistics annually traced in the national budget. With all the above came new Western alliances, a peace with Israel, and a dramatic break-up with Arab nationalism.

In the hesitant fits and starts touted as signs of the wise and cautious leader who succeeded him, Mubarak largely stayed the course on all of Sadat's policies—although he did remove Sadat's bird of prey from the national flag, replacing it with Nasser's eagle once more, thus signalling vapid recommitment to the Arab cause. More importantly for the legal profession, the Sadat/Mubarak policies opened a new space for lawyers and judges to return once again as part of the nation's elite, participating in public discourse and wielding some measure of economic and political power. Aside from the standard use of 'legal seamstresses' to assist the current regime in drafting its legislation and staffing the odd ministerial post, four new developments signal the tentative return of lawyers and judges into the fray of the political elite. This became all too obvious during the presidential and parliamentary elections held at the end of 2005.

First, the embrace of neoliberal market reforms has allowed the return of rich business clients after their disappearance under Nasser. Thus a bevy of American-styled corporate law firms has opened across Cairo, with some of their senior partners heavily involved in developing the ruling party's legal reform projects for market regulation, while others were recruited to head such new regulatory bodies as the Investment Authority, the Authority for Real Estate Finance, the Capital Market Authority, the Cairo and Alexandria Stock Exchanges, and so on. For all these actors, the 'rule of law' is a common demand, largely articulated as necessary to attract foreign investment, and is accordingly concerned with private law guarantees on contracts, torts and property rights.

Second, the state's formal embrace of political liberalism allowed a new breed of human rights lawyers to emerge. Working for myriad NGOs, which largely rely on foreign sources of funding, the human rights lawyers have become increasingly vociferous in the past few years, calling on the government to scrap its emergency laws, berating it over political prisoners and using the press and media to make their voices heard. In response the government established the National Council for Human Rights, an outfit intended to contain some of these lawyers and offer co-optation opportunities to others, but in the meantime it has also served to mainstream human rights vocabulary and solidify it as part and parcel of the public discourse. Again, the rule of law is uniformly demanded by this set of lawyers, although in this case the slogan largely denotes protection for civil and human rights.

Third, the judges and their Club are once again a force to be reckoned with. Since their 1968 massacre, judges had largely refrained from political engagement and stuck to a professional image of technical neutrality. The Judges Club regularly demanded a new law giving the judiciary further guarantees of financial and administrative independence, yet never made enough noises to push its demands forward. The judges' non-confrontational relationship with the government soon collapsed after a Supreme Constitutional Court decision required judicial supervision on every electoral box in all future elections. Willing or not, the judges suddenly found themselves at

the very heart of electoral politics, with the board of their Club threatening not to supervise the 2005 elections unless the government passed a long-demanded law with administrative and financial guarantees for judicial independence. Although the Club did back down from its threat and ultimately agreed to supervise the elections, several of its leading members went on to report instances of electoral fraud in the media. The Club continues in an uncertain confrontation with the government to this day. Naturally, the 'rule of law' is a slogan repeatedly raised by the Judges Club in its demands for an independent judiciary.

In the above three developments, lawyers and judges relied on the liberal vocabulary first introduced and popularised by their turn-of-the-century precursors and given a new lease of life following Sadat's presidency. However, they have not provided a new intellectual outlook for the nation's future and they are yet to engage in any serious popular leadership. And so we come to the fourth and most important avenue for the return of lawyers into the Egyptian elite today. Released into politics with *de facto* legitimacy, the Muslim Brotherhood moved on to regularly win controlling seats of the Bar Association and deploy its demand for the 'return of the *Shari'a*' into a popular leadership project. Capturing 20% of parliamentary seats in the 2005 elections, the Muslim Brotherhood lawyers also raise the 'rule of law' slogan to denote the same commitment to private property and human rights advanced by their colleagues in corporate law firms and human rights NGOs. The Brothers equally support the Judges Club in their 'rule of law' demands for a more independent judiciary. In other words, Muslim Brotherhood lawyers share the same liberal framework of their more secular-leaning colleagues, but with an added Islamist twist and an infinitely more effective popular support network.

### **Snapshot 2006: and when they were down they were up**

There are 32 000 law students enrolled at Cairo University Law School today. The absolute majority did not want to study law, but their weak grades could not get them admitted anywhere else. The faculty has no control over tuition fees, admission requirements and annual student intake—these all being political questions left for the Ministry of Education to decide. But the faculty has nonetheless maintained its traditional capacity to gauge the changing signs of the times and react accordingly. While the Law School's name has not altered since the 1950s, its faculty nonetheless took a cue from the government's new economic policies and effectively decided to privatise its educational services. Over the past decade Cairo University Law School expanded its degree offerings to include a 'French Section' run by the French Ministry of Foreign Affairs in a manner echoing the 1890 *École libre de droit*, followed by another 'English Section' run under a more direct supervision from the Law School administration.

Students at both sections pay much higher tuition fees than their fellow colleagues enrolled in the public 'Arabic Section'. In return, while their average class size ranges from 20 to 140 students, the corresponding average

in the Arabic Section continues to teeter at the epic ratio of 5000 students per graduating class. French and English section students are the most likely to join the judiciary or secure a high-paying job with a corporate law firm. Arabic Section graduates generally end up in a small *cabinet d'avocat*, their work as trainee lawyers receiving little to no pay, and their subsequent success as lawyers so uncertain that many decide to quit the profession altogether.

The curriculum is ostensibly the same across all three sections, namely a secular education in various fields of public and private law, combined with four required classes in Islamic law, particularly in the codified rules of marriage, divorce and inheritance. Students in all three sections generally appear undisturbed by the hybrid jumble of Islamic and secular components in their curriculum. Moreover, the student body is overwhelmingly apolitical, barely engaging in any activism on campus. The only notable exception is students belonging to the Muslim Brotherhood, whose posters and stickers can be seen across the Law School buildings. They are certainly troubled by the secular legal system they must study to pass their exams, and they are equally interested in a political project that can bring the *Shari'a* back into judicial application. Of course, almost all these students belong to the underprivileged Arabic Section.

The pre-1952 liberal experiment is now too far in the past to capture the popular imagination, the disappointments of Nasser's Arab nationalism are too embarrassing to remember, and the Sadat/Mubarak Western-oriented market reforms have yet to translate into meaningful developmental gains and thus garner serious popular support. Egypt's modern identity is up for grabs yet again, and this time the Muslim Brotherhood lawyers are at the helm of reinventing the national psyche—and unabashedly using the rule of law as a slogan in the process.

Refusing the past disappointments of a singularly Egyptian or pan-Arab identity, unsure what a South–South alliance might look like, and having deployed anti-Western rhetoric for populist support over many decades, the Muslim Brotherhood lawyers see Egypt as above all Islamic, and inexorably tie this identity to a larger project of national rebirth rhetorically centred on the return of the *Shari'a*. While they do face political competition from their corporate law and human rights colleagues, they also share with them the same rights-based discourse and adeptly use it to advance their agenda. The latter may look like the skeletal vision of a liberal Islam but, even if it is riddled with loopholes and contradictions, it is still the most serious contender for the national imagination today. If lawyers are to reclaim the overwhelming elite status they enjoyed over 50 ago, their best chance seems to rest in an Islamic identity project that dovetails with legal reforms emphasising liberal oriented *Shari'a* applications. Let me be clear: I am not saying they have won yet, but if we take any indication from the growing number of sympathetic students at Cairo Law School's Arabic Section, then it would seem that the Muslim Brotherhood and its lawyers are certainly headed in that direction. And in the meantime, they are chanting 'rule of law' slogans like every one else.

## Notes

My thanks go to Tamara Chalabi, Hani Sayed and Chantal Thomas for their very helpful comments.

- 1 The term 'elite' is as notoriously slippery as the alternative term 'class' which it originally appeared to augment and/or replace. I will not go into the different definitions of the term 'elite'. Instead, I take it as a given that Egyptian lawyers have played such a major role in political, intellectual and cultural issues, that their elite status will become obvious to the reader without the need to enter into the hopelessly contested meaning of the term. For an excellent summary of the different strands of elite scholarship, cutting from the classical elite theory of the Italian school to recent developments, see E Etzioni-Halevy, 'Elites: sociological aspects', *International Encyclopedia of the Social and Behavioral Sciences*, Oxford: Elsevier, 2002, pp 4420–4424.
- 2 Such was their astonishingly meteoric rise to power that, when the young King of Egypt decided to get married in 1937, his choice for prospective queen was none other than a lawyer's daughter. Five decades earlier the legal profession was so new and its reputation so uncertain that no respectable family would have been willing to consider lawyers as marriage material. See, generally, F Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt*, Stanford, CA: Hoover Institution Publications, 1968.
- 3 Historically the legal profession has been singularly adept at assuming an elite status, giving Egyptian lawyers an inordinate share among Arab colleagues who have risen to domestic and global prominence. Almost all graduates of Cairo University Law School, one can easily count among them two judges at the International Court of Justice, one Secretary General of the United Nations, a Director General of the International Atomic Energy Agency, a Vice President and General Counsel of the World Bank, not to mention the predictable bevy of Secretary Generals of the Arab League.
- 4 This article is based on my larger forthcoming book in Arabic, *Min al-Izdihar ila al-Inhiyar: Tarikh al-Nukhba al-Kanunyya fi Misr 1883–2006*, Cairo: Dar Al-Shorouk. For a more detailed account in English, the most helpful source on the topic remains Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt*. A slightly more up-to-date reference is D Reid, *Lawyers and Politics in the Arab World, 1880–1960*, Minneapolis, MN: Biblioteca Islamica, 1981.
- 5 For a summary, see *Egypt Almanac 2003*, Wilmington, DE: Egypto-file, 2002, pp 169–262.
- 6 See generally, JD Wolfensohn, 'A proposal for a comprehensive development framework', May 1999, at <http://www.euforic.org/rodzend/ma99.htm>; and World Bank, 'What is CDF: ten things you should know about CDF', at <http://www.worldbank.org/cdf/>. For an excellent analysis of this shift in conceiving development and its connection to the rule of law, see Kerry Ritich, 'The future of law and development: second generation reforms and the incorporation of the social', *Michigan Journal of International Law*, 26, 2004, p 199.
- 7 <http://www.whitehouse.gov/nsc/nss.html>.
- 8 N Bobbio, *Liberalism and Democracy*, London: Verso, 2005, p 12. While Bobbio's definition is admittedly skeletal, it nonetheless provide the core set of commitments shared by all strands of lawyers in Egypt today, regardless of their differences in imagining the state's functions as minimal or more 'social', or their disagreement over the secular/Islamic identity of the legal system as a whole.
- 9 Indications of a new school of Egyptian historiography are equally far fetched. For the most sustained attempt at critically revisiting Mohamed Ali's reign with a conscious attention to the human cost of his modernisation project, see K Fahmy, *All the Pasha's Men: Mehmed Ali, his Army and the Making of Modern Egypt*, Cambridge: Cambridge University Press, 1997.
- 10 AF Zaghloul, *Al Muhamah*, Cairo: Dar Al-Maarif, 1900, pp 248–249.
- 11 For a wide ranging introduction, see R Owen & S Pamuk, *A History of Middle East Economies in the Twentieth Century*, Cambridge, MA: Harvard University Press, 1999.
- 12 MK Mursi, 'Kulliyat al-Huquq', in Mursi, *Al-Kitab al-Dhabai lil Mahakil al-Ahleyya*, Cairo: Amireyya Press, 1933, pp 411–412.
- 13 See, generally, JY Brinton, *The Mixed Courts of Egypt*, New Haven, CT: Yale University Press, 1968.
- 14 See, generally, D Landes, *Bankers and Pashas: International Finance and Economic Imperialism in Egypt*, Cambridge, MA: Harvard University Press, 1979; and J Marlowe, *Spoiling the Egyptians*, New York: St Martin's Press, 1975.
- 15 See, generally, N Brown, *The Rule of Law in the Arab World*, Cambridge: Cambridge University Press, 1997, pp 23–128.
- 16 For the details of the new curriculum, see *Ministère de l'instruction publique, Règlement organique de l'École de droit*, Cairo: 1886.
- 17 See A al-Rafi'i, *Thawrat 1919*, Cairo: Dar al-Maarif, 1987.
- 18 See A Hourani, *Arabic Thought in the Liberal Age 1798–1939*, Cambridge: Cambridge University Press, 1995.