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Egypt's "Trial Of Two Regimes": Transitional Justice Or Politics As Usual?

Joyce van de Bildt

In 2013, there was a popular joke circulating among Egyptians: “When you get elected here, you serve two terms: one in the presidential palace, then one in prison.”¹ The joke reflected the fact that former Egyptian presidents Hosni Mubarak and Mohamed Morsi are both on trial; not surprisingly, given Egypt’s tense political environment, the proceedings have generated considerable controversy. These public trials are important as Egypt’s new government charts its future course, while the images produced by the two trials actively contribute to shaping Egyptian collective memory about past regimes.

The criminal trial of Mubarak, his sons, and senior officials from his administration has been referred to by the Egyptian media as *muhakamat al-qarn*, the “trial of the century.” Mubarak was originally brought to trial in August 2011, and received a life sentence in 2012, for failing to prevent Egyptian security forces from killing protesters during the mass demonstrations in January-February 2011. However, in January 2013, an appeals court overturned Mubarak’s life sentence and ordered a retrial. In August 2013 a court ordered Mubarak’s release, and, while he was placed under house arrest until his next trial, he was also sentenced to three years for corruption and embezzlement of public funds. In August 2014, Mubarak again appeared in court and was invited to read his testimony. In an emotional courtroom

¹ Kevin Connolly, “Morsi trial is latest chapter in Egypt’s power struggle,” *BBC News*, November 4, 2013.

speech, broadcast live on Egyptian television, Mubarak denied that he ordered the killing of protesters, and took the opportunity to swear to the Court (and the audience watching) that he had devoted his life to Egypt, recounting his service to the country over his 62-year career as a military commander, vice-president, and president.² In comparison to his appearances in 2011 and 2012, Mubarak appeared defiant and in better health in 2014. The verdict in Mubarak's retrial has been postponed multiple times and is currently scheduled to be issued on November 29, 2014.

While the Mubarak trial continued, President Morsi was ousted by the Egyptian military, arrested, and also brought to court together with other senior leaders of the Muslim Brotherhood. Morsi faces multiple charges, including inciting the killing of protesters, espionage for foreign militant groups, and treason. Initially Morsi's trial was not televised, based on the interim military government's gag order, issued in November 2013, that effectively banned all media outlets from reporting on the hearings. Officials claimed the gag order was necessary to avoid further exacerbating the hostile relations between pro-Morsi demonstrators and government forces at the time. Morsi's defense was based on the argument that he was still Egypt's rightful president and therefore the court's legitimacy was unfounded.

Both the Muslim Brotherhood and the Egyptian military have sought to use the trial as a theater to directly address the Egyptian public by advancing their rival political agendas and mutual accusations. Morsi's trial has been postponed multiple times, and most recently to November 15, 2014.

Regardless of the final legal outcomes, these two trials will undoubtedly shape the public's memories of the former presidents and their respective regimes. Joachim Savelsberg and Ryan King argue that "legal trials evoke collective sentiments, and they may impress memories [...] on groups and peoples."³ They also claim that "following the fall of a dictatorial regime that allowed or committed massive human rights violations, the ritual destruction of former political leaders, possibly charismatic figures, through trial is likely to result in a revision of collective memories of the role

² "Bath mubashira li-kalimati "Mubarak" amam al-mahkama bi-'muhakama al-qarn'" ("Live broadcast of Mubarak's speech in court during 'the trial of the century'"), *Al-Youm al-Sab'a*, August 13, 2014.

³ Joachim J. Savelsberg and Ryan D. King, "Law and collective memory," *Annual Review of Law and Social Science* 3(2007), 206.

those leaders played in history.”⁴ In the Egyptian case, Harold Garfinkel’s interpretation of courtroom events as “degradation ceremonies” of the individuals on trial is particularly appropriate to the initial stages of the Mubarak trial, when the former President appeared in front of the court in a hospital bed while locked up in a cage. But while this image aroused feelings of poetic justice among large portions of the public, the degradation likely evoked sympathy as well. Hence, the portrayal of former leaders during public trials may lead people to reconsider the past in a new light, adding to the contested memory of past regimes.

The trials of former statesmen are seldom just about accountability; they are also part of writing a historical record, judging past crimes, and symbolizing the transition towards a new era. In an ideal situation, trials can function as a “process of internal cleansing and thus prepare the ground for a functioning democracy, the legitimacy of which depends on a system of accountability that is guaranteed only through the principles of the rule of law.”⁵ The current situation in Egypt is unfortunately far from this ideal and hence unsuitable for this kind of transition, and has inevitably resulted in a politicization of the trials. Most notably, Morsi’s trial cannot be separated from his successor regime’s attempts to discredit Morsi’s image with the Egyptian public. Some observers argue that Morsi’s trial is part of a political theater that uses the courtroom “to validate and authenticate a contested revolution,” arguing that the trial is “not concerned with the determination of guilt and innocence so much as the rationalization and justification of the events of July 3, 2013.”⁶ Notably, the latest charges against Morsi include leaking national security documents to Qatar during his presidency. This comes on top of charges of staging a jailbreak and murdering prison officers during the uprising of January 25, 2011, an act that is considered to be high treason. Another case against him concerns espionage, including sharing state secrets with the Iranian Revolutionary Guards Corps and conspiring with the foreign Islamist militant groups Hamas and Hezbollah to destabilize Egypt. Indeed, Morsi is not merely charged with misconduct as president, but also accused of being a “disloyal” Egyptian citizen – a characterization that the government’s rhetoric liberally uses against the Muslim Brotherhood. Hence the current military-backed government may

⁴ Savelsberg and King, 192.

⁵ John Borneman, cited in Savelsberg and King, 189.

⁶ Awol K. Allo, “The politics of Mohammed Morsi’s trial,” *Al-Jazeera English*, February 2, 2014

benefit from the ongoing trials, and the images produced by the proceedings largely work in favor of the current president, 'Abd al-Fattah al-Sisi.

The Egyptian media plays an important role in shaping these images through its selective transmission of audiovisual material and headlines to its audiences. In August 2014, the Cairo Court announced that it would lift the media ban on Morsi's trial, allowing the media to report the charges that Morsi had leaked national security information to Qatar when he was in office. The Prosecutor General claimed it was "the biggest case of espionage in the history of Egypt," which Egyptian media outlets immediately reported in their headlines.⁷ Notably, the media's "verdicts" these days focus less on Mubarak than they do on Morsi. To be sure, the contrast between the current representation of the Mubarak trial and the way he was portrayed three years ago is great: while in August 2011 Egyptian media eagerly distributed the news that Mubarak may face execution, in August 2014 his speech in his own defense was broadcast on national television. Some Egyptian lawyers have explained this extraordinary reversal as part of a trend in which the Mubarak trial has been increasingly politicized over the past year, with allies of the Mubarak regime appearing "all over the media" since the events of June 30, 2014.⁸ Some observers even argue that the Mubarak years are being slowly rehabilitated by the Sisi's military-backed government.⁹

In addition, the slow pace of Mubarak's legal process has been sharply criticized by both secular-liberal anti-military protestors, who accuse the Egyptian judiciary of being politicized, and by Muslim Brotherhood demonstrators who railed against the swift death sentences imposed on hundreds of members of their organization during the last year. Brotherhood spokesmen have denounced the judiciary as "an instrument of the military coup," saying that "all its actions and decisions are closer to military dictates than to judicial judgments."¹⁰ In general, the independence of the Egyptian judiciary has been called into question by both Egyptians and foreign observers, while

⁷ Khadija 'Afifi and 'Izzat Mustafa, "Bi-l-tafsil: Morsi yuwajahu al-i'dam fi akbar qadiya tajassus bi-tarikh Misr" [In detail: Morsi faces charges in the biggest case of espionage in Egypt's history], *Akhtar al-Yaum*, September 6, 2014.

⁸ Omar Said, "Politics and Law in Mubarak's trial," *Mada Masr*, September 27, 2014.

⁹ H.A. Hellyer, "Still interested in Hosni Mubarak's trial by drama?" *Al-Arabiya*, September 29, 2014.

¹⁰ "Freedom and Justice Party Statement on Mubarak Judgment Deferral," published on *IkhwanWeb*, September 28, 2014.

the biased media coverage of the court proceedings of the Mubarak trial have repeatedly been equated to episodes of a television show.¹¹ For example, on September 29, the Judge announced yet another adjournment of its verdict in the retrial because the court needed more time to review the case. In order to strengthen its case, the Court then screened a short film in cooperation with a pro-government television channel, portraying the stacks of documents to be examined.¹² The video left observers astonished by the fact that a media team had been allowed into a room where sensitive trial documents were being held.¹³

In theory, the public trials of discredited former leaders can symbolize a transition to a “new” era and pave the way for applying transitional justice – which entails the implementation of judicial measures in order to redress legacies of human rights abuses, and is typically enacted at a moment of transition from violence and repression to relative stability and liberalization. However, in Egypt, this stability is increasingly elusive and liberalization is strikingly absent. At the same time, the true degree of political transition since the ousting of Mubarak is hard to pin down now that the Egyptian military is back in power and former officials from the Mubarak regime are gradually being rehabilitated. Under these circumstances it has become impossible to separate the two trials from their political context and facilitate a path to transitional justice. As a result, these trials have highlighted the deep divisions in Egyptian society about the fundamental direction that Egypt is taking.

Joyce van de Bildt is a doctoral candidate at the [Graduate School of History](#) and a Junior Researcher at the [Moshe Dayan Center for Middle Eastern and African Studies \(MDC\), Tel Aviv University](#).

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¹¹ Hellyer, “Still interested in Hosni Mubarak’s trial by drama?”.

¹² The video is available on *YouTube*: <https://www.youtube.com/watch?v=FV5mFThWpo4>

¹³ Amira el-Fekki, “Court makes TV show of Mubarak’s trial while Sisi grabs newspaper headlines” *The Cairo Post*, September 27, 2014. For a screenshot of the video shown in court, see Sharif Kouddous on *Twitter*: <https://twitter.com/sharifkouddous/status/515782477634605056>

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