Counter Terrorism and the Normalisation of Violence: a Feminist Genealogy of Anglo/Egyptian Pre-criminal Practices

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Abstract

This thesis expands on and understandings of the 'pre-criminal space' – a pre-emptive form of countering terrorism that sets up different treatment for those suspected of terrorism – by situating it within a historical context. This thesis makes two, inter-related arguments. First, I argue that by contextualising the 'pre-criminal space' within colonial legal histories, it becomes clear how this pre-emptive form of countering terrorism is legitimised and normalised as part of the everyday operation of law, rather than being a form of exceptionalism. Second, the thesis argues that the 'pre-criminal space' relies upon conceptualisations of extremism and terrorism that have been shaped by forms of morality and vulnerability through the marginalisation of gendered, classed and racialised communities.

The arguments are made through a genealogy of pre-criminal forms of countering terrorism in early twentieth century British-occupied and contemporary Britain and Egypt. Using transnational, intersectional, queer and postcolonial feminist approaches that combine archival analysis with interviews and legal analysis, the thesis interrogates legal moments in Britain's colonial history in Egypt, arguing that these events have been central in normalising everyday forms of state violence in both states. By holding together versions of truth from the British administration, British feminists and Egyptian officials, alongside testimonies of the fellaheen (peasantry), the working classes and sex workers, and contemporary interviews with Egyptian citizens, I demonstrate the tensions between empirical depictions of what law and violence mean to people on an everyday basis, and what an archival or legal account provides. The thesis concludes that the pre-criminal space is a form of coloniality that is legitimised through the primacy of contemporary law.

Table of Contents

Table of Figures

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Chapter One: Introduction

1.1 Introduction

This thesis carries out an interdisciplinary feminist mixed-methods study of the contemporary pre-criminal space in the UK and Egypt and its colonial roots as a pre-emptive form of governance in British-occupied Egypt. The purpose of this study is to investigate how structural, everyday violence is legitimised as a lawful method of governance in the contemporary global war on terror.[1] Most writing on the pre-criminal space considers it to be a post 9/11 development based on the perceived risk of certain identities to commit future crimes, often understood as an exceptional device of the global war on terror. By carrying out a feminist genealogical study of the 'histories of the present',[2] I argue that this seemingly new development is in fact an outcome of colonial imagined hierarchies of the human and is suggestive of broader lawful and administrative governance in both states.

This thesis makes two, inter-related arguments. First, I argue that by contextualising the contemporary 'pre-criminal space' within its colonial legal histories, it becomes clear how this pre-emptive form of countering terrorism is legitimised and normalised as part of the everyday normal operation of law, rather than being a form of exceptionalism. This thesis uses a legal and administrative framing to render the contemporary pre-criminal space as a product of a longer history of lawful colonial governance that rests upon its liberal and 'consensual' framing

[1] My main influences for thinking about pre-criminality as a form of governance are the works of: Charlotte Heath-Kelly on 'risk governance': 'Counter-Terrorism and the Counterfactual: Producing the 'Radicalisation' Discourse and the UK PREVENT Strategy' [2013] 15(3) The British Journal of Politics & International Relations 394; and Nasser Hussain on 'hyperlegality': 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514.

[2] David Garland notes this phrase was first used by Michel Foucault in his book Discipline and Punish to trace 'the erratic and discontinuous process whereby the past became the present' in order to 'problematize' the present. David Garland, 'What is a "history of the present"? On Foucault's genealogies and their critical preconditions' [2014] 16(4) Punishment & Society 365, 372. Please see Chapter Two for a discussion on this.

to provide it with legitimacy. In this way this thesis challenges uncritical framings of the law as the ultimate space of protection from state violence and further interrogates political distinctions between the UK and Egypt that cast them as oppositional or lawful/lawless. Second, the thesis argues that the 'pre-criminal space' relies upon and is productive of conceptualisations of extremism, terrorism, morality, and vulnerability that are formed from colonial truth claims about racial, gender and class difference. Like other functions of law, but perhaps to a greater extent, the pre-crime space is therefore dependent upon everyday structural violence that is wrought through the marginalisation of gendered, classed and racialised communities.

Conceptually, this thesis takes issue with the 'state of exception' as the predominant lens to view the global war on terror in general and pre-criminality in particular. The state of exception is a predominant lens though which critical scholars analyse countering terrorism and the global war on terror. This philosophical lens, chiefly associated with Agamben, holds that the modern state is characterised by a sovereign power that provides the ability to abandon citizens and subjects to a zone of exception that is devoid of law.[3] Violent state actions, such as the creation of Guantánamo Bay as a permanent detention centre for detainees of the global war on terror without trial, are understood to be ordered by the executive, an example of a state of emergency turned permanent, and a regression of liberal democratic norms.[4] The differential treatment of 'terrorists' is cast as exceptional, lawless, and as an outcome of dangerous and authoritarian forms of politics within liberal democracies that challenge the integrity of the rule of law.[5]

[3] Giorgio Agamben, *State of Exception*, (Kevin Attell tr, University of Chicago Press 2005); Giorgio Agamben *Homo Sacer: Sovereign Power and Bare Life*, (Daniel Heller tr, Stanford University Press 1998).
[4] This framing reaffirms western liberal democracies as the exclusive proprietor of the rule of law, 'necessarily' overruled because of terrorism. See Saygun Gökariksel and Z. Umut Türem 'The Banality of Exception? Law and Politics in "Post-Coup" Turkey' [2019] 118(1) South Atlantic Quarterly 175.
[5] Rens Van Munster, 'The War on Terrorism: When the Exception Becomes the Rule' [2004] 17 International Journal for Semiotics of Law 141.

Scholars such as Rizq and Polizzi have also applied this lens to the 'everyday' to understand how communities such as British Muslims and migrants are treated in exceptional ways in pre-emptive or pre-criminal spaces.[6] I argue that by noting state violence to be an exception, even if it is considered to be a 'permanent exception',[7] this lens idealises the law as the ultimate protector of human rights through a teleological view of global politics and civilisation as progressive.[8] This approach ends up centring the western liberal democracy as the victim of both 'terrorism' and 'counter terrorism'.[9] Because the state of exception is conceptualised with the western liberal democratic model in mind, forms of state violence and repression such as those in 'authoritarian states' like Egypt, are rendered qualitatively different.[10]

Furthermore, by not attending to different empirical contexts of law, this lens ends up erasing the ways in which the law provides for direct military violence such as war,[11] and more insidiously, how law itself is premised upon structural violence through the erasure of alternative modes of being and ways of living and the diffusion of universal orders of race, gender and class.[12] By centring the post 9/11 deployment of countering violent extremism frameworks as the key reason for the development of the pre-criminal space, scholarship risks

[6] Rosemary Rizq, '"Pre-crime", *Prevent*, and practices of exceptionalism: Psychotherapy and the new norm in the NHS' [2017] 23(4) Psychodynamic Practice 336; David Polizzi, 'The Negation of Innocence: Terrorism and the State of Exception' in: Bruce Arrigo and Brian Sellers (eds) *The Pre-Crime Society: Crime, Culture and Control in the Ultramodern Age* (Bristol University Press 2021).
[7] That the exception becomes the rule is a key part of Agamben's argument. See Mark Neocleous for an in-depth discussion of this: 'The problem with Normality: Taking Exception to "Permanent Emergency"' [2006] 31 Alternatives: Global, Local, Political 191.
[8] Neocleous (n 7), 207; See also Kimberly Hutchings, *Time and the Study of World Politics* (Manchester University Press 2008).
[9] Sunera Thobani, 'White Wars: Western Feminisms and the "War on Terror"' [2007] 8(2) Feminist Theory 169, 176.
[10] Sadiq Reza argues that because the use of emergency powers in Egypt has been directed from the 'ordinary' space of the law, there is little difference in kind to liberal democracies in the West. 'Endless Emergency: The Case of Egypt' [2007] 10(4) New Criminal Law Review 532, 552.
[11] Under Chapter VII of the UN Charter, the Security Council is granted the power to authorise the use of force by states. Gina Heathcote argues that justifications for the use of force mirror gendered interpersonal models whereby force is used to 'save' women, re-embedding structural violence. *The Law on the Use of Force: A Feminist Analysis* (Routledge 2012).
[12] Ngũgĩ wa Thiong'o, *Something Torn and New: An African Renaissance* (Basic*Civitas* Books 2009).

missing out that law is constructed upon a colonial hierarchy of humanity which, as I argue, provides pre-criminal practices with the ability to disregard certain testimony and evidence in the first place. This thesis thereby adds critical insights to contemporary scholarship on countering terrorism, countering violent extremism, and the pre-criminal space in critical terrorism studies, critical legal studies, political science and gender studies.

This thesis approaches the pre-criminal space in a new way: as part of normal legal and administrative governance that is productive of categories of difference, understood through its colonial histories. Following feminist scholarship that considers the unequal violent effects of contemporary global politics to be the durability of colonial inequities, I carry out a genealogy of aspects of pre-emptive governance through the histories of British colonial law-making in Egypt and its everyday effects.[13] I show that pre-emptive colonial legal methods of governance – including the hierarchisation of evidence and the creation of 'soft' educational approaches – were productive of and justified through the conceptualisation of an essential difference between the metropole and the colonies. This thesis therefore understands the contemporary pre-criminal space to be a form of coloniality and part of a legal and administrative governance that has developed through different orders of race, gender, class, sexuality, and religion in both states. I understand such hierarchies of humanity as providing the contemporary pre-criminal space with the ability to treat 'suspicious' subjects differently through fragmentations of law where racialised testimonies are disregarded as inadmissible. Furthermore, the liberal progression narrative that frames the law is what provides it with its claim to legitimacy and the ability to frame Egyptian forms of law as qualitatively different. This argument is necessary in order to understand how the pre-criminal space is legal and based

[13] See Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Duke University Press 2016); Suvendrini Perera and Sherene H. Razack (eds), *At the Limits of Justice: Women of Colour on Terror* (University of Toronto Press 2014).

upon technologies of coloniality, to note the limitations of the law in granting freedom, and to expose how hidden everyday structural violence continues to be a central disciplinary device of law without which it could not function.

Methodologically, this thesis uses postcolonial, intersectional, transnational and queer feminist approaches to interrogate and rethink the hierarchies of the law as the object of my study but also the methods I deploy and forms of knowledge I highlight. I centre key legal moments within the Anglo-Egyptian colonial relationship of 1882-1956 in order the understand the ways in which narratives of civilisation and morality regulated bodies and space through law, and how this regulation manifests differently through contemporary perceptions of race, gender, sexuality, religion and class in both states. Furthermore, using both mixed methods and mixed methodologies this project delivers an argument against the use of 'single' or 'grand' theories within feminist and queer approaches. In order to mitigate for the singular hegemonic voice of the colonial archive, and in order to connect legal histories to the present, I use a mixed methods approach – or a mixed archival approach – using both the colonial archive and legal texts but also local stories and testimonies, and contemporary interviews to present a more dynamic story of law and violence, explained in detail in the following chapter.

By linking this colonial history up to the present-day UK and Egypt through contemporary interviews with Egyptian migrants in Britain, I interrogate essentialising accounts that mark all Muslim or migrant communities as victims. Importantly, I do not approach contemporary Egyptian counter terrorism as solely a remnant of British colonial rule, but as legal tools and thinking that have been informed from multiple different perspectives – including those of local actors and British colonial feminists – and that have been reshaped through contemporary Egyptian governance. While I demonstrate that there is indeed a vast difference between the

amount of everyday violence experienced in Egypt through pre-emptive counter terrorism laws as opposed to in the UK, drawing on an intersectional and transnational feminist approach, I show that there are discrepancies and nuances in peoples' experiences that interrupt the understanding of the UK as 'closer to' the 'emancipatory' rule of law than Egypt. That these stories do not always gel and are often awkward to read together is suggestive of the singular, elitist, and universalising language of law and points towards the complexities and ethical issues around doing research on violence itself. By exploiting such clashes between hegemonic and everyday readings of law, I present alternative stories about pre-criminal governance and develop a methodology for interrogating homogenising truth claims about violence, legality, and terrorism.

In the remainder of this chapter, I first outline common conceptualisations of the pre-criminal space, showing how approaches often situate understandings of pre-criminality within post 9/11 western liberal democracies and pointing to the disciplinary divide between law and politics. Second, I consider approaches that would frame the pre-criminal space through the state of exception lens and argue that these approaches end up holding law as the ultimate insurer of rights and freedoms, often universalising the white experience. Third, I argue that the pre-criminal space should be understood instead as part of broader legal and administrative governance and a form of coloniality. Fourth, I use intersectional feminist approaches to show how colonial production of difference is premised upon multiple different understandings of not only violence but of vulnerability and immorality. Fifth, I provide a summary of the contributions and limitations of this thesis. Finally, I outline the following chapters of this thesis.

1.2 The pre-criminal space

The 'pre-criminal space' is a term used in a variety of different spaces, including in academic and governmental spaces. The term most often refers to pre-emptive legal and policy outcomes of global pushes towards countering extremism that work to catch potential terrorists before a crime has happened.[14] McCulloch and Wilson note that while 'risk-based' measures are calculated from evidence such as prior criminal offences, pre-crime 'involves a shift from calculation and risk to imagination and uncertainty as key modes of folding the future into the present'.[15] It is therefore a precautionary method in which suspected 'terrorists' often end up being treated more harshly than those accused of other forms of crime or completed crimes of violence.[16] In 2014, the UN Security Council issued Resolution 2178 which encouraged Member States to 'engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts'.[17] Following this, regulatory practices are understood to have moved 'from sanctioning the acts of individuals to anticipating those acts'.[18] This was a shift towards the 'ideological processes behind the use of violence' and 'the relationship between ideology and terrorism'.[19] Over the past two decades, western liberal democracies – in particular the UK, Germany, Denmark, Sweden and the Netherlands – are understood to have led on the development of pre-criminal methods.[20] While this thesis looks only the British and Egyptian approaches, it also

[14] Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism Fionnuala Ní Aoláin uses the term 'pre-terrorist'. United Nations General Assembly 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism' Human Rights Council 43rd Session Supp No 3 UN Doc A/HRC/43/46 (2020) (UNGA) [24].
[15] Jude McCulloch and Dean Wilson, *Pre-crime: Pre-emption, Precaution and the Future* (Routledge 2016) 41
[16] McCulloch and Wilson note that this is because 'pre-crimes are seen as more threatening than completed serious crimes because imagined fears are unbounded'. *Ibid*., 72.
[17] UN Security Council Resolution 2178 (24 September 2014) UN Doc S/RES/2178 [16]
[18] UNGA (14), 24.
[19] Alice Martini, Kieran Ford and Richard Jackson (eds,) *Encountering Extremism: Theoretical Issues and Local Challenges* (Manchester University Press 2020) 1.
[20] Ministry of Refugee, Immigration and Integration Affairs 'The Challenge of Extremism: Examples of Deradicalisation and Disengagement Programmes in the EU' (2010) <https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuid=2A283FA8-A7BE-C748-F9C58D204801D86A> accessed 12 October 2021.

problematises the view that the legal regulation of pre-criminality 'began' with the war on terror and is restricted to western liberal democracies.

There are two main ways that critical scholarship understands the pre-criminal space as functioning. I will term them 'pre-legal' and 'legal'. The pre-legal pre-criminal space refers to countering extremism measures taken outside of or prior to the enactment of the law and are most often the object of critical terrorism studies research. The legal pre-criminal space refers to pre-emptive criminalisation through the creation of preparatory offences and is most often the object of critical legal studies research. Scholarship on pre-criminality as a pre-legal or a legal development rarely overlaps. Furthermore, there is disagreement over whether the space represents an exceptional phenomenon that is corrosive to the rule of law, or whether the space is part of a legal development. This creates a false dichotomy of the two phenomenon as separate functions of politics and law. However, as evidenced by Innes and Sheptycki, and Innes, Roberts and Lowe, the 'pre-legal' and 'legal' spaces work to co-create one another.[21] This thesis combines legal and political approaches, understanding the pre-criminal space as a fusion of the two. Before delving into theoretical approaches, I first provide an empirical account of pre-legal and legal pre-criminal methods.

Pre-legal pre-criminal methods include 'deradicalisation' programmes that are aimed at 'protecting' people 'vulnerable to radicalisation'.[22] While the definition of the pre-criminal space is vague, usage suggests it functions to pick up earlier stages of extremism that are not

[21] Martin Innes, Colin Roberts, and Trudy Lowe, 'A Disruptive Influence? "Prevent-ing" Problems and Countering Violent Extremism Policy in Practice' [2017] 51(2) Law & Society Review 252, 275; Martin Innes and James W.E. Sheptycki, 'From Detection to Disruption: Intelligence and the changing logic of police crime control in the United Kingdom' [2004] 14 International Criminal Justice Review 1.

[22] Faiza Patel, 'Rethinking Radicalization' (Brennan Center for Justice 2011) <https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf> accessed 29 September 2021; David Goldberg, Sushrut Jadhav and Tarek Younis, 'Prevent: what is pre-criminal space?' [2017] BJPsych Bulletin 208.

serious enough to warrant legal engagement.[23] The space is understood to function before the law comes into play, providing an opportunity for deradicalisation through community engagement.[24] These pre-criminal approaches are framed as 'softer' and 'less corrosive to the rule of law, broadly sympathetic to civil society engagement, aware of community sensitivities'.[25] However, it is suggested that this framing benefits states for a number of expedient reasons including – in the UK setting – fiscal responses to austerity as Heath-Kelly demonstrates,[26] and the circumvention of lengthy court cases as Innes, Roberts and Lowe show.[27]

Most understandings of the pre-legal pre-criminal space in critical terrorism studies scholarship have developed it through studying the UK's Prevent duty, one pillar of its national framework for countering terrorism named CONTEST.[28] The CONTEST agenda was developed by the UK Labour government in 2006 where a fund of six million pounds was allocated to local authorities in the UK with the goal of creating 'bottom-up, community-based programmes to tackle violent extremism'.[29] However, Kundnani demonstrates that the allocation of this

[23] *Ibid*.
[24] Stevan Weine and John Cohen, 'Moving Beyond Motive-Based Categories of Targeted Violence' (Argonne National Laboratory, Risk and Infrastructure Science Center, Global Security Studies Division 2015, ANL/GSS-15/6) 21 < https://publications.anl.gov/anlpubs/2015/10/122067.pdf> accessed 23 September 2021.
[25] Fionnuala Ní Aoláin, 'European Counter-Terrorism Approaches: A Slow and Insidious Erosion of Fundamental Rights' (*Just Security*, 17 October 2018) ≤https://www.justsecurity.org/61086/european-counter-terrorism-approaches-slow-insidious-erosion-fundamental-rights/≥ accessed 23 September 2021.
[26] Charlotte Heath-Kelly demonstrates how austerity measures in 2010 centralised funding for Prevent thereby re-shaping the imagination of 'extremism risk' as a national phenomenon. 'The Geography of Pre-criminal Space: Epidemiological Imaginations of Radicalisation in the UK Prevent Strategy, 2007-2017' [2017] 10(2) Critical Studies on Terrorism 297.
[27] Innes, Roberts, and Lowe (n 21), 267.
[28] 'Preventing violent extremism' and 'countering violent extremism' have blurry definitions. Martini, Ford and Jackson note 'countering violent extremism' is more often used to refer to immediate responses to threats of violent extremism whereas 'preventing violent extremism' is more often a 'holistic' approach 'to ensure that society holds a level of cohesion and stability such that violent extremism is less likely to occur'. 'Countering extremism' is used as an umbrella term for all these approaches where extremism refers to a broad spectrum of phenomena 'from specific ideas and ideologies, the display of certain behaviours and ideological sympathy, to the actual use of violence'. It is often not used to describe white nationalist violent attackers. Martini, Ford and Jackson (n 19), 3. See also Fionnuala Ní Aoláin who explains the usage of this terminology varies widely by country. UNGA (n 14). I use 'countering extremism' to refer to this umbrella approach.
[29] Department for Communities and Local Government, 'Preventing Violent Extremism Pathfinder Fund 2007/8: Case Studies' (2007) 4 <

funding was structurally Islamophobic, distributed as it was, 'in direct proportion to the numbers of Muslims in the area'.[30] Since then, the Prevent duty has developed into a multi-agency set up, becoming a legal duty in 2015 through the Counter-Terrorism and Security Act.[31] The Prevent duty obligates civil society actors and public sector workers in the spaces of education, health, prisons, police and local government[32] to report anyone they consider 'vulnerable' to being drawn into terrorism.[33] Guides to markers of 'risk'[34] are developed through the co-operation of local agencies, and refer not only to violent extremism but non-violent extremism (as the 'opposition to fundamental British values'[35]), which, according to the UK government, can 'create an atmosphere conducive to terrorism and can popularise views which terrorists exploit'.[36] Risk assessments come from research on terrorism that links radicalisation to socio-economic background, religion, age and vulnerability, many of which have been disproven yet continue to underscore policy.[37]

The duty on public sector workers to carry out countering terrorism is argued to have a 'chilling effect' on Muslim and migrant communities and has increased the arbitrary power of police to

https://webarchive.nationalarchives.gov.uk/ukgwa/20120920021555/http:/www.communities.gov.uk/documents/communities/pdf/324967.pdf> accessed 23 September 2021.

[30] Arun Kundnani, *Spooked! How not to prevent violent extremism* (Institute of Race Relations 2009) 12 <https://www.kundnani.org/wp-content/uploads/spooked.pdf> accessed 23 September 2021.

[31] Counter-Terrorism and Security Act (CTSA) 2015, s 29.

[32] Specified authorities are listed in CTSA 2015, sch 6.

[33] UK Government 'Statutory Guidance: Revised Prevent Duty Guidance for England and Wales *gov.uk* (1 April 2021) <https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales> accessed 23 September 2021.

[34] HM Government, *Counter-Terrorism Local Profile: An Updated Guide* (Crown Copyright 2012) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118203/counter-terrorism-local-profiles.pdf> accessed 23 September 2021.

[35] 'The Government has defined extremism in the Prevent strategy as: "vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs…"'. UK Government (n 32). Following this definition, Martini, Ford and Jackson note that it is 'of little surprise therefore that the desire for political or social change, under a counter-extremism logic, is transformed from being an indicator of active engagement in political life, into an indicator of vulnerability to radicalisation and a threat'. Martini, Ford and Jackson (n 19), 3.

[36] UK Government (n 33).

[37] UNGA (n 14).

take matters into their own hands.[38] After being referred to Prevent for reading a book on terrorism in his university library, Mohammed Umar Farooq said the experience had changed his 'whole persona': 'I'm treading on eggshells. I can't say too much because it may be perceived in the wrong manner or somebody may report me for something'.[39] While being characterised as 'soft', pre-legal pre-criminal approaches work to cast Islam as fundamentally linked to violence and against British liberal and democratic values.

In its legal form, critical legal studies scholars and criminologists understand the pre-criminal space through the development of new legal methods that bring forward the 'threshold of criminal responsibility'.[40] With this, the nature of a crime is shifted to one that has not happened and is not imminent.[41] The extension of law's temporality allows for the criminalisation of acts that are not innately criminal.[42] It is a selectively implemented form of law, animated by a fear that a crime threat could emerge, depriving people of 'even an initial chance to demonstrate their trustworthiness'.[43] The evidence for a 'pre-crime' is replaced with suspicion and the legal presumption of innocence is suspended.[44] This paradigm of domestic legal systems replicates the shift toward pre-emptive self-defence mechanisms emergent through the global war on terror.[45]

[38] Christina Pantazis and Simon Pemberton, 'From the "Old" to the "New" Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation' [2009] 49(5) British Journal of Criminology 646; International Law Programme and International Security Department Roundtable Summary, 'UK Counterterrorism Legislation: Impact on Humanitarian, Peacebuilding and Development Action' (2015) <https://www.chathamhouse.org/sites/default/files/UK-Counterterrorism-Legislation111115.pdf> accessed 23 September 2021.

[39] Cage NGO, 'Interview with Mohammed Umar Farooq' (29 September 2015) < https://www.youtube.com/watch?v=tbaUxBjZmLo&ab_channel=CAGE> accessed 23 September 2021.

[40] Heath-Kelly (n 26) 298.

[41] McCulloch and Wilson (n 15) 25.

[42] *Ibid*., 62.

[43] *Ibid*., 3.

[44] Heath-Kelly (n 26) 298.

[45] Writing on 'pre-emptive self-defence' as a justification for targeting 'terrorists' on foreign soil is widespread within international legal scholarship. See Amos N. Guiora, 'Anticipatory Self-Defence and international Law – A Re-Evalutation [2008] 13(1) Journal of Conflict and Security Law 3; Lauren Wilcox provides a critical feminist and queer perspective to the use of drone strikes, arguing that drone technology is productive of gendered and

This temporal shift in law brings pre-criminal offences into the realm of 'inchoate offences'.[46] In criminal law, 'inchoate offences' relate to criminal acts which have not been committed. While inchoate offences, such as attempt, encouragement, and conspiracy, were already part of the criminal legal system in the UK, McCulloch and Wilson note that preparatory terrorism offences extend the law's temporality earlier than these preventative offences, remove the need for substantive evidence, and 'look to the identity of the would-be suspect instead of conduct as the primary basis for criminal liability'.[47] Ramsay names them 'pre-inchoate' offences.[48] The main difference according to Ramsay is that whereas inchoate offences criminalise acts deemed intrinsically dangerous because 'they require proof of some conduct in which the actor loses control of the effects of his criminal intentions',[49] 'pre-inchoate' offences criminalise conduct which in itself is purely harmless, but that is scantily connected to some harm through the consideration of the 'dangerousness' of the actor, facilitating 'convictions built on identities constructed as threatening'.[50] As McCulloch and Wilson explain, nineteenth century 'status offences' were early versions of pre-criminal offences as they considered that the 'dangerousness' of an actor signalled the likelihood of a future crime occurring, without necessitating evidence.[51] Status offences criminalised categories like 'drunks', 'vagrants', 'prostitutes' and were shaped from conceptualisations of moral and social threats.[52]

racialised 'killable' or 'manageable' bodies. See Lauren Wilcox, 'Embodying Algorithmic War: Gender, Race, and the Posthuman in Drone Warfare' [2017] 48(1) Security Dialogue 11.

[46] McCulloch and Wilson (n 15) 19.

[47] McCulloch and Wilson (n 15) 19.

[48] Pre-inchoate offences also include possession offences, failure to report and breach of a preventive order. Peter Ramsay, 'Democratic Limits to Preventive Criminal Law' in Andrew Ashworth, Lucia Zedner and Patrick Tomlin (eds), *Prevention and the Limits of the Criminal Law* (Oxford University Press 2013) 215.

[49] *Ibid*.

[50] McCulloch and Wilson (n 15) 30.

[51] *Ibid*., 21.

[52] *Ibid*.

Similarly, contemporary pre-inchoate offences criminalise acts that are not innately criminal, 'but that become so when deemed to be carried out in preparation towards acts of terrorism', such as possessing certain items that would be otherwise lawful.[53] An example could be donating to a charity deemed to be linked to a terrorist organisation, or the possession of items construed as terrorist.[54] For instance, following his extradition from the UK to the US and three-year solitary confinement without trial in 2007, the evidence used to convict Fahad Hashmi of terrorism charges consisted of receiving an acquaintance for a visit who had in his possessions 'socks and ponchos' that were classed as 'military training gear'.[55] As McCulloch and Wilson point out 'there are great challenges in establishing intention to commit a future crime where the acts that point to that intention are equivocal and not in themselves harmful or criminal'.[56]

Carrying out a genealogical study of preventative practices in Britain, dating to the Prevention of Terrorism Acts in the 1970s, Heath-Kelly identifies shifts and continuities in the development of pre-emptive methods, and considers contemporary pre-criminality to be part of a 'risk governance' whereby the radicalisation discourse enables the British government to 'perform' security and to act upon futurity.[57] Heath-Kelly identifies that what has changed since the 1970s has been policy language, from that of prevention towards that of pre-emption.[58] She argues that part of the genealogy of the contemporary pre-criminal space is found in 1990s crime prevention models that were developed from statistical modelling, where

[53] *Ibid*., 62
[54] The International Law Programme and International Security Department Roundtable Summary of counter terrorism legislation warned that charity organisations abroad may be falsely regarded as engaging in terrorist activity because of actions such as aid relief. See (n 38).
[55] Nisha Kapoor, *Deport, Deprive, Extradite: 21st Century State Extremism* (Verso Books 2018) 31.
[56] McCulloch and Wilson (n 15), 20.
[57] Heath-Kelly (n 1).
[58] Charlotte Heath-Kelly, 'Reinventing prevention or exposing the gap? False positives in UK terrorism governance and the quest for pre-emption' [2012] 5(1) Critical Studies on Terrorism 69, 70.

the probability of future offending could be calculated from rates of prior criminal conduct, school drop-outs and economic deprivation.[59] This 'predictive turn' imagined crime through 'local geographies, statistical data and the calculative rationality of risk'. [60] Newer models of pre-criminality were developed from scholarship that framed the 'international' terrorist as elusive, meaning that fighting the terrorist no longer relied upon statistical data but upon suspicion.[61] Simultaneously, Heath-Kelly maintains that the actual practices of pre-emptive counter terrorism are visible in both earlier and contemporary periods.[62] She therefore considers there to be continuity in the pre-emptive politics of the UK, thus interrogating 9/11 as a turning point in countering terrorism approaches.

Other than Heath-Kelly, most research on pre-criminality does not look towards it as enabling wider governance or as part of a longer history of discursive performances of exceptionalism, but instead mainly critiques the 'turn' to pre-criminal policies as damaging to human rights. Heath-Kelly's work is thus influential for my framing of the pre-criminal space. While there is an wealth of research on the 'boomerang effect'[63] of colonial counter-insurgency methods, these are often not connected with legal forms of governance in understanding the pre-criminal space today or do not situate the methods in the wider knowledge paradigm that enables them.[64] I propose that by understanding the pre-criminal space as part of legal and administrative governance wrought through law as a singular and universalising tenet of modernisation and colonialism, we can better understand claims to its legitimacy.

[59] Heath-Kelly (n 26), 298.
[60] *Ibid*.
[61] *Ibid*., 299.
[62] Heath-Kelly (n 58).
[63] As explained in Chapter Two, the 'boomerang effect' is a popular analytical tool for assessing the travelling effects of colonialism 'back' to the metropole.
[64] Laleh Khalili, *Time in the Shadows: Confinement in Counterinsurgencies* (Stanford University Press 2012); James Trafford, *The Empire at Home: Internal Colonies and the End of Britain* (Pluto Press 2021); Mario Novelli, 'Education and countering violent extremism: Western logics from south to north?' [2017] 47(6) 835; Nasser Abourahme, 'Of monsters and boomerangs: Colonial returns in the late liberal city' [2018] 22(1) City: Analysis of Urban Change, Theory, Action 106.

Literature on the pre-criminal space and counter extremism continues to centre it as a development of the western liberal democracy. There is a presumption that Arab states are not employing countering extremism approaches whereas western democracies are leading on 'softer' and law-based methods.[65] When legislative approaches are recognised, Egypt's use of law is often cast as a corrupt rule *by* law set up, where the executive appropriates legal tools.[66] The UK by contrast is understood to be one of the original sites of counter extremism approaches where the rule *of* law still applies, although is sometimes 'necessarily' derogated from, or where pre-criminality is considered an exception. My point here is not that Egypt's methods of governance are not corrupt, but instead that the main mode of framing such corruption suggests a tarnishing of the integrity of the law, rather than a recognition of the role that violence and bias play within the law already.

Despite this division both British and Egyptian countering terrorism and countering extremism approaches are influential regionally and internationally.[67] Over the past two decades both states have moved towards increasingly legislative forms of countering terrorism, however the extent to which each state uses countering terrorism to crackdown on civil society differs. Both states have also been increasing their capacity to legislate pre-emptively. Egypt has used emergency law almost permanently since its first promulgation as British martial law in 1914.

[65] Maqsoud Kruse, 'Countering Violence Extremism Strategies in the Muslim World' [2016] 668(1) The ANNALS of the American Academy of Political and Social Science 198.
[66] Ahmed Ezzat, 'Law, Exceptional Courts and Revolution in Modern Egypt' in Robert Springborg, Amr Adly, Anthony Gorman, Tamir Moustafa, Aisha Saad, Naomi Sakr, Sarah Smierciak (eds), *Routledge Handbook on Contemporary Egypt* (Routledge 2021).
[67] Egypt's definition of terrorism in Law No 97 of 1992 influenced the definition adopted by the Arab Convention for the Suppression of Terrorism in 1999. See Lynn Welchman, 'Rocks, hard places and human rights: anti-terrorism law and policy in Arab states' in Victor V. Ramraj, Michael Hor and Kent Roach (eds), *Global Anti-Terrorism Law and Policy* (Cambridge University Press 2005); UK British courts are some of the most influential in the world regarding terrorism cases. See Zoe Scanlon, 'Punishing Proximity: Sentencing preparatory terrorism in Australia and the United Kingdom' [2014] 25(3) Current Issues in Criminal Justice 763; Alexander Murray, 'Terrorist or Armed Opposition Group Fighter?' [2018] 20(3-4) International Community Law Review 281.

Since the Egyptian revolution of 2011 and the 2013 coup d'état, President Abdel Fattah el-Sisi's government has passed new acts that help him to crackdown on society *and* to claim a desire to move towards the rule of law, nodding towards international legal requirements to pre-emptively counter terrorism.[68] Egypt has also been developing counter extremism approaches since 1997, through prison-based deradicalisation programmes focusing on re-education, religious discourse, psychological counselling, and family and financial support.[69] Law 94/2015 for Combatting Terrorism is used today alongside other laws including colonial-era laws on assembly (Law 10/1914 for Assembly) and protest (Law 14/1923 for Protests and Demonstrations) to detain people en masse for 'infringing on public peace' or 'disturbing public order'.[70] Mass trials in military courts are for members of the Muslim Brotherhood – the most prominent political opposition in Egypt – and for other critics of the regime including journalists, activists, lawyers, human rights groups, labour movements and academics.[71]

While the state violence involved in Egyptian countering terrorism is more visible than it is in the UK, this thesis questions whether the two states' practices should be considered to be qualitatively different, or whether this framing is part of a singular, western and universalising conceptualisation of law. This thesis takes issue with this Eurocentricity and demonstrates that not only does Egypt have its own form of pre-criminality, but this form of governance has

[68] Security Council Resolution 1373 mandated all States to enhance legislation to prevent terrorism and the preparation of terrorism. UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373.
[69] Kruse (n 65); See also Naureen Chowdhury Fink and Hamed El-Said, 'Transforming Terrorists: Examining International Efforts to Address Violent Extremism' (International Peace Institute 2011) <https://www.files.ethz.ch/isn/128781/2011_05_trans_terr_final.pdf> accessed 23 September 2021.
[70] Contemporary cases using these laws are detailed in: International Commission of Jurists (ICJ), *Egypt's Judiciary: A Tool of Repression. Lack of Effective Guarantees of Independence and Accountability* (2016), <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf> accessed 23 September 2021; and in Cairo Institute for Human Rights Studies (CIHRS) 'Towards the Emancipation of Egypt: A Study of Assembly Law 10/1914' (2017) <https://cihrs.org/wp-content/uploads/2017/01/Towards_the_em_of_Eg_eng.pdf> accessed 23 September 2021.
[71] 'Annex A – Prosecutions of Activists and Journalists under Egypt's Terrorism Law' *Human Rights Watch* (15 July 2018) <https://www.hrw.org/news/2018/07/15/annex-prosecutions-activists-and-journalists-under-egypts-terrorism-law> accessed 23 September 2021.

developed through the longer colonial history of law as a form of legitimisation and 'humanisation' in Egypt. This thesis thus adds to critical legal studies and Middle Eastern studies on histories of law and governance in Egypt. My project traces the re-circulation of forms of legal control and violence instead of investigating the 'origins' of pre-criminality or assuming that legal methods 'begin' in the metropole. Before delving into my empirical context, I first contest a theoretical framing of pre-criminality as exceptionalism and thereafter develop a conceptualisation of the pre-criminal space as part of legal and administrative governance.

1.3 Pre-criminality as exceptionalism

One major theoretical framing of the pre-criminal space is as a form of exceptionalism that threatens the integrity of liberal democracies and undermines judicial procedures.[72] From this perspective, the framing of pre-crime as a 'softer' approach that is 'less corrosive' of the rule of law is a mere attempt at legitimisation. Kundnani and Hayes note pre-criminal approaches to be primarily enacted through policy reform, executive decree or the allocation of funds, rather than 'primary' legislation.[73] They consider deradicalisation programmes to be the cause of problems of democratic accountability and compliance with human rights standards. Using this framing, scholars have even ended up commending the juridification of the pre-criminal space since Prevent was made a legal duty in 2015. For Walker and Cawley, the rule of law would at least bring about legal constraints and 'accountability, transparency and fairness'.[74] Here, the pre-criminal space is understood as an unveiling of sovereign power, whereby the executive rules and corrodes the rule of law.

[72] Arun Kundnani and Ben Hayes, 'The globalisation of Countering Violent Extremism policies: Undermining human rights, instrumentalising civil society' (Transnational Institute 2018) <https://www.tni.org/files/publication-downloads/cve_web.pdf> accessed 23 September 2021.
[73] *Ibid*., 36.
[74] Clive Walker and Oona Cawley, 'The juridification of the UK's counter-terrorism prevent policy' [2020] Studies in Conflict & Terrorism, 2.

This understanding of the pre-criminal space takes from the 'state of exception' lens, the dominant critical lens to understand the global war on terror. Through this lens, mechanisms of the global war on terror such as arbitrary arrest, torture, detention without trial, and pre-criminal methods, are effects of the state of exception.[75] This state of exception is understood to be ruled by sovereign power, where law is suspended by the executive branch. It is often cast as a 'return' to the past or a 'regression' from democratic and liberal values.[76] This framework developed in reaction to Schmittian theory on the state of exception whereby the Nazi jurist and political theorist Schmitt tied the exception to the sovereign as 'he who decides on the exception'.[77] For Schmitt, the state of exception entailed the suspension of law which was ultimately at the whim of the sovereign who held legitimate power. Here, sovereign power and thus the state of exception is constitutive of juridical order, or as Van Munster puts it 'the sovereign declaration of the state of exception simultaneously creates the state of nature and the rule of law'.[78]

Agamben reframes Schmitt's theory, and effectively rescues the rule of law through holding the exception as 'law's "other": as a zone where law is suspended, a space devoid of law, a zone of anomie'.[79] Guantánamo Bay is often given as an example where the exception reigns free, ungoverned by the 'lawful' order in the United States.[80] A geographical and jurisdictional difference is therefore drawn between a 'lawful' USA and a 'lawless' Guantánamo Bay. For Agamben, the military order issued by President George W. Bush on 13 November 2001 that

[75] Fleur Johns, 'Guantanamo Bay and the Annihilation of the Exception' [2005] 16(4) The European Journal of International Law 613.
[76] Gökariksel and Türem (n 4).
[77] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, (George Schwab tr., University of Chicago Press 2005).
[78] Van Munster (n 5), 143.
[79] Agamben 2005, (n 3) 50.
[80] Stephen Humphreys, 'Legalizing Lawlessness: On Giorgio Agamben's *State of Exception*' [2006] 17(3) European Journal of International Law 677, 680.

authorised indefinite detention, of which Guantánamo Bay was part, 'radically erases any legal status of the individual, thus producing a legally unnameable and unclassifiable being'.[81] Being a Guantánamo detainee – a place where indefinite detention, lack of legal representation and constant interrogation and torture is the norm – is thus understood as the pinnacle of dehumanisation.[82]

The work of Judith Butler rethinks exceptionalism through the lenses of governmentality and performativity, framing the state of exception as discursive and tactical. By relocating exceptionalism within practices of governmentality, Butler interrogates Schmittian and Agambenian framings that invest all power in the sovereign to suspend law and renders the exception a product of multiple actors.[83] As Neal explains, Butler rethinks exceptionalism as performative, as the repetitive discursive production of a justification for a political course of action.[84] For Butler, the suspension of law is a political practice or a 'tactic' of governmentality.[85] In this way, 'the suspension of law is not the exception in itself, but rather part of the performative constitution of "exceptionalism" as a normalised and legitimate mode of government'.[86]

However, for Butler, it appears that the suspension of law still ultimately gives way to executive decision making that sits outside of the 'true' rule of law. Speaking about decisions taken about detainees at Guantánamo Bay, Butler explains:

[81]Agamben 2005, (n 3) 3.
[82] Alice Speri, 'Tortured by Guantánamo' *The Intercept* (10 September 2021) < https://theintercept.com/2021/09/10/guantanamo-bay-detained-fathers-911/?utm_medium=social&utm_source=twitter&utm_campaign=theintercept> accessed 23 September 2021.
[83] Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (Verso 2004) 54.
[84] Andrew W. Neal, 'Goodbye War on Terror: Foucault and Butler on Discourses of Law, War and Exceptionalism' In: Michael Dillon and Andrew W. Neal (eds) *Foucault on Politics, Security and War* (Palgrave Macmillan 2008) 43-64.
[85] Butler (n 83), 54.
[86] Neal (n 84), 51.

> Neither the decision to detain nor the decision to activate the military tribunal is grounded in law. They are determined by discretionary judgments that function within a manufactured law or that manufacture law as they are performed. In this sense, both of these judgments are already outside of the sphere of law, since the determination of when and where, for instance, a trial might be waived and detention deemed indefinite does not take place within a legal process.

What is curious is Butler's differentiation between executive actions which 'manufacture' the language of law, and the 'rule of law' as a space in which 'real' legal processes take place. If, as Butler argues elsewhere, the law is performative and repetitively productive of bodies,[87] why are legal processes and executive actions understood as taking place in separate spheres whereby the former constitutes the 'real' law of a liberal democracy, and the latter is the discretionary decision making of the sovereign?[88] The answer to this could be in Butler's depiction of executive actions allowing for the resurgence of sovereign power. Here, executive decisions are a form of sovereign power hidden beneath the pluralistic framework of governmentality in normal times that exposes itself through the state of exception. Butler explains that it is:

> […] in the moment that the executive branch assumes the power of the judiciary, and invests the person of the President with unilateral and final power to decide when, where and whether a military trial takes place, it is as if we have returned to a historical time in which sovereignty was indivisible, before the separation of powers has instated itself as a precondition of political modernity.[89]

[87] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 2006) 171.
[88] Or multiple 'petty sovereigns' as Butler frames it through their governmentality approach. Butler (n 83), 56.
[89] *Ibid*., 54.

In this way, while Butler's interrogation of the state of exception as tactical and performative is useful for conceptualising how discursive framings of countering terrorism as a necessary exception help to justify excessively violent state actions, they continue to situate 'the rule of law' as a separate sphere in which 'proper' legal processes take place.

According to these framings, by surrendering power to the executive in a time of emergency, the judiciary allows for the suspension of law and violent emergency measures to be taken, to defend democracy and the rule of law. This Agamben suggests is an 'aporia', or the biggest contradiction of the necessity: that a liberal democracy requires the individual decision of the executive to use violence for its self-preservation.[90] In these framings, to be cast out of the law is to be rendered outside of humanity. The modern state is cast as built upon the exclusion and abandonment of those forms of life that can be rendered as 'bare life', their political being suspended by the state of exception: 'the fundamental categorial pair of Western politics is not that of friend/enemy but that of bare life/political existence, *zoē/bios*, exclusion/inclusion'.[91] The work of Arendt has been increasingly used as a basis to interrogate countering terrorism whereby the 'civilised' state as the ultimate insurer of rights has the power to take them away and render people stateless thus removing their rights.[92]

In an detailed interrogation of the work of Agamben and Arendt, Schotten shows how the zoē/bios distinction is premised upon a hierarchisation of the value of forms of life through processes of racialising, class and gendering, whereby bare life is understood as the unfree and

[90] Agamben 2005, (n 3), 30-31.
[91] Agamben 1998 (n 3), 8.
[92] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace & Company 1973) 291.

natural place of 'both biological life and the activity of meeting its needs'.[93] Schotten demonstrates that Arendt's work manages to rationalise slavery as the necessary functioning of zoē. For Schotten, Arendt does this by framing the division of zoē and bios or 'life and the good life' in terms of the private and public spheres, noting that the work that goes on in the private space of the household, while not functioning as 'political' life, is still necessary to the existence of politics, and that therefore, 'the household is included within the frame of human life, albeit only by way of its exclusion from properly human life'.[94] Domestic labour is therefore a fundamentally unfree activity because it is chained to 'the demands of the life process'.[95]

As Schotten explains, Arendt not only discusses domestic work in exceptionally disparaging terms, rendering it free from political thought and social action (which as gender and race theorists have shown is both untrue and reproduces a particular whitened and masculine view of politics[96]) but further argues that slavery is an 'essential truth' of human existence, and that while it is 'unjust' it is also 'natural'. In this way Arendt effectively argues that 'the enslavement of some is necessary for the freedom of others'. [97] In a similar way, Schotten critiques Agamben's reframing of the state of exception or 'the camp' to depict 'the Muslim' (in Agamben's essentialising and ahistorical terms) to be the ultimate 'nonhuman' in our contemporary moment: 'what Agamben finds to be definitive of "the Muslim" is his passivity, apathy, and sheer lack of cognitive or emotional response'.[98] Arendt and Agamben both work

[93] C. Heike Schotten, *Queer Terror: Life, Death, and Desire in the Settler Colony* (Columbia University Press, 2018) 40.
[94] *Ibid*., 44-45.
[95] *Ibid*., 47.
[96] See for instance, Bridget Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labor* (Zed Books 2000); Hazel V. Carby, 'White woman listen! Black feminism and the boundaries of sisterhood' in: *The Empire Strikes Back: Race and Racism in 70s Britain* (Routledge 1982); Carole Pateman, *The Sexual Contract* (Polity Press 1988).
[97] Schotten (n 93), 51.
[98] *Ibid*., 59

to fragment and hierarchise understandings of humanity through a gendered, classed and racialised logic and privilege whitened, European, masculine, ahistorical and secular understandings of what constitutes 'the political'.[99]

Furthermore, the state of exception as a philosophical portrayal of the contemporary post 9/11 moment relies upon teleological understandings of a universal linear time. Here, the exception is deemed an aberrational rift in time where we can see echoes of the violent past. Even when it is termed a 'permanent emergency', it is still considered to be permanent exceptionalism, not provided through law.[100] From this understanding, the pre-criminal space is considered a corrosion of liberal democratic values. Law is traditionally bound up in teleological narratives whereby the rule of law, along with other foundational institutions of liberalism such as contract and representation, has been constructed as one of the ultimate possibilities for freedom and emancipation because of its grounding in the 'consent' of the people.[101] The legitimising power that the law holds is then bound up in how it is regarded as civilising and humanising.

A variety of philosophical perspectives that opposed colonialism – among them Kantian cosmopolitanism – have worked upon understandings of time as progressing towards 'freedom', 'emancipation', 'revolution', and law as a signifier of this. But as Mignolo argues,

[99] See also the work of: David Farrier and Patricia Tuitt, 'Beyond Biopolitics: Agamben, Asylum, and Postcolonial Critique' in Graham Huggen (ed) The Oxford Handbook of Postcolonial Studies (Oxford University Press 2018); Sumi Madhok 'Coloniality, political subjectivation and the gendered politics of protest in a "state of exception"' [2018] 119 Feminist Review 56; Similarly, Alex Tickell holds that in rejecting religious belief as a potential basis for politics, Agamben's state of exception is limited to Eurocentric, Enlightenment understandings of secularity as the rational location of political thought. *Terrorism, Insurgency and Indian-English Literature: 1830-1947* (Routledge, 2012).

[100] Neocleous (n 7), 192.

[101] Uday Singh Mehta, Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought (The University of Chicago Press 1999) 67.

these approaches ended up perpetuating the exclusions of colonialism.[102] For instance, Kant developed an understanding of the 'cosmopolitan right' of all who participated in a 'world republic' to be 'the right of the stranger not to be treated as an enemy when he arrives in the land of another'.[103] While he theorised this right in opposition to imperialist land acquisition, he caveated hospitality as conditional upon the recognition of 'rightful borders'.[104] Indeed, full political membership to democratic communities within the western understanding of state-making has historically been restricted to property-holding, Christian men.[105]

Mignolo understands Kant's redefinitions of personhood and citizenship in a new cosmopolitan world order as underscoring the secular human rights project and international law as the ultimate granter of such rights.[106] As Hutchings explains, the operation of time within these theories of world politics is 'necessarily exclusionary' in that what is counted as significant change or progress is always 'bound up with specific normative stances, and it always relies on treating the time of world politics in unifying and universalising terms'.[107] While Agamben claims to counter and be suspicious of the above mentioned progressive philosophies, Hutchings argues that he is similarly caught up in a teleological logic of historicism that ends up rendering the state of exception as the new face of the modern state, and therefore a universal lens to view world politics.[108]

Rather than interrogating imperialist justifications of lawful control, emancipatory philosophies can risk perpetuating them if they do not critique the view that the law is the

[102] Walter D. Mignolo, 'The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism' [2000] 12(3) Public Culture 721.
[103] Immanuel Kant, 'Perpetual Peace: A Philosophical Sketch' [1795] in *Immanuel Kant: Practical Philosophy* (Mary J. Gregor tr and ed., Cambridge University Press 1996) 489.
[104] Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge University Press 2004).
[105] *Ibid.*
[106] Mignolo (n 102) 737-8.
[107] Hutchings (n 8), 129-130.
[108] *Ibid.*

ultimate and universal site of freedom. Similarly, critical terrorism studies scholarship (although not all) has been challenged for its reliance on the Frankfurt School of Critical Theory, and the objective of 'emancipation'.[109] Scholars including Heath-Kelly, Stump and Dixit, and Gunning have noted concerns that an uncritical goal of emancipation could end up undermining pluralism and become 'just another (neo)-colonial project'.[110] For Oando and Achieng, current critical terrorism studies frameworks ignore empirical contexts and perpetuate colonial narratives.[111] One major repercussion of this universalising lens is that it can end up – albeit sometimes unintentionally – re-centring the vulnerability of the white subject. Butler has been critiqued in such a way for privileging whiteness in their framing of the 'grievability' of bodies. For Thobani, Butler foregrounds, 'however unintentionally, the experience of the (white) American subject, who has suddenly and graphically discovered its own vulnerability'.[112] From this perspective, some critical interrogations of the pre-criminal space end up sharing the same epistemological space as uncritical terrorism studies work that develops theories on terrorism: ultimately, they both come to the defence of the western liberal democracy.[113] From the critical terrorism studies perspective, the pre-criminal space is a signifier that forms of authoritarianism and lawlessness use the racialised figure of the Muslim to encroach upon western liberal democracies. For terrorism studies, the 'terrorist' is the symbol of the 'greatest threat to western liberal democracies', in pathologising and cultural arguments about Islam.[114]

[109] Martini, Ford and Jackson (n 19) 5.
[110] Jacob L. Stump and Priya Dixit, *Critical Terrorism Studies: An Introduction to Research Methods* (Routledge 2013) 6; Jeroen Gunning, 'A Case for Critical Terrorism Studies?' [2007] 42(3) Government and Opposition 363; Charlotte Heath-Kelly, 'Critical Terrorism Studies, Critical Theory and the "Naturalistic Fallacy"' [2010] 41(3) Security Dialogue 235.
[111] Samwel Oando and Shirley Achieng, 'An Indigenous African Framework for Counterterrorism: Decolonising Kenya's Approach to Countering "Al-Shabaab-ism"' [2021] 14(3) Critical Studies on Terrorism 354.
[112] Thobani (n 9), 176.
[113] The dichotomy between terrorism studies and critical terrorism studies is problematic. Jarvis notes that in focusing so much energy on terrorism studies, critical terrorism studies risks generalising a complex field which in actuality is heterogeneous. Lee Jarvis, 'Critical Terrorism Studies After 9/11' in Richard Jackson (ed), *Routledge Handbook of Critical Terrorism Studies* (Routledge 2016).
[114] Pantazis and Pemberton (n 38), 650.

While I do not deny the real forms of safety that can be accessed through democratic processes and the law (indeed as I find in the latter two chapters of this thesis), it is crucial to look to how law and politics overlap in the creation of the pre-criminal space in order to understand how violence is normalised and legitimised. By looking to a historical, non-European context, the persistence of colonial forms of governance is unveiled, challenging the Eurocentricity of many contemporary accounts of the pre-criminal space. This thesis therefore challenges the framing of the pre-criminal space as exceptional.

1.4 Pre-criminality as legal and administrative governance

This section lays out my understanding of the pre-criminal space as a form of governance derived from the administration of law and policy. My understanding is primarily informed by Hussain' conceptualisation of law as a 'methodology of governance',[115] and Heath-Kelly's rendering of 'risk governance'.[116] Both scholars look to the productive capacity of the administration of law and policy in the creation of 'truthful' singular hierarchies of humanity, classifications of difference and the following justification of increasingly pre-emptive modes of handling 'suspect' and 'dangerous' subjects.

Empirical, historical, and legal scholarship challenges the state of exception as the primary lens to understand state violence. For such scholars, the imagining of a 'normal' and an 'emergency' rule as two oppositional forms of governance assumes that the 'emergency' is an aberration that happens in a space separate to the 'normal' constitutional order 'thereby preserving the Constitution in its pristine form while providing the executive with the power to act in an

[115] Hussain (n 1), 515.
[116] Heath-Kelly (n 1).

emergency'.[117] This framing is problematic because it is based upon an assumption and the 'serious misjudgement' that legality is the ultimate space of protection for human rights from state violence, and bolsters the power of the executive to act in exceptional ways.[118] Instead, postcolonial legal scholars develop an understanding of the law as bound up in violence. Hamzić's queer conceptualisation of the law *as* violence is illustrated through international law as an institution 'perfectly suited for global violent pursuits'.[119] Feminist scholars also show how international legal operations named 'peace and security' are productive of their own violence, whether through sanctioning the use of force, or continuous everyday violence.[120] Hussain overturns conceptualisations of countering terrorism as a reaction to an emergency by tracing the lineage of the UK Terrorism Act 2000. He explains that some of the most important turning points in the Act's history were debated and introduced during periods of 'relative calm' in the UK.[121] Indeed as Roach notes, 'the overriding theme of the British response [to terrorism] is a commitment to a legislative war on terrorism that is prepared to impose robust limits and derogations on rights normally enjoyed in the nonterrorist context'.[122]

For Hussain, many of the so-called 'exceptional' practices of liberal democracies – detention without trial, torture, and pre-criminal methods – are provided for through law. Countering the framing of Guantánamo Bay as a lawless 'blackhole', Hussain details an overlapping 'excess' of laws and administrative orders, showing that 'many of the mechanisms and justifications we find there [Guantánamo] are continuous and consonant with a range of regular law and daily

[117] Neocleous (n 7), 207.
[118] *Ibid*.
[119] Vanja Hamzić, 'International law as violence: Competing absences of the other' in Dianne Otto (ed.) *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2018) 79.
[120] Heathcote (n 11); Carol Cohn (ed) Women and Wars: Contested Histories, Uncertain Futures (Wiley 2012); Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*, (University of California Press, 1994); Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (Zed Books, 2007).
[121] Hussain (n 1), 515.
[122] Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press 2012) 238.

disciplinary state practices'.[123] For Hussain, the claim that to be held in Guantánamo Bay is to be rendered unnameable is inconsistent with 'the profusion of names and classifications–enemy alien, unlawful belligerent, enemy combatant'.[124] Instead he understands Guantánamo Bay to exemplify what he terms 'hyperlegality', which points to the increasing classification of persons and the expansion of administrative venues within the law to 'deal' with 'terrorist suspects' differently and pre-emptively.[125] The so-called 'exceptional' and 'lawless' space of Guantánamo Bay can therefore be considered as an example of the 'fragmentation' of law or hyperlegality,[126] an excess of law,[127] or a 'dual' system of law,[128] in which the administration of law attempts to 'fill up' any space deemed unregulated. Or as Johns frames it, Guantánamo Bay is the 'jurisdictional outcome of exhaustive attempts to domesticate the political possibilities occasioned by the experience of exceptionalism'.[129]

From a critical legal studies approach, Hussain's conceptualisation of the expansion of the law as creating increasingly pre-emptive categories focuses on administration as a relational process in which new classifications of suspicion are produced. This approach recalls the work of Spade who analyses the forms of knowledge and methods of governance that are produced from administrative interactions. As Spade explains: 'administrative systems that classify people actually invent and produce meaning for the categories they administer, and that those categories manage both the population and the distribution of security and vulnerability'.[130] Therefore, law can be thought of as productive of subjects, or as Butler describes it, law is:

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[123] Nasser Hussain, 'Beyond Norm and Exception: Guantánamo' [2007] 33(4) Critical Inquiry 734, 735.
[124] *Ibid*., 740.
[125] Hussain (n 1), 515.
[126] *Ibid*., 514.
[127] Johns (n 75).
[128] Julia Eckert (ed.), *The Social life of Anti-Terrorism Laws: The War on Terror and the Classifications of the "Dangerous Other"* (transcript, 2008); Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press 1993).
[129] Johns (n 75), 615.
[130] Dean Spade, *Normal life: administrative violence, critical trans politics, and the limits of* law (Duke University Press 2015) 11; Schiffauer explains the introduction of preventive measures creates a new 'atmosphere' where

> […] incorporated, with the consequence that bodies are produced which signify that law on and through the body; there the law is manifest as the essence of their selves, the meaning of their soul, their conscience, the law of their desire. In effect, the law is at once fully manifest and fully latent, for it never appears as external to the bodies it subjects and subjectivates.[131]

Understandings of governance conceptualise the performativity of law as a form of biopower, whereby the sovereign has the ultimate power to '"make" live and "let" die'[132] through disciplinary technologies that manage individual bodies and the 'population' for productive reasons, 'to the extent that they form… a global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on'.[133] Foucault proposed that such '*techniques* of power present at every level of the social body and utilized by very diverse institutions', would also create hierarchies within society through racism.[134] Foucault's understanding of biopower could therefore be used to conceptualise the invention of new categories of suspicion as they provide the state with the means to organise racialised sections of the population through systems like the prison. Whereas Foucault developed his understanding of disciplinary power through looking to how the prison regulates individual bodies, the systematisation of prisons, the development of the carceral state and the global prison industrial complex could be considered as evidence of global capitalist forms of biopower.[135]

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the administration of new laws constructs knowledge about the 'danger' of Muslim immigrants. Werner Schiffauer, 'Suspect Subjects: Muslim Migrants and the Security Agencies in Germany' in Julia Eckert (ed.), *The Social life of Anti-Terrorism Laws: The War on Terror and the Classifications of the "Dangerous Other"* (transcript, 2008), 56.

[131] Butler (n 87), 171.

[132] Michel Foucault, *"Society Must Be Defended": Lectures at the Collège de France, 1976-76* (Mauro Bertani and Alessandro Fontana eds., David Macey tr., Picador 1997), 240.

[133] *Ibid*., 243.

[134] Michel Foucault, *The History of Sexuality Volume 1: An Introduction* (Robert Hurley tr, Random House Inc 1978) 141, emphasis in original.

[135] Julia Sudbury (ed), Global Lockdown: Race, Gender, and the Prison-Industrial Complex (Routledge 2005).

From an international politics approach, Heath-Kelly conceptualises the pre-criminal space as productive of categories of extremism and terrorism and a form of 'risk governance'.[136] She understands the radicalisation discourse as a 'crucial component within the governance of terrorism through pre-emptive technologies and categories of risk'.[137] She argues that policy-making *and* scholarly communities have invented the radicalisation discourse 'which deploys categories of riskiness and vulnerability to ideology to provide a narrative about things that are unknown'.[138] Heath-Kelly holds that the invention of the radicalisation discourse 'enables policy-making and scholarly communities to render a linear narrative around the production of terrorism, making it accessible to problem solving approaches (or "governance")'.[139] In other words, intellectual processes that make a 'risky' subject 'knowable' are central to the deployment of new methods, policies and laws to deal with them.

Heath-Kelly's work is reminiscent of how Said conceptualised orientalist academic inquiry as productive of discursive essentialisms about the 'Orient' which justified colonial endeavours.[140] In another text, Heath-Kelly goes so far as to warn that scholars should refrain from producing knowledge on pre-emption within our contemporary moment, because 'the more knowledge that is produced about 'pre-terrorist' behaviours and risks, the greater the uncertainty about the 'tipping point' where a suspect subjectivity morphs into the figure of the terrorist'.[141] Her mode of analysis speaks not to *what* pre-crime and radicalisation are, but *how* different spaces of knowledge production on terrorism have turned it into a persuasive 'regime

[136] Heath-Kelly (n 1).
[137] *Ibid.*, 396.
[138] *Ibid.*, 407.
[139] *Ibid.*, 396
[140] Edward W. Said, Orientalism (First published 1978, Penguin Books 2003).
[141] Heath-Kelly (n 58), 70.

of truth' in a Foucauldian sense.[142] This point about the creation of a singular truth is central to my wider understanding of the universalising effects of modern law. Foucault understood truth to be multifarious and produced as a technology of power. He explained:

> Truth is of the world: it is produced by virtue of multiple constraints. And it induces the regular effects of power. Each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse it harbours and causes to function as true; the mechanisms and instances which enable one to distinguish true from false statements, the way in which each is sanctioned; the techniques and procedures which are valorised for obtaining truth; the status of those who are charged with saying what counts as true. [143]

In this way, the 'truth' about modes of being is shaped through the methods of capturing and producing knowledge that are deemed appropriate, rational, and reasonable to the political agenda of that society and its historical practices. As I demonstrate throughout this thesis, juridical and pre-criminal 'truths' are constructed in situations where evidence presented by suspected parties is cast as inadmissible through colonial depictions of Egyptians as emotional, irrational and unreliable. Such 'truths' also do not always require evidence, as explained previously for pre-crime offences. Furthermore, as I demonstrate through my interviews, juridical truths and the universalising language of the law can work to psychically erase and rescript subjects particularly through the affective mechanism of fear as a disciplinary mechanism, as is visible in Sara's explanation of the efforts she makes to 'get out of the terrorist zone' in the UK:

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[142] Michel Foucault, 'The political function of the intellectual' (Colin Gordon tr., Radical Philosophy 017, Summer 1977) <https://www.radicalphilosophyarchive.com/issue-files/rp17_article2_politicalfunctionofintellectual_foucault.pdf> accessed 24 September 2021. Similar works are: Imran Awan, Keith Spiller and Andrew Whiting, *Terrorism in the Classroom: Security, Surveillance and a Public Duty to Act* (Palgrave Pivot 2019); Thomas Martin, 'Governing an unknowable future: the politics of Britain's Prevent policy' [2014] 7(1) Critical Studies on Terrorism 62; Mohammed Elshimi, 'De-radicalisation interventions as technologies of the self: a Foucauldian analysis' [2014] 8(1) Critical Studies on Terrorism 110.
[143] Foucault (n 142).

> I feel that I could constantly be under surveillance because of my identity. That identity could be so many things, so I try to claim another identity, and I try to [pause] now I try to put a title in front of my name now that I have a title. But I try to change all my paperwork because again it gives you a completely new um identity in front of people who would just look at you as an immigrant like "oh you're just another one of them". But no, "I'm a well-educated immigrant who contributes to your society blah blah blah". So, this is how I try to portray myself. So, ah I try to get out of the terrorist zone.[144]

Sara's fear of the 'terrorist zone' is suggestive of the colonising effects of law as it disperses on an everyday basis. At the same time, as I explain further in Chapters Two, Six and Seven, the effects of juridical truths are unpredictable, and like we see in Sara's interview, we often find instances of resistance to these narratives in the same spaces.

While Hussain and Heath-Kelly's approaches to legal and risk governance are from different disciplines, reading their conceptualisations of the production of knowledge on terrorism together – for Hussain through administrative interactions, and for Heath-Kelly through scholarship – harnesses an understanding of pre-criminal governance that blurs the boundary between law and politics as a normal part of the everyday governing of liberal democracies rather than as a form of exceptionalism. Both approaches also help me to de-centre the state and situate power within multiple sites of the everyday. While this approach is not explicit within Hussain's work, I develop 'everyday' and affective conceptualisations of hyperlegality in Chapters Six and Seven to think about how everyday administrative interactions with bureaucracy are in themselves productive of categories of difference.

[144] Interview with Sara 27 November 2019, Sara's home.

1.5 Colonial hierarchies of humanity

So far, I have argued that the pre-criminal space should be understood as part of normal legal and administrative governance that finds its legitimacy in the universalising 'regime of truth' of law and works through the production of subjects. But what is the underlying logic that allows for the lawfully different treatment between someone suspected of terrorism and someone suspected of any other crime? How is it that terrorist pre-crimes require no actual evidence, only suspicion, and judiciaries are lawfully able to rely upon the identity of the individual? What underscores this claim to legitimacy? This section argues that colonial productions of racial, gendered, and classed difference stick on bodies as truth claims and are central to justifying the development of a variety of 'different' 'hard' and 'soft' methods of treating terrorist subjects.

Crucial to my understanding of pre-criminal governance is that it relies on colonial productions of difference and hierarchies of humanity. For Hussain, the use of fragmented legal orders is a form of disciplinary rule that has its origins in the colonial use of various emergency orders and legal codes as a concessionary 'civilising' set up and works on the fragmentation of levels of humanity into the human, the non-human and the nearly human.[145] From a critical global history perspective, Stoler explains that imperial anxieties over the loss of empire fuelled the frenzied republishing of laws and policies.[146] Writing on the Dutch colonisation of Indonesia, Stoler understands these processes – in a similar fashion to Hussain's hyperlegality – as fixing 'the degrees of unfreedom that would keep Sumatra's plantation workers coerced and confined'.[147]

[145] Hussain (n 123) 739-40.
[146] Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton University Press, 2010) 2.
[147] *Ibid.*

'Lawless' was the term used to depict the lands British colonisers desired to reap for themselves.[148] Mbembe explains that these spaces were imagined in the following way: 'the colonies are not organized in a state form and have not created a human world. Their armies do not form a distinct entity, and their wars are not wars between regular armies'.[149] Such 'lawlessness', colonial governments argued, necessitated violent emergency measures as the first step in the civilising process. For Mbembe, 'biopolitics' is therefore not a sufficient lens to capture the multifarious ways in which the colonial state murders and allows entire communities to die. Reconceptualising governance as 'necropolitics' through attending to the deathly space of the colony, Mbembe understands it as the ability to not only kill but to keep 'alive in a state of injury', or to make a social death through slavery.[150] Violent practices could be deemed 'civilising' and therefore 'civilised'. [151]

Writing on French occupation of Algeria, Fanon described the 'lawlessness, the inequality, the multi-day murder of man' carried out by colonial authorities as 'raised to the status of legislative principles'.[152] For Esmeir, the promulgation of colonial law in Egypt hit at the very heart of what it was to be considered human. Looking to the application of British law to Egypt in the early twentieth century she explains that 'the human came into being as the teleology of modern positive law: its absence, law asserted, indicated a state of dehumanization or indeed inhumanity, that is, a state of cruelty, instrumentalization, and depravity'.[153] Such fragmented categorisation of the human is central to technologies of governance. Both Fanon and Esmeir's concerns with the legal sanctioning of violence lies at the heart of this project because it is

[148] Stephen Morton explains nineteenth century British depictions of Irish communities as lawless and violent justified the use of emergency laws. *States of Emergency: Colonialism, Literature and Law* (Liverpool University Press 2012) 38.
[149] Achille Mbembe, 'Necropolitics' [2003] 15(1) Public Culture 11, 24.
[150] *Ibid.*
[151] *Ibid.*, 11.
[152] Franz Fanon, *Towards the African Revolution: Political Essays* (Haakon Chevalier tr., Grove Press 1967), 53.
[153] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012), 2.

through imagining law only as a consent-giving institution that we condone racialised violence and permit imperialism in changing guises.

Postcolonial and decolonial scholars explain that the narrative of a 'lawful' metropole and the 'lawless' colonies rested upon the colonial production of an 'ontological and epistemological difference'.[154] The colonial imagination of an ontologically different 'Orient' – which was 'underhumanized, antidemocratic, backward, barbaric'[155] – contrasted with a western subject that 'constitute[d] the universal norm by occupying that empty, abstract place reached by a "natural" and "normal" evolution',[156] and justified the need to find different methods to govern colonial subjects. Colonialism for Fanon provided one singular imperial truth whereby blackness was intelligible in relation to whiteness and only existed through the colonial lens: 'the black man has no ontological resistance in the eyes of the white man. Overnight the Negro has been given two frames of reference within which he has had to place himself… his customs and the sources on which they were based, were wiped out…'.[157] For Ngũgĩ the importation of law acted as a form of 'dismemberment,' separating the colonised not just from their lands but also from their language, ontologies, community and kinship practices.[158] In such a way, law

[154] Said (n 140); see also Meyda Yegenoglu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge University Press 1998); Franz Fanon, Black Skin White Masks (Charles Lam Markmann tr., Pluto Press 1968) 82; Ngũgĩ (n 12) 6-7. My work is inspired by postcolonial and decolonial approaches. The work of postcolonial scholars such as Said is central in my understanding of the construction of 'oriental difference'. Lockman explains that Said's *Orientalism* has been critiqued for its broad claims about the production of knowledge by colonial forces that risks re-fixing an east/west binary. Lockman, *Contending Visions of the Middle East: The History and Politics of Orientalism* (Cambridge University Press 2004), 182-214. A similar critique of postcolonial Arab authors has been made by Omar who argues that in reclaiming modernity from the colonisers, they perpetuated Eurocentric understandings of politics. Hussein Omar, 'Arabic Thought in the Liberal Cage' in Faisal Devji and Zaheer Kazmi (eds) *Islam After Liberalism* (Oxford University Press 2017). In a different way, decolonial scholars, focusing on the material elements of (neo)colonialism and imperialism, help to rethink the signification of modernity, understanding it as a persistence of coloniality. Gurminder K Bhambra, 'Postcolonial and decolonial dialogues' [2014] 17(2) Postcolonial Studies 115.
[155] Said (n 140) 151.
[156] Yegenoglu (n 154), 48.
[157] Franz Fanon, (n 154), 82.
[158] Ngũgĩ (n 12) 6-7.

works to dismember and re-write modes of being in the language of the coloniser, which is productive in its bolstering of the imperial 'truth regime'.

In a similar way, in Heath-Kelly's reading of Scarry's work on pain, she explains that torture is not used to obtain information, but to 'destroy maligned subjectivities and bodies and to buffer the perceived power of the regime'.[159] For Scarry, violence is world-destroying in that it denies the voice of the tortured subject and forces them to exist though the narrative of the torturer. Heath-Kelly extends this contending that such violence is political in its destructive *and* productive capacities, in that it is capable of both enforcing and destroying political orders through its communicative effects.[160] Violence and indeed the structural violence of law is therefore always political.

This imagined split is the main framing of the colonial archives, where Egyptians are considered essentially different and only able to learn from violence:

> The Egyptians are always more likely to be impressed by deeds than by words, and no amount of diplomatic representations, unless followed up by tangible action, will convince them that we mean business, and that if it comes to a trial of strength, they, and not His Majesty's Government, stand to lose.[161]

In this way, the construction of difference as a truth claim about the entire Egyptian population provided the rationale for treating them differently to white, 'civilised' subjects. This provided the basis upon which self-determination of the colonies was justified as a slow, 'educational'

[159] Charlotte Heath-Kelly, *Politics of Violence: Militancy, international politics, killing in the name* (Routledge 2013) 23.
[160] *Ibid.*
[161] Egypt and Sudan 5 November 1924 in *Powers of the Egyptian Government and its change in status* (The National Archives, Kew Gardens) FO 141/430/6/5512/143.

process towards 'civilisation'. This also provided the ability to expel colonial subjects from the political space through rendering local modes of being unthinkable in the modern legal space. Makdisi understands contemporary use of the term 'terrorism' in a similar way, as producing an entire ontological category of threat, that features as a 'thoroughly internalized threat, a spectral presence'. [162] Its existence offers 'not merely the ideological justification but rather the politico-juridical foundation for a universal campaign of investigation, interrogation, confiscation, detention, surveillance, torture, and punishment…'.[163] In this way, the production of the 'truth' of racialised difference justifies the lawfully differential treatment of 'terrorist' subjects today in the expanding administrative venues that Hussain identifies as characteristic of legal governance.

But how can this conceptualisation provide an understanding of not only the production of 'terrorist' subjects but its shifting meaning and ability to shift across new signifiers? How can we understand the deployment not only of 'hard' approaches to combat terrorists constructed as 'violent', but the development of 'soft' approaches that deal with 'vulnerable' and 'innocent' subjects? While the above approaches are instructive for this thesis in determining racial conceptualisations of difference, many of these approaches, from postcolonial legal and critical terrorism studies and international politics do not engage with feminist approaches that research the intersecting processes of gendering, sexuality, racialisation and class that are central to conceptualisations of 'softer' methods of governance and to the 'saviour' narrative that characterises colonial justifications for intervention.

[162] Saree Makdisi, 'Spectres of "Terrorism"'[2002] 4(2) Interventions: International Journal of Postcolonial Studies 265, 267.
[163] *Ibid.*

Indeed, there is a surprising lack of engagement in critical terrorism studies and political science on terrorism with feminist work. Where studies on terrorism have looked to feminist approaches, they have focused more on women as terrorists, or victims of terrorism,[164] rather than how 'softer' approaches may suggest a gendered structural effect of laws and policies themselves. Furthermore, much security studies scholarship perpetuates a state-centric understanding of governance. I contend that critical terrorism studies and critical legal studies must take seriously postcolonial and feminist work that destabilises the western liberal democracy as the victim of countering terrorism and terrorism and centres marginalised forms of knowledge production. This thesis therefore departs from the often state-centric conceptualisations of bio and necropolitics, looking to the everyday creation of legal categories of difference, premised upon gendered, racialised and classed hierarchies of humanity, in the most intimate of spaces as part of the performativity of law.

Postcolonial and intersectional feminist theorists understand that integral to coloniality and racialisation are the interdependent hierarchies of gender, class and sexuality that work in shifting ways to fragment categories of difference. Puar explores queerness 'as a process of racialization', looking to the historical convergences between 'queers and terror': 'the terrorist does not appear as such without the concurrent entrance of perversion, deviance'.[165] For Puar and other queer theorists, bio and necropolitical approaches can be combined to understand the multifarious and changeable ways in which racialised queer bodies are both included and excluded in the nation through homonationalist technologies. [166]

[164] Laura Sjoberg and Caron E. Gentry (eds.) *Women, Gender, and Terrorism* (University of Georgia Press 2011); Lisa Sharlach, 'Veil and four walls: a state of terror in Pakistan' [2008] 1(1) Critical Studies on Terrorism 95.
[165] Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press 2007), xxiv.
[166] Puar defines US 'homonationalism' as a form of sexual exceptionalism that manifests as a national homosexuality, possible 'not only through the proliferation of sexual-racial subjects who invariably fall out of its narrow terms of acceptability… but more significantly, through the simultaneous engendering and disavowal of *populations* of sexual-racial others who need not apply'. *Ibid*., 2.

From a different context, in Carby's semi-autobiographical work on British and Caribbean imperial relations, racialisation was stirred through anxieties over the sexual conjugation of white women and black men in British port cities during wartime, considered to be threatening to British purity and hygiene. This was understood to be a 'sex problem' that was neither external, nor imported, but was a '"home grown" composite racialized consciousness… a consciousness that gave English national culture its character, meaning, substance and resonance' that took the form of racial segregation policies.[167] Children born out of these relationships carried around the markers of 'threat' to the British national identity. Britain, anxious to quell such 'threat' took to practices of segregation.[168] In this way, government policies are directly connected to gendered and racialised imaginations of difference and hierarchies of humanity.

For many feminist and queer scholars, to comprehend global governance it is necessary to pay attention to the most intimate spaces of the everyday. Such conceptualisations take us out of the state-centricity of much critical terrorism studies research. Conceptualisations of conjugality as threatening to moral and national orders sit at the very heart of methodologies of governance.[169] Understanding the modern state as constructed upon heteronormative orders of gender and sexuality whereby the family unit is a microcosm of the health of the nation, threats to this order have been historically routed through moral panics around sexual deviancy, justifying crackdowns on sex workers and gay communities. As Rao notes, in the colonies, 'the criminalisation of sodomy was one element in a broader biopolitical apparatus of colonial

[167] Hazel V. Carby, *Imperial Intimacies: A Tale of Two Islands* (Verso 2019) 72.
[168] *Ibid*.
[169] See: Stoler, (n 13); Laura Lammasniemi, 'Regulation 40D: Punishing promiscuity on the home front during the First World War' [2016] 26(4) Women's History Review 584; Hanan Hammad, *Industrial Sexuality: Gender, Urbanization, and Social Transformation in Egypt* (University of Texas Press 2016); Hanan Kholoussy, 'Monitoring and Medicalising Male Sexuality in Semi-Colonial Egypt' [2010] 22(3) Gender & History 677.

regulation animated by a range of concerns including… the "improvement" of the population'.[170] As I show in Chapters Three and Five, the 1914 promulgation of martial law in Egypt, which provided the set-up of military tribunals for sex workers, acted to produce categories of vulnerability, dangerousness, extremism and immorality.[171]

As Stoler explains then, the 'key to the sexual politics of colonial rule was never just sexual violations realized but the distribution of social and political vulnerabilities that nourished the potential for violation'.[172] In other words, the imagination of a feminised and sexualised colonial space justified intervention and 'protection' and 'necessitated' 'softer' methods to do so. As Yegenoglu demonstrates, imaginations of veiling as private, closed to western eyes, and the 'essential' being and existence of the feminised 'Orient', underpinned new methods to uncover its 'truth' and 'essence'.[173] British women were considered to be useful additions to the colonial administration, as they could 'access' what men could not.[174] Looking to the global war on terror, Khalili depicts a similar occurrence whereby counter-insurgency practices are carried out by different actors from military and civil society backgrounds, helping to frame interventions as 'soft'.[175] She explains:

> A gendered body becomes a necessary, indeed desired, adjunct or accessory to an asymmetrical war of conquest and occupation. The gendered body serves the functions of counterinsurgency – the "humanitarian", ostensibly "softer", tasks that are required to ensure the winning of hearts and minds – much more efficiently and effectively.[176]

[170] Rahul Rao, *Out of Time: The Queer Politics of Postcoloniality* (Oxford University Press 2020), 8.
[171] Letter from Colonel on the Staff i/c Administration British Troops in Egypt to the First Secretary, the Residency, Alexandria, 28 June 1924 in *Prostitution and venereal diseases. Part 1*. (The National Archives, Kew Gardens) FO141/466/2.
[172] Stoler (n 13) 308.
[173] Yegenoglu (n 154) 48.
[174] *Ibid.*
[175] Laleh Khalili, 'Gendered Practices of Counterinsurgency' [2011] 37(4) Review of International Studies 1471.
[176] *Ibid*., 13.

As this thesis shows in Chapter Five, such differences were taken up by different actors in British-occupied Egypt, including by British colonial feminists, who helped devise 'softer' and more 'humane' methods of governance. Conceptualisations of extremism and terrorism were therefore imbued with changeable markers of 'threat' to the Empire which were held together with the development of theses on moral and social hygiene throughout the metropole and the colonies.

Scholars also note that conceptualisations of 'vulnerability' where one is 'both a "suspect" and in need of being "saved"' underscores 'softer' and pre-criminal methods.[177] Heath-Kelly and Strausz note that the development of the Prevent agenda within safeguarding duties, as a space of 'caring', is a distinctive feature of countering terrorism after 9/11.[178] Pettinger notes the framing of pre-emptive countering terrorism work as providing support for and protection against individuals in public sector settings.[179] Elsewhere, Heath-Kelly argues that a 'big data logic' has led to the pre-criminal space securitising 'all bodies as potentially vulnerable to contamination by extremism'.[180] Conceptions of vulnerability are still wrought through processes of racialisation, as Younis and Jadhav show in the healthcare sector.[181]

Returning to the development of the contemporary pre-criminal space, the conceptualisation of terrorist crimes as qualitatively different mirrors the old colonial 'truth' of racial, gendered,

[177] Vicki Coppock and Mark McGovern, '"Dangerous Minds"? Deconstructing Counter-Terrorism Discourse, Radicalisation and the 'Psychological Vulnerability' of Muslim Children and Young People in Britain' [2014] 28(3) Children & Society 242.
[178] Charlotte Heath-Kelly and Erzsébet Strausz, 'The banality of counterterrorism "after, after 9/11"? Perspectives on the Prevent duty from the UK health care sector' [2019] 12(1) Critical Studies on Terrorism 89
[179] Tom Pettinger, 'CTS and normativity: the essentials of preemptive counter-terrorism interventions' [2019] 13(1) Critical Studies on Terrorism 118.
[180] Heath-Kelly and Strausz (n 189), 299.
[181] Tarek Younis and Sushrut Jadhav, 'Islamophobia in the National Health Service: an ethnography of institutional racism in PREVENT's counter-radicalisation policy' [2019] 42(3) Sociology of Health and Illness.

sexual and classed difference and hierarchies of humanity that justified 'different' methods for governing colonial subjects. Pre-criminality is therefore exposed as the persistence of an imagined colonial difference and fragmented humanity that informs methods of classifying vulnerability and dangerousness. The violence of law is therefore not only a redeployment of violent methods towards post-colonial subjects, but more insidiously hidden through the racialised, gendered and classed structures of the law itself that aid the construction of certain subjects and certain forms of testimony as fictitious, unreliable, emotional, and therefore inadmissible.

I argue that interrogations of 'care' as a method of countering extremism could benefit from engaging with feminist histories that unpick how understandings of vulnerability have developed through gendered and orientalist frames. A feminist approach accounts for changing experiences of legal violence, resistance to processes of classification and the re-writing of local modes of being. By looking to forms of testimony that are cast out of law, it also accounts for the development of multiple legal truths that de-centre the state and its legal institutions. Such a decentring of the state is important methodologically and conceptually as it shifts our view away from traditional western understandings of 'official' politics and law and further interrogates understandings of subjectivity situated in western liberal democratic framings of freedom. By speaking about law from spaces that are traditionally shut out, we can advance an understanding of the law that exposes its partiality, rather than maintains it as objective and impartial. This thesis therefore adds a historical and feminist lens to contemporary understandings of 'soft' methods within critical terrorism studies and political science. Furthermore, by demonstrating the role played by colonial feminists in British-occupied Egypt,

I add to critical legal studies' engagement with feminist legal reformers and contemporary feminist work on the histories of 'governance feminism'.[182]

1.6 Contributions and limitations

Conceptually, this thesis adds to understandings of the pre-criminal space. Whereas much literature looks to the global war on terror as a form of exceptionalism, I conceive of the expansion of pre-criminal methods as part of wider legal and administrative governance. I understand pre-criminal governance not as a new development since 9/11, but significant of the persistence of colonial ways of thinking and imaginations of racial, gender and class difference. The law's administrative capacity to erase and re-write subjects is central to the production and naturalisation of categories of dangerousness and suspicion as legal truths. That these are racialised, gendered and classed categories is significant of the hierarchy of forms of knowledge production upon which the law rests and its legitimising effects. It is my contention that the development of pre-criminal methods are only possible because they rely on imaginations of gendered, classed and racialised difference which provide justification for different and inhuman treatment.

This thesis shifts away from literature on the pre-criminal space that analyses it from a state-centric perspective. By paying attention to shifting power dynamics in both my timeframes, I understand peripheral voices and actions to have important consequences for forms of governance. Using feminist approaches I understand everyday interactions to bolster categories of dangerousness. I understand structural violence as central to the ability of the law to claim

[182] As explained in Chapter Five, governance feminism – which looks to the efforts, collaboration and co-optation of feminism into official spaces of government – is in part a contemporary face of colonial feminism. See Janet Halley, Prabha Kotiswaran, Rachel Rebouché, and Hila Shamir (eds) *Governance Feminism: Notes from the Field* (University of Minnesota Press 2019).

its legitimacy: because such violence is more hidden, and sits in the erasure of voice, it allows for the law to claim its 'humanising' and progressive status.

Empirically, this thesis adds to knowledge on both the historical timeframe of British-occupied Egypt and contemporary British and Egyptian countering terrorism. While the British occupation of Egypt has been the object of extensive research, by framing it in a genealogical manner to understand contemporary UK and Egypt, I add new research to this scholarship. By cross-pollinating my historical readings with contemporary interviews, I add another layer of interpretation. My analysis of the experiences of Egyptian migrants to the UK adds affective layers of knowledge to theoretical understandings of law and interrogates contemporary popular conceptualisations of the 'suspect community'.[183] In taking a transnational and genealogical approach, my research overturns cultural essentialist accounts that would posit the UK as 'lawful' as compared to a 'lawless' Egypt. Instead, I look to the dissipation, fragmentation and persistence of coloniality within both states.

Methodologically, this thesis adds to feminist work on genealogies. By contrasting different spaces of knowledge – including the colonial archive, legal case studies, local narratives and interviews – I interrogate the truth effects of the archive and the law. Using queer and postcolonial feminist approaches to temporality, I make links between my historical and contemporary contexts. In doing so through forms of memory and imagination work, I access more affective forms of knowledge on the law and suggest the persistence of forms of emotionality as they attach to violence over time. Furthermore, using an interdisciplinary approach I exploit the awkward clashes between different forms of knowledge production. By

[183] The 'suspect community' frame is widely used within critical terrorism studies approaches to denote how countering terrorism works to mark all subjects of a particular community 'suspect'. In Chapter Six I add to common conceptualisations of the suspect community through an intersectional feminist approach.

bringing together different feminist approaches – postcolonial, intersectional, queer and transnational – my work adds methodological insights as to the dialogues between these strands of theory. Simultaneously, my engagement with colonial feminists in Chapter Five demonstrates how histories of feminism are deeply intertwined with colonialism and are illustrative of how a singular focus on 'women' is problematic. Finally, by bringing excerpts of archival material into my interviews, I develop interactive and participant-centred research.

This thesis is limited to tracing a specific genealogy of the pre-criminal space within the history and present of Egypt and the UK. From the perspective of the contemporary UK, this limits understandings of pre-criminality to one historical narrative. Although I use approaches which bring in multiple voices and power dynamics, the thesis still presents the Egyptian 'semi-colonial'[184] experience. Despite this, this thesis works to create a methodological approach that can be replicated in other colonial/contemporary contexts similar to the work of Rao in Uganda and India and Lammasniemi and Sharma in India.[185] Additionally, while this thesis speaks solely to British colonialism, I am aware that French, Spanish, German and Portuguese colonialism took different forms, as well as ongoing forms of settler colonialism today, and hope that this thesis would provide methods for thinking about genealogies of pre-criminality in these different contexts too.

From the perspective of contemporary Egypt, the understanding of pre-criminality that this thesis brings together is limited by the resources I accessed. As I explain further in Chapter Two, it was not possible for me to visit Egypt because of the dangers posed to researchers and

[184] As I explain in Chapter Two, the nature of the British occupation of Egypt is contested as to the effects of British influence and the agency of the Egyptian government. Some refer to it as 'semi-colonial' for this reason. See: Hanan Kholoussy (n 169).
[185] Rao (n 170); Laura Lammasniemi and Kanika Sharma, 'Governing Conjugality: Social Hygiene and the Doctrine of Restitution of Conjugal Rights in England and India in the Nineteenth Century' [2021] Australian Feminist Law Journal.

interviewees and because of the COVID-19 global pandemic. I was therefore unable to access archival resources located in Egypt. In terms of the archival data I have collected, this thesis does have a bias towards English language archives and subsequently the colonial perspective. In order to mitigate this, this thesis looks to local forms of testimony, storytelling, interviews with Egyptians and secondary literature.

Finally, one of the most challenging parts of this thesis was bringing together different forms of voice, different methods, and different disciplines to form a cohesive piece of writing. Following scholars such as Stoler, I did not plan to create a smooth narrative but instead wanted to show the rifts between stories to challenge hegemonic ways of thinking.[186] In practice, this presents a challenging method, especially because of the way in which law works to distance itself from emotion, whereas my interviewees were asked specifically about emotion and their experience of the law. This approach calls for constant reflexivity because the tendency and desire to write a narrative that flows seamlessly is not only appealing but is almost automatic. I believe this difficulty points towards the limited scope and the universalising effects of legal language. In distancing itself from emotions, the law renders itself 'impartial' and thus invisibilises the structural violence upon which it is built. Knowing that scholarly research on terrorism is political, this thesis hopes to contribute to ongoing efforts to rethink, challenge and decolonise research methodologies through working with different forms of voice and power. While noting that this is a challenging task within the (neocolonial) structures of the academy in general and the field of critical terrorism studies in particular,[187] it is nonetheless vital to carry out this work so that we might expose the violence of hegemonic narratives on terrorism.

[186] Stoler (n 13).
[187] Rabea Khan, 'Race, Coloniality and the Post 9/11 Counter-Discourse: Critical Terrorism Studies and the Reproduction of the Islam-Terrorism Discourse' [2021] Critical Studies on Terrorism.

1.7 Chapter description

This introductory chapter has presented the overarching argument to this thesis: that the contemporary 'pre-criminal space' is a form of legal and administrative governance that works to reproduce colonial fragmentations of humanity along racialised, gendered and classed lines. Such hierarchies of humanity are what provides the justification for pre-emptive methods that do not require evidence. Furthermore, the liberal framing of the law is what provides it with legitimacy and the ability to frame Egyptian forms of law as qualitatively different. This chapter has challenged the state of exception lens as one that ultimately renders the rule of law free from political influence, using feminist perspectives that contest the dehumanising effects of this approach. I have argued instead that pre-criminality should be considered part and parcel of normal legal and administrative functions and that we should look to beginnings other than 9/11 to do this.

Chapter Two lays out my methodology. I develop a feminist genealogy to understand the persistence of colonial law across time and space. Using a variety of different feminist approaches, including postcolonial, queer, transnational and intersectional, I look to contrasting voices and spaces of knowledge production to interrogate hegemonic archival narratives. This thesis deploys a mixture of archival research, legal analysis, and interviews to make links between the past and present and a queer approach to temporality to allow for a conceptualisation of colonial violence as persisting in the contemporary. I also provide reasoning for my choice of case study and explain the mixed methods approach in greater detail.

Chapter Three provides both an empirical context for my historical timeframe and lays the groundwork for my argument. Taking a critical approach to the hegemonic colonial archive, I

understand the anxious conversations and promulgation of laws amongst bureaucrats and administrators to reflective the fact that, at this point in time, the British Empire was crumbling and British power in Egypt was being called into question by anticolonial calls for independence and international calls for self-determination. I understand this contextual background to be central to the promulgation of forms of martial law and emergency law in Egypt as 'humanising' institutions. I argue that against this background, British administrators implemented emergency laws, not as reactive but as a pre-planned method of governance, within which we can see the institutionalisation of pre-criminal legal tools.

Chapter Four traces the classed, gendered and racialised underpinnings of standards of legal evidence in British-occupied Egypt. I argue that a hierarchical understanding of humanity allowed the colonial authorities to ignore witness statements by fellaheen communities (peasantry) in Egypt and offers an important genealogy of contemporary pre-criminal methods of difference. I demonstrate that the creation of 'dangerous' working class and fellaheen communities provided justification for the material occupation of Egypt. Furthermore, by comparing memorialisation practices of two instances of legal violence – the 1906 Dinshaway massacre and the 1919 Shobak affair – I argue that casting the first event as 'exceptional' paved the way for the implementation of martial law as a 'humanising' institution, which therefore allowed for the relative erasure of the second event.

Chapter Five interrogates the role played by British abolitionist feminists – or 'colonial feminists' – in bolstering imaginations of racial, gender, sexual and class difference and developing new 'softer' methods of dealing with 'vulnerable' and 'extremist' subjects. I understand this development to be part of the history of contemporary of deradicalization programmes. Looking into methods used to manage sex workers in colonial Cairo and their

overlapping with security considerations, I argue that conceptualisations of vulnerability were shaped through the management of moral and social hygiene.

Chapter Six brings the thesis to our contemporary moment. I argue that contemporary British countering terrorism and pre-criminal practices are part of broader legal and administrative governance and have been shaped by British narratives around cosmopolitanism and multiculturalism. Expanding Hussain's conceptualisation of 'hyperlegality' into the everyday, I demonstrate that disciplinary practices flourish in British spaces of bureaucracy where suspicious subjects are continuously re-created. I trace the continuities and ruptures of aspects of pre-criminal thinking present in British-occupied Egypt. At the same time, I look to interviews with migrant Egyptians to the UK to suggest where theoretical and archival assumptions can be interrogated.

Chapter Seven focuses on contemporary Egypt where I argue that we can also glimpse the persistence of coloniality in the gendered and classed marginalisation of subjects and the existence of colonial legal structures. Providing a contextualisation of Egypt's development as a postcolonial state, I show how legal and administrative governance has rested upon the identarian repression of the Muslim Brotherhood and gender non-conforming subjects differently. While taking note of the differences between both states, by presenting an affective reading of law from the perspective of my participants, this chapter interrogates essentialising accounts of Egypt as qualitatively different in its countering terrorism methods than the UK.

Chapter Eight concludes this thesis by looking to moments of hope, joy and resistance that surfaced in my interviews. While it was not within the scope of this thesis to speak to these moments to a great extent, my concluding chapter shows how such moments of joy within

spaces that are considered by hegemonic narratives to be ‘dangerous’ or ‘suspicious’ challenge the essentialising truth claims of singular politics from subaltern and everyday perspectives.

Chapter Two: Methodology

2.1 Introduction

This thesis carries out an interdisciplinary feminist genealogy of the pre-criminal space using a mixture of archival research, legal analysis, and interviews. In my introductory chapter, I re-interpreted the pre-criminal space as a part of legal and administrative governance that bases itself upon universalising narratives of the legitimacy of law as a 'softer' and 'humanising' institution. I conceptualised pre-criminality not as an exception, but as a part of the 'normal' and everyday workings of the liberal democracy, developing through colonial technologies of racialisation, gendering and class-based hierarchies of humanity. I further argued that this imagined difference is what provides the justification for contemporary pre-emptive methods to rely upon 'suspicion' instead of evidence as part of a pre-criminal governance.

In this chapter I present methods and methodologies that help examine the effects of the erasure of local and non-hegemonic modes of being that structures pre-criminality. This chapter lays out my methodological approaches which follows postcolonial, intersectional, transnational, and queer feminisms that understand everyday violence as slow and drawn-out structural processes that prosper in the mundane, the ordinary and the normal parts of everyday life. In erasing voices and shutting people out of the political arena, this violence works in the same way today as it did a century ago. At the same time, through a transnational feminist lens, the effects of law are changeable and markedly different in the UK and Egypt. I therefore add to contemporary critical terrorism studies' understandings of the suspect community through a feminist lens that refuses to homogenise experiences of violence and decentres the western liberal democracy as the victim of terrorism.

My mixed methods and mixed methodological approaches present a secondary contribution of this thesis. I propose a feminist genealogy or 'history of the present' which holds together different modes of voice, theoretical approaches, and time frames. In mixing feminist methods and methodologies, I demonstrate the dialogues and tensions between these gender studies approaches as being productive of one another rather than distinct. Furthermore, I bring in contemporary interviews and historical Egyptian stories, looking particularly to the affective and everyday components of these narratives through a queer lens. These approaches disrupt the normalising processes of the colonial archive, interrogate the hierarchy of forms of knowledge on terrorism, and undo linear narratives of progress upon which 'civilising' law is based.

My approach considers different actors involved in the development of early twentieth century pre-criminal governance – including the British administration, the Egyptian government, colonial feminists, anticolonial activists and fellaheen communities (peasantry) – as a means to ask questions about the relationship between the everyday and the law, and to disrupt the perception of a singular colonising force. This approach decentres the state as the only actor involved the development of pre-criminality. In doing so, I develop a new way of thinking about pre-crime while advancing understandings of the co-optation and collaboration of local actors with colonial powers and considering the murky histories of some forms of feminism. Following Puar, I link together 'seemingly unrelated and often disjunctively situated moments'[1] to interrogate the 'dominant arrangement of history,'[2] and challenge essentialist narratives underlying countering terrorism. As Stoler puts it, this approach exposes 'the febrile

[1]Jasbir K. Puar *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press 2007) 120.
[2] Elizabeth Freeman, *Time Binds: Queer Temporalities, Queer Histories* (Duke University Press, 2010) xi.

movements of persons off balance—of thoughts and feelings in and out of place [...] the rough interior ridges of governance and disruptions to the deceptive clarity of its mandates'.[3] In other words, by reading emotion, bias and power dynamics into conversations that make up the hegemonic archive, we interrogate the singular image of an unshakeable British Empire. Furthermore, in linking contemporary and historical sources, I challenge the 'truth effects'[4] of the archive that a critical analysis can risk perpetuating. By asking my interlocutors to engage with archival material, my interviews are methods that both challenge the colonial archive and the traditional 'researcher-researched' binary.

Speaking and writing about law and its effects is challenging. The elite structure and language of law makes it difficult to write narratives that speak affectively about violence in ways other than what is materially presented as 'evidence'. The law's claims to objectivity and impartiality work to distance it from the everyday violence it perpetuates and upon which it is shaped: the erasure of alternative and local modes of being and the creation of gendered, racialised and classed categories. In erasing ways of thinking, feeling and being other than those intelligible though law, it is difficult to know how to speak about and witness injustice without the words. For Scarry, this speaks to the 'de-objectifying work of pain' where pain 'ensures it unshareability through its resistance to language'.[5] As this thesis shows, the elitist structures of legal language refuse to capture pain other than that which sits within the contours of admissible evidence. This was the experience of several of my interlocutors, and this also created a difficulty in my approach to interviews and writing. Without wanting to smooth over

[3] Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton University Press, 2010), 2.
[4] Anjali Arondekar, 'Without a Trace: Sexuality and the Colonial Archive' [2005] 14(1/2) Journal of the History of Sexuality 10, 12.
[5] Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford University Press 1985) 3-4.

and erase differences, I therefore attempt to exploit the clashes between different forms of knowledge and different disciplines to interrogate the truth claims of the archive and the law.

In what follows I first present a feminist understanding of the law, violence and temporality. Second, I introduce what a 'history of the present' might look like and the challenges posed to my research by carrying out this method. Third I present the details of my case study and the reasoning behind the choice. Fourth I present methods to interrogate the hegemonic colonial archive and some of the challenges I faced in doing so. Finally, I detail how I use contemporary interviews to both interrogate the colonial archive and to present my interlocutors with a creative form engagement with my research.

2.2 Feminist approaches to law, violence, and temporality

This thesis follows postcolonial, queer, transnational, and intersectional feminisms in approaching governance and violence. Each of these strands of feminism provides different yet converging approaches to thinking about the structural production of gendered, racialised and classed subjectivities as changeable and unfixed. The use of these different strands of feminism cannot easily be segregated and perhaps should not be as they share many of the same concepts and reflexive methods of doing research. I have chosen each of these intersecting strands because they reflexively pay attention to the structural creation of difference and their own situatedness within hegemonic structures. Furthermore, they are critical of the universalising and teleological narrative perpetuated by liberal feminism which they understand as playing a colonising role in the deployment of saviour narratives within the global war on terror.[6] I

[6] Through a politics of 'sameness' and 'global sisterhood' liberal feminism reifies essentialisations of 'women' through a teleological lens. For Okin, western societies have departed the furthest from their 'patriarchal pasts' by guaranteeing women the same freedoms as men through legal reforms, employment opportunities and attitudes towards marriage and sexuality. Susan Moller Okin 'Part 1: Is Multiculturalism Bad for Women?' in: Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (eds) *Is Multiculturalism Bad for Women?* (Princeton University Press 1999). See also Martha C. Nussbaum, *Sex and Social Justi*ce (Oxford University Press 1999).

explain this further in Chapter Five where I delineate my feminist methodological approach from the colonial feminism of the Association of Moral and Social Hygiene (AMSH).

There are of course theoretical and methodological clashes between these strands. Mikdashi and Puar have critiqued queer feminist theory for its US-centricity and purporting to speak for the 'universal'.[7] Indeed, theories on gender and sexuality should not be uncritically transplanted onto the contemporary Arab world to understand processes of securitisation.[8] An attentive examination of both colonial and contemporary contexts is therefore necessary to avoid eliding understandings of violence and playing into saviour narratives. Elsewhere, Salem argues that postcolonial feminists often leave out class as an analytic and have avoided interrogating their own middle-class positionality.[9] Where transnational feminisms have universalised an essentialised 'woman', post-structural and anti-capitalist variations have complicated this, looking to build a solidarity politics that accounts for difference.[10] And the simplified use of intersectionality has been called out for its fixing effect on different identities.[11] Holding these critiques and differences in mind, I use these approaches sometimes together, sometimes separately, for how they interrogate the normalising effects of law as a naturally occurring and civilising product of liberal democracies and are reflexive of the forms of knowledge they themselves bolster.

[7] Maya Mikdashi in Nadine Naber, Sa'ed Atshan, Nadia Awad, Maya Mikdashi, Sofian Merabet, Dorgham Abusalim, Nada Elia, 'Roundtable on Palestinian Studies and Queer Theory' [2018] 47(3) Journal of Palestine Studies 62, 66.

[8] The 1990s US version of queer theory came to speak for 'the universal'. By occluding the context out of which it came, this queer theory can end up recognising only certain types of violence (i.e. anchored in white, cisgendered, masculinist, and middle class experiences of homophobia). Mikdashi (n 7). See also Maya Mikdashi and Jasbir K. Puar, 'Queer Theory and Permanent War' [2016] 22(2) GLQ: A Journal of Lesbian and Gay Studies 215.

[9] Sara Salem, 'On Transnational Feminist Solidarity: The Case of Angela Davis in Egypt' [2018] 43(2) *Signs: Journal of Women in Culture and Society* 245, 264.

[10] Anna Sampaio, 'Transnational Feminisms in a New Global Matrix' [2004] 6(2) International Feminist Journal of Politics 181; Chandra Talpade Mohanty, 'Transnational Feminist Crossings: On Neoliberalism and Radical Critique' [2013] 38(4) Signs: Journal of Women in Culture and Society 967.

[11] Rahul Rao, *Out of Time: The Queer Politics of Postcoloniality* (Oxford University Press 2020) 12-15.

Postcolonial, intersectional, queer, and transnational feminist approaches help us to understand violence not as attached to a progressive civilising narrative, but as cyclical, persistent, changeable and contextual. That violence is not only direct but 'invisible', 'slow' and intergenerational is central to many forms of feminist theory that understand processes of gendering, racialisation and class as structuring the modern state.[12] Queer conceptualisations of the violence of normative legal categorisation render it attributable to linear narratives of progress that regulate and condition subjects.[13] In this thesis, everyday violence is distinguished from more 'direct' forms of violence by its temporal characteristics: a slow, drawn out, 'wearing out,'[14] that lasts lifetimes and generations, persists through structures, institutions, memories, symbols and places in the present that can 're-open'[15] and re-embed past trauma.

Puar gives an example of this violence in the context of Palestine where she understands the maiming of Palestinians simultaneous with the denial of them as legitimately disabled bodies to be a core feature of Israeli settler-colonial regulation.[16] Ongoing maiming is productive to the Israeli state because this violence is not recognised in the same way as a death toll. Therefore, Israel can continue to present itself as a champion of liberal rights in the eyes of the West. Here, Puar expands Mbembe's necropolitical conceptualisation of the colonies where to be colonised means to be relegated to 'a third zone between subjecthood and objecthood',[17] by thinking about the restricted forms of deathly life that are permitted within the settler colonial space. In a similar way, queer feminist approaches think past the division of the lenses of

[12] Carol Cohn (ed) Women and Wars: Contested Histories, Uncertain Futures (Wiley 2012).
[13] Freeman (n 2), 3. Freeman describes such temporal regulation 'as chrononormativity, or the use of time to organize individual human bodies towards maximum productivity'.
[14] Lauren Berlant, 'Slow Death (Sovereignty, Obesity, Lateral Agency)' [2007] 33(4) Critical Inquiry 754.
[15] Sara Ahmed, *Strange Encounters: Embodied Others in Post-Coloniality* (Routledge 2000) 8.
[16] Jasbir K. Puar, *The Right to Maim* (Duke University Press 2017), 104.
[17] *Ibid*., 26.

biopolitics or necropolitics, showing how subjects are included in the state just as they are cast out of it.[18]

Such scholars use the terminology of the 'permanent exception' differently to Agamben, critiquing his Eurocentricity and state-centricity and instead showing how for subaltern subjects and gendered bodies, everyday violence becomes the norm because governance is dependent upon the 'wearing out' of these communities.[19] For Berlant, violence in perpetuity 'prospers not in traumatic events, as discrete time-framed phenomena… but in temporal environments whose qualities and whose contours in time and space are often identified with the presentness of ordinariness itself…'.[20] Such structural violence works through categorising subjects through logics of gendering, racialisation, heteronormativity, ableism and class, bound up in understandings of the human.[21] Understood as technologies of governance routed through law and bureaucracy, these taxonomies work in dispersed, fragmented and compounding ways 'to discipline dangers and desires that mark the controlled boundary of the human',[22] or for Ahmed, to mark the 'stranger' 'as the body out of place'.[23]

Following Carby, such logics must be understood not as nouns, but as verbs and processes that are bound to specific times and places: the word racialisation for instance, 'captures the practices and processes involved in the calculations and impositions of difference, all of which have their own logic but are not eternally fixed'.[24] The everyday violence of countering

[18] Puar (n 1); Jin Haritaworn, Adi Kuntsman and Silvia Posocco (eds.), *Queer Necropolitics* (Routledge 2014). In a different way, Deana Heath looks to the suspension of law, and holds that in colonial India, from a perspective that looks to the fragmented forms of power, both the exception and the law existed. Colonial terror: Torture and State Violence in Colonial India (Oxford University Press 2021) 13.
[19] Lauren Berlant, 'Slow Death (Sovereignty, Obesity, Lateral Agency)' [2007] 33(4) Critical Inquiry 754.
[20] *Ibid*., 759.
[21] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012).
[22] Paul Amar, *The Security Archipelago: Human-Security States, Sexuality Politics, and the End of Neoliberalism* (Duke University Press 2013), 17.
[23] Ahmed (n 15).
[24] Hazel V. Carby, *Imperial Intimacies: A Tale of Two Islands* (Verso 2019), 65.

terrorism then, is a perpetual disciplining of bodies and the manifestation of the ripples of legal violence 'on the ground' through administrative and bureaucratic processes of classification. This understanding provides a methodological approach to recognise the persistence of legal violence over time and interrogate the claim that emergency law is a temporal aberration. In these understandings, the destruction, production and 're-writing' of subjects takes place on the level of the affective, whereby emotions circulated through law 'create the very effect of the surfaces of boundaries of bodies and worlds', and are the very essence of the ordinary.[25] For Ahmed, affective economies of emotions govern the movement of bodies, dictate who can pass as unremarkable throughout the nation-space, and construct borders out of fear of the remarkable Other.[26] As she explains: 'hate is economic; it circulates between signifiers in relationships of difference and displacement'.[27] The sticking of emotions on to signs such as bodies works to overdetermine racialised and gendered signifiers and align them with groups and communities, such as the suspected terrorist.

Feminist work centres the experiences of marginalised subjects, interrogating mainstream understandings of violence that might re-affirm a victimising narrative. Postcolonial, intersectional, transnational, and queer feminisms offer understandings of violence that de-centre the western liberal democracy, reframe the aberrational state of exception as a continuum of violence and look to the changeability of experiences of people. Understanding the affects of law as multiple, unpredictable and changeable, queer feminists in particular help to disrupt presumptions of stable and fixed identities.[28] This approach helps me to consider the clashing conclusions that I come up against when paying attention to what the law or theory says on the one hand, and what my interlocutor says on the other when refusing to be

[25] Sara Ahmed, 'Affective Economies' [2004] 22(2) Social Text 117.
[26] *Ibid*. 119.
[27] *Ibid*.
[28] Clare Hemmings, 'Invoking Affect' [2006] 19(5) Cultural Studies 551.

categorised in a certain way. Reading the law as an affective experience means that differences between the UK and Egyptian contexts are more difficult to discern and we can trace similarities in the use of legal and administrative governance. Particularly in Chapters Six and Seven, I use an affective reading of the law to show that there are similarities in the way in which an excess of law or a 'hyperlegality'[29] is experienced by my interlocutors in the UK and Egypt. Transnational feminisms are similarly helpful in interrogating the fixity of categories of dangerousness. Understanding violence as drawn out, hidden, and structural entails considering how people are continuously shaped as products of their changing environment, or as Koser and Al-Ali note, how migrant identities are formed in-between places, 'neither in their place of origin nor in their place of destination'.[30]

These approaches are crucial for a project that understands countering terrorism as a global security structure relying upon a secular-humanist framing of Muslim women and queer Muslims as the victims of a repressive, misogynist and homophobic Islam, and in need of rescue from civilising forces.[31] Starting from the understanding that the global war on terror is actually an 'unequal geographical distribution of suffering and violence',[32] where racialised bodies suffer the most from both political violence and state-led responses,[33] my starting point

[29] Nasser Hussain, 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514.
[30] Khalid Koser and Nadje Sadig Al-Ali (eds) New Approaches to Migration? Transnational Communities and the Transformation of Home (Routledge 2002), 4.
[31] Lila Abu-Lughod, 'Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others' [2002] 104(3) American Anthropologist 783; Saba Mahmood, 'Feminism, Democracy, and Empire: Islam and the War on Terror' in: Hanna Herzog and Ann Braude (eds) *Gendering Religion and Politics* (Palgrave Macmillan 2009); Sima Shakhsari, 'Killing me softly with your rights: Queer death and the politics of rightful killing' in Jin Haritaworn, Adi Kuntsman and Silvia Posocco (eds.) *Queer Necropolitics* (Routledge 2014), 103; Suvendrini Perera and Sherene H. Razack (eds), *At the Limits of Justice: Women of Colour on Terror* (University of Toronto Press 2014).
[32] Perera and Razack (n 31) 5.
[33] Studies have estimated death tolls of 480,000 to 1.3 million because of the global war on terror in Afghanistan, Pakistan and Iraq. Neta C. Crawford 'Human Cost of the Post-9/11 Wars: Lethality and the Need for Transparency' (Watson Institute, International & Public Affairs, Brown University 2018) <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Human%20Costs,%20Nov%208%202018%20CoW.pdf>; Physicians for Social Responsibility, Physicians for Global Survival and International Physicians for the Prevention of Nuclear War, *Body Count: Casualty Figures after 10 years of the "War on Terror", Iraq, Afghanistan, Pakistan* (2015) <https://www.psr.org/wp-content/uploads/2018/05/body-count.pdf> accessed 24

to understand violence shifts away from the western liberal democracy, and is constituted both by spaces of intimacy and spaces of global politics.[34] Furthermore, such approaches help me as a white researcher to act reflexively to critique my own writing and analysis for colonising saviour narratives.

This thesis understands the everyday violence of law as an interpellation of people through a structural hierarchy of what it means to be human, through technologies of gender, race, sexuality and class, or as this thesis terms it, coloniality. This everyday violence prospers in the structures of law and is based upon the erasure of alternative ways of life and non-hegemonic forms of knowledge and can be seen in the creation of new 'dangerous' or 'vulnerable' subjects. It works affectively to inform the regulation of subjects throughout time and across space. It is a form of governance that regulates what it means to be human, but its effects are not always predictable. It must be understood as contextual and changing, and that the subjects of counter terrorism law are marked differently in the UK and Egypt.

2.3 Tracing histories of the legal present

But how to trace this slippery and often invisible form of violence? There is an abundance of research that understands the violent structures of contemporary issues of global politics to be steeped in their colonial histories.[35] Scholars hold that a genealogical approach is not simply a useful method to interrogate contemporary hegemonic narratives, but it is a necessary and

September 2021. These numbers do not include 'indirect' deaths resulting from 'loss of access to food, water, health facilities, electricity or other infrastructure'.

[34] Nicola Pratt, *Embodying Geopolitics: Generations of Women's Activism in Egypt, Jordan, and Lebanon* (University of California Press 2020).

[35] Stoler (n 3); Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Duke University Press 2016); Upamanyu Pablo Mukherjee, *Crime and Empire: The Colony in Nineteenth-Century Fictions of Crime* (Oxford University Press, 2003); Alex Tickell, *Terrorism, Insurgency and Indian-English Literature: 1830-1947* (Routledge 2012); Stephen Morton, *States of Emergency: colonialism, literature and law* (Cambridge University Press 2013).; Kwame Nkrumah, *Neo-Colonialism, The Last Stage of Imperialism* (Thomas Nelson & Sons, Ltd 1965);

potentially transformative challenge to some of the most violent global phenomena.[36] As Stoler puts it, many of the conditions of contemporary global politics 'are intimately tied to imperial effects and shaped by the distribution of demands, priorities, containments, and coercions of imperial formations'.[37] The global war on terror discourse, through memorialising one event (9/11) as the beginning of violence, fetishises the 'terrorist' as a stranger-figure cut off from the histories of its determination: a figure without history, reason, nor rationality.[38] Critical historical approaches destabilise Eurocentric narratives of the vulnerable white western subject, exposing colonial histories not as traces of the past, but as durable structures and processes that 'cling to the present'.[39]

Studies into the 'colonial present' often follow a Foucauldian genealogical methodology. Foucault developed the methodological process of the genealogy towards the later part of his life.[40] In his earlier life he looked to his work as an 'archaeology' of knowledge, denoting a method of research focused on the 'interruptions' and 'discontinuities' of thought, holding that different epochs would work under different discourses of knowledge with different markers.[41] Later on he developed the genealogy, capturing processes of 'descent' and 'emergence', that has come to influence scholarship on 'histories of the present'.[42] Garland explains that the genealogy:

[36] Queer feminist thinking interrogates linear temporalities, re-reading dominant narratives and 'mining the present for signs of undetonated energy from past revolutions'. Freeman (n 2), vxi.
[37] Stoler (n 35) 3.
[38] Ahmed (n 15) 8
[39] Nasser Abourahme, 'Of monsters and boomerangs: Colonial returns in the late liberal city' [2018] 22(1) City: Analysis of Urban Change, Theory, Action 106; Stoler (n 35).
[40] David Garland, 'What is a "history of the present"? On Foucault's genealogies and their critical preconditions' [2014] 16(4) Punishment & Society 365.
[41] Michel Foucault, The Archaeology of Knowledge and Discourse on Language (A. M. Sheridan Smith tr. Pantheon Books 1972); Garland (n 40).
[42] Garland (n 40).

> […] traces how contemporary practices and institutions emerged out of specific struggles, conflicts, alliances, and exercises of power, many of which are nowadays forgotten. It thereby enables the genealogist to suggest – not be means of normative argument but instead by presenting a series of troublesome associations and lineages – that institutions and practices we value and take for granted are actually more problematic or more "dangerous" than they otherwise appear.[43]

One genealogical concept, the 'imperial boomerang effect', is primarily used to trace the colonial histories of western liberal democracies.[44] This effect was conceptualised by Arendt[45] and Foucault[46] separately, however was not the focus of much of their scholarship. The general understanding is that imperial practices and structures travelled from the colonies 'back' to the metropole and are visible today as the structures of national security, policing, counter insurgency and even education that we see in the UK and elsewhere. The development of this framing uses the following explanation from Foucault:

> While colonization, with its techniques and its political and juridical weapons, obviously transported European models to other continents, it also had a considerable boomerang effect on the mechanisms of power in the West, and on the apparatuses, institutions, and techniques of power. A whole series of colonial models was brought back to the West, and the result was that the West could practice something resembling colonization, or an internal colonialism, on itself.[47]

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[43] *Ibid.*, 372.
[44] Abourahme (n 39); Connor Woodman, 'The Imperial Boomerang: How colonial methods of repression migrate back to the metropolis' *Verso* (9 June 2020) < https://www.versobooks.com/blogs/4383-the-imperial-boomerang-how-colonial-methods-of-repression-migrate-back-to-the-metropolis?fbclid=IwAR3gsFcfk7RYeTtNxWtc7mWj8s8MlDqNugpYfeRF36Csxx7F9Q4DCuh9VDw> accessed 27 October 2020.
[45] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace & Company 1973).
[46] Foucault wrote less on colonialism, however he did mention in *Society Must Be Defended* the travelling effect of biopolitical technologies of racialisation as forms of population management or as a 'permanent war' underpinning the formation of states. Michel Foucault, *"Society Must Be Defended": Lectures at the Collège de France, 1976-76* (Mauro Bertani and Alessandro Fontana eds., David Macey tr., Picador 1997).
[47] *Ibid*., 103.

The 'boomerang effect' therefore refers to the colonial project as a '*returning* political technology that eventually "contaminates" the interior'.[48] For Arendt, the colonies were the testing grounds and developmental centres for the 'administrative massacre'.[49] This form of bureaucratic violence points to a mass killing by a state in a 'systematic and organized fashion', or an instance where the state bureaucracy consciously planned to use physical violence against a portion of the population as a method of rule.[50] For Arendt, the boomerang was embodied in the rise of Nazism, totalitarianism and the massacre of around six million Jews in the holocaust.

Novelli understands education as a 'mode of pacification, a vehicle for the reproduction of social inequality, a tool of colonial power, and as a vehicle for militarization and violence'.[51] Using the boomerang effect he shows how the education of 'at-risk youth' was a central tool in western international development and counter insurgency strategies in Afghanistan and Pakistan throughout the Cold War, and then in the early 2000s wars on Iraq and Afghanistan that sought to 'win hearts and minds'.[52] Graham develops the boomerang effect further as a 'two-way' flow of ideas, techniques and practices of power throughout the nineteenth century, and demonstrates how new securitising structures in European cities such as containing, surveilling, policing, imprisoning and re-educating 'troublesome' or 'criminal' classes were formed from the colonies that acted as testing grounds.[53]

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[48] Abourahme (n 39).
[49] Arendt (n 46) xvii.
[50] Mark J. Osiel, 'Ever Again: Legal Remembrance of Administrative Massacre' [1995] 144(2) University of Pennsylvania Law Review 463, 468. See also *Benjamin Lewis Robinson Bureaucratic Fanatics: Modern Literature and the Passions of Rationalization* (De Gruyter 2019), 118.
[51] Mario Novelli, 'Education and countering violent extremism: Western logics from south to north?' [2017] 47(6) 835.
[52] *Ibid*.
[53] Stephen Graham, 'Foucault's boomerang: the new military urbanism' *OpenDemocracy* (14 February 2013) < https://www.opendemocracy.net/en/opensecurity/foucaults-boomerang-new-military-urbanism/> accessed 23 September 2021.

However, there are issues with framing the movement of policies and practices in either a unilinear or duo linear way. This framing relies upon a conceptualisation of the metropole and the colonies as separate spaces and denies the development of governance formed upon class, race, and gender-based violence at 'home'. Perceiving the return of policies as 'contaminating' the metropole suggests that mainland Britain was, until the expansion of Empire, a haven of nonviolence and equality. In fact, critical legal historians note, not only did practices move 'back' home, but the legal division of a 'normal' rule at home and an 'emergency' rule in the colonies was a false binary.[54] This is not to say that subjects in the metropole were treated the same as colonial subjects, but that governance is more complex than what we can understand by taking archival descriptions of colonial policies at their face value. Scholars like Reynolds, Likhovski and Zichi instead understand the development of methods of governance as a changeable 'patchwork' of laws and policies throughout the metropole and the colonies, attaching to classed, gendered and racialised bodies and communities cast as threatening at different moments.[55] The constant movement of colonial officers and administrators, of soldiers and tourists, of missionaries and colonial feminists, and of colonial subjects themselves throughout the British Empire, facilitated the movement of emotional narratives about Britishness and belonging and helped shape and share methods of governance.[56]

Furthermore, by focusing on the travelling nature of policies and practices alone, the structural violence that underpins them can be lost. Instead, we must look not only to the reappropriation

[54] John Reynolds 'The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law' [2010] 6(5) Comparative Research in Law & Political Economy 1, 36.
[55] *Ibid*.; Assaf Likhovski, *Law and Identity in Mandate Palestine* (University of North Carolina Press 2006); Paola Zichi, 'Prostitution and Moral and Sexual Hygiene in Mandatory Palestine: The Criminal Code for Palestine (1921–1936)' [2021] 47(1) Australian Feminist Law Journal.
[56] Members of the British administration in Egypt had previously worked in India and sought to mould British rule in Egypt as an extension of this. Lord Cromer spent time between India and Egypt in the later 1800s. His work as Secretary to the Viceroy in India, Lord Northbrook greatly influenced the shaping of his understanding of imperialism, and his work in Egypt. For more information see M. E. Chamberlain, 'Lord Cromer's "Ancient and Modern" Imperialism: A Proconsular View of Empire' [1972] 12(1) Journal of British Studies 61.

of policies today, but to how such policies feature as examples of a broader 'truth regime' of modernisation, imperialism and law.[57] How the classification of race, ethnicity, gender, class, sexuality, ability and religion and the erasure of non-hegemonic modes of being made such truth regimes possible, the role of local actors, and the persistence of such structures in postcolonial states today. Therefore, this thesis makes a distinction between depicting the 'boomerang' as on the one hand working to bring tangible policies 'home' and on the other hand, depicting it as a wholesale universalising process that is structural to imperialism and modernisation, and for this thesis, law. It is with the latter conceptualisation that my research sits, attempting to untangle the forms of legitimisation and normalisation that law provides contemporary forms of pre-criminal practice.[58]

Colonial presents are difficult to trace because, as Stoler notes, 'they do not have a life of their own': instead they work to shape logics of governance through racial distinctions, dwelling in the slippery realms of affect.[59] This means that while certain colonial presents may be unearthed through intertextual readings of counterinsurgency policies, legal transplants or the physical relocation of colonial administrators, tracing the uneven dissipation of legal violence through communities as a form of everyday violence brings up a number of challenges. This is not least because such a genealogical colonial history configures as 'as neither smooth and seamless continuity (an eternal colonial present) nor abrupt epochal break (a stagist overcoming), but the protracted temporality and uneven sedimentation of colonial practice'.[60]

[57] Looking to property law, Brenna Bhandar argues that 'legal forms of property ownership and the modern racial subject are articulated and realized in conjunction with one another'. *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press 2018), 5.
[58] Similar to a transnational legal approach that holds different forms of law-making – including local, national, international, public and private, hard law and soft law, norms enacted by the state and developed by networks – in tension within a single analytical frame. Prabha Kotiswaran, 'Transnational Criminal Law in a Globalised World: The Case of Trafficking' [2019] 4 UC Irvine Journal of International, Transnational and Comparative Law 52.
[59] Stoler (n 35), 4.
[60] Abourahme (n 39) 107.

So, what is it I should be 'looking out for', when carrying out a genealogical study? In his *History of Sexuality Vol 1*, when tracing the shifts and continuities in how sex and sexuality are understood in the contemporary moment, Foucault explains that the way to do this is:

> … not to determine whether one says yes or no to sex… but to account for the fact that it is spoken about, to discover who does the speaking, the positions and viewpoints from which they speak, the institutions which prompt people to speak about it and which store and distribute the things that are said. What is at issue, briefly, is the over-all "discursive fact," that way in which sex is "put into discourse."[61]

When asking questions about the legitimisation of the contemporary pre-criminal space in in legal and administrative governance, I can ask similar questions of the archives: around how pre-emption, suspicion and vulnerability are spoken about and by whom; for whom is it beneficial to use violent events to construct law as relatively humanising; which civil and military institutions are conducive to this narrative and how are they kept intact today?

David Garland identifies a shift from the Victorian system of punishment to the modern Welfare system, taking place in Britain around 1895. He shows that the turn of the century saw a shift towards a system which increasingly aimed to assess and classify 'criminal' subjects, moving away from a blanket system of punishment. Garland identifies that this systematic shift took place structurally – through the bureaucratisation and decentralisation of punishment, leading to the pluralisation of agencies that were tasked with carrying out an expanding 'grid

[61] Michel Foucault, *The History of Sexuality Volume 1: An Introduction* (Robert Hurley tr, Random House Inc 1978) 11.

of penal sanctions'[62] – and ideologically – whereby discourses of individualism and differentiation meant that the focus of the law and the penal system was less on the gravity of the crime and increasingly on the identity of the individual.

Garland demonstrates that within this multi-agential and identity-based penal system, preventive punishments began to take shape in Britain. Through its focus on identity, new tools were developed that enabled the state to recognise and detain individual characters and place them in preventive detention. Simultaneously, a pathological shift in criminological science meant that penal tools were expanded to include placing 'certain classes of offender'[63] in reformatory institutions such as those specialising in the psychiatry of the 'morally insane', the 'degenerate', the 'lunatic' or the 'feeble-minded'. Within this new scientific understanding of criminology, the criminality of an offender could be reformed, extinguished, or prevented, using a diversity of new penal techniques.[64]

For Garland, this late modern system led to a shift in the relationship between the citizen and the (welfare) state which he depicts as being evident in the new role played by law. Whereas in the previous Victorian system, all citizens were free and equal in front of the law, in the modern system, the 'rational' and 'reasonable' subject could no longer be presumed to exist.[65] Therefore, the multiple agencies of the welfare state sought to 'rescue' subjects from vice and crime, thus relieving conditions that detracted from formal equality, and therefore meaning that citizens could, after treatment, be treated as whole, rational subjects in front of the law once more.[66]

[62] David Garland, *Punishment and Welfare: A History of Penal Strategies* (Gower Publishing Company Limited, 1985), 23.
[63] Garland (n 62), 23.
[64] *Ibid*., 95
[65] *Ibid*., 25
[66] *Ibid*., 31

Garland's thesis is important in delineating the genealogical development of contemporary pre-crime offences. Scholars such as Heath-Kelly and Shanaah have expanded Garland's work to argue that techniques of risk and pre-crime were present much earlier than the neoliberal era with which they are predominately associated in criminology studies.[67] They show how the development of nineteenth century Social Defence philosophy, which cast criminality through 'conditions' and 'types' that could be prevented, particularly influenced continental and international crime policy and found its way into the structure of some international organisations such as the United Nations and the Council of Europe. For Heath-Kelly and Shanaah, Garland's conceptualisation of individualism and categorisation 'does not appropriately capture how positivist and Social Defence thinkers reoriented punishment towards pre-emptive crime', arguing that Garland's Anglocentrism misses out what was developing in European spaces.[68] This thesis does not identify early pre-criminal tools in this way but it does add a layer of analysis that Garland misses in his genealogy, that of the role that colonial conceptualisations of difference and the 'human' played in justifying preventive technologies.

Garland's development of multiple avenues inside and outside of the law sits well with the critical legal theories of Hussain and Reynolds whose work is central in this thesis. Hussain's theory on hyperlegality shows, in a similar vein, the proliferation of different 'types' of law and punishment for different classifications of subjects.[69] However, where Hussain and Reynolds' work centres processes of racialisation and Empire for the development of such new tools, Garland's work mostly skirts over questions of Empire. While he does spend time

[67] Charlotte Heath-Kelly and Šádí Shanaáh, 'The long history of prevention: Social Defence, security and anticipating future crimes in the era of "penal welfarism"' [2022] Theoretical Criminology 1-20.
[68] *Ibid*., 7.
[69] Nasser Hussain 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514.

considering how the development of categories of deviancy were linked to the defence of the Empire, the nation and 'the race',[70] the Anglocentrism of Garland's study means that his framing of the relationship between the citizen and the law lacks important grounding in the development of colonial law for those cast as 'less than human', considering how Empire-building centres on the suppression of alternative possibilities of life.[71]

To expand Garland's conceptualisations of law, then, I would suggest that narratives of racial inferiority underpinned both the liberal and welfare states' conceptualisation of 'humanity' to the extent that we can identify a continuity across the two time frames between which Garland differentiates. This continuity is that: the notion of people being free and equal under law did not extend to colonial subjects. Furthermore, by centring a colonial case study rather than the metropole, it is possible to present counter arguments or additional factors to Garland's genealogy. For instance, the shift that Garland identifies could arguably have been to do with the timing of the period amidst the breakdown of Empire. At this time, when anti-colonial struggles were growing and British administrators were becoming anxious about the loss of Empire, the British metropole was devising new strategies of 'inclusion' and 'cosmopolitanism'.[72] The shift that Garland identifies could very well have been to do with the 'need' to discover new ways of including racialised 'others' through fragmenting forms of law and punishment so to accommodate the 'not yet human'. From the perspective of Egyptian local governance, scholars such as Fahmy and Ezzat have identified a nineteenth century shift in the role played by muhtasibs (officials exercising the duty of hisba, a religious concept governing the correct behaviours and wrongdoings of Muslim subjects regarding Islam), whereby the mandate for enforcing this moral duty was passed onto doctors, the police and city

[70] Garland (n 62) 177.
[71] Roxanne Lynn Doty, *Imperial Encounters: The Politics of Representation in North-South Relations* (University of Minnesota Press, 1996), 105.
[72] See Chapter Five for a discussion on this.

governors between 1848 and 1897.[73] Such a shift also suggests the dearth of non-European sources in Garland's work.

While Garland does conceptualise the fragmentation of punitive practices as linked to increasing calls for morality, social hygiene, and civilisation, demonstrating these through a class analysis, a lack of a substantial analysis of race is surprising, considering the differentiated ways in which racialised subjects were cast as more unhygienic and prone to criminality in ways in which the white working classes were not.[74] Others like Doty demonstrate the importance in attending to forms of anti-colonialism, showing that pre-emptive counter-insurgency measures such as separation and enclosure were developed around the Mau Mau resistance in the 1950s.[75] Furthermore, where Garland focuses on the individualism of the welfare state, he tends to speak less to the ways in which the classification of 'types' of individuals also provided the law with an ability to treat groups of subjects and entire communities as criminal through ascriptions of race, class and gender. As I demonstrate, particularly in Chapters Three and Four, some of the legal developments at this period of time in British-occupied Egypt presented preventive tools à la Garland, but also introduced mechanisms for the collective liability of all members of one group, which is an aspect that remains to this day in both the British and Egyptian contexts.[76] With such considerations in mind, this thesis both utilises and adds another layer of analysis to Garland's work.

[73] Ahmed Ezzat, 'Law and Moral Regulation in Modern Egypt: Ḥisba from Tradition to Modernity' [2020] 52(4) International Journal of Middle East Studies, 665, 672.
[74] Bashford demonstrate this in Alison Bashford *Imperial Hygiene*: *A Critical History of Colonialism, Nationalism and Public Health* (Palgrave Macmillan 2004).
[75] Doty (n 71) 116.
[76] As I explain further in Chapters Six and Seven, such mechanisms of collective liability and punishment or 'proximity' to a crime in the British context, are characteristic of terrorism trials.

There remain several methodological challenges I come up against. These include: finding the right balance between colonial and local effects; interrogating the hegemonic archive for missing voices; and linking the past with the present without determining the archive as the 'truth' of the contemporary. I will discuss each of these in turn using a reflexive feminist approach.

2.4 Case study: British-occupied Egypt

This thesis analyses legal moments throughout the British occupation of Egypt from 1882–1956 to understand the historical present of pre-criminality in the UK and Egypt today. The British occupation went through various stages and importantly, Britain was never 'fully' in control of the Egyptian state. The British entered and occupied Egypt in 1882 following the 'Urabi revolt in which Arab nationalists revolted against European influence in the region and control over the Egyptian economy. From 1882–1914, the British held a Veiled Protectorate over Egypt, whereby they had no legal basis to be there and thus had restricted access to the country. This period under the first and most notorious Consul-General to govern Egypt, Lord Cromer, saw the British carry out 'exceptional' measures against Egyptians which he cast as justifiable and necessary for a country accustomed 'to lawless and despotic government'.[77]

From 1914–1922, alongside the declaration of World War One, Britain declared a Protectorate over Egypt and promulgated martial law. Martial law provided Britain increased access to the country and although cast as 'humanising', was used to systematically curtail the freedoms of Egyptian citizens considered to be a 'threat', as Sir Robert Allason Furness, Oriental Secretary in Egypt wrote in 1922, 'I have reluctantly forborne to point out that during the war when Egypt

[77] Nathan J. Brown, 'Retrospective: Law and Imperialism: Egypt in Comparative Perspective' [1995] 29(1) Law & Society Review 103, 111.

was a Protectorate the Home Office used to treat Egyptians as alien extremists'.[78] In 1922, Egyptian independence was announced following the 1919 Egyptian revolution. However, this 'independence' was negotiated with several reserve clauses which were normalised in the 1936 Anglo-Egyptian treaty. The British continued to occupy Egypt in different modes, past the Egyptian revolution of 1952 and 'true' independence, until their final withdrawal in 1956.

Considering the 'semi-coloniality'[79] of British-occupied Egypt, this case study may seem an unconventional choice for genealogical research into the pre-criminal space. It might be argued that, as a state that was not 'fully' colonised, and was under British occupation for a relatively short period of 73 years, Egypt does not fit the 'traditional' set up of a colonial state, and therefore that the period is unlikely to have had significant effects upon either Egyptian or British contemporary governance.[80] Indeed in the research and writing process of this thesis I was asked a number of times why I was not looking at a 'real' colony such as the British Raj or French Algeria. However, this thesis uses precisely the tensions between British and Egyptian agency as a way to rethink the persistence of governance as a result of the push and pull between a variety of actors such as Egyptian authorities, anticolonial resistors, fellaheen communities, and British feminists. This approach interrogates the hegemonic archive and reads agency into the subjects of dehumanising policies, reframing bare life as 'life amidst the legal denial of life itself'.[81] Furthermore, this critical historical approach provides a way to

[78] Note by Sir Robert Allason Furness, 27 September 1922 in *Powers of the Egyptian Government and its change in status. Part 3.* (The National Archives, Kew Gardens) FO 141/430/6/5512/116.
[79] Hanan Kholoussy, 'Monitoring and Medicalising Male Sexuality in Semi-Colonial Egypt' [2010] 22(3) Gender & History 677.
[80] R. L. Shukla 'Presidential Address: British Colonialism at Work in India and Egypt A Comparative View' [1987] 48 Proceedings of the Indian history Congress 603.
[81] Sumi Madhok 'Coloniality, political subjectivation and the gendered politics of protest in a "state of exception"' [2018] 119 Feminist Review 46, 58

interrogate simplistic binaries of authoritarian/democratic that are so often mapped on to the East/West in contemporary international politics.[82]

Postcolonial scholarship is divided as to the of legacy British colonial endeavours in Egypt. Scholars like Asad and Mahmood argue that secularisation processed imposed led to the reform of the Shari'a and the 'Islamic tradition in general'.[83] Secularisation is a central ideological tenet of the promotion of democracy in the Muslim world.[84] Western secular processes and institutions are understood as having been instructive in the formation of modern Egyptian identities.[85] For Esmeir, a 'juridical humanity' was formed in Egypt as the British colonial power instituted a new modern legal system which interpellated Egyptians as human.[86] This follows an understanding of the liberal rule of law as endowing itself with the power of humanisation, 'and declares that its absence signals dehumanization', binding the living to the power of modern state law.[87] In Chapter Three, I understand the framing of martial law as a 'just' institution in this light.[88] Others understand this colonial influence to persist in Egyptian

[82] Sara Salem, *Anticolonial Afterlives in Egypt: The Politics of Hegemony* (Cambridge University Press 2020) 52. See also Pratt (n 34).
[83] Talal Asad, *Thinking about Secularism and Law in Egypt* (ISIM 2001) <https://openaccess.leidenuniv.nl/bitstream/handle/1887/10066/paper_asad.pdf?sequence=1>; see also Mahmood (n 31).
[84] Mahmood (n 31) 193-194; Yahya Sadowski shows that central to orientalism and neo-orientalism is the cultural argument that Islam is incompatible with politics. 'The New Orientalism and the Democracy Debate' (Middle East Report 183, Political Islam 1993).
[85] For this argument in the context of Lebanon see Max Weiss, *In the Shadow of Sectarianism: Law, Shi`ism, and the Making of Modern Lebanon* (Harvard University Press 2010).
[86] Esmeir (n 21), 3.
[87] *Ibid*., 2.
[88] See also W.J. Berridge, 'Imperialist and Nationalist Voices in the Struggle for Egyptian independence', 1919–22' [2014] 42(3) Journal of Imperial and Commonwealth History 420.

governance today, both in terms of the Egyptian states' adoption of colonial laws and policies[89] and Egypt's forced dependence upon external aid and debt management schemes.[90]

Others emphasise Egyptian agency. As Ezzat notes, 'legal culture in a Muslim society like Egypt cannot be fully understood by reducing it to merely Western influence'.[91] The British occupation of Egypt has been described as 'semi-colonial' by scholars seeking to recognise the agency and independence of the Egyptian legal and governmental systems at the time.[92] Brown explains that colonial influence over legal reforms in Egypt has been overemphasized, that the Egyptian state already had a strong complex system of Ottoman and Islamic legal models, and that when European aspects were adopted, it was purposeful, rather than imposed.[93] The overemphasis on the role Britain played in influencing Egyptian systems of governance has also been highlighted by scholars who focus on the datafication of Egyptian society throughout the preceding Ottoman period and the rule of Muhammad Ali Pasha (1805–1848) for the purpose of regulating the population. This bureaucratisation of identities went on to influence classifications within Egyptian legal systems, in particular forms of criminality and suspicion.[94]

[89] Fatemah Alzubairi, *Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World* (Cambridge University Press 2019); Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press 1997); Brown (n 62); Sadiq Reza, 'Endless Emergency: The Case of Egypt' [2007] 10(4) New Criminal Law Review 532. See also on Nigeria: Emeka Thaddues Njoku, 'Laws for Sale:' The Domestication of Counterterrorism Legislations and its impact in Nigeria," in: Scott Nicholas Romaniuk, Francis Grice, Daniela Irrera, and Stewart T. Webb, (eds), *The Palgrave Handbook of Global Counterterrorism Policy*. (Palgrave Macmillan 2017).

[90] Timothy Mitchell, *Rule of Experts: Egypt, Technopolitics, Modernity* (University of California Press 2002); see also Nkrumah (n 35) explaining neo-colonialism as the 'final and most dangerous stage of imperialism, whereby a state's economic system and political policy is directed from the outside'.

[91] Ahmed Ezzat, 'Law and Moral Regulation in Modern Egypt: Ḥisba from Tradition to Modernity' [2020] 52(4) International Journal of Middle East Studies, 665, 670.

[92] Kholoussy (n 64).

[93] Brown (n 62) explains that far from Lord Cromer's conception of a 'lawless' Egypt, upon the British invasion, there was a complex and developing legal system in place. This is explained further in Chapter Three.

[94] Khaled Fahmy, 'The Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt' in Keith Breckenridge and Simon Szeter (eds) *Registration and Recognition: Documenting the Person in World History* (The British Academy 2012). Fahmy demonstrates a shift towards secular legal reform in nineteenth century Egypt. Mohammed Ali Pasha's rule (1805–1848) saw the beginnings of the administration of identity and the production of the legal subject through the fiscal and medical regulation of the population, culminating in Egypt's very first population census in 1848. See also (Brown n 62) 109.

Marxist and feminist perspectives demonstrate the role played by the Egyptian middle and upper classes working with the British administration to perpetuate and reframe narratives of morality, moderacy and extremism around the working classes, women and particular forms of Islam.[95] For Salem, the common binary within international politics that casts the 'West' as having a strong civil society and consent to rule, compared with the 'East' that has a weak civil society and relies upon violence must be rethought through histories of colonialism. As she explains:

> … any ruling class that came after independence and that based its project on colonial norms of modernization and development would have faced serious challenges in constructing hegemony because of the inability to gain consent for what were essentially colonial projects.[96]

Looking to the durability of colonial technologies, therefore, as Abourahme notes, 'posits serious analytical questions about the self-evident typological distinction between liberal-democracy and its purported other, the authoritarian'.[97] This helps us to understand authoritarian methods throughout the globe, including western liberal democracies – such as surveillance, pre-criminal technologies, travel restrictions, torture and imprisonment – as fragmented and widespread, or as Alzubairi puts it 'part of a worldwide collective authoritarian ambition'.[98] Therefore, while this thesis considers legal reforms overseen by Britain to have created new methods for governing that interpellated people as 'human' through racialised, classed and gendered dimensions, I also look to the role played by Egyptian elites. As this thesis shows, certain legal moments entailed a negotiation between the British and Egyptian

[95] See Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992); Hussein Omar, 'Arabic Thought in the Liberal Cage' in Faisal Devji and Zaheer Kazmi (eds) *Islam After Liberalism* (Oxford University Press 2017).
[96] Salem (n 67), 52.
[97] Abourahme (n 39), 108.
[98] Alzubairi (n 74), 119.

governments, in which the Egyptian government suggested its desire for more rigorous and pre-emptive methods of governance.

2.5 Interrogating the hegemonic archive

The main archival collections I accessed can be separated into two themes that help me to understand framings of morality and extremism. The National Archives Foreign Office collections of the twentieth century in Egypt hold several bundles on the implementation of martial law, on assembly and protest laws, and on anti-British demonstrations. I also accessed colonial maps of Cairo to get an aesthetic sense of the time-period, and as I explain later, used them as a visual method of interviewing. I analysed these documents for the normalisation of emergency law, pre-emptive laws and policies and the construction of 'extremism'. Alongside these documents, I accessed files from the Association of Moral and Social Hygiene (AMSH), held in the Women's Library at the London School of Economics and Political Science (LSE). AMSH was a British women's organisation who held the aim of abolishing sex work in Britain and British colonies. The Women's Library holds letters and reports on AMSH's activities in Egypt in the early twentieth century. These archival spaces provide a view of how racialised and sexualised understandings of morality were central in hegemonic British constructions of and dependencies on law as a continuation of Empire. Additionally, they provide insight into the early formations of contemporary British liberal and governance feminism and the role women's organisations played within the work of Empire.

My archival focus was mainly on British colonial papers because, as I explain further in the following section, I could not access many Egyptian archives online nor travel to the country because of both the dangers posed to researchers and interviewees and the COVID-19 pandemic. It was nonetheless critical to supplement these two British archival spaces, and so I

attended to Egyptian voices through fictional narratives written at the same time as the archival recordings,[99] witness statements by Egyptian fellaheen included in British legal documents, and interviews with Egyptians living in the UK. These documents were in English, Arabic and French. I have a working knowledge of both Arabic and French and took extra training in the former to prepare myself for my research.

There is a profound methodological difficulty in tracing everyday experiences in that the archive is often a singular and hegemonic space. Uncritical historical analyses can risk reaffirming the archive as a 'hegemonic instrument of the state', perpetuating a colonial fantasy of Empire at its pinnacle as unshakable and in control.[100] The focus of British colonialists around the early twentieth century was not so much on expansion as it was on the 'preservation and integrity of the Empire'.[101] Reynolds explains that the fear of losing control of Ireland to anticolonial resistors was amplified by a fear that resistance would have a domino effect in other colonies, explaining why Britain took 'such extensive measures to legislate for the continuing repression of any form of opposition'.[102] The colonial archive is consequently packed with memorandums, notes, draft laws and letters suggesting concerns around losing control of Egypt. Looked at from a critical perspective, the 'archive in excess' can be read as proof of a legal-administrative form of governance.[103]

[99] Specifically the novel by Mahmud Tahir Haqqi, 'The Maiden of Dinshaway' ('*Adhra Dinshaway)* 1906 in *Three pioneering Egyptian novels: The Maiden of Dinshway (1906), Eve without Adam (1934) and Ulysses's hallucinations or the like (1985) / translated with a critical introduction by Saad el-Gabalawy*. (The British Library) Asia, Pacific & Africa ARB.1987.a.1756.
[100] David Zeitlyn, 'Anthropology in and of the Archives: Possible Futures and Contingent Pasts. Archives as Anthropological Surrogates' [2012] 41 Annual Review of Anthropology 461, 462.
[101] Reynolds (n 54), 35.
[102] *Ibid*., 13.
[103] Mayur Suresh 'The social life of technicalities: "Terrorist" lives in Delhi's courts' [2019] 53(1) Contributions to Indian Sociology 72.

This official archive silences marginalised voices, indirectly, because of hegemonic understandings of which voices matter and who had access to literacy, and directly, where certain policies were purposefully not recorded.[104] When colonial subjects are represented, 'the stories that exist are not about them, but rather about the violence, excess, mendacity, and reason that seized hold of their lives, transformed them into commodities and corpses...'.[105] Similarly, although AMSH's collection of files provides a different perspective and adds to understandings of how 'softer' methods of governance were developed, I understand AMSH as expanding upon an colonial perspective.[106] While AMSH's documents shed light on how Egyptian sex workers were considered to be both 'vulnerable' and 'threatening', like in the colonial archive, the voices of Egyptian subjects are mostly if not completely missing. This presents a methodological problem for my research that interrogates how law is violent on an everyday basis.

Feminist scholars have developed methods to work with these forms of erasure through reading 'along the archival grain',[107] queering and re-thinking what is presented in the archive, and supplementing archival material with other data like ethnographies, interviews, fictions and dreams.[108] As Steedman puts it, 'if we find nothing, we will find nothing in a place; and then, that an absence is not nothing, but is rather the space left by what has gone: how the emptiness indicates how once it was filled and animated'.[109] This thesis juxtaposes the colonial archive with records of Egyptian voices in this way. However, the issue remains that the stories written down can never account for all experiences and further, that some were included in the colonial

[104] Saidiya V. Hartman, 'Venus in Two Acts' [2008] 12(2) Small Axe 12(2)1; Carby (n 24).
[105] Hartman (n 89) 2.
[106] I refer to AMSH workers as 'colonial feminists' throughout this thesis because AMSH's understanding of abolition was informed by a narrative of civilisation and in practice included women reformers moving to the British colonies to 'educate'.
[107] Stoler (n 3).
[108] Arondekar (n 4); Samia Khatun, *Australianama: The South Asian Odyssey in Australia* (Hurst 2018).
[109] Carolyn Steedman, *Dust* (Manchester University Press 2002) 11.

archive for a reason. Scholars have devised other methods of re-imagining these erasures or silences.

In wanting to give space to the voices of women slaves in archival holdings about slave ships, Hartman reconfigures the temporality of her archival readings into the conditional tense: a 'what could have been'.[110] Researching becomes a 'double gesture', that pays attention to both the material elements of the archives and to what is absent, remaining cognisant of the impossibility of telling an absent story. This method, termed by Hartman as 'critical fabulation', rearranges the basic elements of the story found in the colonial archive in order to throw 'into crisis "what happened when"'.[111] Hartman's conditional rendering of the silences of the archives opens up space for possible stories of intimacy that can be read across time, and into hopeful futurities. However, this practice could lead to a projection of desired research outcomes if not done reflexively. As Hartman notes, 'the loss of stories sharpens the hunger for them', and the possibility for the researcher to project their imagined story onto archival silences.[112] This is particularly poignant to remember when researching on an area of the world that has been the fetishised object of orientalist study, and from my position as a white British researcher whose knowledge of the Arab world has been interwoven with a desire to uncover its hidden 'mysteries'. I have not experienced countering terrorism as violent on a personal level and I do not want to make assumptions about the experiences of racialised and colonial subjects under emergency and counter-terrorism laws. The challenge remains: 'how to recognise a simultaneity of different histories while not subsuming them into a commensurable spatial and temporal moment of encounter'?[113]

[110] Hartman (n 89).
[111] *Ibid*., 13.
[112] Hartman (n 89), 8.
[113] Yasmin Gunaratnam and Carrie Hamilton, 'The wherewithal of feminist methods' [2017] 115(1) Feminist Review 1, 4.

Arondekar warns that even a critical approach may bolster the hegemonic archive as the new 'dogmatism of scholarship'.[114] She explains that the challenge is to 'juxtapose productively the archive's fiction-effects (the archive as a system of representation) alongside its truth-effects (the archive as material with "real" consequences), as both antagonistic and co-constitutive'.[115] For Gunaratnam, a feminist ethics of care in research entails an acceptance that 'there are planes of life and being that can bypass consciousness and symbolization',[116] that these planes stray into the unquantifiable, and that a politics of care would see researchers learning to 'tolerate incomplete understanding and mystery'.[117] Following Arondekar and Gunaratnam I approach different archival spaces and contemporary interviews as producing different versions of the truth, and as not necessarily sitting comfortably alongside one another. For instance, in Chapter Four, I read a storytelling version of the events surrounding the 1906 Dinshaway massacre, entitled *The Maiden of Dinshaway* ('Adhra Dinshaway), written by Egyptian author Mahmud Tahir Haqqi, alongside the 'official' version of events as documented in the British colonial archive. Holding these two versions of truth together interrogates the British narrative and points us to racialised, gendered and classed effects of law and which testimonies are rendered inadmissible evidence.

2.6 Using interviews to make temporal connections to the present

Taking Arondekar's warning further, so as not to make assumptions about the 'truth effects' of the archive, I carried out contemporary data collection through interviewing Egyptians based in the UK and legal analysis.[118] Considering that a genealogical study should look at both the

[114] Arondekar (n 4), 12.
[115] *Ibid.*
[116] Yasmin Gunaratnam, *Death and the migrant: bodies, borders and care.* (Bloomsbury Publishing Plc 2013) 138.
[117] *Ibid.*, 141
[118] Please see bibliography for a comprehensive list of legal sources.

continuities and ruptures in histories of the present, my interviewees present a wealth of different information that often clashed in unpredictable ways with both my archival and theoretical findings.

I spoke to twelve Egyptian migrants to the UK who lived in and around London at the time of interviews. I was not able to visit Egypt for these interviews because of the danger posed to researchers and interviewees. Throughout Abdel Fattah el-Sisi's Presidency in Egypt, civil society groups, journalists, academics, lawyers, NGOs and activists have been increasingly cast as a 'threat' to the Egyptian state. This has resulted in crackdowns on groups involving mass arrest, torture, force disappearance and murder.[119] In 2016, Italian PhD student at the University of Cambridge, Giulio Regeni, was forcibly disappeared and murdered. Regeni's death has been linked to his research on trade unionism in Egypt.[120] Patrick Zaki, a Masters student and employee of the Egyptian Initiative for Personal Rights (EIPR) was arrested in 2020 for 'spreading false news outside the country' and held in pre-trial detention for 19 months.[121] Many others such as Alaa Abdel Fattah have been held in pre-trial detention for two years (the maximum in Egypt) during which time the prosecution has found fresh charges to bring against them, allowing for their indefinite detention without trial.[122] Considering the topic of my research, it would have been dangerous for both myself and any potential interviewees had I decided to visit Egypt.

[119] Amnesty International, 'Egypt: "Officially, You Do Not Exist". Disappeared and Tortured in the Name of Counter-Terrorism' (2016) <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1243682016ENGLISH.pdf> accessed 16 October 2021.
[120] Ruth Michaelson, 'Giulio Regeni: trial of Egyptian security agents charged over death begins in Rome' *The Guardian* (14 October 2021) <https://www.theguardian.com/global-development/2021/oct/14/giulio-regeni-trial-of-egyptian-security-agents-charged-over-death-begins-in-rome> accessed 16 October 2021.
[121] 'Egypt begins trial of researcher Patrick George Zaki' *Al Jazeera* (14 September 2021) <https://www.aljazeera.com/news/2021/9/14/egypt-begins-trial-of-researcher-patrick-george-zaki> accessed 16 October 2021.
[122] 'Egypt: Detained activist Alaa Abdel Fattah 'at risk of suicide' over conditions, says lawyer' *Middle East Eye* (14 September 2021) <https://www.middleeasteye.net/news/egypt-alaa-abdel-fattah-activist-detained-risk-suicide-conditions> accessed 16 October 2021.

Instead, I decided to interview Egyptians residing in the UK about their experiences in both countries. My research was therefore shaped around the transnational experiences of my participants. This brought up interesting comparative stories about both states and presented a method to think about the travelling effect of law and violence. In order to find these interlocutors, I carried out a snowball sample of participants, beginning with my own contacts from activist and academic networks. Most of my interlocutors were from Cairo and some had experienced living there. The backgrounds of my interlocutors varied widely: ages ranged from early twenties through to early eighties. They identified as four women and eight men. Seven were Muslim and five were Coptic Christian, although not all 'practicing'. Their visa statuses to the UK ranged from long term resident to temporary student or worker, to asylum seeker. Several expressed fear about being picked up by the police were they to return to Egypt. They were majority highly educated, some in the UK to pursue Masters or PhD programmes. The majority were able to move internationally because of their relatively privileged class position in Egypt. However, under the current regime of el-Sisi, these mostly political activists would be arrested indiscriminately despite their class location.

Fear of the Egyptian regime shaped these interviews. I was aware that speaking about a topic that resonates in a much more material way in Egypt was something that would prove upsetting to my interlocutors. Many of them know friends and family who have been arrested by the Egyptian authorities and have themselves felt fear on an everyday basis in the country. Furthermore, for some of my interlocutors in particular, fear of British countering terrorism was a serious concern. Notably with the Prevent duty, referrals are often made in connection to 'sensitive' materials accessed, or topics discussed. This means that people who might be perceived to fit into the 'suspect terrorist' category – Muslims, migrants and people of colour

in the UK – are often afraid to discuss anything to do with 'terrorism'. For these reasons I took precautions for the safety of my interviewees in the following ways. I used an encrypted email address and data storage method; I made sure that my interviewees felt comfortable with the topic we were discussing; I gave my interviewees the choice of where and when to meet; I made sure to follow up after the interview, to check in with them regarding their consent around my use of their transcripts, to anonymise their data, and to generally check that they were OK.

The reason for my choice in a relatively small sample size for my interviews, and one that was diverse in its range of backgrounds and experiences, was that, following feminist qualitative research practices, I did not intend to make generalisable conclusions from their stories, but rather to 'look at the "process" or "meanings" individuals attribute to their given social situation'.[123] Koser and Al-Ali warn that in transnational scholarship refugees and migrants tend to be homogenised and 'presented in an undifferentiated manner', similar to presumptions of a universal experience of countering terrorism.[124] A reflexive feminist project on violence must avoid perpetuating this victimising narrative and retain an awareness of the research process as one that can re-embed such framings. A small sample size that pursues in-depth interviews gave me the opportunity to explore the layers of meaning, subtle differences, and clashes in the story of each person. As I show in Chapters Five and Six, these interviews demonstrate how hegemonic narratives attempt to erase and re-write subjectivities but also forms of resistance to colonising forces.

The purpose of these interviews was to gain some understanding of how people experience counter terrorism law and the pre-criminal elements of it – whether violently or otherwise – in

[123] Sharlene Nagy Hesse-Biber, Feminist Research Practice: A Primer (SAGE 2013), 119.
[124] Koser and Al-Ali (n 30).

both Egypt and the UK. They would therefore add another layer to the archival experiences of everyday violence that are neither present, nor ones that I can, from my positionality, presume to know. These interviews provided affective layers of knowledge that are eclipsed from normative readings of law and the statistical counting of deaths in the global war on terror.[125] In this way my participants themselves interrogated mainstream accounts that recognise only certain forms of violence (direct, 'terrorist', targeting white subjects). In speaking about law and violence from their own experience, they also posed challenges to scholarship on the state of exception, the democratic/authoritarian binary, and the elitism of law and the academy itself. For Madhok, a gendered and postcolonial analysis of exceptionalism that begins with subaltern subjects reads agency into abjected bodies which perform 'the rights they do not have and, in so doing, lay[s] a claim on these rights'.[126]

While this method cannot speak directly to the historical period of early twentieth century Egypt, it adds to the genealogical approach of my study by presenting another source of knowledge about present-day experiences of law, helping to interrogate the often state-centricity of work on countering terrorism. While I could have accessed everyday stories of the effects of countering extremism from reports in the UK and Egypt, and was certainly influenced by them, many of these reports did not present the intersectional or transnational approach that helps me to understand the effects of countering extremism as simultaneously intimate and global, and changeable with migrant stories.[127] Interviews provided a picture of countering terrorism as it has travelled and prospered in global and everyday structures, a transnational element to a story of law that is globalising and universalising at its heart.

[125] Amanda Perry-Kessaris, 'Legal Design for Practice, Activism, Policy and Research' [2019] 46(2) Journal of Law and Society 185; Cath Lambert, *The Live Art of Sociology* (Routledge 2018).
[126] Madhok (66), 65.
[127] Organisations that my work is indebted to include: Muslim Engagement and Development (MEND) <https://mend.org.uk/>; CAGE < https://www.cage.ngo/> ; Egyptian Initiative for Personal Rights (EIPR) <https://eipr.org/en>; Cairo Institute for Human Rights Studies (CIHRS) <https://cihrs.org/?lang=en>.

2.7 Mapping interviews

Law is a particularly inaccessible and elite structure. As Karim told me when talking about how he understands legal processes as 'monopolising the legal knowledge, depriving people from having access to this knowledge, this is a kind of violence'.[128] This makes it difficult for people to know how to speak about law, and whether what they are experiencing are the effects of law or something else. Spatial and visual methodologies can provide a more tangible and accessible way to render such a complex subject.[129] They also allow for the transformative potential of research to go well beyond 'data collection', giving interlocutors a sense of ownership over the research process.[130] Creative methodologies help to move beyond fixed representation, to sitting with the ambiguities of sensory and affective experience. Lambert conceives of a 'live art' as 'calling forth our experience of life as fleshy, fragile, emotionally charged bodies'.[131]

I therefore devised an interview method that incorporated creative and visual elements. I hoped that this would help my participants to feel grounded in something they were familiar with, and that they might feel less like the object of orientalist research and more like an active participant making a vital contribution to knowledge production. I chose to bring archival documents – specifically two colonial era maps – to my interviews and asked my interlocutors to use them to think about the history of law and policing in Egypt and their own experiences of law and violence. This method brought my participants further into the project by presenting them with a part of their own history. The maps consisted of a British military map of Cairo drawn in

[128] Interview with Karim, 25 January 2020, SOAS, University of London.
[129] Perry-Kessaris (n 110).
[130] Linda Theron, Ann Smith and Jean Stuart (eds) *Picturing Research: Drawing as Visual Methodology* (Sense Publishers 2011) 22.
[131] Cath Lambert (n 110); See also Les Back, 'Live sociology: social research and its futures' in Les Back and Nirmal Puwar (eds.) *Live Methods* (Wiley-Blackwell/The Sociological Review 2012).

1942,[132] and a British military map of London drawn in 1926.[133] Both maps are marked with 'secret information' such as military bases, and areas of concern, termed on the Cairo map 'potential centres of disturbance'. The colonial map is an overlapping of specific laws as regulatory of bodies, and more abstract but nonetheless enforced liberal notions of time and space as homogenous and 'progressive'.[134] The colonial map therefore acts to 'fix' space and time and works like other archival documents, to contribute to a hegemonic narrative about the strength of British governance.

My reason for choosing these maps is that they expose historical narratives about areas of 'danger'. Particularly with the map of Egypt I wanted to know whether participants could identify with some of the areas marked. I provided participants with tracing paper and asked them to annotate each map with their own experience, focusing on these terms: safety, law, violence, policing, resistance, and counter terrorism.

Figure 1 is snapshot of the map of Cairo that I brought to my interviews. The London map is viewable in Appendix D. It is less relevant because it was engaged with less.

[132] Cairo [Civil security scheme] 1942 in *Maps* (The British Library, London) MDR Misc 875. <http://www.bl.uk/onlinegallery/onlineex/maps/africa/5000632.html> accessed 25 September 2021. See appendix for zoomable version. My thanks to Anne Alexander for pointing me towards this map.
[133] The County of London, G.S.G.S. no. 3786A, 1926 in *Cartographic Items Map* (The British Library, London) *C.C.5a.170*. and *216.e.33* <http://explore.bl.uk/primo_library/libweb/action/dlDisplay.do?vid=BLVU1&afterPDS=true&institution=BL&docId=BLL01005010728&_ga=2.217216086.1771357446.1568294493-137159136.1567340069> accessed 25 September 2021. See appendix for zoomable version.
[134] Puar notes that present day geopolitical processes continue to work to 'affectively [produce] new normativities and exceptionalism through the cataloguing of un-knowables', (n 1), xxiii-xxiiii.

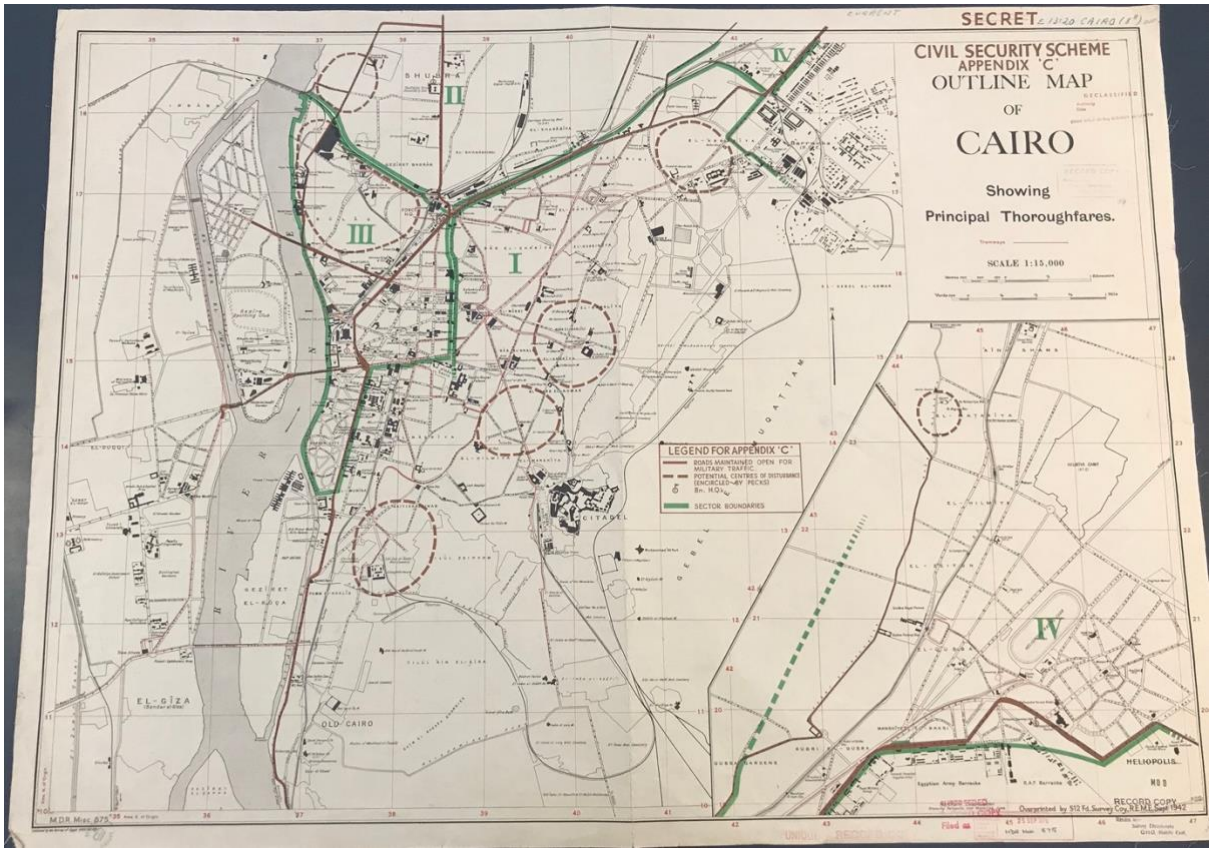


Figure 1: Military map of Cairo, 1942

One of the first things I asked my interlocutors was what they thought was meant by the 'potential centres of disturbance' marked on the map. The map is not specific in what these mean and other archival documents leave a wide interpretation to 'disturbance' or 'threat' or 'outrage', so that a broad range of people are homogenised under the same category. In asking my interlocutors, I wanted to get a sense of how the same areas travel through memories and oral histories as a critical response to the homogeneity we find in the archives. To explore further layers of knowledge throughout the interview, I proceeded to ask my interlocutors to annotate the map with their own personal experiences of law and violence. I discuss these findings mainly in Chapter Five, but themes and ideas sparked by this method are present throughout the thesis. Figure 2 shows the annotation process by my interlocutor Salma.

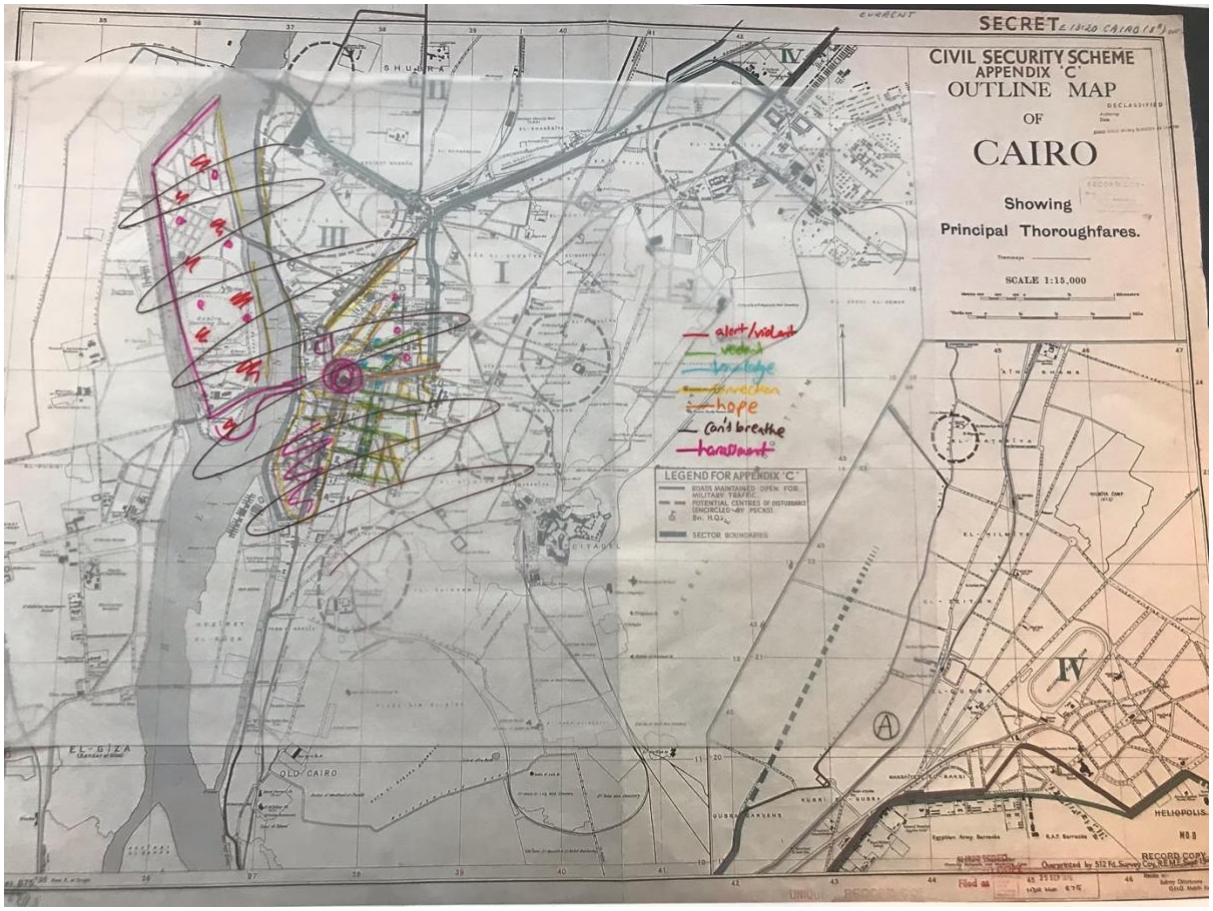


Figure 2: Annotated map of Cairo by Salma

While Salma used different colours to add her feelings, not everyone engaged in the same way. This process did not work for every participant. The ability to read and recognise maps is itself a western colonial practice.[135] Some of my participants had never seen a map of Cairo or did not associate Cairo with maps. The practice was therefore new and did not 'feel' like the Cairo they knew. Others seemed to feel like they were being put 'on the spot' or expected to produce something in particular, and therefore felt unsure about the process. Furthermore, the map of London I showed was more complex and less familiar still for participants and it did not work so well in interviews. However, most people found the process interesting, stimulating and that it sparked memories. The experience of interacting with a part of a history they know so intimately appeared to strike a chord with my interlocutors, many of whom spent a long time

[135] Thomas J. Bassett, 'Cartography and Empire Building in Nineteenth-Century West Africa' [1994] 84(3) Geographical Review.

examining and asking questions about the map, the archives and my research in general. I hoped that this experience provided them with the confirmation that they were directly involved in this project.

Page explains that the desire to 'produce knowledge from a person's experience of suffering' is a tension held throughout the research process.[136] The burden placed on subjects to share their stories and traumas is a violence in itself, not only because of how repetition can re-open experiences of violence,[137] but because of the mode of re-telling and assumptions made by the researcher.[138] It is crucial to remain aware that my own understandings of violence are shaped by my socio-legal positioning as a white British subject. Lambert exemplifies this in relation to artistic representation:

> I do not, *cannot* feel what another feels, but my feelings are instead based on my own hurts and experiences, and I recognise that capacity to feel in others. Each person's feelings of empathy and identification are therefore distinct, filtered as they are through their own memories and experiences. Such an account points to the complexity of our own affective sense-making, not just in relation to performance art of obviously representational expressions of suffering, but in wider experiences of trauma.[139]

Memories of violence may be heightened or lessened depending on the context in which they are relayed, and thus the environment of the interview and the researcher-researched relationship is central in shaping the conversations that are had. Simultaneously the effects of violence have the potential to be re-triggered on the body through memory sparked by the

[136] Tiffany Page, 'vulnerable writing as a feminist methodological practice' [2017] 115 Feminist Review 13, 16.
[137] Ahmed (n 15) 8.
[138] Sylvanna M. Falcón and Eliabeth Philipose, 'the neo-liberal university and academic violence: the women's studies quandary' [2017] 117 Feminist Review 187.
[139] Lambert (n 110) 134-135.

maps.[140] Indeed, the interviews for some induced anxiety and sadness. That this topic was for some not only stressful but potentially dangerous was made clear by two potential interlocutors – asylum seeking Egyptians – who refused my invitation. This was also made clear by Sara and Ilyas who appeared apprehensive throughout the interview, and Mariam who specifically requested that we went to eat lunch together after the interview for her to regain a happier headspace. In addition to the measures that I put in place to ensure that my interlocutors' data was safe, I decided not to ask direct questions about countering terrorism within the interview space at the outset, but to ask my participants to instead walk me through their experience of both cities. This meant that we could discuss a whole host of different emotions and experiences, and that I could also ask about feeling safe and joyful. I also treated the interview and the period around it as a continuous conversation where I would be available for any concerns my interlocutors had. I made sure to bring with me lists of counselling, immigration, and housing services just in case they could come in handy.

The encounters with my interlocutors not only made me constantly reflect upon my interview practice and adjust it accordingly, but they spoke to some of the very monitoring, surveillance, and pre-criminal effects that this thesis traces. Returning to Heath-Kelly and Said's concerns about the centrality of scholarly knowledge production in the construction of a 'truth regime' about 'the terrorist' and 'the Orient' respectively, and Foucault's assertion that it would be a 'dangerous error to discount [the intellectual] politically in his specific relation to a local power',[141] it is possible that the interview process replicates the interviews with police, local authorities and border officials that my interlocutors, as migrants, must endure. A reflexive feminist approach that allows for silences and discrepancies without stressing the need to

[140] Gunaratnam (n 101) 47.
[141] Michel Foucault, 'The political function of the intellectual' (Colin Gordon tr., Radical Philosophy 017, Summer 1977).

interpret every effect and one that is flexible to the needs of its interlocutors can provide the tools to undo some of the colonising tendencies of academia.

This chapter has outlined my feminist genealogical approach which presents a secondary contribution to this thesis. My feminist genealogy combines different methods – archival, legal analysis and interview – with different methodologies – postcolonial, intersectional, transnational, and queer feminist. This approach seeks not only to interrogate the truth claims of the colonial archive but further, to think about how multiple different truth claims are produced and how they go on to define the contours of 'terrorism' which has material implications for people around the world today.

This thesis makes several methodological claims. First, by engaging with understandings of violence that extend beyond what the law can understand – violence that remains over time, that is retriggered, that is structural and affective – this thesis work to undo claims that countering terrorism is 'exceptional' 'aberrational' and 'temporary'. These approaches help me to understand pre-criminality as attached to much longer histories of colonial violence. Second, while this thesis is limited to the empirical context of British-occupied Egypt and contemporary Egypt and the UK, I hope to present a flexible methodological approach that could be replicated elsewhere. Furthermore, in focusing on historical Egypt and the contemporary UK and Egypt as a case study for the persistence of coloniality, my approach accounts for a multiplicity of power dynamics, thus presenting a different 'set-up' for a 'history of the present'.

Third, by using different feminist approaches, I demonstrate the dialogues and tensions between strands of feminism and point to where they are productive of one another. At the same time, by looking at the history of colonial feminism in Chapter Five, I demonstrate how

histories of feminism are deeply intertwined with colonialism and how a singular focus on 'women' is problematic. Finally, my creative interview methods not only engage histories with the present through archival materials, but also rethink the traditional researcher-researched binary and present my interlocutors with a sense of ownership over the interview process.

These mixed method and mixed methodological approaches play a vital role in this thesis. In combining a multiplicity of different actors and voices, but also forms of knowledge including emotions, this thesis de-centres the state as the lead character in critical terrorism studies work. This reframing of power dynamics, attention to how knowledge is formed and what counts as knowledge also interrogates the universalising truth claims of law and exposes the pre-criminal space for its reliance on narrow, white, male versions of 'evidence'. Finally, following queer and postcolonial feminisms, this thesis rethinks linear narratives of temporality that would accept the move from emergency laws to permanent counter terrorism laws as proof of civilised 'progress'. This approach helps me to rethink the space of the law as the ultimate protector of rights and instead view the law as inherently violent.

The following five chapters present my substantive findings through my archival and legal analysis and contemporary interviews. Chapters Three, Four and Five focus on the British occupation of Egypt, looking to the development of pre-criminality through law, the gendered, racialised and classed structure of evidence and the creation of 'soft' methods. Chapters Six and Seven look to the contemporary UK and Egypt respectively and trace the persistence of aspects of pre-criminality as they have been differently shaped. Throughout each chapter I point to continuities and disruptions of legal violence in the past and present and therefore hope to present a cohesive genealogical story of pre-criminality.

Chapter Three: Legal and Administrative Methods of Governance in British-Occupied Egypt

3.1 Introduction

This chapter argues that throughout the British occupation of Egypt, forms of pre-criminality were emerging in legal and administrative spaces. Reynolds and Hussain identify the colonial face of contemporary legal and administrative governance as both a fragmentation of law, and the shift away from martial law towards a more permanent emergency framework.[1] I demonstrate that the same shifts were occurring in British-occupied Egypt. Through these broader developments, I delve into archival conversations between colonial administrators to show that versions of pre-criminality were developing. The forms I identify are: the use of martial law to gain closer access to civil society, the creation of class-based forms of suspicion, and the institutionalisation of legal tools such as the concept of 'collective liability' that removes the need for concrete evidence. This chapter lays the groundwork to understand the empirical context of this thesis regarding the power dynamics present in British-occupied Egypt. It also points towards my broader argument, that pre-criminal governance is productive of and relies upon categories of difference wrought through colonial hierarchies of humanity and is situated within 'normal' legal and administrative practices as opposed to 'exceptional'.

I demonstrate that the particularities of the 'semi-colonial'[2] set up in Egypt were central to the way in which governance was shaped and its claims to be 'humanising' and 'civilising'. At this

[1] John Reynolds, *Empire, Emergency, and International Law* (Cambridge University Press 2017); Nasser Hussain 'Towards a Jurisprudence of Emergency: Colonialism and the Rule of Law' [1999] 10 Law and Critique 93.
[2] 'Semi-colonial' is a phrase used by some to refer to the shifting power dynamics between the British and Egyptian governments. Hanan Kholoussy, 'Monitoring and Medicalising Male Sexuality in Semi-Colonial Egypt' [2010] 22(3) Gender & History 677.

point in time, the British Empire was crumbling and calls for Egyptian independence from both anticolonial resistors and the international community were gaining force. Furthermore, as Britain could not access Egypt as a whole, Britain's sense of self in Egypt was constantly under question. British conceptualisations of Egyptianness and the correct tools through which to govern the population, therefore, developed through an uneasy relationship with law. As legality was understood as a key liberal institution, using it to govern Egypt could show that Britain was an 'exemplary coloniser', accepting Egyptians as 'civilised' subjects. However, as archival anxieties show, coercive means were coveted to depose of protestors. I demonstrate how British authorities manipulated law to suit the political climate, 'stretching'[3] it to fit a new and 'unprecedented'[4] situation, all the while casting it as 'humanising' and 'civilising'. Under this narrative, martial law was cast as providing a framework for better treatment of Egyptian subjects, one that brought the checks and transparency of a judicial structure.[5] Simultaneously, the Egyptian government sought British legal and administrative tools because they institutionalised pre-emptivity and bolstered national security. Egyptian actors therefore played a part in negotiating that such tools remained but under their own jurisdiction after the nominal Egyptian independence of 1922.

This chapter examines the short period of the first thirty years of the twentieth century. It looks to the implementation of British martial law in Egypt in 1914 alongside World War One, to the negotiations around its retraction and the first limited version of Egyptian independence in 1922, and to two statute-based laws promulgated in Egypt by Britain that helped institutionalise understandings of dangerousness and pre-criminal practices (the 1909 Police Supervision Act

[3] Reynolds (n 1), 76.
[4] Letter on the use of martial law by the judicial advisor to the Administration 6 May 1926 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/105.
[5] 'Martial Law in Egypt, 1914-23' pamphlet written by Sir M.S. Amos, August 1925 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/95, 9.

and Law 10/1914 for Assembly). This chapter analyses British colonial archives on martial law and national security, taking a critical approach that reads anxieties and emotions into conversations between administrators. I carry out a critical reading of the development of laws in British-occupied Egypt, demonstrating that they were developed, planned for, and promulgated strategically in periods of calm rather than in the context of emergency, and further that their promulgation took into consideration the social and political effects that such laws would have within Egypt, back in the metropole, and within the international community. In doing so, new laws instituted racialised and classed classifications of dangerousness and suspicion. This chapter also gives examples of events through which colonial thinking persisted and was reshaped. These include discussions between British and Egyptian officials on how to maintain forms of pre-emptive law-making after Egyptian independence and the durability of martial law in contemporary Egyptian governance.

As explained in Chapter Two, scholarly opinion is divided as to the extent of British influence in Egypt. Alzubairi frames the balance in a helpful way:

> The British did not force Egypt to adopt legal provisions from the British law. However […] even after the nominal independence of Egypt after 1922, the British represented an influential and perhaps an attractive power to Egypt, which may have influenced their legislation.[6]

In order to avoid essentialisation or making presumptions as to the 'truth effects' of the archive, this chapter contextualises archival conversations, noting the power dynamics throughout. While this chapter speaks less to forms of racialisation, gendering, and class-based dynamics

[6] Fatemah Alzubairi, *Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World* (Cambridge University Press 2019), 126.

than other chapters, it nevertheless makes suggestions as to the everyday effects of such laws. From a feminist perspective that centres a subaltern positionality, I connect official archival conversations to their everyday context, in particular demonstrating that class-based understandings of dangerousness were developing at this time.

In this chapter I first explain broader theories on the use of martial law and emergency law as pre-emptive governance. Second, I adapt this to the Egyptian context, giving an empirical assessment of how the Egyptian 'semi-coloniality' shaped the development of laws in Egypt. Third, I show how martial law was adapted to the Egyptian context. Fourth, I show how martial law was developed and normalised by the Egyptian government after independence. Fifth I give examples of the promulgation of two statute-based laws that helped institute pre-emptive methods in Egypt.

3.2 Governing through the idea of emergency

This section situates the development of pre-criminal thinking and tools in the broader historical context of the normalisation of emergency frameworks and the 'liberalisation' of martial law.[7] The development of martial law and its use in British-occupied Egypt is crucial for a genealogy of the contemporary pre-criminal space for a number of reasons. First martial law – especially that used in the colonies – is widely understood to be the roots of contemporary counter-terrorism law in that various processes of 'liberalisation' and normalisation have, over time, made martial law palatable to democratic societies all the while turning it into a more permanent and pervasive framework within the law.[8] The liberalisation of martial law, in widening the scope of what could be considered an emergency, has provided for it to become

[7] Mark Neocleous, 'From Martial Law to the War on Terror' [2007] 10(4) New Criminal Law Review: An International and Interdisciplinary Journal 489.
[8] Reynolds (n 1); Hussain (n 1); Neocleous (n 7).

a pre-emptive framework of governance rather than a reactive response to an emergency.[9] In this way, we start to see pre-criminal tools being institutionalised as part of a racialised 'dual system' of law whereby the powers of martial law are normalised into statute-based emergency frameworks.

Second, and as I demonstrate later in this chapter, in practice, martial law granted the British authorities greater access to Egyptian civil society, and was thought of as more of an administrative endeavour than a military one. The closer contact with 'everyday' people lent the British administration increased opportunities to 'know' and classify Egyptians. Such classifications were made permanent through the simultaneous promulgation of statute-based laws. In this way, looking to the racial, classed and gendered classifications that martial law helped forge gives us clues as to what colonial norms were brought over into permanent emergency frameworks and justified as 'pre-emptive' methods. Third, the representational narratives used to justify or decry martial law at various points in time as either 'humanising' or 'draconian' suggest the pervasiveness of political framings that work to keep colonial subjects as 'nearly' human. This suggests the forms of colonial difference written into pre-criminality.

Like the concept of the state of exception discussed in Chapter One, martial law is a contested term for its relationship within or outside of the rule of law. In its original form in medieval England, martial law was used as a 'military law' to discipline the armed forces through the use of non-statutory, extraordinary powers such as military courts. Very quickly the use of martial law expanded to discipline civilians in peacetime and as a course of 'justice' to punish

[9] Reynolds (n 1), 70.

uprisings by execution, against the English peasantry and in Ireland.[10] Debates over the nature of martial law were prominent from its early development. On the one hand, martial law was considered 'neither more nor less than the will of the general who commands the army' and therefore it constituted a suspension of law.[11] On the other hand, jurist and constitutional theorist Dicey held that 'the suspension of ordinary law and the temporary government of a country or parts of it by military tribunals… is unknown to the law of England'.[12] For Dicey, the constitution precluded the use of martial law. That England had never known the suspension of law and temporary government by military institutions was an 'unmistakeable proof of the permanent supremacy of the law under our constitution'.[13] The defence of necessity for Dicey was therefore written into the common law.

What these definitions do not provide for, however, is a view of the differential treatment of colonial spaces. For Reynolds, Dicey's perspective does not provide for how the colonies were imagined as a distinct juridical space where the emergency reigned and through which colonial subjects were granted different (if any) access to the law to those in the metropole.[14] Legalism in this sense, he argues, is bound up in racial hegemony.[15] However, as Reynolds goes on to argue, the imagined distinction between a metropole where the 'ordinary' law ruled and the colonies where 'emergency' law ruled was not possible or always desirable to maintain.[16] In fact, as Reynolds and Hussain show, whereas the colonies are often framed as 'lawless' spaces

[10] Reynolds (n 1), 72.
[11] Duke of Wellington in Hussain (n 1), 98.
[12] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (First published 1915, LibertyClassics 1982), 183.
[13] *Ibid*.
[14] Reynolds (n 1), 74.
[15] *Ibid*.
[16] John Reynolds 'The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law' [2010] 6(5) Comparative Research in Law & Political Economy 1, 36. The Defence of the Realm Act (DORA) was promulgated in Britain in 1914 as a less draconian version or martial law. Despite this, DORA granted sweeping powers to the executive and military without need for Parliamentary consent, such as executive detention. DORA was an application of martial law at home in everything but name.

where colonial subjects were subject to the violent whim of a colonial authority unrestrained by the metropole, such violence was often mediated by an overlapping of different emergency codes and legal orders.[17] Hussain describes a 'colonial rule of law' to be one that claims legitimacy through law but one that is also 'full of law, full of rules that hierarchize, bureaucratize, mediate and channel power'.[18] In this sense, we begin to see a law that is fragmented, changeable and able to adapt to new contexts, adding in 'special measures' for those deemed 'not yet ready' for full civilisation.

One important point to remember about the multiplicity of rules and the administration of law that Hussain describes is that is that it relies upon the collection of knowledge *about* a population to create new categories of suspicion.[19] From Hussain and Reynolds' perspective, by contextualising the administration of so-called emergency measures, and taking a view of law not as what is written within legislature but as a multiplicity of changeable disciplinary devices, variations of 'emergency' – such as martial law, emergency law and counter terrorism law – can be understood as a 'technique of governance, rather than a temporary response to an isolated crisis'.[20]

In terms of the actual implementation of laws in Egypt, the shift between the use of martial law and the simultaneous promulgation of statute-based emergency laws is reflective of a broader change that was taking place throughout the British Empire at the time. A general trend throughout the nineteenth and twentieth century was the movement from the draconian sounding martial law towards an emergency framework which was cast as respecting

[17] *Ibid*., 4.
[18] Hussain (n 1), 102.
[19] Charlotte Heath-Kelly, 'Counter-Terrorism and the Counterfactual: Producing the 'Radicalisation' Discourse and the UK PREVENT Strategy' [2013] 15(3) The British Journal of Politics & International Relations 394.
[20] Reynolds, (n 1), 70.

democratic rights. As Reynolds puts it: 'while martial law in its original form is distinct from the contemporary state of emergency, the production over time of special powers and security maxims has allowed the essence of martial law to be retained in a form more palatable to liberal taste buds'.[21]

The condemnation of martial law as allowing for the abuse of power by the executive was first recognised back in 1628 when the Petition of Right restricted its use to wartime in England.[22] While the Petition of Right outlawed this practice in England however, martial law was later exported to England's new colonies – first and foremost, Ireland – where the framework was tested and expanded as a prototype of governance[23] and 'approved of as a mechanism to protect British interests over those of the native other'.[24] In the colonies, the use of martial law did not garner the same backlash as it did in England, however there were still concerns around how far it could be justified. Concerns and debates around the legality of using martial law in the colonies came to a head in the mid-nineteenth century, following the use of the framework in Jamaica in 1865 to execute 439 civilians and the public flogging of 600 others, under Governor Eyre. In this case, Eyre declared martial law in reaction to protests over the conviction of a Jamaican for trespassing. Protestors were suppressed with heavy force. Simultaneously, martial law was increasingly being considered a draconian framework by liberal states adopting the values of democracy and the rule of law, and who had their citizens to answer to.[25]

Heated debates ensued between Members of Parliament and jurists in Britain as to the scope and true essence of martial law. These debates were instructive in developing the key elements

[21] *Ibid*., 69.
[22] *Ibid*., 72.
[23] Ngũgĩ wa Thiong'o, *Something Torn and New: An African Renaissance* (Basic*Civitas* Books 2009) xi.
[24] Reynolds (n 16), 10.
[25] Reynolds (n 1).

through which martial law was thereafter defined. The horrific and murderous use of martial law by Eyre increased the general perception of the framework as 'draconian' which shaped its development: increasingly it was understood that martial law had to be justified through 'necessity', which could be defined as a threat to 'public security'. [26] At the same time martial law 'necessarily' suspended some fundamental liberties.[27] Neocleous explains that in this way, gradually martial law shifted from a framework that regulated the military, to one that was concerned with the regulation of internal security and public order by the military on behalf of the state.[28] Thus what was considered to be an emergency was broadened to encompass a wide range of disturbances to the peace, including economic crises and environmental disasters. In other words, some form of emergency could always be considered to exist. The developing emergency frameworks were statute-based which gave them a level of permanency that martial law did not have. Their situation within the constitution, however, also helped to frame them as more civilised and respectful of liberal values. Reynolds explains that co-current to the development of the emergency, however, there remained acceptance of Eyre's actions which could be seen in the 'stretching' of the boundaries of the necessity within the colonies.[29] As Neocleous terms it, this 'liberalisation' of martial law was effectively martial law in disguise: it was a process that 'occurred through the generation of new concepts which permitted the key practices of martial law to be carried out under a conceptual form more easily defended on liberal terms'.[30]

While the move from martial law to emergency law was framed as humanising, it actually aided the development of a more 'pervasive and constant' emergency framework,[31] and

[26] Neocleous (n 7), 494.
[27] *Ibid*.
[28] *Ibid*., 496.
[29] Reynolds (n 1), 76.
[30] Neocleous (n 7), 490.
[31] Reynolds (n 1), 78.

signalled the beginning of the accumulation of laws that scholars understand to be what functions today as a form of governance.[32] As early as 1833 in Ireland and 1818 in India, multiple statute-based emergency codes were promulgated to deal with 'local disturbances and dangerous situations,' allowing for among other things, detention without trial.[33] Ireland, the 'embryo in which the institutionalisation of emergency powers and the notion of a permanent emergency was fostered',[34] was subject to the accumulation of special Acts with permanent resonance such as those that allowed for detention without trial, the suppression of local disturbances and the suspension of Habeaus corpus. Finnane and Donkin explain that these emergency codes were specifically shaped through their colonial encounters, developing new and more ruthless punishments.[35] They show how longer detention periods and post-release monitoring were instituted in the mid nineteenth century following moral panics around Irish prisoners as 'habitual criminals'.

Furthermore, the cross-pollination of notions of 'dangerousness' between emergency codes and criminal law is central to understanding pre-criminality as part of the fragmentation and regrafting of laws to suit racialised subjects. Alzubairi demonstrates that colonial Egypt saw the 'invention' of forms of what is recognised today as 'terrorism' through the development of legal frameworks such as the 1883 Penal Code, but also the earlier French Penal Code of 1810.[36] She shows how early definitions of the crimes of rebellion, sabotage and sedition which allowed for broad interpretations including for the crime of spreading 'dangerous ideas' to have influenced contemporary anti-terrorism laws in Egypt. As I expand on in Chapter Four,

[32] Nasser Hussain on 'hyperlegality': 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514; Reynolds explains that the pervasive emergency framework were included as derogations clauses in international human rights treaties: the 1947 International Covenant on Civil and Political Rights (ICCPR) and the 1953 European Convention on Human Rights (ECHR). Reynolds (n 16), 30.
[33] Reynolds (n 1), 80-81.
[34] *Ibid*., 81
[35] Mark Finnane and Susan Donkin, 'Fighting Terror with Law? Some Other Genealogies of Pre-emption' [2013] 2(1) International Journal for Crime and Justice 3, 10.
[36] Alzubairi (n 6), 121-127.

Alzubairi explains that capitalist concerns of both the British administration and the Egyptian government influenced the definition of 'terrorism' through a class-based lens.[37] The notion of an economic emergency was a justification for the colonial use of martial law where the framework was used to suppress uprisings, expropriate land, raise taxes and quash trade unionism, helping towards imperial expansion.[38]

The normalisation of aspects of martial law into permanent statute-based laws, therefore, is an important backdrop upon which to trace the development of pre-criminality. Looking to the colonial space, we can see how law was fragmented and used according to colonial hierarchies of humanity. The next section looks specifically to British-occupied Egypt and how the 'colonial rule of law' was shaped around and productive of racial difference.

3.3 Law based governance in Egypt: a new context

The experience of Egypt interrogates the smooth shift from a martial law framing to an emergency law framing. Martial law was promulgated in Egypt by the British in 1914 alongside World War One. At this point it was determined to be a draconian framework in many parts of the Empire and had begun to be replaced by statute-based laws. However, as I demonstrate, the promulgation of martial law in Egypt was framed as 'humanising' and 'civilising'. As I argue, Egypt presented a different colonial set up, and therefore, the meaning and applicability of martial law was 'stretched,' reappropriated and eventually, normalised.[39]

[37] *Ibid*.
[38] Reynolds explains that emergency has become the predominant frame to understand falling profits and market fragility. The notion of the crisis in liberal democracies invests increased powers in the executive to regain market stability. Reynolds (n 1), 95. For Klein, 'the war on terror' was used by the US administration as a premise to enhance spending on defence, outsource security to the private sector and to create of a private security state at home and abroad. Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Metropolitan Books 2007), 299.
[39] Reynolds (n 1), 76.

The story of British colonial activities in Egypt differs greatly to the more 'traditional' forms of plantation colonialism that Britain had enforced. There are certainly crossovers between the more 'classic' forms of colonialism – such as in India – and Egypt, for instance, both states were subordinated to the needs of British capitalism and were used as primary exporters of raw materials, which led to the distortion of the development of these nation's own economies.[40] Furthermore, members of the British administration in Egypt had previously worked in India and moulded British rule in Egypt on the Indian pattern to an extent.[41] However, while Britain took greater control of India it was never able to colonise Egypt to the same extent. Indeed, as we shall see, precisely the *lack* of British control over Egypt from 1882 plays a crucial part as for why martial law was so greatly advocated by the British.

When Britain invaded and began occupying Egypt in 1882, there was already a complex legal and governmental system in place. This was formed of a mixture of Shari'a-based personal status codes and the Ottoman treaties of Capitulations which granted extraterritorial status to citizens of European states.[42] In this system, the 'Native (sic) Courts' would try Egyptian nationals, and separate consular courts would try the cases of foreign nationals until the Mixed Courts were set up in 1876. Gradually, a legal code was developed which borrowed from the French, as well as a separate judiciary and eventually a system of National Courts in 1884.[43] There is disagreement as to how far European colonialism impacted the development of the Egyptian legal system, as highlighted in Chapter Two however there is general agreement that a set of European-style reforms were instituted in the late nineteenth century, but that the

[40] R. L. Shukla 'Presidential Address: British Colonialism at Work in India and Egypt A Comparative View' [1987] 48 Proceedings of the Indian history Congress 603, 616.
[41] *Ibid*.
[42] Nathan J. Brown, 'Retrospective: Law and Imperialism: Egypt in Comparative Perspective' [1995] 29(1) Law & Society Review 103, 107.
[43] *Ibid*., 109. Brown makes it clear that the set-up of the national court system should not be attributed to the British as preparations had been in place much earlier.

persistence of Egyptian agency within forms of government as well as the structurally engrained Islamic and Ottoman systems meant that what was to follow was an overlapping of different forms of law. Wood demonstrates that the development of the 'Mixed Courts' (1875-1876) and the 'Native Courts' (1883-1884), which discriminated between British, French and local subjects, meant that conflicts of jurisdiction were a routine occurrence.[44] Within these structures, the jurisdiction of Islamic law was narrowed to only apply to issues concerning the 'personal status' of Egyptian Muslims. Wood notes that the procedures of the Islamic Courts remained uncodified unlike those of the 'Mixed' and 'Native Courts', and suggests that the influence of such courts is still up for question within scholarship.[45]

Despite this, Ezzat shows that religious legal concepts persisted throughout this period and continue to influence conceptualisation of and ruling upon morality and Egyptian public order, to the extent that they cannot be understood as originating from European colonialism. Ezzat explains that the Islamic concept of hisba, which denotes that 'Muslims are required to command right when it is not being observed and forbid wrong when it is being committed', has been adopted into various platforms of the Egyptian legal system such as the administrative courts, facilitating the judgement of issues of morality.[46] For instance, the persistence of this concept has provided for cases that judge the contents of books for whether they distort the image of Islam.[47]

[44] Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt*, 1875-1952 (Oxford University Press 2016), 27.
[45] *Ibid*., 32
[46] Ahmed Ezzat, 'Law and Moral Regulation in Modern Egypt: Ḥisba from Tradition to Modernity' [2020] 52(4) International Journal of Middle East Studies, 665
[47] Ezzat demonstrates a case in which a Professor at Cairo University was considered to have insulted Islam in his scholarship. Using the Islamic concept of hisba, Giza personal status court ruled that because his writings amounted to apostacy, Abu Zayd's wife could no longer be married to him and were separated. The couple were forced to leave Egypt as a result, bringing up questions around the policing of citizenship.

The systems of Capitulations and Mixed Courts represented a constant source of frustration for both the British and the Egyptian authorities in that they restricted the ability to enforce civil and criminal law against foreigners.[48] This lack of power frustrated Lord Cromer – the first and most notorious Consul-General in Egypt (1883–1907) because of his ruthless treatment of Egyptians and hard driven imperialism – to no end, in terms of 'the delay which constantly occurs, in the Native Courts, in dealing with cases in which natives are charged with offences against British soldiers'.[49] He referred to the breakdown of authority in 1882 as requiring a system 'tantamount to the introduction of martial law'.[50] In this way, both the British and Egyptian governments had reasons to desire a set up like martial law that would do away with the Capitulations.

At the same time, the early twentieth century saw pressures from the international community and the metropole to acknowledge the self-determination of colonies, and pressures from anticolonial resistors themselves. European civilisation missions were greatly impacted by the acceleration of independence movements and the Wilsonian doctrine of self-determination which came to shape the proceedings of international law and the formation of the League of Nations. At the same time, back in Westminster, members of the Labour party called for decolonisation and demanded to know 'has there ever dawned on the Government the advisibility of leaving Egypt to the Egyptians?'.[51]

[48] Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press 1997), 26.
[49] Cromer in Brown (n 42).
[50] Cromer in Nathan Brown, 'Brigands and State Building: The Invention of Banditry in Modern Egypt' [1990] 32(2) Comparative Studies in Society and History 258, 271.
[51] Parliamentary Question, 28 February 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337.

Along with the expanding liberal values of democracy came citizens' demands to be governed justly, and as such Britain and other colonising powers came under pressure to prove that they were helping colonies along the path of 'civilisation'. Britain, France, and others were scrutinised by MPs at home and nationalist and anticolonial groups in Egypt for implementing martial law and carrying out violent acts.[52] The British response to this in Egypt was less than favourable, and the administration instead desired a way to retain their status in the country.[53] Many British in Egypt at the time regarded the doctrine of self-determination to blame for the period of unrest which culminated in the 1919 Egyptian revolution.[54] Due to pressures around being seen as exemplifying the progressive thinking of the allied nations however, the British administration in Egypt pursued a new course: one where they would remain in Egypt with the 'goodwill' of the people. Mitchell explains that this 'mechanism of goodwill' required in the post-war period was in essence a 'machinery for producing the consent of the governed.'[55] Through this paternalistic form of rule, key concepts of liberal democracy, such as free speech and the rule of law were judged as not *yet* applying to the colonial space.[56] This also formed the basis of the Protectorate system which 'allowed imperial powers to acknowledge a claim of independence, while insisting that for less developed peoples […] the only way to advance that claim was under European control'.[57]

[52] Roberts notes that US President Woodrow Wilson, who promulgated the self-determination doctrine, thought of self-determination as a gradual process where colonial states must be 'educated' in self-government, just like British imperialists. Priscilla Roberts, 'Wilson, Europe's Colonial Empires and the Issue of Imperialism' in Ross A. Kennedy (ed) *A Companion to Woodrow Wilson* (Wiley-Blackwell 2013) 496. Massad argues it is wrong to understand the doctrine of self-determination and anticolonial calls for independence as formed from the same historical juncture. This is because the doctrine of self-determination equated the political agency of the colonised *and* the colonisers, developing a new mode of imperialism which limited anticolonial claims. Joseph Massad, 'Against Self-Determination' *Humanity Journal* (11 September 2018) <https://www.humanityjournal.org/issue9-2/against-self-determination/> accessed 7 October 2021.
[53] Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (Verso 2013), 89.
[54] Quarterly Report on Moral of the Troops in the E.E.F as Gathered from their correspondence 31 March 1919 in *Foreign Office and Foreign and Commonwealth Office: Embassy and Consulates, Egypt: General Correspondence* (The National Archives, Kew Gardens) FO141/825.
[55] *Ibid*.
[56] Homi K. Bhabha, 'Sly Civility' [1985] 34 The MIT Press 71, 95.
[57] Mitchell (n 49), 90.

Or as Consul-General (1907–1911) Sir Eldon Gorst put it in his *Memorandum Respecting Self-Government in Egypt* that: 'the rate of progress towards autonomy must depend upon the decisions of the British, and not the Egyptian people'.[58] Indeed, attempts by the Watani (National) party to engage in political debates were ridiculed. For instance, in response to pressure around the self-rule of Egypt that was gathering pace in 1910, Gorst noted that:

> … non-contentious projects, and measures in which no political considerations are involved… display a steadily-increasing tendency to become mere instruments of the Nationalist agitation against the occupation. The periodical demands for constitutional government, the acrimonious attacks on the Government on the occasion of the debates on the Budget and the Soudan, and the unreasoning hostility and suspicion displayed in the discussion of the Suez Canal scheme, are in their essence manifestations of Anglo-phobia stirred up by the Nationalist party.[59]

One outcome of the acceleration of anticolonial protests was the assassination of the Egyptian Prime Minister Boutros Ghali.[60] A young man named Ibrahim Nassif al-Wardani was convicted of this assassination. Gorst and Foreign Secretary Sir Edward Grey conspired as to the best method to use the law in a way that would impact demonstrators. Concerned with the 'somewhat fanatical' students of al-Azhar Mosque, Gorst desired to 'inspire some fear of the authorities amongst the extremists, without actually going outside the law'.[61] Gorst and Grey were desperate that the trial of al-Wardani should end with his death sentence because of the affective capacity it had to discipline the Egyptian population: 'only a capital punishment has

[58] Memorandum Respecting Self-Government in Egypt by Sir Eldon Gorst 22 May 1910 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/103.
[59] *Ibid*.
[60] Ghali was considered a traitor because of his support of the British including presiding over the 1906 Dinshaway Special Tribunal, signing the Anglo-Condominium that relinquished Egyptian control over Sudan and renewing the press censorship bill. See Malak Badrawi, *Political Violence in Egypt 1910-1925: Secret Societies, Plots and Assassinations* (Routledge 2001), 22.
[61] Letter from Sir Eldon Gorst to Sir Edward Grey 16 April 1910 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/85.

a deterrent effect among Orientals'.[62] In the event that al-Wardani was acquitted or his sentence was less than capital punishment, Gorst and Grey considered engineering this affect themselves, either through organising a re-trial of al-Wardani by European judges on the premise that the Egyptian judges had been intimidated,[63] or by deporting 'the real instigators of the crime' through measures in the nature of martial law.[64] For the latter plan, Gorst proposed the deportation of nationalist leader Sheikh Shawish: 'from the local point of view, there can be no doubt that the moral effect of the expulsion of Sheikh Shawish would be more than doubled by carrying it out through the Army of Occupation'.[65] According to Gorst, once a convincing case had been built around Shawish, they would wait until he caused any trouble and then would use the British army of occupation to detain and deport him to Malta. The plan was to simultaneously send a private warning to another Nationalist leader, Mohamed Farid, 'that he would be the next victim if he didn't remain quiet.'[66] Esmeir explains that methods such as exile represented a central British method in removing subjects from political life in a 'humane' way:

> The prohibition on participating in political life did not negate the punishment's humaneness… exile was one institution of juridical humanity… expulsion from the political community was deemed preferable to execution or imprisonment. The latter would have permanently imprinted the rebels on Egyptian political life as either heroes or victims. Exile, carried out humanely, erased them from political life.[67]

[62] Letter from Sir Eldon Gorst to Sir Edward Grey 23 April 1910 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/86. On the proposed re-trial of al-Wardani by European judges, Gorst stated: 'I shall, of course, endeavour to find some legal peg upon which to hang the proposal'.
[63] Letter from Sir Eldon Gorst to Sir Edward Grey 23 April 1910 (n 58).
[64] Letter from Sir Edward Grey to Sir Eldon Gorst 3 May 1910 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/96.
[65] Letter from Sir Eldon Gorst to Sir Edward Grey 16 April 1910 (n 57).
[66] *Ibid*.
[67] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press 2012), 250.

It appears that Grey and Gorst were strategic in their choice of method of punishment and the effect it would have on the population. In this way, the British framed the use of 'neutral' and 'rational' tools of law and administration as 'political' when used by Egyptian nationalists and suggested that Egypt was therefore not ready for self-rule as it was so based upon hostility and could not pave the way towards peace. A similar cultural essentialist narrative is evident in liberal democratic attitudes towards the use of law in postcolonial states today as inevitably corrupt and authoritarian.

In this way, the limited rule that the British administration enjoyed in Egypt made the martial law framework more appealing in the increased military, economic and civil access to Egyptian society it would provide. On the backdrop of international calls for self-determination and internal anticolonial protests, the administration had to be careful about how it framed its methods of governance and, as we can see in the al-Wardani case, claims to the rule of law were used strategically alongside deportations and threats. As the next two sections show, when martial law was promulgated, it was done so in a similar manner: it was represented as a version of the 'rule of law' all the while facilitating increased access to Egyptian civil society and stretching into new spaces, eventually moulding into Egyptian martial law and sharing concepts of emergency with statute-based laws.

3.3.1 Martial law stretches into the everyday

The conceptualisation of Egypt as a 'different sort' of colony provided the scope for the British administration to adapt and 'stretch' martial law in new 'humanising' forms through accessing civil society and building knowledge banks about Egyptians. As we shall see, the implementation of martial law facilitated the infiltration of British imperialism over the 'whole

surface of society'[68] through its expansion into civil society. Indeed, even Brown, who plays down the effects of the British on the development of legal institutions, notes that that 'no Egyptian government could take an action that the British actively opposed'.[69] As this section shows, the use of martial law as primarily a civil and administrative measure rather than a military measure allowed for increased access to everyday society and the opportunity to learn about and classify parts of the population.

Martial law was promulgated on 2 November 1914 in the official journal of the Egyptian government by the Commander of the British forces Lieutenant-General J. G. Maxwell. In doing so, the British announced Egypt to be a Protectorate, thus terminating Ottoman Suzerainty. It was a brief proclamation that covered only three points:

> (1) The powers to be exercised under my authority by the Military Authorities are intended to supplement and not to supersede the Civil Administration, and all civil officials in the service of the Egyptian Government are hereby required to continue the punctual discharge of their respective duties.
> (2) Private citizens will serve the common end by abstaining from all actions of a nature to disturb the public peace, to stir up disaffection, or to aid the enemies of His Britannic Majesty and His Allies, and by conforming promptly and cheerfully to all orders given under my authority for the maintenance of public peace and good order; and so long as they do so, they will be subject to no interference from the Military Authorities.
> (3) All requisitions of services or of property which may be necessitated by military exigencies will be subject of full compensation, to be assessed, in default of agreement, by an independent authority.[70]

[68] Timothy Mitchell, *Colonising Egypt* (University of California Press 1991), 40. Mitchell explains how the principle of order and discipline used in the development of Muhammad Ali's army was used 'over the whole surface of society' to regulate people throughout the provinces.
[69] Brown (n 42) 107.
[70] Proclamation by the General Officer Commanding His Britannic Majesty's Forces in Egypt 2 November 1914 in *War with Turkey: proclamation of martial law in Egypt* (The National Archives, Kew Gardens) FO 891/62/14.

Despite ostensibly being promulgated throughout Egypt in reaction to World War One, thus providing protection to British troops, martial law also gave the British the much-desired access to administrative and judicial spaces throughout the country, including the ability to regulate working class and rural districts for the spread of disease and disorder. With relief at a system that would allow them to bypass the difficult Egyptian legal structure, the British administration promulgated martial law, describing it as 'the only system under which everyone can be held'.[71]

Looking into archival records, we witness a shift in the location of martial law from the military space into civil and administrative spaces and such a development as indicative of the framework as being 'humanising'. In his pamphlet on martial law in 1925, Sir M.S. Amos, who served as a judge in Egypt, described British martial law as *sui generis* and that it 'corresponded to nothing which is to be found in Hall or Dicey'.[72] He clarifies further:

> We were not in His Majesty's dominions; we were not in a hostile country; for the greater part of the time no warlike operations and no rebellion was going on in Egypt… I think that it is plain that British martial law in Egypt, as it existed from 1914 to 1923, must be regarded as constituting an effective claim by His Majesty's Government to a provisional and temporary sovereignty exercised jointly and in partnership with the Egyptian Government.[73]

If we return briefly to Dicey, we can see that while he considers martial law to be within the remit of the rule of law, he also acknowledges that illegal acts may be 'necessarily' taken which

[71] Letter to the Secretary, War Office in London from A. J. Murray, General, Commander in Chief, Egyptian Expeditionary Force, 26 November 1916 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/1.
[72] 'Martial Law in Egypt, 1914-23' pamphlet written by Sir M.S. Amos, August 1925 (n 5), 8.
[73] *Ibid*.

could be covered by an Act of Indemnity that would grant immunity to those responsible.[74] While an Act of Indemnity was promulgated in Egypt as I explain later, Amos doubted the need for the Act:

> … it may well be doubted whether an Act of Indemnity was necessary at all. Martial law, as administered, was so plainly a necessity, and so evidently created a stable and effective *de facto* sovereignty, that in a neutral and unpolitical atmosphere, at any rate, there could be no possibility of its legal validity being called into question.[75]

What this suggests is that contrary to Dicey, Amos considers martial law as it was enacted in Egypt to be hardly martial law at all in its normal framing: an emergency measure that might entail illegal acts. Instead, for the British administration, this new – or 'unprecedented' as one law officer described it[76] – colonial situation presented a scenario where martial law was more like the rule of law than emergency rule. Three years earlier, making a speech on negotiations over Egyptian independence, Prime Minister of Egypt (1922 and 1927–1928) Abdel Khalek Sarwat Pasha described that the regime of martial law, despite its exceptional character, 'has almost become a normal regime in Egypt'.[77] Amos described martial law as setting an 'unfamiliar standard of care and deliberation' in Egypt, noting that 'in one instance the trial of seventeen persons charged with criminal conspiracy lasted without intermission for nine weeks', as exemplary of this.[78] Amos' enthusiasm that a nine-week trial suggests the accountability of legal procedures under martial law should not be taken at face value, however,

[74] David Dyzenhaus, 'The Puzzle of Martial Law' [2009] 59(1) The University of Toronto Law Journal 1, 4.
[75] 'Martial Law in Egypt, 1914-23' pamphlet written by Sir M.S. Amos, August 1925 (n 5), 8.
[76] Letter on the use of martial law by the judicial advisor to the Administration 6 May 1926 (n 4).
[77] Speech by Abdel Khalek Sarwat Pasha 1 April 1922 in *Martial law: powers of the Ministry of the Interior* (The National Archives, Kew Gardens) FO 141/430/5/5512/98
[78] 'Martial Law in Egypt, 1914-23' pamphlet written by Sir M.S. Amos, August 1925 (n 5), 8.

as shown previously and throughout Chapter Four, administrators manipulated the processes of trials and the content of evidence to suit the political scene.

Part of the reason martial law was considered closer to the rule of law was its so called 'elastic' ability to work in the background. Commander in Chief of the Egyptian Expeditionary Force, General A.J. Murray described, 'as an instrument of Government, as distinct from an instrument of repression, it [martial law] has… been used almost exclusively by the Civil Authorities'.[79] Murray pressed that it was necessary for the application of martial law to affect 'to a greater or lesser extent, every department of the Civil Administration', before going onto list how every public service, including the state railways, the department of public works, the postal and telegraph services, the ports and lights administration, the administration of civil law and the control of police, should be manipulated.[80] In fact, it was framed so much in this way that it was considered by Murray as 'probably wholly unnecessary as a military measure…'.[81] While there had been a push towards agricultural reform in the period preceding 1914,[82] the promulgation of martial law provided for direct British control over the economy such as the systematic requisition of land, the ban on sugar imports, the manipulation of house rents.[83] In this way, British access to everyday and inner workings of Egyptian society was increased through martial law.

[79] Letter to the Secretary, War Office in London from A. J. Murray, General, Commander in Chief, Egyptian Expeditionary Force, 26 November 1916 (n 67).
[80] *Ibid*.
[81] Letter to the Secretary, War Office in London from A. J. Murray, General, Commander in Chief, Egyptian Expeditionary Force, 26 November 1916 (n 67).
[82] Aaron George Jakes 'The Scales of Public Utility: Agricultural Roads and State Space in the Era of the British Occupation' in Marilyn Booth and Anthony Gorman, *The Long 1890s in Egypt: Colonial Quiescence, Subterranean Resistance* (Edinburgh University Press 2014).
[83] A note on martial law reads that it is 'a valuable supplement to the powers of the civil administration. Over a million and a quarter sterling in revenue is raised for the Egyptian Government under martial law… large sums accrue to the Treasury from agreements with the sugar producers which in their turn rest upon a martial law prohibition on imports of sugar… it is martial law that enables control to be exercised over the entry into Egypt of undesirable aliens… the regulation of house rents… was first imposed by military proclamations…'. Note on Martial Law 24 March 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/69.

One of the ways in which this civil administrative version of martial law worked was through allowing the British to circumvent Egyptian law, granting them greater access to land, infrastructure, and resources. In Amos' report, he recounts how in 1915, the British military desired to extend a railway between the areas of Zagazig and Ismailiya. The Egyptian government had previously attempted to acquire land to make this happen, but legal procedures had made it a slow process. With pride, Amos explained that under British martial law, the Commander General was able to bypass legal procedure and issue a proclamation 'whereby the Egyptian State Railway is authorized to take immediate possession of any lands required for the purpose'.[84] Martial law thus allowed for the expansion of British power into spaces that were until that point inaccessible. The development of railways facilitated the dissipation of imperial violence to Egyptian communities in various ways. Abul-Magd argues that for rural communities in Upper Egypt who had been systematically ignored by the colonial authority, the poverty and hardship they faced as a result was compounded by the fact that they were not made accessible by rail. [85] At the same time, as examined in Chapter Four, for communities whose lives *were* made accessible through the expansion of infrastructure, the railways brought new challenges in the form of violent attacks and destruction by British soldiers. According to General Sir Charles Gwynn who served in Sudan: 'Egypt… supplied labour corps in large numbers which were exposed to and suffered causalities from, the risks of war. Heavy requisitions were also made from the people for transport, animals, food and forage'.[86] The fellaheen who served in the army were often also given empty promises that their animals

[84] 'Martial Law in Egypt, 1914-23' pamphlet written by Sir M.S. Amos, August 1925 (n 5).
[85] Zeinab Abul-Magd, *Imagined Empires: A History of Revolt in Egypt* (University of California Press 2013), 137-138.
[86] Charles W. Gwynn, *Imperial Policing* (Macmillan and Co. 1939) 67 <https://archive.org/details/in.ernet.dli.2015.275121/page/n77/mode/2up> accessed 26 September 2021.

would be returned to them for a price, but they were often sold off in Palestine and the fellaheen themselves were often under paid or not paid at all.[87]

The penetration of martial law deep into Egyptian society was also considered necessary in order to regulate and protect the increasing number of British, Australian and New Zealand troops stationed around Egypt. The framework provided the set-up of military tribunals to try people specifically accused of offences against soldiers. Considered threatening to the morality and hygiene of the troops, sex workers were deemed enough of a risk to justify their trial by military court as recorded in the following passage written by an army colonel lamenting the retraction of martial law in 1924:

> The situation [regarding the transmission of venereal diseases] has become worse since the abolition of martial law, and after full consideration, I formed the opinion that the increase in disease is mainly due to the lack of efficiency in the measures adopted by the civil authorities for the control of prostitutes, both registered and unregistered… During the operation of martial law such persons [sex workers] were arrested and tried before military courts and on conviction, were awarded punishments ranging from 14 days to 6 months imprisonment with hard labour, and/or fines of from 10/- to £10 – this action proved an efficient deterrent. At the present time, although they are constantly arrested by the civil police, the punishments awarded vary, I believe, from only PT5 – PT100.[88]

[87] *Ibid*.
[88] Letter from Colonel on the Staff i/c Administration British Troops in Egypt to the First Secretary, the Residency, Alexandria, 28 June 1924 in *Prostitution and venereal diseases. Part 1*. (The National Archives, Kew Gardens) FO 141/466/2.

Martial law, in its framing as not a military measure but an administrative measure thanks to the different situation presented by Egypt provided increased access to the everyday workings of Egyptian society, presenting opportunities to develop new methods of governance.

3.3.2 Normalising martial law into Egyptian governance

Framing the British occupation of Egypt as an 'unprecedented' situation provided the grounds upon which to elongate and normalise the use of martial law not only into everyday administration but also temporally, past its supposed retraction in 1923.[89] Here we begin to see the persistence of colonial thinking through the knowledge sharing between the British and Egyptian governments concerning the best methods with which to shut down dissent and control society.

Years of anger at the British occupiers and their upper-class Egyptian collaborators culminated in the 1919 revolution. However, Egyptian citizens would only see a 'nominal' independence granted on 28 February 1922. Brown explains that independence was unilaterally granted by Britain as part of its effort to consider new ways to guarantee British interests in the country after the nationwide uprisings.[90] The nominal independence in 1922 was considered:

> […] essential to give proof of a more civilized world and to our foreign guests who observe us attentively, that the Egyptian people are perfectly up to the responsibilities and rights that their union has given them sacred their great spirit of sacrifice.[91]

[89] Letter on the use of martial law by the judicial advisor to the Administration 6 May 1926 (n 4).
[90] Brown (n 44) 40.
[91] Journal Officiel du Governement Egyptien 5 July 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/76.

The British proved difficult to get rid of as they negotiated several legal and administrative agreements with the Egyptian government that would provide for their ongoing influence in the region. Many members of the British administration believed that 'simultaneous with the suspension of British martial law, Egyptian martial law should be proclaimed'.[92] The Egyptian government itself was invested in an outcome that would end the Protectorate but grant them some of the same powers of national security. As Prime Minister Sarwat Pasha relayed:

> There is no one among us who does not want the abolition of martial law and in the shortest possible time. But everyone realizes that we cannot abolish it without the prior ratification of the decisions taken under the Empire of this regime.[93]

The ratification Sarwat Pasha is referring to is the Act of Indemnity which provided absolution for military and civil orders carried out throughout the period of martial law and handed martial law over to the Egyptian government. The Indemnity Act was promulgated as Law 25/1923 in the official Egyptian law journal on 5 July 1923. The law withdrew 'completely and definitely from the competence of Egyptian courts all claims direct or indirect in respect to the acts, results or consequences of British Martial Law'.[94] Acts of violence that were carried out such as the requisition of supplies and the destruction of villages and attacks on civilians by soldiers (see Chapter Four for more details) were therefore considered normal and effectively legalised. The Act also stated that certain aspects of martial law, including the controlling of enemy property and certain provisions of the Treaties of Peace should be carried over into Egyptian

[92] Note by European Director General of Public Security in Egypt Alexander Keown-Boyd 12 March 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/59a.
[93] Speech by Abdel Khalek Sarwat Pasha 1 April 1922 (n 73).
[94] Despatch from His Majesty's High Commissioner in Egypt enclosing The Decision of the Council of Ministers relative to the Indemnity Act, Text of the Indemnity Act and Notes exchanged with the Egyptian Government 7 December 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/82.

martial law, as should the garrison of troops at ports to defend British interest in the Suez canal.[95] The Indemnity Act also set up a committee to decide the fate of those condemned by British military courts and conveniently suggested that the topic of requisitioned real estate should be returned to at a future date.

Therefore, this legal tool effectively absolved the British of any wrongdoing and transferred the responsibility onto the Egyptian government for any continuing dissent and violent actions taken to manage it. In orchestrating this set-up, High Commissioner Lord Allenby made clear that:

> […] we should have the strongest possible case to prove to the public opinion of the world that the blame for the failure [to keep order] rests on the shoulders of Egypt and the Egyptian people, and that His Majesty's Government itself had done all that was humanly possible to carry out the undertakings into which it had entered.[96]

As such, this is a key moment to understand the persistence of coloniality in Egypt through the transference of martial law into Egyptian hands as a primary method of governance, and with it the increased access to society and disciplinary mechanisms. The 1923 negotiations saw definitions of martial law being adapted to the new political set up, atrocities being legitimised and the framework being considered an effective method to maintain national security.

Conversations between British officials responsible for national security at the time show that they did not find the retraction of British martial law to be a satisfactory solution because of

[95] *Ibid*.
[96] Letter from High Commissioner Lord Allenby to Earl Curzon 3 April 1921 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/14.

the ‘responsibility for public security’, in particular regarding foreigners, that they continued to have.[97] Alarmed that the retraction of martial law would put a stop to the investigations of leading revolutionaries, European Director General of Public Security in Egypt Alexander Keown-Boyd demanded more powers to ‘make any arrests & requisitions that we consider necessary… powers to carry on our investigations as we do now… [and] a court composed of European judges to draft the case’.[98] It was presumed that the retraction of martial law would certainly lead to ‘demonstrations, at first peaceful, but which would inevitably degenerate into smashing of foreign shops, etc. and be followed by bloodshed’.[99] Therefore, when a number of attacks on British subjects were staged by Egyptian nationalists out of anger that the occupation remained despite Egyptian independence, British troops still garrisoned around Cairo carried out arrests and detentions similar to actions they would have taken during martial law.[100] Arrests were ramped up at this point of high anxiety including a number of members of the Egyptian Watani party.[101] The pre-emptive overtones of this thinking that at first might suggest a rational, thought-out and justifiable increase in police presence, were actually based upon a refusal to recognise the anger and pain of Egyptians as legitimate. Furthermore Keown-Boyd’s thinking connects peaceful protest to violent assaults in one fell swoop which is characteristic of contemporary theories that link ‘extremist’ thinking to violence and justify pre-criminal intervention.

The arrests and detentions were then subject to the scrutiny of a number of law officers to determine whether such events constituted an effective continuation of martial law ‘in

[97] Letter from High Commissioner Lord Allenby to Mr Austen Chamberlain, Foreign Office 9 December 1924 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/87.
[98] Note by European Director General of Public Security in Egypt Alexander Keown-Boyd 12 March 1923 (n 88).
[99] Letter to Mr Kerr and Mr Furness 18 November 1922 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/44a.
[100] Badrawi (n 56), 173.
[101] Telegram to Foreign Office 6 March 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/63.

substance if not name' that the British could continue to exploit.[102] The legal advisor to the High Commissioner for Egypt and Sudan Lord Allenby, considered that the actions taken by the army were 'reasonable measures of self-protection', and that in all cases they constituted an exercise of martial law.[103] Martial law was here distinguished from the 'institution of martial law' that existed between 1914 and 1923, and was instead understood as a 'precautionary' measure that *always* exists when an army is present on foreign soil. Martial law, in this restricted manner, was thus recognised as having existed since the British entered Egypt in 1882 and could be argued as remaining so until they left. The official proclamation of martial law to the citizens of Egypt was understood as simply 'an intimation to the public that the Executive intends to disregard the law and to ignore legal rights', and therefore a political and affective manoeuvre to instil discipline in the population.[104] The fogginess around the boundaries of martial law provided the space for the British to continue carrying out executive measures even after the official act had been retracted.

Members of the Egyptian government also expressed concerns over security measures. Prime Minister of Egypt (1921–1922 and 1926–1927) Adly Yakan Pasha agreed to ask for the suspension of martial law 'as soon as an Egyptian law is promulgated giving the Government adequate powers to deal with demonstrations and to effect *preventive* arrests'.[105] Egyptian officials painted anticolonial protests and demonstrations as a justification for the continuation of martial law, despite claims that they desired to repeal it. Speaking on the negotiations, Sarwat Pasha said:

[102] Letter from Mr Amos to Mr Kerr 4 December 1924 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/86a.
[103] Letter from High Commissioner Lord Allenby to Mr Austen Chamberlain, Foreign Office 20 December 1924 *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/90.
[104] Report from Law Officer's Department on Arrests in Egypt 16 January 1925 *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/91.
[105] Letter to Foreign Office 28 February 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/60 emphasis my own.

> […] among the people who complain of the maintenance of martial law and demand its abolition, there are some who try, at the same time, to obstruct the action of the government in this regard. This ministry has promised that […] it will work to repeal the restrictive measures of freedom which have been taken under martial law. But those who respect nothing stir up riots and encourage the thugs to disturb the peace and to engage in acts of depredation and terrorism.[106]

In 1923, Egypt promulgated a new constitution following independence which included a provision for the declaration of martial law. Since that time, Egypt has been mostly under some form of emergency rule. In 1958, martial law gave way to the more 'liberal sounding' emergency law, which encompassed a broader range of threats including war, internal disturbances, natural disasters and epidemics.[107] Reza understands the 'permanent emergency' to be a normalised feature of Egyptian governance, without which it is impossible to understand the postcolonial Egyptian state today.[108] Alzubairi also notes that the normalisation of emergency frameworks had begun earlier in the development of the Egyptian Penal Code to allow for the trial of citizens who commit crimes against the 'public order'.[109] Adly Yakan Pasha's concern over maintaining preventive arrest suggests that British martial law and the various statutory laws enacted throughout the occupation were central in providing the government and military with such powers, and further, that the period of British occupation had facilitated the development of a pre-criminal space within the law.

[106] Speech by Abdel Khalek Sarwat Pasha 1 April 1922 (n 73).
[107] Sadiq Reza, 'Endless Emergency: The Case of Egypt' [2007] 10(4) New Criminal Law Review 532, 537.
[108] *Ibid*.
[109] Alzubairi (n 6), 126.

3.4 Statute-based laws and the institutionalisation of pre-emptive measures

As Hussain explains, colonial governance was made up of a patchwork or fragmentation of different legal frameworks, inherited and new, martial law and statute-based, that bolstered one another, creating new classifications of suspicion and 'filling up' the space of governance through bureaucracy.[110] Egypt like other colonies saw the deployment of statute-based laws co-current to martial law, that provided the British and later the Egyptian government with permanent fixtures that responded to Adly Yakan Pasha's request for pre-emptive methods. The following section demonstrates how two such two laws – the 1909 Police Supervision Act and Law 10/1914 for Assembly – were part of the progression towards a statue-based and pre-emptive emergency framework in Egypt, how they helped institute understandings of security threat and terrorism, and how they were framed as humanising.

3.4.1 The 1909 Police Supervision Act

In 1909 the British instituted the Police Supervision Act in Egypt notably just one year after the 1908 Prevention of Crime Act in the UK which introduced indeterminate sentencing and preventive detention.[111] The 1909 law sought to limit the movement of 'suspicious' characters by extending the already existing Vagabond Law which allowed the Government to prescribe their place of residence. This was influenced by existing class-based British laws on vagrancy, sex work and the regulation of diseases that allowed for the imprisonment and coercive intervention of people based on identity, perceived 'dangerousness' and the risk of future crime,[112] and also existing Egyptian provisions. Nineteenth century British legal conceptions

[110] Hussain (n 32).
[111] Finnane and Donkin (n 35), 10.
[112] *Ibid*., 21.

of dangerousness were associated with individuals or groups who were seen to 'threaten the domestic order as well as the very existence of the state'.[113]

Referring to concerns over 'dangerous characters', Gorst, explained, 'the idea is to create a special settlement for them, rather on the lines of what has been proposed for the unemployed in England, where they would be kept under special supervision and prevented from doing further harm'.[114] He noted that 'nothing will be done outside the law,' [115] and in July, the Police Supervision Act of 1909 was introduced which expanded the capacity to arrest, trial and detain those deemed potential criminals.[116] In practice, a committee of local omdas (mayors) had the job of collating lists of 'suspicious' individuals from villages around Egypt. The first list came to a total of around 12,000 names. After checks made by provincial governors and British inspectors, this list was reduced to 283 men, out of whom 263 had no previous convictions. These 283 were then tried before a commission and consequently were sentenced to a period not exceeding five years living under police supervision in their village and the security payment of LE100-1000. If the defendant could not pay the security fee, they would be exiled to the settlement Gorst referred to. One hundred and sixty-seven men, without previous convictions, were exiled here.[117] As Brown states, 'the only qualification to deserve this punishment was a bad reputation'.[118] The 1909 law therefore provided for pre-emptive suspicion-based detentions without trial and in curtailing the movement of people, are reminiscent of the control orders and Terrorist Prevention and Investigation Measures (TPIM) in use in the UK today.

[113] *Ibid*., 10.
[114] Letter from Sir Eldon Gorst to Sir Edward Grey 31 January 1909 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/36.
[115] *Ibid*.
[116] Esmeir (n 63), 277.
[117] *Ibid*.
[118] Brown (n 46) 279.

Fahmy and Brown show that the development of this law was part of the systematic and institutional creation of the criminal category 'banditry' that was a direct product of the power struggle between the Egyptian government and the British occupiers.[119] An earlier institution that provided the same effects as this law was the 1883 Egyptian 'Commissions of Brigandage', which sought to curtail bandits who dealt in highway robbery, pillaged villages and murdered notables throughout the countryside. This institution worked on a classed basis to mark the working classes and fellaheen as suspicious. As Fahmy explains, through the development of the modern Egyptian state in Muhammad Ali's early nineteenth century rule, local authorities tightened their control over rural areas of the country and measures were imposed to monitor the movement of the fellaheen in particular.[120] Already in the 1830s, it had been decreed by the 'Government Department of Catching Absconders' (ma'mūriyyat dhabt al-missahhabīn) that every villager should carry a passport with them when they left their village.[121] As Fahmy explains, the Ottoman legal authorities felt this anxiety most 'in the case of people who had no domicile and who roamed around the city with no clear residence and/or profession'.[122]

Brown explains that the Commissions constituted 'an attempt by the Egyptian government to retain a measure of control over state building, to ensure that Egyptians would still control law

[119] *Ibid*., 271.
[120] Khaled Fahmy, 'The Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt' in Keith Breckenridge and Simon Szeter (eds) *Registration and Recognition: Documenting the Person in World History* (The British Academy 2012), 350. The monitoring and enclosure of fellaheen communities can be understood as part of the early economic development of the Egyptian state whereby practices of primitive accumulation worked to fix local areas in place. Mitchell explains that nineteenth century economic development occurred as a 'reorganization and transformation' and 'new relations between human agency and the nonhuman'. Timothy Mitchell, *Rule of Experts: Egypt, Technopolitics, Modernity* (University of California Press 2002), 16. When the British arrived in Egypt in 1882, a central aim was to 'rescue' and repair the Egyptian economy as Egypt had defaulted on European debt. The fellaheen were considered a key section of the population for the production of cotton for European consumption. Mitchell traces the regimentation of rural Egypt back to the 1820s (under the rule of Muhammad Ali) which was seen as central in the development of a productive economy. Timothy Mitchell, *Colonising Egypt* (University of California Press 1991), 47-49.
[121] *Ibid*., 341.
[122] *Ibid*., 350.

enforcement and local administration even as the British occupied the country'.[123] He continues that while forms of banditry had occurred for decades before, Prime Minister of Egypt Nubar Pasha (1884–1888) strategically chose to treat it as an emergency to be dealt with through the Commissions, thereby effectively inventing it through institutionalisation. While the courts systems were slow to charge and sentence, the Commissions were an institution that worked outside of the legal system, that did not have to wait for the notification of crimes – indeed they worked in a pre-emptive manner, and forcibly took confessions.[124] In effect they represented a fragmented form of law whereby new categories of dangerousness provided the 'need' to create new administrative venues to deal with them.[125]

As the power struggle intensified between the British and the Egyptian government, the monopoly over the control of state security became the desire of the British occupiers. The British relied on the colonial ideology of representing Egyptian institutions as backwards and lawless in order to frame their own as civilising. While the Egyptian Commissions were certainly not a fair institution – they became notorious for torture including hanging people from iron collars[126] – the British used this a means to institute their own version which enacted proactive rather than reactive policies.[127] With political opinion in the metropole necessary to appease, the law was consciously used to increase accountability. For instance, commenting on proposals for the 1909 law from Britain, Grey instructed Gorst that the British administration in Egypt would have to take steps to make sure that abuses would not occur. He outlined that there was a need for a measure of transparency around the internal methods used

[123]Brown (n 46), 271.
[124] *Ibid*., 276.
[125] Hussain (n 32).
[126] Brown (n 46), 271.
[127] In 1891, ghafirs (village guards) were instructed to systematically search for bandits rather than wait for them. Brown (n 46), 278.

for designating 'dangerous characters'.[128] Gorst did not agree with the request for greater transparency, explaining that 'such a new departure would induce a terrible cataclysm.'[129] He explained that in the case of insufficient or suspicious evidence for a dangerous character, the case would be forwarded to an inspector of British nationality. According to Gorst, this unofficial, unchecked process was the 'way in which we exercise our unseen control in every branch of the government'.[130] In response, Grey assured Gorst that he would decide nothing hastily and that he would send through his despatch without comment on the law.[131] The conversations between Grey and Gorst over the administration of the Police Supervision Act are indicative of the tensions between forms of governance in the metropole and in the colonies and suggestive that colonial administrators allowed for their own discretionary understanding of what constituted lawful actions.

The institutionalisation of the criminal category 'banditry' in Egypt was therefore a product of the power struggle between the Egyptian government and its British occupiers, that developed through the curtailment of freedoms and monitoring of the working classes and fellaheen. While the Egyptian government used an extra-legal institution to bypass its own court system and therefore any interference by Britain in its internal governance, the British authorities used the law to construct their own legitimacy in dealing with the situation. While banditry had been in existence in Egypt for decades, both the Egyptian government and the British occupiers chose this moment to condemn it as an emergency situation requiring strong security measurements, and both instituted aspects of pre-emptive and suspicion-based criminalisation.

[128] Letter from Sir Edward Grey to Sir Eldon Gorst 13 August 1909 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/60.
[129] Letter from Sir Eldon Gorst to Sir Edward Grey 19 august 1909 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/61.
[130] *Ibid.*
[131] Letter from Sir Edward Grey to Sir Eldon Gorst 23 August 1909 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/62.

3.4.2 Law 10/1914 for Assembly

Law 10/1914 for Assembly was passed alongside the declaration of martial law as a measure to control and suppress any gatherings that could be construed as disrupting public order, as stipulated in section 2 of the martial law proclamation.[132] At the time, the British found that there were no specific provisions found in the Penal Code for offences committed by assemblies, and in response to mounting dissent from Egyptian nationalists, found the promulgation of an assembly law necessary.[133]

In their detailed archival research, Cairo Institute for Human Rights Studies (CIHRS) found that while this law was approved by the Council of Ministers and ratified by the acting regent Prime Minister Hussein Rushdi Pasha, it was done so under great pressure from the British Authorities and without consultation of the Legislative Assembly or the Khedive.[134] The Act criminalises the gathering of more than five persons in public.[135] If the persons refuse to disperse they are liable to serve no more than six months in prison and a fine of at least LE20. If the assembly gathers in order to commit a crime, those convicted could be sentenced to no more than two years in prison.[136] A particular pre-emptive aspect of Egyptian law-based governance are the concepts of collective liability and collective punishment provided for through Law 10/1914 for Assembly, which has historically and contemporaneously allowed for the mass arrest of protestors, thus providing the government with a means to restrict access

[132] Cairo Institute for Human Rights Studies (CIHRS) 'Towards the Emancipation of Egypt: A Study of Assembly Law 10/1914' (2017) <https://cihrs.org/wp-content/uploads/2017/01/Towards_the_em_of_Eg_eng.pdf> accessed 23 September 2021.
[133] *Ibid*., 81.
[134] *Ibid*., 23.
[135] *Ibid*., 31.
[136] *Ibid*., 19.

to the political space. This is a key aspect to the development of pre-criminal governance in Egypt.

The law, having been written to serve the purposes of an emergency period of war, where 'simply assembling could constitute a danger to the public peace',[137] applies to 'assembled persons… even if the assembled persons harbour no criminal intent'.[138] This understanding continues to be upheld by the Court of Cassation in Egypt today and has applied in cases of mass arrest and trials over the past decade (see Chapter Seven for more detail).[139]

The notion of collective liability as understood in the assembly law is important in how the judiciary can render a whole host of people 'criminal'. Collective liability means that all defendants become principal perpetrators in the assembly and are subject to criminal liability as accomplices in the most severe crime they committed.[140] Furthermore, parties need not actually be present to be convicted. As was detailed in a High Commissioner's report:

> The promoters of an unlawful assembly are criminally responsible for offences committed by members of the assembly in the execution of the common object, although such promoters were not actually present when such acts were committed.[141]

The collective liability found in Law 10/1914 for Assembly allows for the arrest and detention of persons simply because of their proximity to a potential crime. Law 10/1914 for Assembly is perhaps one of the most notorious Acts coming from this period because of its resonance

[137] *Ibid*., 31.
[138] *Ibid*., 32.
[139] *Ibid*., 54.
[140] *Ibid*., 59.
[141] *Ibid*., 81.

today. This Act is a favourite tool of President Abdel Fattah el-Sisi, allowing him to carry out mass arrests on protestors under the guise of countering terrorism (examples are drawn out further in Chapter Seven). To give a contemporary example of its use, in the case *Yara Sallam and 22 others*[142], the group were arrested nearby protests on 21 June 2014, charged with various crimes under assembly and protest laws. They were sentenced to three years imprisonment. Based on the concept of collective liability to assembly 'the court concluded that all the crimes were linked, having taken place at a single time and place and based on a single criminal notion during their assembly, with the intent to pursue the purpose of the assembly'.[143] There was no specific evidence that incriminated all twenty-three defendants: the only piece of evidence the prosecution used was video footage that placed five of the defendants at the scene. As Alzubairi points out, the colonial period saw the heavy reliance upon British intelligence gathering as the sole source of evidence for trials of people considered threatening to the public order or British troops, even before a crime had been committed.[144] As explained in Chapter One this is a crucial aspect of contemporary pre-criminal methods through the expansion of the temporality of the law and the development of preparatory crimes.[145] The collective liability in the 1914 law and the development of a class-based understanding of dangerousness in the 1909 are both suggestive of early forms of the pre-criminal space, developed through both British and Egyptian struggles for control over the country and national security.

[142] Public Prosecution v. Yara Sallam and Twenty-two others, Appeals Misdemeanour Court, Case 1343/2014, detailed in Cairo Institute for Human Rights Studies 'Towards the Emancipation of Egypt: A Study of Assembly Law 10/1914' (2017) 60-61, <https://cihrs.org/wp-content/uploads/2017/01/Towards_the_em_of_Eg_eng.pdf> accessed 23 September 2021, and in: International Commission of Jurists, *Egypt's Judiciary: A Tool of Repression. Lack of Effective Guarantees of Independence and Accountability* (2016) 33-35, <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf> accessed 23 September 2021.
[143] CIHRS (n 128).
[144] Alzubairi (n 6) 137.
[145] Jude McCulloch and Dean Wilson, *Pre-crime: Pre-emption, Precaution and the Future* (Routledge 2016) 18.

3.5 Conclusion

This chapter has examined the promulgation of various types of law by the British in Egypt as exemplifying the beginnings of legal and administrative pre-criminal governance. I have argued that two main frameworks – martial law and newly developing statute-based emergency laws – were used by the British in conjunction with the Egyptian government in varying ways and the beginnings of pre-criminal methods can be traced within them. I have suggested that within the overlap between these different legal frameworks, aspects of pre-criminal thinking, such as the lack of need for evidence and class-based conceptualisations of dangerousness were normalised into the supposedly 'less draconian' framework of emergency.

The framing of martial law as 'normal' and 'civilising' at a time when it was increasingly being considered as draconian was a strategic choice by the British in consideration of their unstable presence in Egypt. Martial law allowed the British greater access to administrative and bureaucratic spaces of Egypt. Martial law persisted as the primary method of governance by the new Egyptian government from 1922 and continues to this day. Coloniality underscores the very shaping of these forms of law, based as they were on the securitisation of the state and the disciplining of the colonial subject. We can understand the persistence of statute-based emergency laws, such as Law 10/1914 for Assembly, in part as a remnant of colonialism, but also of elite Egyptian decision making. Important for this thesis, the development of this pastiche of laws in Egypt in the early twentieth century demonstrate a technique of governance that relies on the construction of pre-criminal categories. As hinted at throughout this chapter, and explored in greater detail throughout the following chapter, classifications of dangerousness were wrought through racialised, classed and gendered hierarchies of humanity which provided for the justification of their treatment through special and pre-emptive legal avenues.

Chapter four: The coloniality of legal evidence

4.1 Introduction

This chapter traces processes of normalisation through the memorialisation and erasure of two moments of legal violence in British-occupied Egypt. In doing so it makes two interrelated arguments. First, conceptually, I argue that the legal temporal shift that characterises contemporary pre-criminality is only possible *because* certain forms of testimony can be disregarded within the racialised, classed and gendered structures of the law. In order to make this argument I look to the development of race, class and gender-based forms of pre-criminality in British-occupied Egypt through the ranking of evidence as irrational or rational. Second, I make the empirical argument that the memorialisation of the 1906 Dinshaway massacre as a moment of 'exceptional' violence carried out by the British administration paved the way for the institutionalisation of martial law, which was rendered comparatively 'humanising' and therefore gave way to the normalisation of systematic violence and the institutionalisation of pre-criminal practices. In order to make this argument I look to the comparative erasure of a second event, the 1919 Shobak affair.[1]

The overarching argument of this thesis is that pre-criminality is part of the normal functioning of legal and administrative governance that finds its legitimacy within the liberal framing of the law. Furthermore, this pre-criminal governance depends upon the everyday production of

[1] To unravel the Dinshaway Massacre I look to records from the National Archives and the story by Mahmud Tahir Haqqi, 'The Maiden of Dinshaway' ('*Adhra Dinshaway)* 1906 in *Three pioneering Egyptian novels : The Maiden of Dinshway (1906), Eve without Adam (1934) and Ulysses's hallucinations or the like (1985) / translated with a critical introduction by Saad el-Gabalawy*. (The British Library) Asia, Pacific & Africa ARB.1987.a.1756. For the lesser known Shobak Affair I attend to witness statements by fellaheen held in the National Archives, specifically held under: Record of Procès-verbal, 27 March 1919 in *Foreign Office and Foreign and Commonwealth Office: Embassy and Consulates, Egypt: General Correspondence* (The National Archives, Kew Gardens) FO 141/825.

gendered, racialised and classed difference to justify the differential treatment of 'terrorist' suspects through law. I developed this argument substantively through archival research in the previous chapter where I demonstrated that forms of pre-criminality were being normalised in British-occupied Egypt. I showed that the framing of martial law as an administrative tool rather than a military one meant that it could infiltrate Egyptian society all the while being framed as more 'humanising' and 'just'. Furthermore, I showed that the dialogues between martial law and statute-based laws provided for the institutionalisation of pre-emptive law-making. This chapter delves deeper into the production of gendered, racialised and classed norms within the administration of law-making. It also provides further evidence to support my empirical claim that the use of the martial law framework from 1914-1923 provided more room for the British administration to justify systematic state violence against Egyptians as 'necessary' and civilising.

By analysing the legal contours of two major events of state violence, I make links between the colonial logics of difference and the political-economic considerations of the British infrastructural occupation of Egypt, thereby arguing that there existed different standards of evidence for the fellaheen (peasantry) in Egypt, who were marked as 'dangerous' and treated in a pre-criminal manner. The 'humanising' effects of law are what provided the ability to cast the fellaheen as 'calculating'. This chapter explores narratives of fiction and fact when it comes to testimony and evidence, contending that while the British may have brought in institutions that were imagined as providing the transparency of law, that they were built upon racialised, classed and gendered suppositions of fact and fiction. In this way, I locate the formation of pre-criminality at the intersection of a colonial mythology of difference and the material exigencies of the British occupying forces. I understand both discursive narratives of 'oriental' difference and capitalist desires as shaping the bias, disregard and politicisation of certain testimonies in

British-occupied Egypt. I explore this by looking into how classed and gendered forms of testimony and evidence were treated as fictions and therefore inadmissible to 'rational' and 'objective' legal proceedings.

Methodologically, this chapter contrasts two class and gender-based instances of violence towards the fellaheen – the Dinshaway massacre that was carried out in 1906 prior to the enactment of martial law and the Shobak affair that was carried out during the martial law period, in 1919 – to expose the continuities but also the stark differences in the way each event is or is not remembered. Through this, I demonstrate that methods of memorialisation of the Dinshaway massacre provided the affective mechanisms through which martial law could be justified as a 'humanising' and 'just' institution. Despite this framing, I demonstrate that the violence enacted during martial law was more systematic and was normalised through its legal framing and its relative erasure. By playing with different forms of knowledge production – specifically contrasting the hegemonic archive with local storytelling and memories from one interlocutor – this chapter unravels the power dynamics involved in the creation of truth regimes and deconstructs categories of dangerousness. Methodologically, this chapter speaks to the necessity of attending not only to marginalised subjects but also different forms of voice and 'types' of knowledge in research projects that decentre the state. Attending to the persistence of affect through memories and stories, this chapter rethinks framings of the violence of emergency law as aberrational and temporary.

I understand these two violent events to be key moments in the shaping of a particular class-based form of pre-criminality where forms of material evidence provided by the fellaheen are disregarded as unimportant or irrational and therefore inadmissible evidence. Furthermore, as I show, this classed logic of criminalisation worked in gendered ways where the murder and

rape of women is narrated by both the British administration and local Egyptians as a form of material loss and property damage rather than a human life. From this perspective, archival and legal material is exposed for its epistemological bias, and stories of which lives are more grievable than others come to the fore.

As we already discovered in Chapters Two and Three, the notion of the powerful imposition of a new oppressive legal system by the British is refuted by scholars who note the agency of Egyptian actors and their pivotal role in laying the foundations of Egyptian law and the pre-criminal space. My argument, therefore, is not so much that the British single-handedly institutionalised classed, gendered and racialised biases within the Egyptian legal system, but instead that forms of epistemological violence – such as the mistrust of fellaheen testimony – were part and parcel to, and indeed created the space for, other forms of violence by the occupying British army but also the Egyptian police. Furthermore, that the 1914 proclamation of martial law played a political role by justifying such violence under the banner of 'necessity' and 'civilisation'. Linking to my overarching argument, I contend that this epistemological violence is central to the dubious role played by evidence in contemporary pre-criminal convictions.

4.2 Methodological considerations

Methodologically, this chapter approaches archival and interview material from a postcolonial and intersectional feminist perspective, using not only the British colonial archives but Egyptian archival material and interview material. These include the testimonies of fellaheen attacked by British soldiers; an Egyptian novel written at the time of the 1906 Dinshaway massacre, *The Maiden of Dinshaway* ('Adhra Dinshaway) by Mahmud Tahir Haqqi; and also the words of one of my interlocutors, Kamal el-Helbawy, whose childhood memories of the

end of the British occupation speak to how security practices are remembered generations later.[2] These sources testify to how remnants and effects of martial law remain psychically in popular cultural memory.

By holding the memories of a key interlocutor alongside archival documents of the time, I attempt to disrupt the historical timeline that would understand events such as the British redaction of martial law and decolonisation as steps in a progressive civilisation narrative away from exceptional violence. Foregrounding incommensurable truths is crucial to an interrogation of the archive. As Stoler explains 'to smooth out incompatible versions would be to ignore the different frames in which events were understood, reported, and played out'.[3] Reading a novel alongside the official archives probes and exposes the 'essentially fictive nature of law', and helps build an argument about the gendered, racialised and classed underpinnings of evidence that persist in contemporary legal practices of the global war on terror.[4] This mixed archival approach provides different epistemological renderings of the violence of the law, challenging the notion that the law is just and impartial, and revealing the fictitious, racialised, classed and gendered basis of the pre-criminal space.[5]

My critical interrogation of the British colonial archive asks questions about the forms of material and epistemic violence that shape how testimony and evidence was or was not recorded throughout the Dinshaway massacre and the Shobak affair, which voices were held above others, and which testimonies were marked as fact or as fiction. In doing so I shed light

[2] Kamal requested that his name be published in this research. I remained in conversation with him over which quotes he was comfortable with me using. Kamal edited his interview transcript twice. I also provided him with a final copy of the chapters in which he features to make sure he was happy.
[3] Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton University Press, 2010) 18
[4] Patricia Tuitt, 'Critique, Crime Fiction and the No Right Answer Thesis' in Maria Aristodemou, Fiona Macmillan and Patricia Tuitt, *Crime Fiction and the Law* (Birkbeck Law Press 2017) 16.
[5] Following Samia Khatun's historical method which holds different memories together in order to render visible colonial violence. Samia Khatun, *Australianama: The South Asian Odyssey in Australia* (Hurst 2018) 91.

on not only the discursive colonial myths upon which pre-criminality functions but also the political-economic motivations of imperialism that helped to shape it. Furthermore, the more haunting types of violence also provide a window to the intergenerational remnants they left behind, and the disciplinary power that accumulates around forms of remembering.

The interview material comes from one of my older interlocutors, Kamal el-Helbawy, who was the only one of my interviewees wanting to be named. This is perhaps because of the name Kamal has made for himself in both the UK and Egypt, having been an influential figure in the Muslim Brotherhood in Egypt and globally. Kamal was born in 1939 and grew up in the town of Shibin el-Kom, in Menoufiyya province in lower Egypt (near the village of Dinshaway). As a leading figure in the Muslim Brotherhood, Kamal has travelled the globe, carrying out work in Afghanistan, Pakistan and Saudi Arabia until 1994, when he deemed it unsafe to return to Egypt because of the Mubarak regime's crackdown on the group.[6] So, he settled in London where he has lived until today and describes it as safe. In London, Kamal cofounded two of the most influential Muslim organisations: the Muslim Council of Britain and the Muslim Association of Britain. Kamal's relationship with the Muslim Brotherhood is a complex one, after having been a central actor for decades, he formally resigned in 2012 after the group put forward a political candidate in Egypt, something that he disagreed with. By that time, Kamal considered that the group had shifted from the original teachings of Hassan el-Banna and had grown more violent and secretive. Kamal still cannot return to Egypt.

Interviewing Kamal is an experience I will not forget. A man who has been in the public eye in both the UK and Egypt for his work with the Muslim Brotherhood, and views of Egyptian

[6] Lorenzo Vidino, *The Closed Circle: Joining and Leaving the Muslim Brotherhood in the* West (Columbia University Press 2020).

politics, he was gracious and kind throughout out multiple interactions and pointed me towards resources on the Dinshaway massacre despite vulnerabilities because of his age and concerns over Covid-19. This chapter picks up on some of the memories and descriptions of the end of the British occupation of Egypt that arose throughout our interviews.

This chapter first provides theoretical framings for the gendered, racialised and classed contours legal evidence before showing the material ways in which such legal evidence provided for continued colonial occupation. Third, I present archival narratives of the Dinshaway massacre of 1906. Fourth, I present archival narratives of the Shobak affair. Finally, I assess the political effects of methods of memorialising and erasing both events.

4.3 The facts and fictions of evidence

This section provides a reminder as to how contemporary pre-criminal offences require scant evidence and further demonstrates the gendered, classed and racialised underpinnings of testimony in the contemporary global war on terror. In contemporary trials that deal with the 'preparation' of a terrorist act, little material evidence is available because of the nature of the so-called 'crime': because the crime has yet to be committed, there is little to go on to prove that it would occur. As McCulloch and Wilson note, 'because there are no crime scenes, the information used in pre-crime prosecutions tends towards the speculative quality of intelligence rather than concrete evidence'.[7] Some pre-crime laws do not require evidence at all and allow the reliance on coercive and sometime violent intervention.[8] McCulloch and Wilson explain that whereas criminal law requires the proof of guilty acts – actus reus – and a guilty mind – mens rea – the shift in temporality to pre-crime poses a great challenge to establishing intention,

[7] Jude McCulloch and Dean Wilson, *Pre-crime: Pre-emption, Precaution and the Future* (Routledge 2016) 94
[8] *Ibid.*

especially where the acts in and of themselves are not illegal.[9] As they explain, 'as a result of the difficulties of proving intention based on innocuous or ambiguous acts, investigations and prosecutions of preparatory offences focus on the character or identity of the accused'.[10]

Ramsay explains that the court proceedings for pre-criminal offences 'amount to a discretionary administrative risk assessment of the individual concerned,'[11] and that:

> These offences are unlikely to come to light except as a result of the surveillance and investigation efforts of the authorities. Arrest and conviction for these offences will in practice be dependent on official activity, on the office gaze and where it is directed.[12]

This points a situation where the bulk of 'evidence' for pre-crime offences rests upon the perception of dangerousness of an individual. This dangerousness is constructed through the everyday policing of and intervention into communities deemed less likely to innately hold liberal values. Furthermore, even when evidence *is* presented, questions arise as to its bias. Razack and Kapoor separately show how torture plays a vital role in the creation of 'truth' and 'proof' of criminality within counter-terrorism trials.[13] According to Kapoor, the voluntary confession to terrorism as admissible evidence in a court of law often follows the attempt to extract a confession through torturous methods.[14] As Heath-Kelly explains, torture should thus be thought of not as information extraction but as the erasure and re-writing of subjects in the language of the hegemon, to 'destroy maligned subjectivities and bodies and to buffer the

[9] *Ibid*., 20.
[10] *Ibid*.
[11] Peter Ramsay, 'Democratic Limits to Preventive Criminal Law' in Andrew Ashworth, Lucia Zedner and Patrick Tomlin (eds), *Prevention and the Limits of the Criminal Law* (Oxford University Press 2013), 219.
[12] *Ibid*.
[13] Sherene Razack, 'The Manufacture of Torture as Public Truth: The Case of Omar Khadr in Suvendrini Perera and Sherene Razack (eds), At the Limits of Justice: Women of Colour on Terror (University of Toronto Press 2014); Nisha Kapoor, *Deport, Deprive, Extradite: 21st Century State Extremism* (Verso Books 2018).
[14] Kapoor (n 13), 27.

perceived power of the regime'.[15] Counter-terrorism law therefore hinges upon preceding physical and mental violence to create terrorist subjects.

Furthermore, feminist scholarship explores the gendered and racialised hierarchy of versions of truth whereby 'rationality' trumps 'emotionality' as reliable and therefore admissible evidence. As Ahmed explains, emotions are associated with women who are represented as 'closer' to nature and cast as 'a sign of "our" pre-history, and as a sign of how the primitive persists in the present'.[16] This can be seen in gendered forms of witnessing and testimony particularly in cases of rape where the burden of proof is on the (often but not always) female survivor. To this day, rape cases will often ask derogatory questions of the plaintiff, often with gendered or sexualised connotations to the point of 'victim-blaming'. As I demonstrate in this chapter, the absences in the official British archive, and the methods with which fellaheen testimony represent women in an 'honourific'[17] way, are suggestive of such a gendered and racialised hierarchy of rationality over emotion, justifying a privileging of the testimonies of British men and Egyptian men (subject to context).

For Razack, emotions shown by suspected terrorists are responded to with indifference or used to bolster an image of them as dangerous. Examining the case of Omar Khadr – a Canadian citizen detained in Guantánamo Bay when he was a child, and physically and mentally tortured throughout his detention – Razack explains that any emotion exhibited during his trial at Guantánamo 'could be enlisted to support Welner's [the Prosecution's] opinion that he was a

[15] Charlotte Heath-Kelly, *Politics of Violence: Militancy, international politics, killing in the name* (Routledge 2013) 23.
[16] Sara Ahmed, *The Cultural Politics of Emotion* (Edinburgh University Press 2004), 3
[17] Beth Baron explains how the concept of honour was central to nationalist and anticolonial discourse which was often based on ideas of female purity. *Egypt as a Woman: Nationalism, Gender, and Politics* (University of California Press 2005) 40.

violent jihadist'.[18] This included the manipulation of recordings of Khadr crying and his family reacting with devastation. Even his love for Harry Potter did not act in his favour to show he was 'westernised', instead, the prosecution used it to cast him as living in a 'fantasy' world.[19] As Razack explains, this dehumanised framing serves as justification for torture and secures Western innocence.[20] For Razack, this narrative is reliant on a 'blood discourse' – a powerful biological narrative that scripts all Muslims as a race of people who carry the seeds of disloyalty'.[21] Razack's analysis shows how the decisions of a court can be made on the continued colonial myth of racial and religious difference: here this mythology allows for all Muslim bodies to be marked as a potential threat.

As Suresh explains, processes of documentation and archiving are central in the creation of narratives of 'fact' and 'fiction':

> […] files, government reports and other official documents are simultaneously signs of state power, essential to the rule of law, which serve to provide an accurate account of the world in documentary form through their ability to authenticate and produce juridical truth, and more fundamentally, determine the form that the law will take.[22]

Here, the mundane administrative and bureaucratic functioning of law is itself the location of power. Others contend that legal narratives are different versions of truths. As Aristodemou notes, 'just as language is fictional, bringing something that is absent into presence through representation, legal concepts are fictional constructs whose existence depends on our

[18] Razack (n 13) 64-67.
[19] *Ibid*., 63
[20] *Ibid*., 68
[21] *Ibid*., 60
[22] Mayur Suresh, 'The File as Hypertext: Documents, Files and the Many Worlds of the Paper State' in Stewart Motha and Honni van Rijswijk (eds) *Law Memory and Violence: Uncovering the Counter-Archive* (Routledge 2016), 101.

collective belief in them.'[23] She explains that law and literature both construct narratives which normalise and integrate the aberrant event into society in order to restore the disrupted social order.[24] The file here plays a crucial role in the production of new worlds, or new narratives, which later become the new truth and produce a new order.[25] As I demonstrate in British occupied Egypt, the production of gendered, racialised and classed legal truths pave the way to discount certain forms of evidence as inadmissible and provide a shield for state violence. In this way, colonial violence is normalised within the space of the law.

4.4 Material exploits through law

This section links the fictions of evidence to the material gains they made possible in colonial Egypt. That modern law is based on myths, fantasies and fictions is a key argumentation for critical legal scholars. For Fitzpatrick, modern (Occidental) law is constructed upon the myth that law equals order,[26] and that the basic functioning of this European mythology is the 'conferring of identity on a people', central to which has been the creation of European racism.[27] This law carries forward the concepts of rationality, objectivity and an imperial-informed humanity that constructs a racialising division in 'nature'[28] and permits colonising and regulatory interventions at any point. As Fitzpatrick notes:

> With the creation of modern European identity in Enlightenment the world was reduced to European terms and those terms were equated with universality. That which stood outside of the absolutely universal could only be absolutely different to it […] something other than what it should be.[29]

[23] Maria Aristodemou, 'The Introduction didn't do it' in Maria Aristodemou, Fiona Macmillan and Patricia Tuitt, *Crime Fiction and the Law* (Birkbeck Law Press 2017) 5.
[24] *Ibid*., 9.
[25] Suresh (n 22) 104.
[26] Peter Fitzpatrick, *The Mythology of Modern Law* (Routledge 1992), 58.
[27] *Ibid*., 82.
[28] *Ibid*., 63
[29] *Ibid*., 65.

As Yegenoglu explores, the very myths, fantasies and fictions upon which orientalist thought rests – those that depict Arabs as ontologically and culturally distinct and sexually available – are constitutive of western subjectivity, structurally, through 'historically specific construction[s] and… collective process[es]'.[30] For instance, as a structural disciplinary process, the 'civilising' mission worked as a combination of politics and morality that would have gendered effects in all forms such as the development of specific policies on marriage between settlers and colonised communities.[31]

Furthermore, the racialising structures of modern law developed and gained traction as they were introduced to bring 'order' to the supposedly 'lawless', and importantly for this chapter, 'propertyless'[32] colonies, and continued to act as 'an operative condensation of Enlightenment thought'.[33] Geographical division and the requisition of land and property is recognised by many postcolonial scholars as central in colonial occupation and accumulation of capital.[34] Bhandar explains property law as 'unfolding in conjunction with racial schemas' which continue to retain their disciplinary power of organising today.[35]

Therefore, the importance of spatial occupation to the development of class-based forms of suspicion and pre-criminality cannot be emphasised enough. Jakes explains that while the infrastructural occupation (isti'mar) of Egypt by Britain was in part a matter of fiscal exigency, responding to the debts Egypt had to pay back, that the development of roads, railways and

[30] Meyda Yegenoglu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge University Press 1998) 2
[31] Nasser Hussain 'Towards a Jurisprudence of Emergency: Colonialism and the Rule of Law' [1999] 10 Law and Critique 93, 100.
[32] Fitzpatrick (n 26) 72.
[33] *Ibid*., 57
[34] Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press 2018) 2.
[35] *Ibid*.

communication lines was also central in the surveillance and regulation of the Egyptian population.[36] He points out that agrarian policies in particular 'constituted the centrepiece of a hegemonic project'.[37] Britain was most invested in reforming the countryside which had already provided Egypt with the resources to become a leading exporter in cotton since 1860.[38] Not only would the countryside be subject to the laying of new roads, however, this would be accompanied by an administrative set of up of local authorities responsible for preserving the roads, and a strict enforcement of law and punishment therein.[39] This was based on the assumption that the fellaheen could not be trusted to keep such new infrastructure intact.[40]

As I demonstrate, this period and the two instances of violence – the Dinshaway massacre and the Shobak affair – entailed the 'writing of new spatial relations', such as 'the production of boundaries and hierarchies, zones and enclaves; the subversion of existing property arrangements; the classification of people according to different categories.'[41] The mythology of difference upon which law sat enabled colonial exploits and other forms of colonial violence in a material and productive way. The repetition of the narrative of racialised, classed and gendered difference was the basis upon which different standards were justified for colonial subjects as opposed to those from the metropole. As we shall discover, in terms of law, this manifested in different legal standards being set for the fellaheen and working-class Egyptians than they were for the British and elite Egyptians who worked with them. As the proceedings of the two events I explore attest, standards of evidence were linked to landownership and

[36] Aaron George Jakes 'The Scales of Public Utility: Agricultural Roads and State Space in the Era of the British Occupation' in Marilyn Booth and Anthony Gorman, *The Long 1890s in Egypt: Colonial Quiescence, Subterranean Resistance* (Edinburgh University Press 2014), 63.
[37] *Ibid*.
[38] Melani Cammett, Ishac Diwan, Alan Richards, John Waterbury, *A Political Economy of the Middle East* (fourth ed., Westview Press 2015) 241.
[39] Jakes (n 36)
[40] *Ibid*., 62
[41] Achille Mbembe, 'Necropolitics' [2003] 15(1) Public Culture 11, 25-26

Britain's capitalist ambitions within the country and also the imperial ideology of humanising law.

4.5 Event one: The Dinshaway massacre and 'exceptional' violence before 1914

This section analyses two distinct narratives of the first violent legal event in the pre-martial law period through the proceedings of the 1906 Special Tribunal in the village of Dinshaway. The first narrative is that which is recorded in the British colonial archive as the 'official' summary of evidence from the Tribunal proceedings. The second narrative is a short story by Mahmud Tahir Haqqi, *The Maiden of Dinshaway* ('Adhra Dinshaway). This account was written just after the events of Dinshaway and is considered a fictional or exaggerated version of the events, however, is written in a documentary style. *The Maiden of Dinshaway* was published in the newspaper *al-Minbar* on 15 July 1906 and finally as its own book in 1909.

The Special Tribunal saw the speedy public execution of four fellaheen and the harsh punishments – including the public flogging – of around ten others for the alleged premeditated murder of a British officer, Captain Bull. The Tribunal was organised by Lord Cromer, the then Consul-General for Egypt, who, as has been mentioned previously, had complained about the slowness and the inefficiency of the Egyptian legal system, and had vocalised his enthusiasm for the use of martial law in Egypt on a number of occasions. Lord Cromer's administration took swift action to set up an extraordinary tribunal to try the villagers, defending it as necessary 'because reliance on the regular institutions of justice was sometimes insufficient in a country accustomed to lawless and despotic government'.[42] This is despite, as Esmeir notes,

[42] Cromer in Nathan J. Brown, 'Retrospective: Law and Imperialism: Egypt in Comparative Perspective' [1995] 29(1) Law & Society Review 103.

the national courts system 'being perfectly capable of delivering harsh responses, including capital punishment'.[43]

The Special Tribunal itself was overseen by British and Egyptian ministers and members of the judiciary and was presided over by Boutros Ghali, the Prime Minister of Egypt from 1908–1910, who was considered a traitor by nationalist supporters and assassinated in 1910 as was explained in Chapter Three. The assassination was described by Badrawi as the 'first incident of its kind to occur in Egypt for more than a century', suggestive of the harmful legacy left by the Dinshaway Special Tribunal.[44] This section attempts to destabilise the colonial memory from which fact, fiction and evidence are constructed, thus further examining the layers of meaning that Dinshaway has left in literature, memories and even bedtime stories. The juxtaposition of an Egyptian 'fictional' narration of events alongside a British 'factual' one interrogates the 'fact' of the pre-crime space and unsteadies the suspicion with which bodies continue to be marked today. It therefore interrogates the role of coloniality as it underscores pre-criminality.

4.5.1 Narratives from the British colonial archive

This section presents the events of Dinshaway according to official British records, which include witness statements for the prosecution only. While the records suggest that statements were taken from the defendants, they are not printed among the court records in the National Archives which points to the lack of recognition of the importance of subaltern testimony. Sources also include prints of the British directed newspaper the *Egyptian Gazette* and

[43] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012), 254.
[44] Malak Badrawi, *Political Violence in Egypt 1910-1925: Secret Societies, Plots and Assassinations* (Routledge 2001), 22.

secondary sources.[45] At the time, the partiality of the evidence was questioned by MPs in Britain because as they pointed out, the translation of court documents into English was supervised by one of the judges. However, Foreign Secretary Edward Grey saw no reason to doubt the accuracy of the accounts.[46]

On 13 June 1906, a group of five British officers went to shoot pigeons nearby the small village of Dinshaway, located in Menoufiyya province, north of Cairo. The names of the officers predominantly involved in the incident were Captain Bull, who died at the scene, Major Pine-Coffin, Lieutenant Porter and Lieutenant Smithwick. The officers had come to shoot pigeons the previous two years. The fellaheen had not been informed of the officers' plan to shoot pigeons this year.[47] The British officers were accompanied by an ombashi (police official) of the Egyptian police, and by a guide and translator named 'Abd al-'Al Saqr. The pigeons and the land on which they were housed belonged to the fellaheen of Dinshaway. The villagers who feature heavily within archival narratives are Muhammad 'Abd al-Nabî, his wife Mabrûkah who died at the scene (who is not named in the British archive), and Mohamed Darweesh Zahran. While the British witness statements attest that the soldiers did not know the pigeons belonged to the fellaheen, Egyptian witnesses testified that they were warned by a 'grey-haired man' not to shoot, because the last two times the people were angered by it.[48]

[45] Special Correspondent for the Egyptian Gazette 'Denishwai Trial. Passing of Judgment. Sentences Received Calmly. Preparations for Execution.' *Egyptian Gazette* (28 June 1906) < https://dig-eg-gaz.github.io/post/2017-03-16-pearce-blog/> accessed 27 September 2021; Ziad Fahmy, *Ordinary Egyptians: Creating the Modern Nation through Popular Culture* (Stanford University Press 2011)

[46] HC Deb 15 November 1906, vol 165, col 98-9 <https://api.parliament.uk/historic-hansard/commons/1906/nov/15/conduct-of-the-denshawi-trial#S4V0165P0_19061115_HOC_108> accessed 27 September 2021.

[47] Denshawai Case Summary of Evidence November 1906 in *Egypt* (The National Archives, Kew Gardens) FO 881/8986, 11.

[48] *Ibid*., 9

According to the British narrative, the officers started firing some shots at the pigeons 'when a fire broke out in the threshing floor [belonging to] Muhammad 'Abd al-Nabî which was extinguished in five minutes'.[49] At this point, a number of fellaheen 'surrounded' the officers and attempted to take their guns, when Lieutenant Porter's gun 'accidentally' exploded, striking the wife of al-Nabî. Just one statement (of the twenty-six) mentions that she was thought to be dead, and the *Egyptian Gazette* refuted that she died. Several other fellaheen were injured by 'accidental' gunfire. According to the witness statement of the omdah (major) of Dinshaway, Mohammad el-Shazly, the officers 'fired shots at the natives (sic) intending to frighten them, but some of them were hurt'.[50] The officers then 'thought it wise to give up our guns to the people'.[51]

After the shots were fired, some of the fellaheen began hitting the officers, and several witnesses noted that Mohamed Darweesh Zahran was the 'ringleader'. Other fellaheen tried to stop them. Major Pine-Coffin's witness statement notes that 'although [he] does not know the language of the natives (sic), he understood from the gestures of this prisoner [Zahran] that he was inciting people to beat them'.[52] Lieutenant Smithwick noted that one fellah 'carried a fass [a hoe] in his hand, which he drew across his neck as a sign that he would murder them'.[53] One officer, Captain Bull, was hit on the head with a brick, and another Pine-Coffin had his arm broken by a blow. Bull broke away to escape, only to collapse and die hours later. Two forensic experts testified that the cause of death was sunstroke, and that the 'wounds found on the body of the victim were not of a nature to cause death alone'.[54]

[49] Egyptian Gazette (n 45).
[50] Denshawai Case Summary (n 47), 11.
[51] *Ibid*., 4.
[52] *Ibid.*
[53] *Ibid.*
[54] *Ibid*., 7

The Special Tribunal convened on 24 June 1906 and fifty-nine fellaheen stood accused of the premeditated murder of Captain Bull. Just three days later, on 27 June, the sentence was read out to the prisoners, 'a sentence to which there could be no appeal'.[55] The act committed was the 'intentional and previously arranged […] beating with the intention to kill' which 'caused the death of one of the injured'.[56] The sentence noted that the crime was committed mercilessly against 'blameless' and 'defenceless' officers who 'showed no enmity and did not provoke the aggressors'.[57]

The sentences were thus: Four fellaheen – Hassan Ali Mahfouz, Youssef Hussein Salem, Said Issa Salem and Mohamed Darweesh Zohran – were to be hanged; Two – Mohamed Abdel Nebi Moazzin and Ahmed Abdel Asl Mahfouz – were sentenced to penal servitude for life; One – Ahmed Mohamed Assissi – was sentenced to fifteen years of penal servitude with hard labour; Five – Mohamed Ali Abou Sanak, Bakli Ali Shaalan, Mohamed Mustafa Mahfouz, Raslan Said Ali and Asawi Mohamed Mahfouz – were sentenced to seven years of imprisonment with hard labour; Three – Hassan Ismail Assissi, Ibrahim Hassan Assissi and Mohamed el Ghurbasi Said Ali – were sentenced to receive fifty lashes and a year of penal servitude, and five – Said el Afi, Azab Omar Mahfouz, Said Suleiman Kheirulla, Abd el Ali Hassan Ibrahim and Mohamed Ahmed Assissi – were sentenced to fifty lashes.

The remaining defendants were acquitted.[58] The court ruled that the moudir (governor) of Menoufiyyah province should enforce the sentences aided by Egyptian police forces. One day later on 28 June the hangings and floggings took place in front of families, friends and crowds from all over the Menoufiyyah province in the centre of Dinshaway 'almost on the

[55] The Tribunal was established under an 1895 Khedival decree which prohibited appeal. Egyptian Gazette (n 45).
[56] *Ibid*.
[57] Sentence as printed in Egyptian Gazette, *Ibid.*
[58] *Ibid*.

very scene of the attack made on the party of the officers'.[59] A journalist for the *Egyptian Gazette* who witnessed the executions stated that 'every now and then a loud wail from the women came from the village, but save for this all was strangely quiet.'[60]

The evidence and testimony used to quickly 'prove' the 'premeditated murder' of an officer by a group of fellaheen is littered with emotive language that casts the British soldiers as innocent and defenceless. As a result of the 'humanising' effects of law, the fellaheen are cast as a calculating yet irrational group without a reasonable motive. Furthermore, these proceedings even note that the forensic experts refuted that the cause of death was a blow to the head. That this evidence seems to have been cast aside speaks to the lack of any accountability throughout the trial and further suggests the political nature of the Special Tribunal and the hangings and floggings that followed it.

4.5.2 Narratives from Egypt: The Maiden of Dinshaway

The section presents the events of Dinshaway narrated by Mahmud Tahir Haqqi in his novel *The Maiden of Dinshaway* ('Adhra Dinshaway). The novel became widely popular particularly because of its use of Egyptian colloquial Arabic ('amiyya) but was also critiqued because of it.[61] Fahmy notes that although the novel 'lacks literary sophistication and reads more like a documentary of the events of Dinshaway than a true novel, it served the purpose of nationally memorializing the Dinshaway incident'.[62] In this chapter, Haqqi's novel acts as a form of testimony for the fellaheen which is otherwise absent in the colonial records of the trial.

[59] *Ibid.*
[60] *Ibid.*
[61] Fahmy notes that literary conservatives disapproved of the use of colloquial Egyptian. Ziad Fahmy, *Ordinary Egyptians: Creating the Modern Nation through Popular Culture* (Stanford University Press 2011) 94.
[62] *Ibid.*

Haqqi's novel begins with a conversation between characters from the village about the British coming to shoot their pigeons each year. They do not know if the British will come this year. The character Muhammad Zahran explained that he had previously complained to the omdah about the British who shoot pigeons, but that nothing had happened.[63] The conversation continues:

'"Why don't we stop them?"
"Who can stand in their way? They own both land and sea."
"Let them even kill us. It's God's will."
"Can't we report the matter right now?"
"Report to whom? Nobody can dare to question anything they do."'

The fellaheen's resignation to the officers' killing of their pigeons is described as 'nurtured by decades of abject poverty and brutal oppression'.[64] In Haqqi's version of the events, the British officers decide that there is no need to get a permit to shoot because the Egyptians, fearing the British, will allow them what they desire. The conversation between the officers proceeds thusly:

'"The Egyptians fear the British the way cowards dread the might of the brave. I've never seen such hypocritical and bizarre people!"
"… So it's the same here as in India?"
"As in all the Orient!"'

[63] Haqqi (n 1), 20.
[64] Haqqi (n 1), 6.

On their way to Dinshaway, the soldiers' guide, 'Abd al-'Al Saqr, asks an old man whether hunting is forbidden in this area. The man replies that "it is not allowed around houses and barns. However, if they want to hunt, they should move away a little farther". The officers begin shooting pigeons and do not stop when they set a barn alight. Mabrûkah, the wife of Muhammad 'Abd al- Nabî who appears in the British version, is killed by a stray bullet. Haqqi describes Mabrûkah's husband, Muhammad, bent over her, shedding tears of grief while his barn burns.[65] As in the official British archives, secondary literature on the event is torn over whether Mabrûkah was killed or recovered from her injuries, and according to Fahmy, a female villager was 'presumed dead'.[66] This speaks to the lack of importance given to documenting gendered subjects.

A struggle breaks out and, after threatening and slapping one fellah, Captain Bull is hit on the head with a stone and Major Pine-Coffin's arm is broken. Bull is found later, barely alive, by a fellah named Sayyid Ahmad Sa'id who brings him water. Bull dies, and presumed to be the culprit, Sa'id is murdered by a soldier. According to Haqqi 'there is no deliberate attempt on their [the fellaheen] part to kill any of the officers, but to defend their lives and possessions'.[67] When Lord Cromer hears of the incident at Dinshaway he is irritable and says to Mr Mitchell:[68]

> Don't forget to deal this double blow to the Egyptian nation. The first blow is the appointment of al-Hilbâwî as public prosecutor. The second is the harshness of the sentences which will make them shudder with terror. I shall immediately order the ministers of the Egyptian government to establish the special court.

[65] *Ibid*., 26
[66] Fahmy (n 61), 92.
[67] Haqqi (n 1), 6.
[68] Presumably Mr Mitchell-Innes, Under-Secretary of State for Finance in Egypt.

In Haqqi's novel, the Special Tribunal is described in a ridiculing manner, highlighting the absurdity that such a process could be taken for justice. At one point, the public prosecutor requests two litres of eau de cologne 'to repel the offensive odor of the defendants'. Muhammad Darwish Zahran is identified by Pine-Coffin as the ringleader of the fellaheen, and we are led to understand that Pine-Coffin is making up accusations based on who he does not like the look of: in reality he cannot distinguish any of the accused. The book records the controversial decision to have the Special Tribunal overseen by the nationalist figurehead Ibrahim el-Helbawy who acted as public prosecutor who pleads:

> Does the murder of a peasant woman, or even ten of her kind, justify pulling the gun from the hands of a senior officer? This is an unforgiveable crime. Suppose, for the sake of argument, your honors, that the officers killed all the fellahin, burnt all their barns, and shot all their pigeons. Are they to blame for that? Wasn't the trip intended only to shoot pigeons and not people? While the officers were enjoying themselves, this happened by accident… In short I ask the court to wipe out the whole village of Dinshway and to condemn all these stinking defendants to death.[69]

In Haqqi's version, the sentences are read out word for word as they are in the official British records. The hanging and floggings take place publicly in Dinshaway. Haqqi describes it as the same square where the first clash had taken place, 'in that rectangle, whose ground was covered with cruelty and whose angles bespoke harshness, the instrument of crucifixion and torture was also erected'.[70] The novel closes in anguished cries:

[69] Haqqi (n 1), 42.
[70] *Ibid*., 45.

> Dinshway! Dinshway! Your very name now inspires awe and terror. So forgive me if I bid you adieu for the last time! … Dinshway! Dinshway! Let your name be immortalized. But what kind of immortalization?! Don't forget, Dinshway, to tell your children in the future generations about your afflictions, so that they can learn how civilized the twentieth century can be under British domination![71]

The way in which the events of the massacre have been variously remembered, memorialised and forgotten provides clues about which forms of violence are made acceptable and the role that law and its actors play. Cultural and intergenerational reproductions of the events of Dinshaway provide a powerful platform for critiquing the reliability of the evidence presented at the Special Tribunal itself, and also of the larger question of how law was used by the British during this period. That Haqqi's novel reads more as a documentary of events brings the style of the prose closer to the official tribunal evidence that is documented in the National Archives. This creates an almost eerie effect for the reader: when both forms of documentation read as trial evidence, (how) can we distinguish between fact and fiction? More importantly, what are the social, political and economic dynamics that inform the constructions of 'facts', 'truths', 'evidence' and 'fictions' in these cases? And perhaps most importantly for a genealogical study, how have different narratives of Dinshaway imagined the law to have been either suspended or present, and how were assumptions of guilt instrumentalised by the colonial authorities as a form of pre-emptive governance?

Reading the two narratives on Dinshaway together exposes how this case was carried out to construct the fellaheen as pre-emptively plotting the murder of British soldiers, thus helping Cromer to quash resistance. First, the narrative as accepted by the Tribunal was that the

[71] *Ibid*., 48.

fellaheen had no reason to be angry with the British soldiers. The fellaheen's claim to their land and property, and also the death of Mabrûkah, are discarded as unimportant but crucially as irrational reasons to launch an attack. The absences and silences around the death of Mabrûkah 'abd al-Nabî in the British records are particularly telling of not only the status of Egyptian peasant women in the eyes of the British, but also of the gendered basis of evidence itself. As suggested by both records of the events, Mabrûkah's death was not considered a potential reason that could have incited the fellaheen to attack the officers. Her death is even disputed by certain sources, many of which make the point that the gun that killed her accidently exploded when the fellaheen tried to wrestle it from Lieutenant Porter. In Haqqi's narrative, the prosecution's farcical question, 'does the murder of a peasant woman, or even ten of her kind, justify pulling the gun from the hands of a senior officer?', amplifies and makes clear what is not being said in the 'official records'.

Second, the disregard of the fellaheen's property: their land and their pigeons, or as Haqqi refers to them, their 'sustenance',[72] is indicative of the imperial ideology of 'uncivilised' peoples as 'wild, promiscuous, propertyless and lawless',[73] and further, of these 'failings' as being 'physically inscribed into the Egyptian landscape at dire cost to the country's productive potential'. [74] The large scale policies of agrarian reform explained earlier were shaped under the rhetoric of Egypt giving its 'consent'.[75] The British framed themselves not just as helping to rid Egypt of its debt, but also as bringing a whole new package of social reforms. The redevelopment of lands and roads was therefore framed as helping towards the goal of 'eliminat[ing] patterns of spatial inequality' that occurred with the private ownership of land.[76]

[72] Haqqi (n 1), 26.
[73] Fitzpatrick (n 26), 72.
[74] Jakes (n 36), 63.
[75] Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (Verso 2013) 89.
[76] Jakes (n 36), 67.

This allowed for the requisition of land which, because it was compensated, was cast as helping towards 'public utility'.[77] The non-recognition of the fellaheen's property then, sits within the wider ideological and political-economic considerations of the British occupation, where the fellaheen's property rights were undermined twofold: first, through a dehumanising framework, and second through infrastructural reform as being 'necessary' for the public good. The refusal to recognise Mabrûkah's death and the destruction of property as motivations for self-defence is therefore possible because of the mythology of racial and gender difference upon which the law is based.

The depiction of the Tribunal as 'necessary', and as even providing some level of 'justice', helped normalise this gendered and classed imagery. The Tribunal was established not under British jurisdiction but under an 1895 Khedival decree which provided for such a measure in the case of an offence committed against soldiers or officers of the British Army.[78] This decree had been arranged by Lord Cromer and signed off by the Egyptian government under his encouragement.[79] To MPs in Britain demanding to know the legality of the Special Tribunals, Foreign Secretary Edward Grey explained that while flogging was no longer allowed under the ordinary criminal law of Egypt, and while no stipulation as to the character of punishment to be inflicted was actually noted in the Decree of 1895, under article 5, the Decree 'gives the Court full discretion as to the punishments to be inflicted'.[80] The Decree further provided under article 4 that there shall be no appeal from the judgement pronounced by the Special Tribunal.[81]

[77] *Ibid*.
[78] HC Deb 15 November 1906, vol 165, col 100-1 <https://api.parliament.uk/historic-hansard/commons/1906/nov/15/outrages-on-british-soldiers-in-egypt#S4V0165P0_19061115_HOC_124> accessed 27 September 2021.
[79] See note 27 in Luke (n 120).
[80] HC Deb 12 July 1906, vol 160, col 1054-7 https://api.parliament.uk/historic-hansard/commons/1906/jul/12/the-denshawi-trial accessed 27 September 2021.
[81] HC Deb 5 July 1906, vol 160, col 225-8< https://api.parliament.uk/historic-hansard/commons/1906/jul/05/the-denshawi-affray> accessed 27 September 2021.

Despite this, the British were able to distance themselves from the 'materiality of the excessive violent legalities in which they were implicated',[82] through framing the event as an Egyptian invention. When detailing the Tribunal to MPs, Grey carefully noted that Lord Cromer had been absent during the Tribunal, and 'in any case, the arrangements connected with the trial and the executions of the sentences were primarily under the authority of the Egyptian Government'.[83] As Esmeir understands it, the British constructed a 'split world' between an idealised imagination of a judicial order on the one hand led by the British, and a factual violent system of punishment on the other led by the Egyptians.[84] In this sense, even while accepting that Dinshaway was violent, the British narrative wrote it off as exceptional and necessary. Furthermore, the British government went to considerable lengths to frame the affair as simultaneously providing a nod to the institutions of justice. According to Grey, the Special Tribunal:

> […] was instituted to take the place of courts-martial; to insure that cases of this nature should be tried by competent judges acquainted with the country, customs, and language of the people; and, at the same time, to prevent any possible miscarriage of justice, by giving greater security to the accused than they would have had if tried by courts-martial.[85]

For Grey to claim that the Special Tribunal at Dinshaway provided a higher level of justice and security, when the Court expedited the mass public torture and execution of fellaheen on questionable evidence, shows not only how much distance Grey and other administrators took from actual colonial policies, but crucially exposes the level of violence innate to institutions of justice. Indeed, in the different context of American slavery and abolition, Hartman explains

[82] Esmeir (n 43), 255.
[83] HC Deb 5 July 1906 (n 81).
[84] Esmeir (n 43), 260.
[85] HC Deb 12 July 1906 (n 80).

the eventual freedom to be a recognised subject, to bear rights and to therefore deserve to be recognised by the law as a 'double bind', and that in fact, 'the stipulation of abstract equality produces white entitlement and black subjection in its promulgation of formal equality'.[86]

In this way, Dinshaway can be understood to be a key moment for the institutionalisation of pre-criminality. As it was at this moment in time, when surveillance structures were already developing, facilitated by infrastructure as Jakes notes, that two things happened: a pressure to bring about structures of 'justice' from outside Egypt, and simultaneously, a growing anticolonial backlash that the British pinned to the 'dangerous' and 'suspicious' characters that they were already categorising. Whereas in other colonial contexts, as Morton notes, the British narrative of peasant uprisings and insurgency was depicted as spontaneous, 'rather than the rational outcome of organised political resistance' which helped render uprisings as irrational and apolitical, the Dinshaway massacre in Egypt exemplifies the beginnings of peasant and working-class resistance being institutionalised as pre-meditated and calculated because of the 'humanising' effect of the law.[87]

4.6 Event Two: 'Rough justice' under martial law and the Shobak affair

Following the 1906 Dinshaway massacre and its framing as an exceptional moment of violence, a key justification for the implementation of martial law in 1914, rested on narratives that imagined it as comparatively humanising and civilising. As a reminder, British martial law was instituted amidst an entanglement of various overlapping forms of law, including Ottoman and French codes and forms of Islamic law, on top of the reforms implemented by the British from 1882, that meant the jurisdiction of a case was often fraught with complexities. This

[86] Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford University Press 1997), 116.
[87] Stephen Morton, *States of Emergency: Colonialism, Literature and Law* (Liverpool University Press 2012), 19.

section argues that it was through the framing of martial law as closer to a 'consensual' and 'just' ruling, that the British were in fact able to perpetrate increasingly systematic forms of violence. As illustrated below through the depiction of the 1919 Shobak affair, the quashing of anticolonial resistance included the purposeful destruction of village after village and the systematic attack and murder of fellaheen. Myths of Dinshaway continued to influence the way that the fellaheen were treated here as we can see the perpetuation of narratives around pre-meditation, suspicion, and their pre-criminal treatment.

As explained in Chapter Three, the implementation of martial law in 1914 functioned to bring the British in closer contact with large groups of Egyptian society in military and civil ways. As was provided for by section 3 of the *Proclamation of Martial Law in Egypt*, martial law was crucial in the requisition of land, property and infrastructure.[88] Furthermore, there was an increase in British and allied troops stationed throughout Egypt, and administrative systems were commandeered to further facilitate the economic needs of the larger war effort during World War One. The institutionalisation of military courts by martial law was framed as an 'impartial'[89] method of achieving justice, and military garrisons as an effective and 'peaceful'[90] means of restoring order.

The use of violence as a disciplinary device – or as General Sir Charles Gwynn referred to it, 'rough justice' – was considered exceptional but necessary and understandable. [91] Gwynn gives the example of an incident in 1919 where all the male inhabitants of a village were flogged as

[88] Proclamation by the General Officer Commanding His Britannic Majesty's Forces in Egypt 2 November 1914 in *War with Turkey: proclamation of martial law in Egypt* (The National Archives, Kew Gardens) FO 891/62/14.
[89] 'Martial Law in Egypt, 1914-23' pamphlet written by Sir M.S. Amos, August 1925 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/95.
[90] Charles W. Gwynn (n 82), *Imperial Policing* (Macmillan and Co. 1939) 80-81 <https://archive.org/details/in.ernet.dli.2015.275121/page/n77/mode/2up> accessed 26 September 2021.
[91] *Ibid*.

punishment for the murder of a soldier. This punishment was considered by the military authorities as a 'compromise' for the soldiers who had wanted to take violent revenge on the entire village. Describing the incident, Gwynn explains that, 'rough justice of this sort may have occasionally been used, but, on the whole, such cases, even if they occurred, were exceptional and the principles of avoiding unnecessary force and of all action likely to cause permanent bitterness were careful avoided'.[92] Contrary to Gwynn's claims as this section shows, it is precisely by examining these instances of 'rough justice' that the systematic violent treatment of the fellaheen, and the way in which claims of 'justice' obscure the everyday reality of their effect on society, become clear. The following section analyses witness statements testifying to actions by soldiers that have a stark similarity to the events at Dinshaway but that did not have the same resonance as a 'turning point' because of the way they could be cast as 'normal'.

4.6.1 1919: The Shobak affair

A sizeable folder of papers located in the British National Archives documents official complaints and testimonies taken from Egyptian fellaheen from villages along the railway line south of Cairo in 1919. Two separate sets of procès-verbal record the testimonies of twenty-six fellaheen and five police officers regarding systematic acts of violence perpetrated by British and Australian troops in March and April 1919. While the existence of witness statements for the Shobak affair could be understood to suggest increased legal accountability since the Dinshaway massacre, it is necessary to interrogate what 'truths' are being presented and what actions were nonetheless permitted. I use these documents to outline the sequence of events in this section. The violence spread over fourteen days as the soldiers travelled down each stop on the railway, looting and burning each village to the ground. The raids and attacks

[92] *Ibid.*

were variously explained by the army as necessary to recover any illegal arms and as a collective punishment for recent damage made to railway lines.

Sixteen days prior to this violence, on 9 March 1919, one peaceful protest of students at Al-Azhar University in Cairo saw hundreds arrested under Law 10/1914 for Assembly, and some wounded and killed by British machine gun fire.[93] People up and down the country demonstrated their outrage at this violence including by cutting railway line connections.[94] Factory workers around the country began waves of strikes which were a crucial mechanism of the 1919 revolution. The sugar factory at Hawamdia was no different, and soldiers had been stationed there to keep guard and prevent locals from demonstrating. This was the factory from which the soldiers began to make their way down the railway line, destroying villages.

On 25 March 1919, British and Australian soldiers, accompanied by Egyptian police officers, forced their way into the homes of the fellaheen of el-Azizia and Badrashein villages on the pretence of searching for arms. According to the testimonies of eleven village officials and four Egyptian police officers, the soldiers demanded all valuables including jewellery and money, and then burnt the houses to the ground overnight. The fellaheen themselves were violently attacked and in many cases, raped. Those who tried to escape from the villages were arrested.[95] The omdah of el-Azizia, Dessuki Ibrahim el Dessuki Rashdan, described scenes where houses were burnt despite people still being inside. All the geese of the village were slaughtered and

[93] Report dated 29 March 1919 in *Egyptian delegation to the Peace conference, collection of official correspondence from November 11, 1918, to July 14, 1919* (Paris Peach Conference 1919), 37 <https://archive.org/details/egyptiandelegati00pari/page/36/mode/2up> accessed 27 September 2021.
[94] *Ibid*., 38.
[95] Procès-verbal of Dessuki Ibrahim el Dessuki Rashdan, Omda of Azizia, 27 March 1919 in *Foreign Office and Foreign and Commonwealth Office: Embassy and Consulates, Egypt: General Correspondence* (The National Archives, Kew Gardens) FO 141/825. N.B. subsequent witness statements are all from this same file unless otherwise indicated.

wrapped in sacred flags only used for funerals. In addition, 174 houses were burnt. Soldiers indiscriminately fired at houses and bayonetted people who resisted.

It was estimated by the Giza Police Captain that the total monetary losses from the 304 villagers of the villages of el-Azizia and Badrashein amounted to £LE 15887.975.[96] Later, Rashdan was told that this collective punishment was for the people of el-Azizia because some officers had been molested while visiting some nearby ruins, and that the people of el-Azizia and Badrashein had conspired to burn the railway sections of Hawamdia and Badrashein.[97] Rashdan and others were forced to sign a confession that read as follows:

> We the Omdas and Sheikhs of El Azizia and Bedrechein regret the destruction of the Railway Stations and the wounds caused to the British soldiers. We admit that what has befallen our villages is just and right and we undertake to offer men for labour without pay, and that we are to be court-martialled in case of delay.[98]

Mohamed Manzur el Dali, the omdah of Badrashein recounted a similar story that took place on the same night. In his village, seven people were shot, three of them killed outright.[99] Many who gave evidence corroborated that women had their clothes ripped off and were raped, but that 'the people would conceal this fact in shame of permanent disgrace'.[100] Some soldiers attempted to rape a woman named Alieh, and when she struggled, they hit her over the head with a rifle blow that killed her.[101] Contrarily, a visiting British representative noted two months later that:

[96] Police Report by Bayoumi Osman, Captain of Giza Police Station, 27 March 1919.
[97] Procès-verbal of Dessuki Ibrahim el Dessuki Rashdan, Omda of Azizia, 27 March 1919.
[98] *Ibid*.
[99] Procès-verbal of Mohamed Manzur el Dali, Omda of Badrashein, 27 March 1919.
[100] Procès-verbal of Goma Abdullah, Sub chief of guards of Azizia, 27 March 1919.
[101] Second procès-verbal of Mohamed Manzur el Dali, Omda of Badrashein, 31 March 1919.

> No single authenticated case of rape has come to my notice since I arrived in Cairo though owing to searching of villages for arms, women's quarters in native houses have necessarily been entered which is contrary to Moslem habits and quite sufficient in itself to start such rumours among Egyptians.[102]

Accessing gendered spaces is described as necessary by this British official through a culturally essentialist argument that casts Islam as having irrational sensitivities and traditions. The narrative that Egyptians exaggerate acts of violence plays out here as it did throughout the Dinshaway Special Tribunal.

In one testimony, after corroborating the raids, violence and murder, Abdel Meguid Sarwa the Egyptian police officer who accompanied the army officers, explains that when he refused to be involved in the forced confession, the British Colonel overseeing the official response to the events 'flew into a rage and threatened me angrily that in case of my failing to sign he would consider me as an accomplice to them [the fellaheen] in the destruction of the railways'.[103] Sarwa describes the jewellery that he later saw soldiers openly exchanging in the streets and says that he saw the officers cooking and eating the geese. The soldiers were also reported to have stolen sugar from the factory they were guarding.[104] According to Sarwa, when asked about the destruction, theft, assault and murder, the Colonel stated that:

> The soldiers seeing some inhabitants smuggling arms and escaping from the houses tops, fired at them. As to the fire, it might be that the flames [spread] owing to a house which took fire spreading it to the others owing to the lack of extinguishing hands.[105]

[102] HM Representative at Berne, 27 May 1919.
[103] Procès-verbal of Abdel Meguid Sarwa, Police Officer at Hawamdia outpost, 1 April 1919.
[104] Letter from Police Officer at Hawamdia outpost, 29 March 1919.
[105] Police Report by Bayoumi Osman, Captain of Giza Police Station, 27 March 1919.

More procès-verbal from the days following in early April testify that the soldiers continued to move South from village to village, raiding the houses and assaulting fellaheen. Between 3 and 7 April the soldiers attacked the villages of Nazlet el-Shobak, Beni Suef, Ezbas, Tazmant, Ashmant, Maimoun and Wasta Markaz.[106] The sustained and systematic attacks on multiple villages, themselves facilitated by the easy access provided by the modern railway stations, should be understood as part and parcel to a Britain not quite yet ready to relinquish its control of the semi-colony. The blue dots on the map below mark the stops along the railway line where these attacks took place.[107]

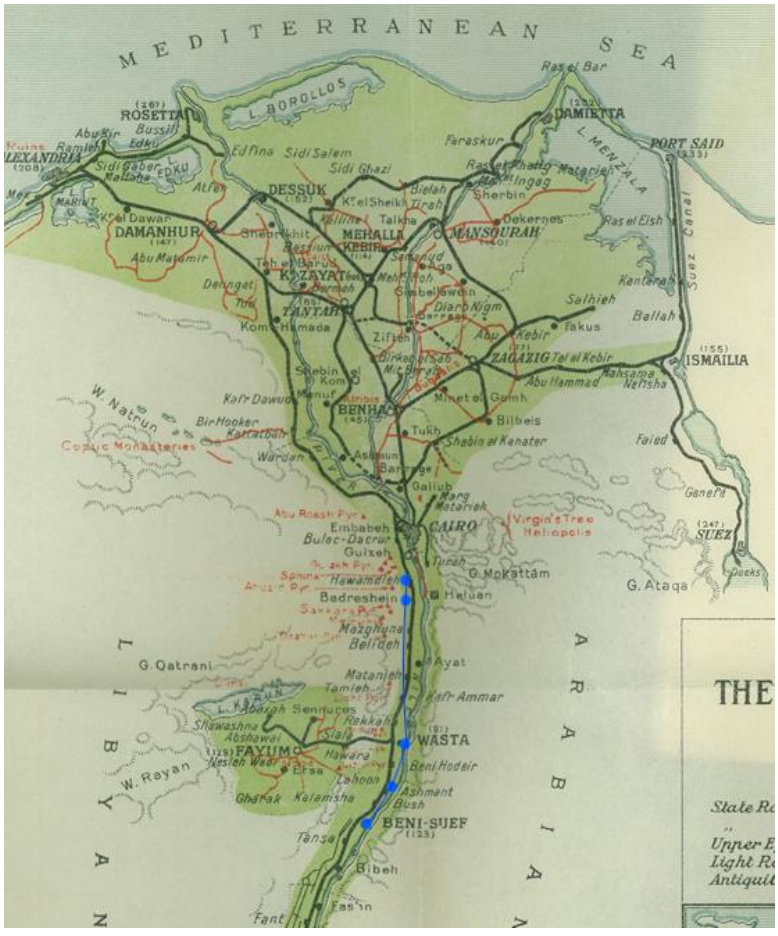


Figure 3: Map marking the Shobak Affair, 1919

[106] Report by Mudir Beni Suef, 7 April 1919.

[107] The Railway System of Egypt in *Maps Historical Collection* (The American University in Cairo) DT45. E4 1 909 <http://digitalcollections.aucegypt.edu/digital/collection/p15795coll6/id/151>.

In a second procès-verbal carried out with the residents of Nazlet el-Shobak, the omdah's son, Abdel-Latif Abou el-Magd testified that five days after the attacks on el-Azizia and Badreshein, his village had been warned to be compliant with the arrival of the soldiers. Hearing about the attacks in the north, the villagers of Nazlet el-Shobak 'resolved to resort to absolute tranquillity'.[108] However, as before, the soldiers broke into houses on the premise of searching for arms. They stole valuables, burnt 144 houses out of 210, killed the animals, assaulted men and women. Abou el-Magd approximated that the soldiers killed 21 and wounded 12, some were burnt inside the houses.

At the time of testimony, Abou el-Magd was sure there were more deaths unaccounted for. His father, the village omdah, was taken away by the soldiers. Five village officials were buried alive to their waists, shot, and disfigured with bayonets.[109] A statement from Zenab Bint Khalil describes discovering that one of the men was her husband. She found him 'buried up to his waist, a bullet piercing his side and a wound in his neck'.[110] Khalil, like a number of other women also testifies to having been violated, and that her daughter was raped in front of her. Nearly all of the seventeen witness statements describe women being raped and shot if they resisted.

Another statement from Saw Eff. El Taher, a police officer stationed nearby, describes how he attempted to dissuade the soldiers from attacking and taking members of the village hostage. He explained to them that the village officials were trustworthy and always following the instructions of the civil authorities. However, El Taher goes on to explain how he was ordered by the Colonel not to interfere in the attacks. When finally, El Taher was able to enter the

[108] Procès-verbal of Abdel-Latif Abou-El-Magd, 12 April 1919.
[109] *Ibid.*
[110] Procès-verbal of Zenab Bint Khalil, 15 April 1919.

village, he rescued a number of women from the officers. Twice during El Taher's statement it is noted that he broke down into tears and had to stop the recording.[111] Contrary to two other statements by police officers who, similar to El Taher, frame themselves as despairingly obligated to follow the British demands, a statement on behalf of the soldiers reported that:

> The police officer is reported by all witnesses to have thoroughly concurred in the action taken. He states that SHOBAK was a very bad village and had always given him a great deal of trouble and that he was pleased at what had happened and that it would be a good lesson to the villagers. He stated that the 5 prisoners [those who were half buried and executed] were the worst characters and ringleaders in the trouble.[112]

Later, British officials accorded the blame of such crimes to the 'work of a small gang, and are in no way general to the majority of troops'.[113] The attacks were further downplayed by a *Report on Morale of the Troops* published on 31 March 1919, which describes how it was quite understandable for soldiers to feel anger and disgust 'at the behaviour of a people that has derived nothing but benefit and prosperity from the presence of the British Forces'.[114] The report suggests that the soldiers should be allowed a relaxation of local restrictions, to be more aligned with 'what is virtually a civilian army'.[115] The report notes the frustration and anger that many soldiers felt as having been conscripted to the Army of Occupation in Egypt. The papers do not record any penalty faced by the soldiers, however, it was not unheard of for lower ranking soldiers to face court-martial for violence such as this, which would suggest that the

[111] Procès-verbal of Sawi Eff. El Taher, 15 April 1919.
[112] Account of the 'Shobak affair' by Major GSI for Brigadier General, 4 July 1919.
[113] Letter from Major-General Commanding Delta District & L of C Defences.
[114] Quarterly Report on Moral of the Troops in the E.E.F as Gathered from their correspondence, 31 March 1919.
[115] *Ibid.*

army Generals continued the narrative of 'compromise', 'coercion and consent' when negotiating between Egyptians and British soldiers.[116]

The method of recording violence at Shobak, and the seeming 'care' and effort which has been put into interviewing and translating the witness accounts of tens of fellaheen could be read as suggesting that the British administration were taking such incidences more seriously since the legacy of the Dinshaway massacre. However, it is necessary to think further to examine how such evidence is presented in order to get a sense of the multiple meanings behind it and the forms of governance it helps produce. As Suresh suggests, legal processes themselves are productive of social power, forms of governance and juridical truth.[117] To suggest that the 'truth' that is being produced here is one of the British at fault, however, does not do justice to the systematic violence that was essentially still allowed for (and that indeed was effectively written off in the Indemnity Act as we saw in Chapter Three) throughout 1919 and onwards. Instead, juridical truth needs to be contextualised in the wider archive and forms of knowledge production circulating at the time.

As historians such as Stoler explain, archives in excess belie the seemingly smooth, accountable, and 'just' forms of governance and sense of self that colonial governments desire to present. She describes such archival entries as the products of 'bureaucrats eager to be viewed favorably by their superiors, on whose judgement their salaries, positions, and pensions would depend. They are careful to deflect attention from their own faults, add small flourishes that affirm their loyalties…'.[118] Therefore, archival materials such as the above presentation of

[116] In another case, 19 Australian, New Zealand and British soldiers faced court-martial for destroying properties in Cairo's red-light district and assaulting civilians in 1916. As a penalty, the Australian, New Zealand and British consuls each paid their share of damages proportional to the number of their soldiers involved. This is explored further in Chapter Five.
[117] Suresh (n 22).
[118] Stoler (n 3) 232.

testimonies help construct narratives of ‘good governance’. In other words, providing room for the fellaheen to present their witness statements is suggestive of the values of accountability and justice that martial law was cast as providing. Furthermore, the law here is also used as a tool to distance the British authorities from the acts of violence. By suggesting that the guilty parties may be a small group of British and Australian soldiers, the colonial occupiers excuse such violence as ‘exceptional’ or unsurprising for soldiers who naturally display such behaviour. In this way, the legal process provides a normalising effect of violence.

Finally, despite the testimonies, the essentialising narratives of the ‘dangerousness’ of the fellaheen and the necessity to govern them with increased violence persists. This was bolstered by martial law which provided increased justification to quash any threats to the colonial authority. The fellaheen, who had already been marked as a dangerous and unpredictable group through the Dinshaway massacre, were cast as a legitimate target of collective and systematic punishments. As explained in Chapter Three, such collective punishments, also instituted by Law 10/1914 for Assembly, should be thought of as parallel forms of regulation to contemporary pre-criminal offences and punishments in that they do away with the need for individual and tangible forms of evidence and mark a collection of people as one threat based on identity or proximity to a crime.

4.7 The normalisation and persistence of colonial violence

In both the cases of Dinshaway and Shobak, British soldiers trespassed upon lands and destroyed the property of the fellaheen. In both cases, British soldiers violently attacked the fellaheen causing injuries and deaths. In both cases, a civilising narrative underscored the justification of violence, one where Egyptians could only learn from acts of violence. But whereas Dinshaway was and continues to be remembered as exceptional violence, the

systematic destruction of villages down the railway line in 1919 is less often used to exemplify the violence of the British occupation. In fact, the Shobak affair is rarely known by Egyptians I have asked. What happened between the two events that allowed for this different construction of violence and what does it suggest about the normalising ability of the law and the persistence of colonial violence?

It is my contention that in framing Dinshaway as an exceptional moment of violence carried out by Lord Cromer, subsequent administrators in Egypt could justify the promulgation of martial law as a comparatively 'just' institution. This is corroborated by the relative silence around the Shobak affair. Furthermore, by including witness statements of fellaheen in the hegemonic archive, the Shobak affair becomes more of a testament to the British following a 'normal' legal procedure, rather than a demonstration of colonial violence. In this way, it is possible to look to this moment in Egyptian history as the start of increasingly systematic institutionalisation of categories of dangerousness within the law. While World War One played an important role in the deepening of class and racial divides, the normalisation of violence on an everyday basis in Egypt and the invisibilisation of the Shobak affair, I contend that it was the humanising framing of martial law that provided the structural justification and institutionalisation of such violence.

Dinshaway has been described as a 'turning point in British imperialism in Egypt'.[119] It is a historical event that Fahmy suggests points to the exceptional violence of the British administration, and one that helped galvanise anticolonial resistance.[120] An important remnant of the massacre was that it allowed the following Consul-Generals and High Commissioners

[119] Kimberly Luke, 'Order or Justice: The Denshawai Incident and British Imperialism' [2007] 5(2) History Compass 278.
[120] Fahmy (61), 92-93.

for Egypt (for our purposes, Eldon Gorst, 1907–1911; Herbert Kitchener, 1911–1914; Milne Cheetham, 1914–1915; Henry McMahon, 1915–1917; Reginald Wingate, 1917–1919 and Edmund Allenby, 1919–1925) to distance themselves from this 'exceptional' instance of violence and to prove their capacity for instituting 'humane' and 'just' legal systems. In doing so, parallels were often drawn between British martial law and a 'normal' regime of law as we saw in Chapter Three.

The Dinshaway Special Tribunal was condemned as a farce and a 'massacre', as 'excessive and mediaeval' by commenters inside and outside of Egypt, and subsequent administrators distanced themselves from it.[121] The massacre was condemned by Members of the British Parliament, too. Liberal MP John Mackinnon Robertson noted on 4 August 1906 that:

> The examination of fifty accused natives (sic) took but thirty minutes, and the bulk of the evidence was given by British officers. The papers which had been published alone sufficed to show that the charge of premeditation was not only false, but absurd. The only evidence as to premeditation was a suggestion that the fire broke out in the village.[122]

The case caused a stir in the UK House of Commons with many opposition MPs demanding to know how the executions and floggings could be justified, and whether steps would be taken to have sentences 'conducted in accordance with the usage of civilised nations'.[123] The

[121] Luke (n 119).

[122] HC Deb 4 August 1906, vol 162, col 1804-24 <https://api.parliament.uk/historic-hansard/commons/1906/aug/04/adjournment-autumn-sitting#column_1823> accessed 27 September 2021.

[123] HC Deb 2 July 1906, vol 159, col 1411-4 <https://api.parliament.uk/historic-hansard/commons/1906/jul/02/the-denshawi-executions#S4V0159P0_19060702_HOC_195> accessed 27 September 2021; See also: Parliamentary Question 7 July 1922, in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/32. Such queries were also frequently accompanied with a concern that a sustained occupation of Egypt would require British tax-payers' money to finance the suppression of revolts. While anticolonial sentiment grew throughout the British Labour party particularly after the First World War, the party still held many conservative views and 'was not… committed to rapid decolonization'. See: Kenneth O. Morgan, 'Imperialists at bay: British labour and decolonization' [2008] 27(2) The Journal of Imperial and Commonwealth History 233.

massacre also continued to haunt the psyche of the British administration, as shown by their determination to distance themselves from it. For instance, in 1908, in reaction to the publication of a story in the newspaper *L'Etendard Egyptien*, entitled 'A New Dinshaway' (un nouveau Denchaway) – which accused the British in Sudan of massacring seventy Sudanese prisoners – the Prosecutor General was ordered to examine whether the editor of the piece could be prosecuted under the penal code. In the case that a prosecution was feasible, Consul-General Sir Eldon Gorst (who took over from Cromer in 1907) offered that he would 'not object to the Egyptian authorities taking proceedings against him [the newspaper editor]'.[124]

All in all, attempts to distance the British from Dinshaway and to render the violence as an Egyptian fault – such as the appointment of Egyptian officials to administer the Special Tribunal and the punishments – were unsuccessful, as we can see in the force of the condemnation of Cromer's actions and the increasing anticolonial resistance that followed. What the distancing attempts do point to however, is a shift in the narrative of the occupation, towards one which began to draw parallels between British martial law and a 'normal' regime of law by constructing a contrast 'between the hateful memory to the average Egyptian of the Special Court that tried the "Denshaway" case, and the reputation for impartiality and patience acquired by the Military courts of 1914-23'.[125] Therefore, the Shobak affair could be comparatively rendered a 'normal' part of a 'humanising' martial law whereby such incidences of systematic violence were justified as the necessary compromise of 'rough justice'. Furthermore, the attention paid to fellaheen testimony in the archives provided the colonial authorities with both distance from the violent events (blamed as they were on a handful of rogue soldiers) and 'proof' of their humane and consensual legal institutions.

[124] Letter from Sir Edward Grey to Sir Eldon Gorst 31 May 1908 in *Egypt* (The National Archives, Kew Gardens) FO 800/47/17.
[125] Letter to Mr Wiggin 19 July 1925 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/94.

Looking to Egyptian forms of cultural memorialisation and storytelling, the violence that Haqqi portrays as lasting in the grounds and the name of 'Dinshaway' can be traced in the years and decades following the events. The violence of Dinshaway remained for the fellaheen in the way their village and province were thereafter regulated. Immediately following the executions, the British dismissed the original ghafirs (watchmen) of the village and replaced them with one sheikh, one wekil (deputy) and twenty specially selected ghafirs, the salary of which was to be paid by the residents of Dinshaway.[126] This method of imposing fines on districts and communities where outrages (the term used for violence against British officials or armed forces) occurred was carried into martial law, and 'considered to be the most effective method of dealing with the indifference of inhabitants towards crimes of violence'.[127] These collective punishments can be thought of as indicating a form of pre-criminality, as they not only intended to punish after the 'fact' of crime, but also to 'predict' any future criminal occurrence through a calculation of risk based on geographical and class-based factors.[128] The Dinshaway Special Tribunal therefore played a part in marking the fellaheen as 'dangerous' and 'plotting' for years to come.

Furthermore, for decades following Dinshaway, army patrols of the Province of Menoufiyya were increased. These patrols are remembered by Kamal el-Helbawy, who was born in a village nearby Dinshaway in Menoufiyya Province in 1939. Kamal remembers the following from when he was a boy of around six to nine years of age (dating approximately 1945-1947):

[126] HC Deb 5 July 1906 (n 81).
[127] Reuters Telegram on HC Debates 9 March 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/64.
[128] This is reminiscent of crime prediction models that would come less than a century later in the 1990s.

> Because of the Dinshaway event, in 1906, so it [the Menoufiyya governate] was patrolled by the British troops a lot. And there was sensitivity in the people's minds and hearts against the occupation troops, not against the foreigners or the British. I can't say it's anti-British because the Egyptians love foreigners, help them, and welcome them. But they were against anti-occupation troops especially.[129]

Kamal was careful to point out to me that Egyptian resistance was not aimed at British citizens themselves, but at the army of occupation based in the province. That the army themselves would symbolise the violence of coloniality to the fellaheen and not generally 'Britishness' is perhaps suggestive of the great presence that troops had in the countryside in order to facilitate infrastructural reform.[130] It could also reflect Kamal's position as an Egyptian living in the UK today.

This is not to say that violence towards British citizens did not occur, indeed the Dinshaway massacre helped further galvanise various forms of 'anti-British' and 'anti-government' organising that was already taking place.[131] In the years following, there were a number of assassination attempts aimed at members of the armed forces and civilians, such as the murder of a British professor of law in 1922.[132] Assassinations were also directed at Egyptian members of the panel who oversaw the Dinshaway Tribunal, including Prime Minister Boutros Ghali. Kamal continues:

[129] Interview with Kamal el-Helbawy, 1 April 2020, over the phone.
[130] Jakes (n 36).
[131] Badrawi (n 44), 3.
[132] Letter to Foreign Office 28 December 1922 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/51.

> I used to see some of them coming in small groups. [pause] Four, five soldiers, either on horses or in old vans or cars, and they used to sit sometimes near the railway station or near the canals, beside the main roads.[133]

By this time, around forty years after the massacre, the British influence had waned after Egyptian independence in 1922, but remained physically until 1956, however Kamal makes the connection between Dinshaway and both the British troops and fellaheen alike keeping their distance:

> They [the soldiers] did not enter the village because they were also afraid from the people and the farmers, because of their hatred to occupation [...] Children sometimes were happy to go and say: "Hello! Hello!" But most of the farmers were aware not to talk to them, and they [the soldiers] were not willing even to talk to the people sometimes […] Some of the people were happy to see foreigners, on horses or in cars, and some were afraid. Some women used to run away from them, and some farmers used to run away in front of British soldiers at that time.[134]

The Dinshaway incident caused great pain and outrage among Egyptians and was the source of political and media inquiry and condemnation in both Egypt and Britain for years to come. Nationalist leader Mustafa Kamil publicly and internationally condemned the incident alongside speeches he made outlining the demands of the nationalist movement.[135] It also became the subject of Egyptian cultural expression, including in the form of rural ballads, plays, poetry and novels commemorating the massacre.[136] The memorialisation of the massacre

[133] Interview with Kamal.
[134] Interview with Kamal.
[135] Fahmy (n 61), 92-93.
[136] *Ibid*., 93.

turned it into a 'national myth',[137] and according to numerous accounts, the 1906 executions ushered in the beginnings of the Egyptian uprisings and eventual 1919 revolution against the British.[138] Jakes notes that within weeks of the trial, anticolonial activists 'began devising an array of creative new practices to confront and challenge British rule'.[139]

The massacre has also remained in oral histories passed throughout generations for years to come as shown by Kamal, and my other interlocutors of younger generations who brought up the incident themselves in interviews. Kamal explained how:

> In the village the grandfathers and grandmothers usually tell their children and grandchildren stories before they go to bed, before they sleep. And they were talking about the red soldiers. *Al-asker al-ahmar*. The red soldiers coming on horses and many fiction stories as well. They did not only talk about realities or events, actual events like Dinshaway, but they created stories, fictions to get their children either frightened or to sleep quickly. So and ah, of course, bad behaviour, or some bad behaviour of occupation troops can be explained in an exaggerated way. You see the farmers used to exaggerate sometimes the stories about the British soldiers and sometimes you see, relate them to *ginn* or *shaytan* or some other unknown creatures.[140]

The slippage between factual narratives and fictional bedtime stories that Kamal describes above points to both the inherited memory of the massacre, and the material and physic effects it continued to have nearly thirty years later, used to teach lessons to children. While Kamal explains these oral stories as exaggerating the bad behaviour of the occupying troops in order to frighten children, the notion that Egyptians would exaggerate and embellish their testimonies

[137] *Ibid.*
[138] *Ibid.*, see also Jakes (n 36) 78.
[139] Jakes (n 36) 78.
[140] Interview with Kamal.

of violence committed by the British troops underscored the proceedings of trials and court hearings, if indeed complaints were ever listened to enough to reach this point.[141] Indeed, the inability, failure or refusal to listen to narratives of violence can in itself perpetuate and create new injustices.[142]

What is missing in these memories is any trace of the Shobak affair. While the differences between the two are wide ranging, such as the Shobak affair being part of a broader period of unrest and state violence in the run up to the 1919 revolution and the context of war and increased allied troops in the country, it is my contention that the ability to 'forget' such systematic violence importantly points to the normalising effects that martial law, being cast as 'normal' law, had. Indeed, the witness statements and their location in the colonial archive can be understood as attempts to prove transparency, accountability and justice all the while condoning and providing the space for such violence to happen under martial law.

4.8 Conclusions

The thirteen years between the 1906 Dinshaway massacre and the 1919 Shobak affair saw both a shift in British narratives of violence – away from exceptional and unruly violence towards the 'compromise' of 'rough justice' – and a move towards the institutionalisation of more systematic forms of violence including the gendered, classed and racialised underpinnings of evidence. The discourse of martial law provided the protection of legitimacy and thus everyday violence became more systematic.

[141] In his volume *Modern Egypt,* Cromer explained that in order to ensure the correct governance of Egypt, British Administrators must assert a reasonable and disciplined sympathy for the Egyptians, based on 'a careful study of Egyptian facts and of the Egyptian character'. Evelyn Baring, First Earl of Cromer, *Modern Egypt* (Cambridge University Press 1910) 570.
[142] Jill Stauffer, 'Listening to the Archive: Failing to Hear' in Stewart Motha and Honni van Rijswijk (eds) *Law Memory and Violence: Uncovering the Counter-Archive* (Routledge 2016) 35.

An important remnant, one that increasingly shaped how the fellaheen were policed, was the class-based marker of 'suspicion' and 'pre-meditative' criminality. This marker was produced and crystallised as a juridical truth through the administrative functioning of both violent events. It was seen in Dinshaway in 1906 in the hangings and floggings of fellaheen on the grounds that their evidence was inadmissible, and the following institutionalisation of increased surveillance and policing in the province. It was also seen in Shobak and other villages in 1919 where the fellaheen were marked as having 'conspired' to burn down the railway station at Badrashein. By the time of the Shobak affair, the marker had become increasingly normalised through the systematic forms of violence allowed for through the 1914 declaration of martial law. Central to this pre-criminality was the insistence upon collective punishments as not only responding to the supposed 'crime', but as a risk-based method of preventing future criminality. As explained in Chapter Three, the notion of collective liability was being written into Law 10/1914 on Assembly at this time.

The ability to mark the fellaheen as suspicious, dangerous, and criminal was facilitated by a discourse which framed them as essentially different in a 'propertyless' sense which was materially confirmed by British economic reforms such as land seizures. This discursive and material narrative allowed the Special Tribunal to discount any claim the fellaheen had to their property, thereby overlooking it as admissible evidence that they had any 'rational' reason to be angry with the Officers. The murder of Mabrûkah is also used to discount evidence provided by the fellaheen. The systematic rapes carried out in the Shobak affair are similarly exemplary of the gendered nature of property and the orientalist framings of available sexuality, whereby Egyptian women's bodies are understood to be accessible to white men and Islamic understandings of gendered space are understood as backward and to be disregarded

Modernising infrastructural reforms played an important part in the surveillance and disciplining of the fellaheen. As we understood from Jakes, this was already happening prior to 1914 where land reform was centralised in a concerted effort to not only bring economic aid but also to facilitate the knowledge about and surveillance of the agricultural communities. Dinshaway played a role in increasing the surveillance of the Menoufiyya province. With the beginning of World War One, military garrisons were again increased and more easily justified by the war effort.

In both cases, the narrative of exaggeration plays out and underscores the supposed inadmissibility of the evidence. The juxtaposition of Haqqi's short story and Kamal's memories of bedtime stories with the witness statements and 'official' evidence for both cases interrogates the impartiality of law and order in the colonies. My argument is not that Dinshaway should be exposed for its empty claims to justice, indeed it is quite clear that no one was fooled by this pretence. Instead, I contend that reading this high-profile case can tell us a lot about the systematic violence – such as that of the Shobak affair – that was thereafter buried in a period of emergency rule and that was presented for all intents and purposes as 'normal'. This exposes the normalising and legitimising effects of the law through its ability to distance colonial regimes from violence all the while institutionalising hidden and structural forms of violence.

In looking to the construction of juridical truths in British occupied Egypt, this chapter has demonstrated the racialised, gendered and classed underpinnings of legal evidence and its link to the justification of differential treatment for subjects framed as inherently 'dangerous'. In situating the development of this form of pre-criminality as part of the normalising effects of martial law, I have shown that pre-emptive practices were developed through forms of legal

and administrative governance in early twentieth century Egypt. This chapter has also depicted the importance of class-based logics in the presumption of criminality and the economic exploitation of the colonies. This is extended in the next chapter to show how the intersection of class, gender, race, and sexuality came to inform a conceptualisation of poor morality and hygiene as a marker of vulnerability and criminality and a justification for 'soft' and 'educational' methods of governance.

Chapter five: Colonial feminism and 'soft' governance

5.1 Introduction

This chapter builds on my previous two substantive chapters which demonstrated how the colonial deployment of racialised, classed and gendered hierarchies of humanity informed the construction of 'dangerousness' and justified the differential treatment of marginalised communities and the institutionalisation of pre-criminality. In this chapter I use postcolonial, intersectional, and queer feminist approaches to interrogate the work of colonial feminists[1] in British-occupied Egypt in their bolstering of categories of difference and creation of 'soft' methods of governance. The intertwined constructions of difference that mark subjects through forms of racialisation, class, sexuality, and gender shape my interrogation while the framing by government officials and British feminists, within and outside of Egypt, forms the central object of analysis.

This chapter shifts away from the colonial administration as the central producer of categories of suspicion and suggests a new genealogy for the contemporary development of counter extremism programmes. My analysis recognises how social movements, such as feminism, can be instrumentalised through legal projects that re-inscribe racial, gender and class difference as unequivocal truths that form the basis for state violence. Methodologically, this chapter establishes the value of a postcolonial, intersectional, and queer feminist approach that 'sees' the narrowness of feminisms that prioritise 'women' as an isolated category of inquiry and which, as this chapter shows, ultimately underpin colonial and civilising forms of governance.

[1] I refer to AMSH workers as 'colonial feminists' throughout this article because AMSH's theory of abolition was informed by a narrative of civilisation and was implemented by sending women out to the British colonies to 'educate'.

I first provide a short vignette from the British archives before presenting my introductory section and argument.

An archival snippet dated 17 September 1922 tells the story of a scandal that found its way to the local press in Egypt caused by then Liberal Home Secretary Mr. Shortt. Giving a speech in Newcastle Upon Tyne, a city located in the North-East of Great Britain, Shortt was quoted as saying:

> There is peril facing us in every quarter. That which is most imminent is the peril of the East. We are a great Mohammedan nation; the greatest, I believe, that exists to-day. In India, Egypt, and all over the world, we have Mohammedans who are part of our Empire, and are fellow-subjects with ourselves [...] we have trouble enough in Egypt amongst our Mohammedan fellow-subjects. And why? Because of misrepresentation and misunderstanding–because we have not been represented as the friends of the Mohammedan as, in fact, we are.[2]

The way in which this speech was represented by British newspapers caused a great deal of concern for Shortt at the time, as it was suggested that Shortt – and therefore Britain – continued to consider Egypt a colony despite the earlier declaration of Egyptian independence that year (28 February 1922) and the ongoing talks around the retraction of martial law. According to the British administration, the speech was said to have given rise to protests in Egypt.[3] Looking back to Chapters Three and Four, it is clear that this period was one of particular tension around how the British administration should be seen to be acting in Egypt in front of the newly

[2] 'Allies United: Mr Shortt on the Near East Peril. More Troops. Freedom of the Straits Essential' *The Observer (1901 – 2003)* (17 September 1922) <https://0-search-proquest-com.serlib0.essex.ac.uk/hnpguardianobserver/docview/480829353/D5192662241B49DDPQ/1?accountid=10766> accessed 27 September 2021.

[3] Letter from High Commissioner Lord Allenby 27 September 1922 in *Powers of the Egyptian Government and its change in status. Part 3.* (The National Archives, Kew Gardens) FO 141/430/6/5512/117.

founded League of Nations and interested parties back home: at this point it was considered not only crucial that it was understood that the British had handed over power to Egypt but also that any uprisings and crackdowns be seen as the fault of Egypt.[4] Shortt was presumably very quickly encouraged or ordered to make a statement following this speech, which was made on his behalf in the end by H.R. Boyd of the Home Office:

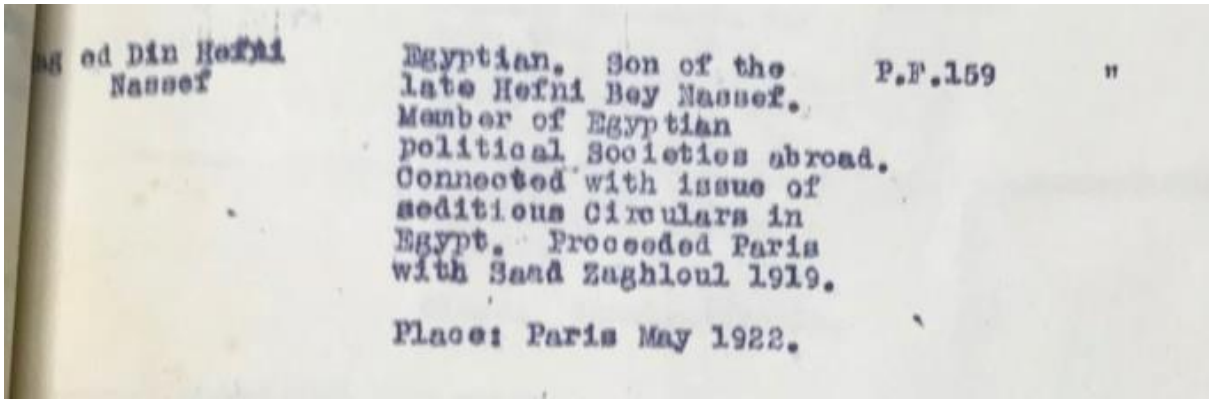
> Mr Shortt is in the North of England, but he desires me to say that he neither intended to nor did include Egypt when alluding to the Empire, nor did he in any way refer to the Egyptians as subjects of the British Empire. He has asked me to correct the misunderstanding.[5]

Shortt's misspeak points towards the fuzzy mistranslations that were just beginning to take shape towards the end of the British Empire. It raises queries around what it meant to be 'subject' of or 'friend' to the British Empire, how a certain, acceptable, and 'moderate' form of Islam was being folded into ideas of inclusivity and cosmopolitanism, and how this form was cast in opposition to the 'imminent peril' of the East (most likely referring to anticolonial nationalisms). While British citizens in the metropole were being told that Egypt had gained independence, they were not being told, however, about the continuing security work that was being carried out by the stationed administration in Egypt.

A second archival snippet dated 4 July 1922, shortly before Shortt's misspeak, was drawn up by the Department of Public Security in Egypt and reveals more about the methods used to separate 'friend' from 'peril'. The document consists of a twelve-page 'Provisional Special

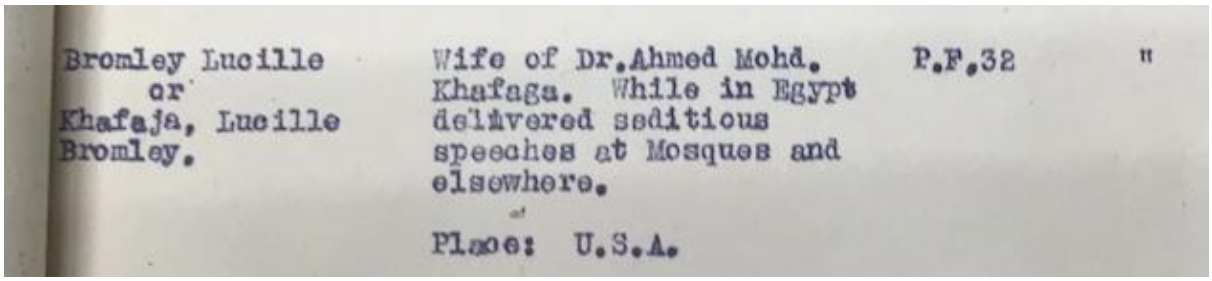
[4] Letter from High Commissioner Lord Allenby to Earl Curzon 3 April 1921 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/14.
[5] Letter from High Commissioner Lord Allenby 27 September 1922 (n 3).

List' – what we could consider today to be termed a 'blacklist'[6] – of Egyptians and foreigners who were to be stopped at ports and borders and to be 'arrested and disposed of in accordance with instructions given'.[7] Next to the name, a section labelled 'Particulars' lists an assortment of pieces of information, all varying from person to person. These include: present whereabouts as far as is known, race, family connections, date of deportation, date of birth, criminal interests, affiliation with infamous groups, and a description of the 'character' of this person. Next to this list of particulars is listed the file number and 'instructions' (i.e., how to deal with this person should they turn up at a port.) Below I have included some excerpts from this list so the reader may appreciate the details for themselves.



ed Din Hefni Nassef	Egyptian. Son of the late Hefni Bey Nassef. Member of Egyptian political Societies abroad. Connected with issue of seditious Circulars in Egypt. Proceeded Paris with Saad Zaghloul 1919. Place: Paris May 1922.	P.F.159	"

Figure 4: Excerpt 1 from 'Provisional Special List' 1922, The National Archives.



Bromley Lucille or Khafaja, Lucille Bromley.	Wife of Dr.Ahmed Mohd. Khafaga. While in Egypt delivered seditious speeches at Mosques and elsewhere. Place: U.S.A.	P.F.32	"

Figure 5: Excerpt 2 from 'Provisional Special List' 1922, The National Archives.

[6] Marieke de Goede and Gavin Sullivan note that blacklists, 'kill lists', and the proscription of organisations are productive methods of governance in the contemporary war on terror. 'The Politics of Security Lists' [2015] 34(1) Environment and Planning D: Society and Space 67. See also Gavin Sullivan, *The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law* (Cambridge University Press 2020).

[7] Provisional Special List 1 April 1922 in *Martial law: powers of the Ministry of the Interior* (The National Archives, Kew Gardens) FO 141/430/4/5512/12.

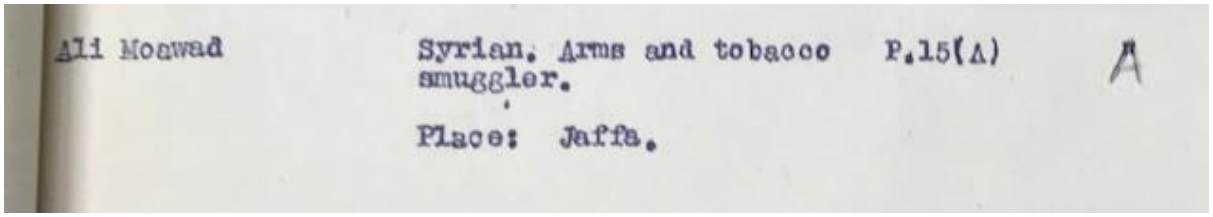

Ali Moawad Syrian. Arms and tobacco smuggler. P.15(A) A
Place: Jaffa.

Figure 6: Excerpt 3 from 'Provisional Special List' 1922, The National Archives.

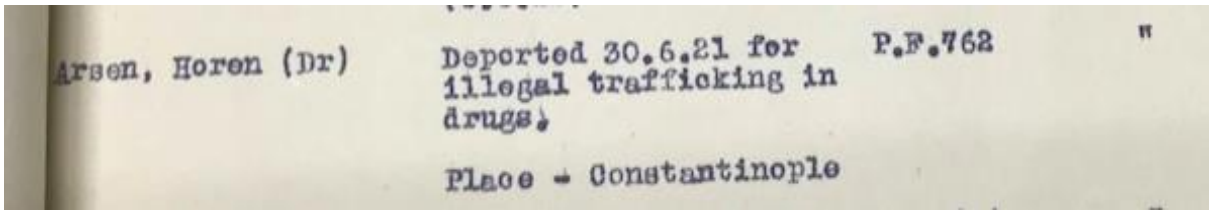

Arsen, Horen (Dr) Deported 30.6.21 for illegal trafficking in drugs. P.F.762 "
Place - Constantinople

Figure 7: Excerpt 4 from 'Provisional Special List' 1922, The National Archives.

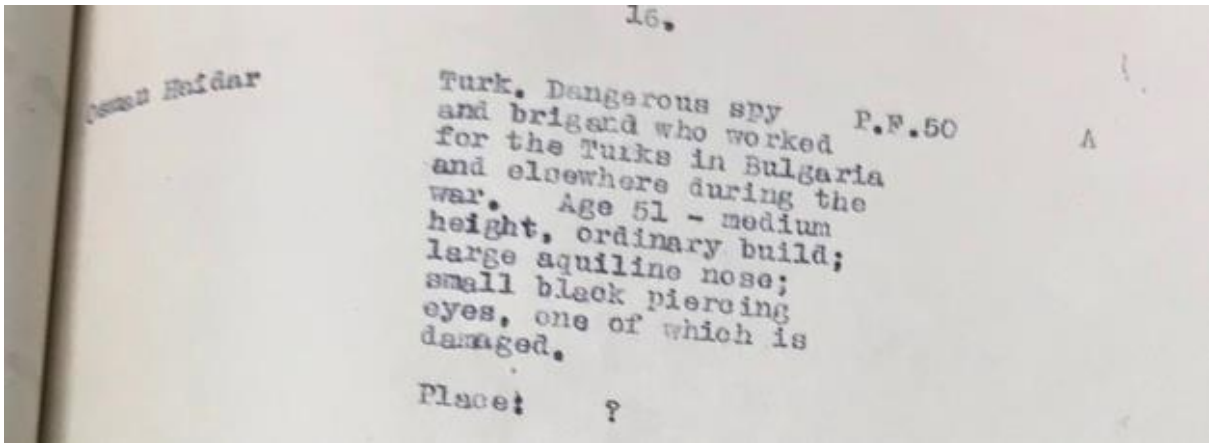

16.
Haidar Turk. Dangerous spy and brigand who worked for the Turks in Bulgaria and elsewhere during the war. Age 51 - medium height, ordinary build; large aquiline nose; small black piercing eyes, one of which is damaged. P.F.50 A
Place: ?

Figure 8: Excerpt 5 from 'Provisional Special List' 1922, The National Archives.

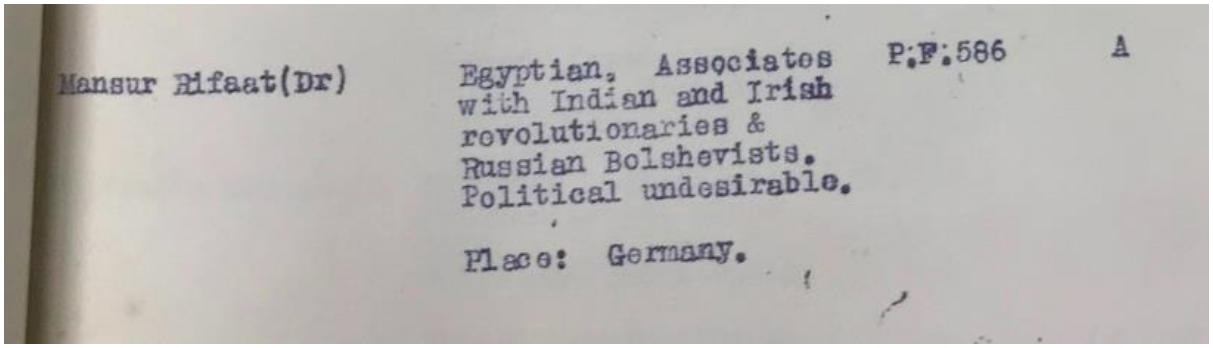

Mansur Rifaat(Dr) Egyptian. Associates with Indian and Irish revolutionaries & Russian Bolshevists. Political undesirable. P.F.586 A
Place: Germany.

Figure 9: Excerpt 6 from 'Provisional Special List' 1922, The National Archives.

Upon first inspection, the pages of names seem arbitrarily pulled together, the reasons given for deportation are wide ranging and include 'political undesirables', categorised as Bolsheviks, Anarchists, Communists, German sympathisers, Egyptian nationalists, hashish

traders, arms smugglers, white slave traders, student activists, doctors, journalists, and female family members of well-known political dissenters. Held together, these two records – Shortt's statement and the blacklist – suggest that this historical moment saw the re-shaping of a discriminatory British subjectivity that was premised on the inclusion of the 'right sort' of colonial subjects and the exclusion of those who posed 'imminent peril'. These documents also suggest the development of a narrative of risk-based and 'common-sense' law and policy, where the British were bolstering their borders in reaction to forms of intelligence work that relayed where uprisings and insurrections were (or should be) taking place. However, the subsuming of large differences under the singular category 'undesirable' suggests that there is much more going on here than the one colonial archive can offer us and further suggests the fluidity with which categories of threat, dangerousness and 'habitual' criminality are built.[8]

Therefore, this chapter explores different archival narratives of dangerousness, extremism, and immorality in order to interrogate the above framing of a homogenous 'perilous nationalism'. In not only attending to the framings of danger by the British administration but also, differently yet intersecting, with those of British abolitionist feminists from the Association of Moral and Social Hygiene (AMSH) present in Egypt, this chapter seeks to offset the official colonial narrative by looking to spaces that were not considered 'political', but 'vulnerable', to immoral/radical influences. In doing so, I demonstrate how a wider variety of people could be subsumed under the markers 'dangerous' 'immoral' and 'criminal', and how this is a central effect of modern law-making. This is particularly relevant when considering contemporary leanings towards 'softer' methods of countering terrorism and could point to the colonial co-operation with or co-optation of British feminist organisations. Reading between the lines of

[8] Mark Finnane and Susan Donkin, 'Fighting Terror with Law? Some Other Genealogies of Pre-emption' [2013] 2(1) International Journal for Crime and Justice 3, 10.

the spatialisation of perceptions of criminality and immorality, I demonstrate how the overlapping of 'perilous', 'narrow nationalisms' and 'unhygienic' and 'contagious' forms of (im)morality were understood by various authorities to be reproduced in the working-class and red-light districts of Cairo and other cities, thereby interrogating conceptualisations of the formal space of politics.

I argue that conceptions of vulnerability and immorality were shared among various groups of authorities – including the British administration, British abolitionist feminists, the British army and the Egyptian government – which rested upon conceptualisations of racial, gender and class difference. This morality politics was the primary lens through which 'suspicion' of 'extremist' politics was constructed. Importantly, the arrival of AMSH in Egypt in the 1920s expanded the development of new, 'softer' methods of dealing with 'immoral' and 'extremist' subjects and thus can be thought of as an early version of contemporary pre-criminal methods and counter extremism approaches. Methodologically I interrogate feminist approaches that purport to defend singular understandings of womanhood and show that they end up bolstering imperial forms of governance.

As I argue, homogenising these disparate versions of Egyptianness were fears of a contagious or hereditary immorality that would detract from civilisation goals. These in turn would be brought through legal forms of governance as 'legality became the preeminent signifier of state legitimacy and of "civilization," the term that united politics and morality'.[9] These would also manifest spatially, in the physical constructions of the administrative categories of

[9] Nasser Hussain 'Towards a Jurisprudence of Emergency: Colonialism and the Rule of Law' [1999] 10 Law and Critique 93, 100.

dangerousness which justified encroachment upon and erasure of local ways of living. As Stoler explains:

> These forms of violence relocate the intimacies of empire in nondomestic space as they open to an emotional economy of intimate injuries that re-member bodily harm in residual humiliations and emergent indignant acts. Shattered possibilities to bear a child, a weakened constitution, enforced immobility, and "formless threats" render intimate violence as something else. Such a reorientation does not make intimate intrusions less relevant; rather, it expands what dwelling in such spaces entails, a dwelling that can be suddenly invaded, accessed to monitor "contagions," and scrutinized for security measures. It resituates the intimate as a zone that is vulnerable to crushing nearness and *arbitrary* intrusion in the "lower frequencies" of the everyday.[10]

For this reason, this chapter investigates working class, downtown areas of Cairo primarily for their depictions as 'breeding grounds'[11] for immorality through the intersection of sex work and fanaticism. The legal taxonomy of suspicious characters and the physical segregation of communities allowed the British administration and the Egyptian police to predict and pre-empt the actions of the so called 'criminal classes.'[12] As will be shown, the medical and legal spaces co-currently developed and informed one another during a time of heightened anxiety over the spread of infectious diseases – in particular venereal disease – to the army on the one hand, and concerns over anticolonial violence on the other.[13] The districts considered the most

[10] Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Duke University Press 2016), 322.
[11] This term is used by Britain to depict 'home grown terrorism' today. It has a history in moral panics around racial miscegenation and threats to whiteness. See Hazel V. Carby, Imperial Intimacies: A Tale of Two Islands (Verso 2019).
[12] Letter from Robert Allason Furness 16 July 1922 in *Martial law: Powers of the Ministry of the Interior* (The National Archives, Kew Gardens) FO 141/430/4/5500/14.
[13] As explored by Khaled Fahmy, 'The Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt' in Keith Breckenridge and Simon Szeter (eds) *Registration and Recognition: Documenting the Person in World History* (The British Academy 2012), 335; Khaled Fahmy, 'Prostitution in Nineteenth-Century Egypt' in Eugene Rogan (ed) *Outside In: On the Margins of the Modern Middle East* (I.B. Tauris 2002) 77.

suspect were home to poorer communities and the red-light districts, such as the 'popular' (working class) district of Ezbekiya in Cairo today. These districts were also the spaces in which colonial feminists worked, from the mid 1920s until the end of the British occupation in 1956, towards their goal of abolishing sex work. Classed and racialised methods of containment and surveillance meant that the 'contagious' and 'extremist' subject was collapsed into a homogenous community, deemed naturally suspicious, and regulated and punished as such in an early pre-criminal space. Interestingly, these spaces are close to those marked on the 1942 map of Cairo as 'centres of potential disturbance' which, as I show in Chapter Seven, were explained by my interlocutors as home to poorer communities whose close living quarters are depicted by authorities as evidence of immorality and potential unrest.

5.2 Methodological considerations

Methodologically this chapter contributes to gender studies scholarship by noting the collaboration of forms of feminism with colonial governance. I both add to histories of contemporary governance feminism and literature on 'soft' forms of countering extremism and also point to the problematic effects of focusing on gender as a single issue. This chapter argues against singular or grand theoretical and methodological approaches and instead suggests the importance of a mixed methodological approach.

Haggis warns of the risks of focusing on white women's and men's voices from the colonies, explaining that 'centring a singular female subjectivity fosters an inability to deal with the power relations of colonialism, privileging the White Woman as benevolent victim of the imperialist White Man'.[14] It is important, therefore, to delineate my feminist methodological

[14] Jane Haggis, 'White Women and Colonialism: Towards a Non-Recuperative History' in Clare Midgley, *Gender and Imperialism* (Manchester University Press 1998) 45, 48.

approach from that of the abolitionist feminist organisation (AMSH) that I am analysing. Methodologically, this chapter is particularly influenced by postcolonial, intersectional and queer feminisms that pay attention to how the intimate, the bodily and the everyday came to inflect and simultaneously modify forms of colonial governance.[15] From this perspective, I understand the production of singular understandings of gender, class, race, sexuality and ability as central to colonial governance and as underpinning the creation of legal subjects. Indeed, in attending to the everyday, poor, and socially marginalised spaces of the city I provide a reading of the above two archival stories that differs from traditional or 'common sense' risk-based approaches to security and border enforcement.

I understand the feminism of the British abolitionist organisation AMSH, however, as a form of colonialism and a force that, even in its resistance to some of the more forceful methods of the British administration, bolstered colonial endeavours through the development of alternative, 'soft' techniques of governance. AMSH's theory of abolition was informed by a narrative of civilisation and was implemented by sending women out to the British colonies to 'educate' people 'out' of 'immorality'. Yegenoglu explains that because one of the key conceptualisations of the 'mysterious' and 'feminine' orient was that it was inaccessible to western masculine gaze, that it was through the assistance of western women that such mysteries could be 'unconcealed'.[16] As Ahmed notes, 'colonial feminism, or feminism as used against other cultures in the service of colonialism, was… tailored to fit the particular culture that was the immediate target of domination'.[17] The perception that European women could be useful in this manner was a common conclusion for writers on the region and is one that persists

[15] Stoler (10), 310.
[16] Meyda Yegenoglu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge University Press 1998) 75.
[17] Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992), 151.

to this day through the global war on terror.[18] Indeed, UN Security Council Resolution 2422, part of the UN's Women, Peace and Security agenda, calls for the integration of gender as a cross-cutting issue in countering terrorism and for the promotion of women as leaders in the fight against terrorism and violent extremism.[19]

The legacy of AMSH as an organisation focused on moral and social hygiene is also one that has had eugenicist leanings. As Bashford notes, 'social hygiene' was better termed 'racial hygiene' throughout the British colonies.[20] She shows how in Australia the settler colonial government sought to legally curtail the movement and freedom of Aboriginal peoples who were imagined as a health risk.[21] Oliviera demonstrates the eugenicist and colonial foundations of contemporary reproductive health organisations such as the International Planned Parenthood Foundation (IPPF).[22] In this way I understand AMSH as being considered able to close the 'epistemological gap' that white men could not fill and helping to produce new methods of working with 'oriental' societies. In a similar way to Zichi, I understand AMSH as part the history of contemporary 'governance feminism', a term coined by Halley, Kotiswaran, Rebouché and Shamir to refer to the forms in which feminists and feminist ideas exert a governing will within human affairs.[23] For Zichi looking at mandate Palestine, the arrival of women's officers 'acting as colonial authorities' helped mainstream singular visions of gender into the formal spaces of government.[24] Through this chapter, I demonstrate how this was true for Egypt and further, that the particular development of 'soft' methods of governance persists

[18] Laleh Khalili, 'Gendered Practices of Counterinsurgency' [2011] 37(4) Review of International Studies 1471.
[19] United Nations Security Council Resolution 2422 (13 October 2015) UN Doc S/RES/2422.
[20] Alison Bashford *Imperial Hygiene*: *A Critical History of Colonialism, Nationalism and Public Health* (Palgrave Macmillan 2004).
[21] *Ibid*.
[22] Amanda Muniz Oliveira, '"Sterilisation Must be Done Against Her Will": Coloniality, Eugenics and Racism in Brazil 2018 — The Case of Janaína Quirino' [2021] 47(1) Australian Feminist Law Journal.
[23] Janet Halley, Prabha Kotiswaran, Rachel Rebouché, and Hila Shamir (eds) *Governance Feminism: Notes from the Field* (University of Minnesota Press 2019).
[24] Paola Zichi, 'Prostitution and Moral and Sexual Hygiene in Mandatory Palestine: The Criminal Code for Palestine (1921–1936)' [2021] 47(1) Australian Feminist Law Journal.

until today through civil society-based pre-criminal tools such as deradicalisation programmes and through gender mainstreaming within practices of counter insurgency.[25]

At the time, Egyptian Feminists such as Huda Sha'rawi were also opposing state-regulated prostitution through the Egyptian Feminist Union (EFU) and were highly involved in the 1919 revolution.[26] However, Egyptian women are rarely mentioned in the reports of either the British administration or AMSH.[27] When Egyptian feminist organisations realised that AMSH had no interest in the anticolonial struggle, they stopped engaging with them.[28] Additionally, while this chapter is indebted to postcolonial feminist literature, it is important to recognise that forms of state feminism, governance feminism and feminisms that speak from an elite location are also a postcolonial condition.[29] Writing on some of the problematics of Egyptian feminist activism, Salem notes that 'many feminists used the motif of the peasant woman as a symbol of freedom… without deeply interrogating the ways in which their own economic advantage was dependent upon the poverty of these very women'.[30] Despite this, it is indeed a limitation of this chapter that it does not look to Egyptian feminist organising. The main reason is that this chapter aims to examine the racialised and classed nature of the narratives shared between white men and women in order to suggest where such administrative spaces of power might continue to influence contemporary understandings of the pre-criminal, in particular through the development of 'softer' methods of deradicalisation.

[25] In Afghanistan from 2010-2012 the US deployed 'Female Engagement Teams' (FETs) to enter women only spaces and collect information. See: Sippi Azarbaijani-Moghaddam, 'Seeking out their Afghan sisters: Female Engagement Teams in Afghanistan' (CMI Working Paper 2014) < https://open.cmi.no/cmi-xmlui/bitstream/handle/11250/2474930/Seeking%20out%20their%20Afghan%20sisters%3a%20Female%20Engagement%20Teams%20in%20Afghanistan?sequence=1&isAllowed=y> accessed 18 October 2021.
[26] Beth Baron, *Egypt as a Woman: Nationalism, Gender and Politics* (University of California Press 2005) 107.
[27] When they are mentioned in abolitionist texts, they are either explained as female students keen to learn from her, or as wealthy Egyptian women involved in philanthropic causes
[28] Sara Salem, 'On Transnational Feminist Solidarity: The Case of Angela Davis in Egypt' [2018] 43(2) Signs: Journal of Women in Culture and Society 245, 264.
[29] Laura Bier, *Revolutionary womanhood: Feminisms, Modernity and the State in Nasser's Egypt*, (Stanford University Press 2011) 25; Salem (n 23), 261.
[30] Salem (n 23), 261.

This chapter therefore provides a lesser explored angle to genealogies of counter terrorism and pre-criminality. In addressing the collaboration of feminist organisations in the development of 'soft' methods to deal with 'vulnerable' subjects, AMSH's methods represent early versions of the contemporary British pre-criminal space that foster links between spaces of care and safeguarding on the one hand, and securitisation on the other.[31] Looking to narratives that sit to the side of the hegemonic archive, this chapter helps disrupt state-centric depictions of the development of countering terrorism and national security programmes, and provides a broader understanding of the 'political'. Furthermore, methodologically, this chapter interrogates the 'truth effects' of the hegemonic archive by contrasting it with archival accounts of British feminists. While as I have explained I understand both to represent forms of colonialism, this mixed-archival approach helps interrogate truth claims of both parties by looking to clashes between them, thus presenting a critical evaluation of the development of categories of extremism.

In what follows, I first present conceptualisations of 'moderate' and 'extremist' politics as they were understood by the British administration. Second, I interrogate the 'official' space of politics and show how understandings of vulnerability and extremism have developed through everyday classed and gendered spaces in the colonies. Third, I attend to archival depictions of immorality and crime as geographically located in working class urban areas and fourth I demonstrate how such a conceptualisation allowed for the increased policing of these areas. Finally, I demonstrate how colonial feminists helped develop 'softer' methods of dealing with

[31] Charlotte Heath-Kelly and Erzsébet Strausz, 'The banality of counterterrorism "after, after 9/11"? Perspectives on the Prevent duty from the UK health care sector' [2019] 12(1) Critical Studies on Terrorism 89.

'vulnerable' subjects, which I argue is part of the history of contemporary counter extremism approaches.

5.3 Framings of moderate and extremist politics

This section explores how understandings of 'extremism' and 'moderacy' were informed by the interaction of British administrators with Egyptian nationalist parties. The acceptance of new 'friends' to Britain was crucial at this point in time. While the occupation of Egypt and other colonies was coming under scrutiny, the British had to think of new methods to continue their presence in the region. Developing links with 'moderate' Islamic groups and producing a common 'fanatical' enemy was a method to ensure this.

The development of shared understandings of morality, moderacy and legality at this point in time was formed from an intersection of different voices of British and Egyptian elites or 'liberals', at the same time as it was informed by British abolitionist feminists and their anti-sex work advocacy. Importantly as I will show, developing ideas on cosmopolitanism and the inclusion of certain subjects was crucial in framing understandings of risk and suspicion.[32] This is because when the future of the British Empire was uncertain methods of governance were being rethought.[33] While certain subjects were beginning to be included as 'friends' to the British Empire, as depicted in Shortt's speech, spatial forms of everyday securitisation meant that a whole host of heterogeneous 'others' were considered a comparable risk to the moral and

[32] Mignolo understands cosmopolitanism has having helped to uphold the 'managerial role' of the North Atlantic. Walter D. Mignolo, 'The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism' [2000] 12(3) Public Culture 721. See also Deborah Starr *Remembering Cosmopolitan Egypt: Literature, Culture, and Empire* (Taylor & Francis Group 2009), 14. Starr shows that the utilisation of the term 'cosmopolitan' in British-occupied Egypt pointed to spaces of power reserved for notables: primarily, upper class, western-born, western-educated, or non-Muslim. Cosmopolitanism was understood to be the antithesis of Egyptian anticolonial nationalism.

[33] John Reynolds 'The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law' [2010] 6(5) Comparative Research in Law & Political Economy 1, 18.

hygienic boundaries of mind, body and nation. While Egypt's official status as a semi-colony was disputed and uncertain, the disciplining of marginalised subjects could be accepted by Egyptian officials where understandings of immorality and extremism overlapped.

At a time when colonial administrators were more anxious than confident in the prosperity of the British colonies, when revolutionary movements were demanding self-rule and creating new spaces of politics, new methods of 'inclusion' were being developed. Lord Cromer, writing his methodology for the *Government of Subject Races*, was central in harnessing cosmopolitanism as a means for the continuation of Empire in a different form:

> […] though we can never create a patriotism akin to that based on affinity of race or community of language, we may perhaps foster some sort of cosmopolitan allegiance grounded on the respect always accorded to superior talents and unselfish conduct.[34]

The imagined racial hierarchy of intelligence and political activity according to which colonial rule premised its different ways of governing different colonies placed Egypt as one of the more intelligent and adept nations (although not sufficiently enough for self-rule). This imagination informed attitudes towards the 'better' way to manage Egypt going forward, differentiated from other colonial spaces, as Cromer described:

> Now, the dominating fact of that situation is that Egypt can never become autonomous in the sense in which that word is understood by Egyptian nationalists. It is, and will always remain, a cosmopolitan country. The real future of Egypt, therefore, lies not in the direction of a narrow nationalism,

[34] Evelyn Baring, First Earl of Cromer, 'The Government of Subject Races' in *Political & Literary Essays 1908-1913* (Macmillan and C. 1913) 12 <https://archive.org/details/poliliteressays00cromiala/page/14/mode/2up> accessed 27 September 2021.

> which will only embrace native Egyptians, nor in that of any endeavour to convert Egypt into a British possession on the model of India or Ceylon, but rather in that of an enlarged cosmopolitanism, which, whilst discarding all the obstructive fetters of the cumbersome old international system, will tend to amalgamate all the inhabitants of the Nile Valley and enable them all alike to share in the government of their native or adopted country.[35]

In this passage, Cromer sheds light on a truth that has contemporaneously been consumed by the inclusivity that cosmopolitanism is said to foster. For Cromer, cosmopolitanism is a direct and logical extension of empire. Not only does cosmopolitanism here allow the global elite to continue to profit in Egyptian land, labour, and resources even after Egyptian independence is granted but it forecloses any attempt to create an autonomous Egypt as false.

Omar pinpoints the introduction of the terms 'moderate' and 'fanatical' into formal Egyptian politics to have taken place in 1907, with the creation of political parties, and notes: 'if fanaticism was the prism through which difference with, and opposition to, their rational economistic project was understood, "moderation" became the term by which the British identified those who were quiescent to it'.[36] Significantly, Cromer worked within Egypt during his time as Consul-General to appease liberal leaning so-called 'moderate' Muslim scholars as 'the only means by which the "fanatical" (violent, populist, Jacobin) could be defeated'.[37] His administration and those that followed made it their mission to outlaw the 'fanatical' Hizb al-Watani (the National party), but to permit the 'moderate' and secularist leaning Hizb al-Umma (the People's party) a place in politics.[38] Hizb al-Umma was linked to a small group of

[35] *Ibid*., 171.
[36] Hussein Omar, 'Arabic Thought in the Liberal Cage' in Faisal Devji and Zaheer Kazmi (eds) *Islam After Liberalism* (Oxford University Press 2017), 31.
[37] *Ibid*., 19.
[38] As we saw in Chapter Three the manipulation of the trial of Ibrahim Nassif al-Wardani, associated with the National Party, was used so that it might instil fear into the population.

intellectuals called ‘Abduh’s group, understood to be developing ‘moderate’ and ‘modern’ forms of Islam. It was even rumoured that Hizb al-Umma was set up by Cromer himself.[39]

As Omar puts it, ‘having been enriched by British agricultural reforms, the bourgeois ‘Abduh group had an interest in prolonging the occupation, which they did by promoting theories about Egypt’s backwardness and arguing for the necessity of British tutelage until the country was ready for self-rule’.[40] It might be surprising to learn that Sa’ad Zaghloul – one of the most famous nationalist leaders throughout the early twentieth century – had been a prominent member of the ‘Abduh group and friend of Cromer. Towards the 1919 revolution, Zaghloul began to vocalise a more radical anti-British politics and was exiled to Malta which as we learned in Chapter Three, was considered a ‘humane’ method of quashing anti-colonial resistance and policing the political arena. In 1924 he became the Prime Minister for Egypt. Zaghloul’s friendship with Cromer points towards the problematics of considering colonialism and anti-colonialism as categorically oppositional and the potential persistence of colonial thinking in postcolonial states.[41]

For researchers, focusing only on what happens within the ‘official’ space of politics, however, confirms middle class and elite men as the embodiment of politics and deems classed and gendered others as outside of the political space. Omar explains that such a framing was picked up by liberal scholars of the Arab world decades later, such as Hourani, who, while crucial in rewriting the infantilising, dehumanising and essentialist orientalist accounts of the Arab world, simultaneously retained a Eurocentricity and elitism in his choice of text and depiction

[39] Malak Badrawi, *Political Violence in Egypt 1910-1925: Secret Societies, Plots and Assassinations* (Routledge 2001) 12.
[40] *Ibid.,* 19.
[41] Zaghloul’s brother, Ahmad Fathy Zaghloul, was one of the judges in the Dinshaway trial, similarly suggestive of the complex relationships between elite Egyptians and the British administration.

of Arab politics.[42] According to Omar, Hourani located the 'essence' of Muslim liberalism 'within the thought of the small, self-contained group of "isolated men"' ('Abduh's circle).[43] Omar argues that consequently there has been a dearth of work that looks into how liberal ideas have been shaped and changed by political actors of all classes – through political practice – including by so-called 'extremists', and importantly how the terms 'moderate', 'liberal', 'fanatical' were picked up and reshaped 'by Egyptians across the political spectrum':[44]

> Such activists understood that there could be no repudiation of the hegemonic imperial project without a rethinking of the basic metaphysics of humanity upon which it had been erected. Their contemplative passages on the Qurʾan and human nature were not just the facile, spiritual musings of oriental mystics, but rather essential to the process by which they began to imagine novel political alternatives to those of imperial hegemons […] Egyptian intellectuals articulated many of the key insights of a postcolonial critique of Eurocentric modernity over half a century before these ideas appeared in the academic field of postcolonial theory.[45]

Restricting conceptualisations of the 'political' or the 'extremist' to formal and theoretical texts and voices means we miss a whole host of ways these categories have been shaped. Attending to the spaces with which the term 'political' is less associated, to those who are considered more 'vulnerable' to radicalisation than to be leading 'extremist' politics, and to those who are deemed dangerous but who are not deemed important enough to influence politics, we get a view of the everydayness of law-making and violence. As such, the following section looks to classed and gendered everyday spaces that are often missed out of this type of analysis.

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[42] Omar (n 36).
[43] *Ibid*., 18 'Abduh refers to Muhammad 'Abduh, an intellectual who had an influence over the Umma party, he advocated the adoption of western institutions, the reform of Islamic heritage and the adoption of the nation-state in place of religion as the basis of community. Ahmed (n 17), 149.
[44] Omar (n 36), 21.
[45] *Ibid*., 22

5.4 Gendered and classed conceptualisations of 'vulnerability'

This section argues that class and gender-based narratives of dangerousness were just as significant in shaping elite understandings of extremism and fanaticism, and legal and extra-legal methods of containment and punishment, even if they were understood as only 'vulnerable' to radicalisation rather than inherently 'political'. In the early twentieth century, for the British, who was deemed 'political' or 'fanatical' and who was deemed 'vulnerable' to this extreme form of politics was formed over a gendered and classed divide. This came out of western political theories that framed politics across a public/private divide, shutting out women and the working classes. In Egypt as in other colonies this was reframed through racialisation. As Pratt notes, scholars of gender and IR tend to elide the significant differences between methods of state formation in the Arab world and Europe. Broadly speaking, Arab state-led conceptualisations of gender have been greatly impacted by racial subordination practiced by colonial administrations: 'the "public sphere" under colonial rule was not a realm of citizenship but of racial subordination, discursively rationalized with reference to gender'.[46] In other words, the imagination of racial difference meant that activities carried out in the public sphere were always considered to have the potential for disruption and violence rather than cast as examples of democracy.

One way in which this played out in western politics was through a pervasive narrative of Muslim women's oppression at the hands of 'their' men: 'veiling – to *Western* eyes, the most visible marker of the differentness and inferiority of Islamic societies – became the symbol now of both the oppression of women […] and the backwardness of Islam', and therefore gave

[46] Nicola Pratt, *Embodying Geopolitics: Generations of Women's Activism in Egypt, Jordan, and Lebanon* (University of California Press 2020), 9

moral justification for the assault on Muslim societies.[47] Muslim women were also seen to be a threat to children because of how they would 'pass on' Islam.[48] Rashid demonstrates that such a narrative persists today in the UK through counter extremism policies whereby the 'disempowerment' of Muslim women is understood to lead to their failure to educate their children in 'good neoliberal values' and their 'empowerment' can provide a 'conduit for integrating [an] inassimilable community'.[49]

The official British narrative was added to and offset by colonial feminists from AMSH who arrived in Egypt in the 1920s and 1930s in order to 'educate' sex workers on the social and moral risks of sex work, and to petition the colonial administrators to change the law which until this time had been regulationist.[50] One of the most 'radical and daring'[51] of these women was Louise Dorothy Potter, by whom most of AMSH's Egyptian reports were written, and who this chapter follows. For AMSH, the regulationist state was part of the problem: by regulating sex workers the state was legally sanctioning vice and corruption.[52] AMSH opposed coercive measures and attempted to intervene into colonial policy, pushing for 'softer' educational methods. Zichi shows that such feminist organisations had a profound effect on legal reform, whether or not it was because their arguments were convenient for the administration at the time.[53] By acknowledging the role played by AMSH in the development of legal forms of governance my analysis interrogates contemporary forms of 'governance feminism' as a part

[47] Ahmed (n 17), 152
[48] Ahmed (n 17), 154. Marianne Dhenin shows that intersections of gender and class shaped a narrative in which poorer Egyptian mothers were the conduits of poor hygiene and bad morals to their children. 'The Construction of Motherhood in Semi-Colonial Egypt' [2021] Australian Feminist Law Journal.
[49] Naaz Rashid, *Veiled Threats: Representing the Muslim Woman in Public Policy Discourses* (Policy Press 2016).
[50] Regulationism sees sex-work as a 'necessary evil that cannot be eliminated and therefore must be regulated'. Francesca Biancani, *Sex Work in Colonial Egypt: Women, Modernity and The Global Economy* (I.B. Tauris 2013), 48.
[51] *Ibid*., 142.
[52] *Ibid*., 143.
[53] Zichi (n 24).

of their legacy.[54] As Abu-Lughod and Mahmood explain, narratives of the global war on terror resemble those of colonial feminists in their construction of the 'oppressed Muslim woman in need of saving' as a justification for invasion and continuing governance.[55] In opening up new spaces for intervention into the lives of potentially criminal or 'vulnerable' subjects, AMSH helped expand typologies of criminality for which new punishments were required.

AMSH promoted a view that women were victims of patriarchal society structures, and that socioeconomic disadvantage, such as lack of education, pushed them into sex work. This was part of a 'hygienist' discourse that was developing across Europe and North America which was opposed to the 'growing laxity and indiscipline of the present generation in the sphere of sex'.[56] Writers on social and moral hygiene believed that to be hygienic in mind and body, and crucially through one's attitude towards sex – underpinned by Christian values – was not only instructive in the physical health of the body, but would provide the individual with an aptitude for self-control, and a restrained and disciplined morality to make the 'right choices' in life. Through educational means, individuals could be guided out of 'animalistic' and 'chaotic' ways of living.[57] Framing sexuality and morality in this way, as the centre of all forms of familial and societal life, also deemed those who upheld such an 'immoral' way of living as invariably perverted, dangerous, or even with an underlying political cause. As Friedrich Wilhelm Foerster, author of *Marriage and the Sex-Problem* – one of the texts circulated by AMSH in Egypt – put it: 'such people [those who do not adhere to the Christian values of the monogamous family] are the Girondists of the modern moral revolution. They are far more

[54] Halley, Kotiswaran, Rebouché, and Shamir (n 23).
[55] Lila Abu-Lughod, 'Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others' [2002] 104(3) American Anthropologist 783; Saba Mahmood, 'Feminism, Democracy, and Empire: Islam and the War on Terror' in: Hanna Herzog and Ann Braude (eds) *Gendering Religion and Politics* (Palgrave Macmillan 2009).
[56] Friedrich Wilhelm Foerster *Marriage and the sex-problem* (Meyrick Booth tr. Wells Gardner, Darton & Co Ltd 1912) 207 <https://wellcomecollection.org/works/w8rnuq25/items?canvas=207> accessed 27 September 2021.
[57] *Ibid*., 203.

dangerous that the open Jacobins'.[58] Physical, mental, and spiritual manifestations of uncivility therefore, would 'terrify and threaten Anglo-European ideas about personhood as enclosed and privatized, and […] undermine distinctions between order and dirt'.[59]

Despite the differentiations in theory and practice proposed by AMSH, I do not perceive these to be challenges to colonial attitudes. Following Yegenoglu, the interrogations and re-interpretations of paths towards civilisation by members of AMSH can instead be thought of as an expansion upon the 'truth value' of orientalism and a bolstering of its legitimacy through opening up new spaces 'within the wider orientalist hegemony'.[60] This is evident in AMSH's expansion on hegemonic narratives and also in the actual co-operation between AMSH and leading figures of the British administration. Despite her disavowal of coercive approaches, Potter often worked with British and Egyptian men who held positions of authority in the spaces of public security and law. Sometimes these were well-known figures such as the Chief of Police Russel Pasha, or Egyptian judges, and other times these would be local mudirs and district administrators.

A year after being sent out to Egypt by AMSH, in 1931, Potter was headhunted and offered work by the Director of European Security Sir Keown-Boyd. Potter's title at Damanhour was formerly 'Chief of the Morality Police', before she persuaded them to change it to 'Chief of the Morals Dept', which felt less of a betrayal to her feminist commitments.[61] She was aware that her connection to the Ministry of the Interior may hinder her educational work in the eyes of Egyptians, however, and noted that it 'may not be wise […] to be too openly connected with

[58] *Ibid*., 28.
[59] Yasmin Gunaratnam, *Death and the Migrant: Bodies, Borders and Care* (Bloomsbury 2013) 64.
[60] Yegenoglu (n 16), 71.
[61] Letter from Louise Dorothy Potter to Miss Neilans, 25 March 1932 in *Letters and reports from Miss L Dorothy Potter* (The Women's Library, The London School of Economics) 3AMS/D13 Box 113. N.B. subsequent documents are all from this same file unless otherwise indicated.

that'.[62] While Potter's concern with her title could point to the ethical struggle that feminists face when being co-opted into forms of governance, I would argue instead that Potter, and AMSH in general, willingly collaborated with British and Egyptian authorities in the creation and disciplining of vulnerable subjects.

Indeed, many of AMSH's attitudes towards sex workers in the colonies intersected with those of the British administration and with elite Egyptian framings of modernity, where orientalist narratives around 'Arabness' and Islam marked Egyptian sex workers as more immoral and unhygienic than their European counterparts.[63] European sex workers were deemed by Cicely McCall – who had worked for both AMSH and the International Bureau for the Suppression of Traffic in Women and Children – 'easier to save' as, 'they are better educated, have more initiative, and have more chance of finding other employment'.[64] For Potter, education and social measures were able to penetrate further into Egyptian society to 'encourage a better standard of morality in all classes',[65] and therefore, were necessary to Egyptian modernisation and civilisation.[66]

This is not to say that an imported British version of morality was the only one developing. Egyptian conceptualisations of the public sphere – and along with it, forms of morality – had also been developing years earlier, and in relation to not only imperialist desires but also local politics.[67] Qassim Amin, known as 'the father of Egyptian feminism' (facetiously re-dubbed 'the son of Cromer and colonialism' by Ahmed) wrote *The Liberation of Women* (Tahrir al-Mara'a) in 1899 which called for the un-veiling of Muslim women in a similarly secular way

[62] Letter from Louise Dorothy Potter to Miss Neilans, 4 August 1933.
[63] Biancani (n 50), 142.
[64] Report to the League of Nations by Cicely McCall, 1929, 5.
[65] Memorandum to Commission on Licensed Prostitution by Louise Dorothy Potter, n.d., 3.
[66] Biancani (n 50).
[67] Omar (n 36).

that hierarchised the west and east.[68] Unlike AMSH and Cromer's noting of Muslim, and particularly, veiled, women, as oppressed and in need of saving, Amin framed the 'Egyptian woman' as unintelligent, lewd, unclean and therefore unfit to nurture the family in the physical, mental and moral ways which her role demands.[69] The new, 'liberated' woman would be one who, educated to a primary level, would understand and adopt this role.[70] Anticolonial struggles then adopted the figure of 'the Egyptian woman' as a strong, new and liberated woman as much as colonial administrators desired and vowed to 'save' the oppressed oriental woman.[71] Therefore, although these conceptualisations varied, both that of Cromer and that of Amin denounced the veil and Islam for setting women (and therefore Egypt) backwards in terms of mental and moral capacity.

Not to align with elite and civilising British and Egyptian understandings of progress then, not to accept 'help' out of an 'oppressive' society, or indeed not to better oneself for the good of the nation, rendered people outcasts in different yet interchangeable ways, where working classes and women were understood as 'vulnerable' to 'immoral' influences, and middle-class Egyptian men who asserted alternative politics were cast as 'fanatical' or 'extremist'. AMSH's singular focus on women as the conduit for an improved morality served to bolster colonising and normative frames of 'moderate' and 'extremist'. This presents a significant message for similar paradigms today. By approaching gender as a singular issue and mainstreaming it through counter terrorism approaches, liberal and governance feminisms serve to help develop and expand security structures that maintain normative forms of gender as significant of an

[68] Ahmed (n 17), 163. Ahmed explains that while there were people who called for women to remain veiled as a matter of moral duty linked to Islam, an Islamic patriarchal attitude mirrors a secular one by ascribing the same duty to women, that of the upkeep of morals as marker of the family and nation. Reactions to Qassim Amin published in al-Liwa newspaper (founded by Mustapha Kamil, founder of Hizb al-Watani) suggested that women had the same right to education and men, and that even though veiling was an Islamic custom, that it may not remain so in future, thus untying the naturalisation of secularism, modernity and education.
[69] *Ibid*., 157-159.
[70] *Ibid*.
[71] *Ibid*.

'acceptable' morality. In the next section, I look at the spatial overlapping of health and hygiene, sexuality and morality, and perceptions of criminality to demonstrate how subjects were created, disciplined and homogenised as one 'perilous' community.

5.5 Archival spatialisations of immorality and crime

Archival renderings of certain districts as homogenous and vagrancy and disease as immoral and criminal builds a picture as to how a morality-based suspicion may have existed and been policed. Geographical regulation is recognised by many postcolonial scholars as central in colonial occupation, as it facilitated 'the subversion of existing property arrangements; the classification of people according to different categories'.[72] This becomes clear by looking at the intersections of securitisation from a broad range of actors. In this section I examine the rendering of certain districts and communities as homogenous through such archival depictions, demonstrating class and gender-based conceptualisations of extremism and vulnerability and how their construction through concerns around the spread of venereal diseases rendered them hereditary and contagious.

In the period around the 1919 Egyptian revolution, certain districts saw the acceleration of methods of mass fining, raids and pre-emptive stop and search to combat anticolonial dissent. These were most often used on 'popular' downtown districts such as Gheziret Badran – which today is a street in the Shubra area of Cairo.[73] It is not a coincidence that this area intersected with the patrolled and cordoned red-light districts located around the contemporary Ezbekia area. This area was considered to have a higher risk of criminal behaviour, one to which AMSH paid attention more than a decade later:

[72] Achille Mbembe, 'Necropolitics' [2003] 15(1) Public Culture 11, 25.
[73] Telegram from Reuters, 22 February 1923 in *Administration of Martial Law in Egypt* (The National Archives, Kew Gardens) FO 141/671/4337/59.

> As regards other crimes, taking the different quarters in Cairo, an average number per year during the five years up to and including 1927 is higher in the segregated quarter of Ezbekia than in any other. The figure given is 66.4 and the next highest figure 62.4 represents a quarter notorious for its secret brothels.[74]

McCall's denoting of Ezbekia as having a high crime rate mirrors the language used back in the metropole where risk-based policing and the preventive detention of 'habitual offenders' were being developed as methods used to incarcerate 'lunatics'.[75] Other depictions of Ezbekia paint it as a space where 'extremists' would take advantage of British soldiers, as evident in this passage:

> In the bars of this street – ([…] haunts of pimps, thieves and dirty Arabs) – the soldiers get drunk and sniff cocaine in the happy company and familiarity of such people, who are the emissaries charged by the Zaghlulists to collect information regarding the movements of troops, the habits (movements) and dwellings of Officers.[76]

As noted earlier, Zaghloul had previously been one of the liberal leaning Hizb al-Umma members whom Cromer admired, but around the 1919 revolution had taken a more assertive anticolonial stance and was deported to Malta on 9 March that year.[77] As is apparent from the archive, conceptualisations of extremism quickly shifted to reflect this change in allegiance.

[74] McCall (n 64).
[75] Finanne and Donkin (n 8) 10.
[76] Letter from Dr Carlo Vignaty to High Commissioner Lord Allenby 23 January 1923 in *Prostitution and venereal diseases. Part 1*. (The National Archives, Kew Gardens) FO 141/466/2.
[77] Badrawi (n 39), 137.

The naturalisation of working-class districts as criminal is also tethered to them being framed as unhygienic and contagious. This appears to have accounted for the ease to which anyone within a certain district could be understood as potentially dangerous. These connections become evident in the following description of an Alexandrian street in a report by AMSH delivered to the League of Nations in 1929:

> In the wider streets of the same quarters in Alexandria, the only drainage is the open sewer which runs down the middle of the road, and eventually flows out, over the pavement, into one of the better streets of the town where there is a gutter. Children living in this quarter have caught syphilis simply from playing in the road. Flies thrive on the filth in summer, and the rains in winter carry it over the road and sometimes into the houses [...] The better French brothels are clean, and the women they employ, though they look physically unfit, are cleanly dressed. But the low-class brothels and the native brothels stink with lack of sanitation, and the women, standing half-dressed or less than half dressed in their doorways, (despite regulations on the contrary) admirably match their surroundings.[78]

This vivid depiction assembles a narrative where poorer Egyptian sex workers represent the locus of infection to the most innocent and vulnerable (children). They are naturalised as part of the overspilling and contagious city landscape compared to the clean Europeans and are criminalised for presenting themselves as such. As Stoler notes, it is 'in the slippage between sexuality, intimacy, and bodily care where biopolitical interventions find their support and quotidian force'.[79] In other words, here, two notions of vagrancy, one, as an individual form of criminality and the other, where disease is a threat to public health, are marked as one in the same, justifying geographical and class-based methods of regulation. The provocative language

[78] McCall (n 64).
[79] Stoler (n 10), 310.

used suggests that AMSH had more concern with the spread of a racialised and class-based morality as a precursor to disease than with the everyday struggles of sex workers who were infected. It is worth also mentioning the factual inaccuracies of the statement where it is suggested that syphilis is transmitted through dirty water.

One of the key characteristics of contemporary pre-criminal methods is that the shift in the law to encompass the time *before* an act takes place means that substantive or material evidence is often accepted as impossible to acquire. Aspects such as character traits, identity, mental health, and 'culture' are therefore relied upon to insinuate guilt. The presumption of innocence is less often present. This plays out in the treatment of sex workers in British-occupied Egypt. Describing how sex workers were typically treated in 1929, an AMSH report explained:

> Police would 'have a round up in the most notorious streets' every week or fortnight, and those suspected of clandestine prostitution were arrested and medically inspected […] Those found diseased are sent to the Lock Hospital if local subjects, or, if they come under capitulatory jurisdiction their consuls are advised and they are fined up to £1 with an option of seven days imprisonment. In Alexandria, from Jan. 1st to August 31st of this year, 208 clandestine prostitutes were arrested, several more than once.' [80]

AMSH, while openly prejudice in its class and race-based depictions of morality, was also highly critical of how sex workers were treated by the state. In the inspection space described, a sex worker's body was pre-emptively regarded as criminal and predicted likely to be infected. Finding a woman without a license to be infected with venereal disease was all the evidence needed to pronounce her a clandestine sex worker.

[80] McCall (n 64), 14.

The continuous subjection to arrest and detainment seems to have been linked to disease. The examination to announce a woman 'infected', thus justifying her arrest and confinement would only last for a few minutes.[81] Furthermore, as Potter notes, most often the doctor would have already made his mind up about her condition: 'the theory is that the doctor knows most of the habitueés well enough to tell at a glance whether their condition has changed since the week before, and he knows all the tricks employed to deceive him'.[82] Potter reported in 1933 that many doctors described the medical examination as being 'worthless'. [83] She also noted that there was sometimes trouble with the doctor in charge. In one instance, some of the 'girls' reported that a doctor forced them to attend the clinic, that he treated them roughly, and that he wanted bribes.[84] Women found ways to resist the inspections, including by using an antiseptic douche before the inspection, and by getting tattoos that disguised symptoms of syphilis.[85] The non-consensual medical inspection and repeated arrest of sex workers relied upon racialised, classed and medicalised understandings of suspicion and acted as a mechanism for categorising and differentiating them as different 'types' of subjects. Evidence of immorality (markings of disease) was not in practice needed for detainment, as it is highlighted, the doctors carried them out briefly, presuming that certain workers were infected.

The construction of conceptualisations of immorality and extremism therefore developed alongside understandings of disease as contagious on a classed, gendered and racialised basis that shifts understandings of politics. The geographical segregation of communities meant that many different people were affected by the overlapping markers of potential extremism and

[81] Biancani (n 50), 171.
[82] McCall (n 64), 3.
[83] Potter (n 65), 4.
[84] Potter (n 65), 3.
[85] McCall (n 64), 3.

infection and treated as suspect. Despite AMSH's opposition to the maltreatment of sex workers, they ultimately ended up confirming imperial notions of segregation.

5.6 Policing segregated districts

The perception of a morality that could be spatially and physically marked and cordoned off, and therefore rendered a 'predictable' risk to hygiene, morality, and the nation, appears to have been taken by multiple parties as an open invitation for intervention. This section details coercive methods of policing such areas and logics of racialisation and class that shaped such methods. With the influx of troops in 1914 and the promulgation of martial law, control was tightened, and sex workers more actively surveilled, as described by AMSH:

> In every town in Egypt there is a segregated quarter or quarters for licensed prostitution. Licensed prostitutes are required to attend a weekly medical inspection, and native women if found diseased are taken to the Lock Hospital under guard and kept there till passed healthy […] Each licensed prostitute must have two cards, one retained by the Police and one by herself. These cards have her photograph and particulars attached and are stamped weekly by the Police at the medical inspection if she is found free from disease. If she is venereally diseased, her card is retained, and she is expected to continue to report weekly until her card once more be stamped "saine".[86]

Such is the description of how sex workers were policed and segregated daily through intersections of criminality and disease. As demonstrated in Chapter Three, the promulgation of martial law provided the set-up of military tribunals under which sex workers were tried specifically as threats to soldiers. Other measures were taken to fight immorality, such as the establishment of a Purification Committee in 1915 to curb venereal disease and 'vice' through

[86] *Ibid*., 2.

regularising the medical inspection of European as well as Egyptian sex workers, and also through the banning of belly dancing and alcohol.[87] Non-gender conforming subjects were also often arrested. The Committee succeeded in issuing a decree, agreed to by the capitulatory consuls (separate consuls for European states under the Ottoman treaties of Capitulations), that stipulated that all women suspected of being infected with venereal disease should be examined and confined to the lock hospital. [88] The decree further criminalised the knowing transmission of syphilis to a man, which mirrors the exceptionalism of crimes against British soldiers under martial law.[89] As such, the regulation of sexuality and morality was considered central to the justification of 'necessary' emergency measures taken to protect troops during wartime.

Discipline was not only enacted through emergency legal measures, however, but the military took part in the everyday disciplining of sex workers, by reporting and marking off 'contaminated' houses. While AMSH abhorred army practices, deeming them 'one of our biggest stumbling blocks' in the abolitionist cause, their communication with soldiers nonetheless tightened the securitisation around sex workers.[90] While the measures referred to under martial law were introduced to outlaw sex work, others considered that the regulations should be relaxed in order to 'meet the demand for European women'.[91] A balancing act between the availability of sex workers and the need to protect the troops often led to the discretionary encouragement of soldiers to frequent 'higher' classes of sex worker – most often those who were European as opposed to Egyptian. Conceptualisations of class were central in depictions of who was vulnerable to this dangerous immorality. Indeed, Josephine Butler, a lead British abolitionist, the writings and politics of whom AMSH representatives followed

[87] Biancani (n 50).
[88] Biancani (n 50), 68 and 119.
[89] Biancani (n 50).
[90] Report to the Executive Committee of the Association for Moral and Social Hygiene by Louise Dorothy Potter 1931, 4.
[91] *Ibid*., 3

with zeal, noted the 'faults' of the working classes when it came to the 'taint of egotism' and 'ethical truths', and pointed to the army as particularly egregious.[92]

Asked by Potter in 1931 about how areas of Cairo were divided into licensed zones and tolerated zones, Sub-Inspector Howlett of the police force in Egypt replied that 'the idea was to attract better-class women for the troops, as they must have brothels, and this kind of woman won't go into the licensed areas, which indeed is hardly fit for her'.[93] While Potter expressed shock at this 'breath-taking statement', she equally noted that the root cause of the attitude of this 'very decent type of young man' and others like him is that 'this sort of country' fosters a love of power and control. In another source, Potter sympathises that the police's task 'is a most difficult one, until new legislation is introduced'.[94] Her forgiving framing around forms of police power is reminiscent of the British colonial narrative of the necessity of a balancing act between coercion with consent.[95]

This period also saw communication between the army and police helping to securitise certain communities. This becomes clear in a letter from Potter to AMSH in England that criticises the presence of troops:

> A list of houses is posted up in the messes as "out of bounds" and this same remark is pasted up on many of the houses themselves. No list of "in bounds" houses of course is given (as far as I know) but the men tell each other, and when these houses are found to contain sick girls, the police notify the Army authorities, who place them out of bounds till a notice is received that all is

[92] Josephine E. Butler, *Personal Reminiscences of a Great Crusade* (Horace Marshal & Son 1910), 17.
[93] Letter from Louise Dorothy Potter to Miss Neilans, 25 March 1932.
[94] Report on the Experiment at Damanhour by Louise Dorothy Potter, n.d.
[95] Aaron George Jakes 'The Scales of Public Utility: Agricultural Roads and State Space in the Era of the British Occupation' in Marilyn Booth and Anthony Gorman, *The Long 1890s in Egypt: Colonial Quiescence, Subterranean Resistance* (Edinburgh University Press 2014) 62.

> well. I have seen the forms on which this is done, also a form stating that a certain girl, accused by a certain soldier, of being the person from whom he contracted disease, was found healthy at the medical examination on such and such a date. [96]

As this extract suggests, knowledge about which houses and which 'girls' were sites of contagion sat at the heart of securitisation structures.[97] No evidence other than the accusation of a woman was needed for her medical inspection. This was despite admissions that this assumption might not always be true. Detailing practices during the First World War, the secretary of AMSH noted that '50% of the women accused had no traces of venereal disease when examined, and it was discovered that in some cases it was the men themselves who had been infected before and thought they were cured, and that the disease had merely broken out again'.[98] The site of the medical inspection, then, becomes more of a gendered and classed disciplinary device for certain understandings of morality than a scientifically-based method of disease control.

The practice of denoting certain premises – poorer and Egyptian – as 'out of bounds' also had a compounding economic effect on the residents. A letter from a group of eight women in 1922 who describe themselves as 'owners of public houses' in the 'out of bounds' area of Alexandria is testimony to this.[99] The letter, addressed to the High Commissioner, requests that their houses be exempt so that British soldiers may visit them again. However their request was denied, and the word 'amusing' scrawled upon the letter by a British official. This interaction is suggestive

[96] Potter (n 94).
[97] Katherine Moon gives a similar account of the centrality of Korean sex workers to the ongoing amicable state relations between the US and South Korea. Katherine Moon, *Sex Among Allies: Military Prostitution in U.S.-Korea Relations* (Columbia University Press 1997).
[98] Letter from the Secretary of AMSH to Louise Dorothy Potter, 6 July 1932.
[99] Letter from Fouada Beut Abrahim et al., to High Commissioner Lord Allenby 10 November 1922, *Prostitution and venereal diseases. Part 1*. (The National Archives, Kew Gardens) FO141/466/1429/2.

of larger processes of economic abandonment that downtown areas have faced in Cairo, explore further in Chapter Seven, and that, as Amar points out, have been the target of social cleansing through forced evictions and gentrification over the past decade.[100]

Foreign troops based in Egypt were also the cause of riots and violence. On 2 April 1915, allied Australian and New Zealand troops – stationed in Egypt alongside the British – demolished several brothels in the Wasser Red Light district of Cairo. As Hamilton writes, 'bedding and furniture were piled into the street and torched, and at least one building was set alight'.[101] The riots were broken up by British military police who put in place a lockdown the next day. This led to another outbreak of violence by Australian troops who also assaulted civilians. When they were finally apprehended, nineteen soldiers were tried before a court martial.[102] Archival documents frequently cast Australian and New Zealand troops as behaving badly compared to their British counterparts, despite many complaints about British troops particularly throughout the war period (as we saw in Chapter Four). In this way, the British could continue to cast themselves as the 'most civilised' of the colonial forces. Indeed, Cromer held that the 'Anglo-Saxon race' was superior to the 'Latin races' because of its individualist as opposed to communitarian principles and was bound to have more success in its forms of colonial governance.[103] The coercive policing of sex workers was thus central to forms of war-time governance. The arrival of British and allied troops throughout World War One deepened classed and racialised segregation, the disciplining of urban communities and tightened conceptualisations of 'threat'.

[100] Paul Amar, *The Security Archipelago: Human-Security States, Sexuality Politics, and the End of Neoliberalism* (Duke University Press 2013) 86-91.
[101] John Hamilton, *Gallipoli Sniper: The Remarkable Life of Billy Sing* (Pen & Sword Books 2015) 233.
[102] Russel Robinson, *Khaki Crims and Desperadoes* (Macmillan Australia 2014).
[103] Evelyn Baring, First Earl of Cromer (n 34).

5.7 'Soft' educational intervention

So far, I have demonstrated that classed, racialised and gendered conceptualisations of vulnerability, extremism and the 'political' were expanded and bolstered through the arrival of AMSH and their work with the British administration. I have also shown that sex workers were subject to coercive forms of policing that targeted so-called 'criminal' areas. This section demonstrates how AMSH helped develop 'softer' methods to deal with vulnerable subjects, opposed as they were to 'hard' police coercion.

AMSH disagreed with the British administration's 'hard' police measures such as the forcible arrest of suspected clandestine sex workers and the 'odious' medical inspection.[104] From the perspective of civil liberties and private lives, the developing systems of Police des Moeurs,[105] and the criminalisation and punishment for unhygienic morals were considered by Josephine Butler as 'oppressive and delusive'.[106] Forceable tactics were seen as ineffective compared to education approaches as suggested by Potter: 'for one person who might be compelled to come by force, if we had power of compulsion, I am sure we should lose 20 who might come in the early stages of their own accord'.[107] Potter's perspective resonates with Zichi's work that shows how British feminists in mandate Palestine 'were able to mobilise, long before gender mainstreaming, a legal expertise on gender and women's rights invoking international legal standards of gender equality and early human rights but often obscuring indigenous voices and alternative and indigenous legal realities'.[108] This is suggestive of the impact such colonial feminist organising had on the development of security structures.

[104] Louise Dorothy Potter, 'Interim Report on the Experiment in Damanhour' (Report, 1933) (The Women's Library, The London School of Economics, 3AMS/D13 Box 113), 4.
[105] This was a unit of the police which was dedicated to the weekly medical inspections of sex workers, or as Josephine Butler described them 'medical police'. Biancani (n 50), 76.
[106] Butler (n 92), 57.
[107] Principles and Methods of the Experiment in Damanhour by Louise Dorothy Potter, 1933, 4.
[108] Zichi (n 49).

While the refusal of coercive approaches may strike some as ethical, the underlying message remains the same. As Stoler points out, 'moral outrage and moral panic about the treatment of white and brown women by brown men have deep imperial genealogies and a strategic politics of their own'. [109] Indeed, Potter pushed for a 'softer' educational approach on the 'dangers of immoral conduct, and the serious results of venereal disease',[110] which took the form of several social and moral hygiene 'experiments' in smaller towns around Egypt. Such experiments in themselves recall the contemporary expansion of pre-criminal spaces through the development of counter extremism approaches and deradicalisation programmes. Potter's most influential experiment took place in the small city of Damanhour in lower Egypt, near Alexandria in 1932. It had two main parts: first the education of the townspeople in matters of morality and social hygiene, and second, the closure of all brothels in the area. Education was a key part of developing a civilised morality and sexuality, and it was specified that this education go deeper than superficial or informative purposes: 'mere instruction is no safeguard unless the power of the lower impulses is counter-acted by a general and systematic training of the character, and, above all else, by a thorough development of will-power'.[111]

Potter gave lectures and classes and screened films for people from town administrators and police to sex workers themselves, and also held open sessions for the public. The inhabitants of Damanhour were thereafter tasked with carrying forward 'the social history of Egypt' by 'upholding a high standard of order & morals in their native town & spreading up-to-date opinion'.[112] In these sessions, participants would discuss texts provided by AMSH, that depicted the way to a moral, hygienic, and civilised life. Themes included the responsibilities

[109] Stoler (n 10), 318.
[110] Potter (n 107), 4.
[111] Foerster (n 56), 170.
[112] Potter (n 107).

of women, morality and 'sexual ethics' including abstention, all of which were underpinned by Christian virtues. Even in the work of Foerster, who professed to be a *secular* 'psychologist, sociologist and educator', Christianity is understood to underscore an 'ethic of sex'. Foerster held that 'a pleasure-seeking individualism is becoming the commanding principle of practical conduct, and in the sphere of sex is replacing all social and religious considerations'.[113] Religion (read Christianity) was therefore seen as providing a key spiritual component: 'all our efforts are lacking in deeper meaning if they are not correlated to a great spiritual view of life as a whole'.[114] Texts also included the 1910 Flexner Report on the state of medical education in the USA by Abraham Flexner.[115] Among other themes, this report pushed the idea that Black doctors were likely to spread disease to their white counterparts, and that they should therefore be educated for the sake of white America.[116] Many Black medical schools in the USA were closed as a result of Flexner's work.[117]

The texts used by Potter in her 're-education' programmes effectively argued for the re-packaging of an entire worldview for women and sex workers in Egypt and other colonies, with 'education' being the method of enactment and Christianity providing the moral framework. This was considered necessary for a civilised society:

[113] Foerster (n 56) 170.
[114] *Ibid*., 207.
[115] On introducing Flexner, Potter stated: 'I think I said in my last report that I was already in touch with one member of the Commission, an Egyptian Judge, who is asking for literature and most anxious to understand. He is absorbing Flexner, and quite agrees on the main lines, but we had a terrific discussion the other day on equal moral standards! This is really very cheering, for so many people here tell one that it is absurd even to try to put that kind of principle before the Egyptians, as it will simply mean nothing to them.' Letter from Louise Dorothy to Miss Neilans, 11 March 1932.
[116] Louis W. Sullivan and Ilana Suez Mittman, 'The State of Diversity in the Health Professions a Century After Flexner' [2010] 85(2) Academic Medicine 246.
[117] Jessie Wright-Mendoza, 'The 1910 Report That Disadvantaged Minority Doctors' *Jstor Daily* (3 May 2019) <https://daily.jstor.org/the-1910-report-that-unintentionally-disadvantaged-minority-doctors/> accessed 27 October 2020.

> The behaviour of any young person in the sphere to sex is the resultant of his or her education as a whole; has the latter been merely intellectual, or has it been soft or superficial, then the boy or girl, in spite of the best possible instruction, will fall a victim to the first temptation […] The sexual behaviour of a given individual is a very good touchstone by which to judge of his whole education, for it enables us to perceive whether or not his training has been based upon a true knowledge of human nature and a disciplining of its weakness.[118]

A highly orientalised view is also evident when considering the changes AMSH made when re-packaging these methods to the colonies. Surprisingly, despite a core tenant of the abolitionist movement being to abolish the regulation of sex work, AMSH in Egypt found themselves with mixed views. After some years based in Egypt, Potter came to the conclusion that 'abolition of state-regulated prostitution should be postponed for some considerable time in the interest of the Egyptian women'.[119] This argument, influenced by earlier social purity campaigns,[120] was made along a civilising narrative that framed Egypt as 'not advanced enough' for more modern laws.[121] In Potter's writing, this is based on an orientalised view of what it meant to be a woman in Egypt through simplistic links to Islam which she described as a religion that knows no kindness nor compassion for the weak, and one that treats women as 'the chattel and servant of man'.[122] AMSH thus bolstered and expanded frames of colonialism through their differential yet kindred essentialisations of Islam with the British administration.

[118] Foerster (n 56) 171-172.
[119] Potter (n 90), 6.
[120] British social purity campaigns first gained momentum around the 'white slave trade' where the body of the sex worker was cast as the ultimate site of oppression. Josephine Butler ran the Ladies' National Association which spread messages throughout the 1880s. In 1885, the National Vigilance Association was founded which was thereafter the main agent for moral reform. Different branches did not necessarily see eye to eye, and reformers with different political views were sent out to the colonies for the purposes of abolition. For more see Biancani (n 50).
[121] Biancani (n 50), 130.
[122] Potter (n 90), 5.

For the second part of experiment, Potter worked with the local police to shut down all brothels in town. Closures of the brothels meant that many sex workers were forced to leave and find work elsewhere. A large number of them had dependents such as parents, siblings or children to support and so moved to Alexandria to continue working.[123] Corroborating the case with other experiments in the British colonies, Potter's AMSH correspondent Alison Neilans said of Hong Kong, 'the girls do not want to go into the Government-supported Refuge, nor to the Salvation Army, and they rather resent being turned out into the streets'.[124] Potter concluded that when the experiment expanded, the 'girls' would have no choice other than to accept the help offered.[125]

In opening up a 'softer', 'educational' space before the law to deal with 'vulnerable' subjects, Potter's experiment is suggestive of Garland's identification of the development of specialist reformatory institutions in this late modern period.[126] Such agencies would be involved in assessments of the characters of individuals, their education and their 'after care', following a period of imprisonment. Agencies like AMSH can be understood as the precursors to contemporary deradicalization programmes that claim to pre-emptively identify potential terrorist subjects and intervene before any crime has occurred.[127] The imagery of a vulnerable subject who is at once a risk to themselves (through living an immoral life) and a risk to society (through spreading immorality to others via contagion, familial ties, or 'culture') rings true with contemporary imaginations of risky subjects in the spaces of care. As Pettinger notes, the British Prevent programme imagines subjects 'both as vulnerable *and* as posing riskiness, as

[123] Letter to Miss Neilans from L. D. Potter, 29 April 1932.
[124] Letter to L.D. Potter from Miss Neilans, 20 May 1932.
[125] Potter 25 March 1932 (n 61).
[126] David Garland, *Punishment and Welfare: A History of Penal Strategies* (Gower Publishing Company Limited, 1985).
[127] Charlotte Heath-Kelly and Šádí Shanaáh, 'The long history of prevention: Social Defence, security and anticipating future crimes in the era of "penal welfarism"' [2022] Theoretical Criminology 1-20, 3.

individuals in need of support themselves *and* whom society needs protecting from'.[128] This narrative also recognises women as at once a security risk *and* a solution to violent extremism and terrorism. For instance, UN Security Council Resolution 2422 urges Member States to gather 'gender-sensitive research and data collection on the drivers of radicalization for women' and 'to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism […] including through countering incitement to commit terrorist acts […] including by the empowerment of women'.[129] This language is very similar to Potter's use of education to reformulate the morality of Egyptian sex workers as bearers of their 'culture'. From this perspective, AMSH's work laid some of the groundwork for the symbiotic development of structures of security and care.

5.8 Concluding thoughts and contemporary connections

To return to Shortt's speech and the blacklist, and considering my analysis of archival materials, I argue that there is a need to re-interpret considerations of 'peril', 'friends' and 'extremist' politics. The dualism that was set up between an 'acceptable', 'moderate' and 'friendly' Muslim and an 'extremist', 'perilous' and 'fanatical' Muslim, by Shortt, British and Egyptian liberals and by later scholars of the Middle East, situate forms of danger and predictable criminality within the formal space of politics. This centred upon politically active groups and individual Egyptian men of the (primarily but not always) middle classes. This class and gender-based depiction worked from a consideration that what is political can only exist within formal (masculine, public) spaces, and that the working classes and women (among other gendered subjects) could only ever be 'vulnerable' to radical influences. However, by looking further into archival texts that focus on such 'vulnerable' spaces and subjects, I have

[128] Tom Pettinger, 'CTS and normativity: the essentials of preemptive counter-terrorism interventions' [2019] 13(1) Critical Studies on Terrorism 118, 120.
[129] United Nations Security Council Resolution 2422 (13 October 2015) UN Doc S/RES/2422, 11-13.

demonstrated an offsetting of hegemonic and common-sensical depictions of risk-based law and policy that reacts to those calculated to be a threat. By looking to depictions of the overlapping physical space and unhygienic morality shared between so-called extremists, the poor, and sex workers, the border between formal politics and everyday conceptualisations of gendered, classed and racialised communities is collapsed.

The hereditary or contagious conceptualisation of extremist and immoral views is what allows the 'vulnerable' person to be at once at risk *from* society and a risk *to* society.[130] For instance, sex workers are framed as simultaneously in need of saving from their 'oppressive' culture and as posing a risk to others through either their poor morals or their diseased bodies. Moral panics around figures of the diseased, the sexually perverted and the extremist are inextricably linked to the modern development of the state of emergency, the use of martial law, and its increasing normalisation through forms of legality as this thesis demonstrates. The subjects with which the state identifies such a narrative are rendered a crisis that is a concern not only to health but to labour and production.[131] The role of colonial feminists is an important site of political action framed as 'soft' interventions focused on housing, education and health and articulated through a language of morality and hygiene.

That this is a class-based imagery is central and helps to further comprehend how such forms of immorality are fluid and transferrable. Not only are Egyptian and European sex workers considered to have innately different moral standards because of their race and religion, but the potential for 'catching' bad morals was also rendered a class problem.[132] The construction of

[130] Fiannane and Donkin show that a similar paradigm shift between from an individual being 'the risk' to being 'at risk' occurred in the 1960s in Britain regarding those with mental illnesses (n 8), 10.
[131] Lauren Berlant, 'Slow Death (Sovereignty, Obesity, Lateral Agency)' [2007] 33(4) Critical Inquiry 754.
[132] Josephine Butler expressed this sentiment: 'my deep sympathy with the daughters of the working classes and the poor, from whose ranks so many of the victims of the social evil are drawn', (n 92), 54.

difference between Christian and Islamic societies in reference to hygiene and morality imbued with a paternalistic attitude towards gendered and classed communities sits at the basis of notions of 'vulnerability' to immoral conduct. Indeed, I have argued that these frames are crucial to the legal imaginary that moves between Britain and its colonial outposts.

Without wanting to overstate their influence, which is difficult to ascertain through archival documents alone, AMSH nevertheless were attempting to influence a shift in 'morality' in Egypt and other colonies through 'soft' educational means. AMSH's abhorrence to methods of dealing with moral impurity that involved coercion, from their feminist perspective that campaigned for equality of treatment, meant that they sought methods that would get to the 'root' of the problem and would be 'more effective' in doing so. Understood in the context of the decentralisation of the prison and the expansion of penal welfare agencies, Potter's experiments opened up space 'before' the law where people were schooled in 'civilised' morals and were thereafter expected to spread these morals themselves. Potter's willingness to work with the police, indeed even taking a title 'Chief of the Morals Dept' points towards the cross pollination of ideas between the police, and civil society, and further breaks down the perceived distance between 'hard' and 'soft' approaches. Furthermore, AMSH's interpretation of 'women' as imbued with a singular understanding of morality meant that their approaches were readily taken up by the colonial administration. This suggests the problematics of using a singular focus on gender to do feminist work.

The similarities between this imagery and those used in contemporary deradicalisation programmes cannot be a coincidence. This early twentieth century expansion of governance into the everyday through the development of new reformatory agencies is a crucial part of the history of contemporary overlaps between the seemingly disparate spaces of security and care.

Indeed, the conceptualisation of terrorism as a contagion is frequent within terrorism studies work. Consider this quote:

> […] there is an important element of "contagion" both within and between these separate strains [of terrorism]. We believe that it may even be possible to identify a "patient zero" for each strain: an individual who either through advocacy or example first promoted the innovative adoption of terrorist methods to advance a particular political cause.[133]

Importantly, the move towards using 'softer' civil society approaches as a more acceptable form of coercion underpins national and international attitudes towards countering extremism today.[134] This history not only points to the development of frames of extremism and terrorism but also challenges contemporary understandings of care and methods of mental health diagnoses.[135] As I argue in the next two chapters which focus on contemporary British and Egyptian pre-criminal practices respectively, we can see the persistence of such forms of coloniality in the continuing use of different methods of governance for gendered, classed and racialised 'vulnerable' and 'extremist' subjects.

[133] Tom Parker and Nick Sitter, 'The Four Horsemen of Terrorism: It's Not Waves, It's Strains.' [2016] 26(2) Terrorism and Political Violence 197, 198.
[134] Khalili (n 18); Fionnuala Ní Aoláin, 'European Counter-Terrorism Approaches: A Slow and Insidious Erosion of Fundamental Rights' *Just Security* (17 October 2018) ≤https://www.justsecurity.org/61086/european-counter-terrorism-approaches-slow-insidious-erosion-fundamental-rights/≥ accessed 23 September 2021.
[135] For some radical and user-led approaches that place mental health within the contexts of intersectional social justice see 'Recovery in the Bin: A critical theorist and activist collective' <https://recoveryinthebin.org/>; and Hamja Ahsan, *Shy Radicals, خجولون جذريون: The Antisystemic Politics of the Militant Introvert* (Book Works 2019).

Chapter six: Bureaucracy and pre-crime in the contemporary UK

6.1 Introduction

This chapter argues that contemporary British countering terrorism and pre-criminal practices are part of lawful and administrative governance in which coloniality persists to shape everyday effects. I demonstrate that these effects are visible as the erasure of voice and the rewriting of subjects as 'suspicious' or 'acceptable'. At the same time, using transnational, queer and intersectional feminist approaches this chapter interrogates the 'suspect community' lens as potentially casting entire communities as victims. I develop this argument through a mixed-methods approach whereby interviews with Egyptian migrants to the UK help to interrogate the 'truth effects'[1] of the hegemonic archive.

Thus far, this thesis has argued that the British colonial legal development of pre-emptive methods of dealing with 'dangerous subjects' was premised upon the imagination of difference between the colonies and the metropole bolstered as a truth regime, resting upon the claim to legitimacy that the law provided. This difference manifested in the various compounding logics of race, gender, class, sexuality, and religion which reified the fragmentation of humanity into those deemed 'civilised' and those deemed not yet fit for the civilised structures of law. Such logics worked on everyday and intimate levels to erase alternative modes of being, ridicule testimonies, script vulnerable and suspicious subjects and exile people from the realm of politics, thus having a disciplinary effect. For instance, Chapter Four demonstrated the classed,

[1] Anjali Arondekar, 'Without a Trace: Sexuality and the Colonial Archive' [2005] 14(1/2) Journal of the History of Sexuality 10.

racialised and gendered basis upon which testimony and evidence for crimes against the state have been wrought. Chapter Five depicted how a framing of 'vulnerable' subjects justified the development of new 'softer' methods of engagement prior to the law which proposed to instil a civilised morality.

In the context of the contemporary UK, I argue that these colonial logics persist in the shaping of British pre-criminal practices. Using interviews with Egyptian migrants to the UK and legal analysis, this chapter demonstrates how the universalising effects of colonial law-making persist in contemporary British counter terrorism legislation and prosper in the spaces of everyday bureaucracy. Using a feminist lens, I look to how emotions can be constituted by the effects of law and re-written, scripting subjects as 'suspect'. However, simultaneously, this chapter also interrogates my own conclusions so far, the 'truth effects' of the archive and the victimising and homogenising narratives that can be perpetuated in an uncritical use of the 'suspect community' framing. The suspect community is a prevalent conceptual approach within critical terrorism studies that holds that 'ordinary' people and entire communities can be rendered 'suspect' as a result of the dissipation of legal categorisation through logics of racialisation. While this frame is a useful way to approach hyperlegality on an everyday basis, I expand on it to think about the changeable effects of the law.

Using transnational, queer and intersectional feminist theories that provide understandings of the effects of violence as unpredictable and changing, this chapter interrogates assumptions that all Muslim and migrant communities in the UK experience being a suspect in the same way. Instead, I provide an understanding that accounts for the pasts and presents of migrants in the UK, showing how people are continuously (re)shaped by geopolitics and their experiences of gender, class, immigration status and religion. Furthermore, looking to feminist

understandings of emotionality and agency, I provide examples of conscious and unconscious forms of resistance that challenge the 'suspect community' lens. I also developed this through my interview methods themselves: by bringing colonial maps to my interviews and asking my interlocutors to annotate them, the interview experience was richer and spoke to affective understandings of law.[2] Using a transnational and intersectional feminist lens that pays attention to how pain moves across borders of time and space is necessary to hold together the changeable lives of migrants and to provide a view of counter terrorism that holds the global together with the everyday. Thus, I demonstrate the durability of frames of coloniality and instances of divergence and resistance to these narratives.

In this chapter, I first provide my overarching theoretical framework which looks to the everyday effects of hyperlegality. Second, I provide an account of the feminist methodologies that guide my work. Third, I theorise counter terrorism legislation as pre-emptive governance. Fourth, I use my interlocutors' narratives to show how hyperlegality is felt on an everyday basis. Fifth, I demonstrate how pre-criminal thinking produces 'vulnerable' subjects, and finally, I show the divergences from the categories of vulnerability and suspicion.

6.2 Hyperlegality and its everyday effects

This section brings together theories on hyperlegality and the suspect community from an intersectional, queer and transnational feminist perspective. It provides a theoretical understanding of lawful and administrative governance on an everyday level that can account for the unpredictable effects of violence. Hussain's conceptualisation of governance as 'hyperlegal' helps to frame how law produces new categories of suspicion and new disciplinary

[2] This of course requires thinking reflexively and ethically on how people may be triggered by circumstances I cannot predict.

methods. As explained in Chapter One, since the global war on terror, there is a common understanding that successive terrorism legislation is 'necessarily' and quickly prepared in reaction to exceptional incidences of political violence. However, an understanding of terrorism laws as reactive does not do justice to the history of marginalisation and colonial violence upon which these laws have been structured, the enduring conceptualisations of 'vulnerability' that underscore predominant narratives of 'terrorism', the expansion of both legal and pre-legal spaces to account for 'pre-criminal' offences, and the everyday accounts of my interlocutors. The development of pre-criminal methods is therefore better framed as a product of lawful and administrative governance – or, as Hussain terms it, a 'hyperlegality'.[3]

Hussain explains that the UK's anti-terror legislation has primarily been introduced in periods of calm, suggesting that such law-based approaches should be understood as a pre-planned 'methodology of governance'.[4] Hussain explains that 'it is, in fact, empirically the case that what one witnesses in the contemporary global "emergency" is a proliferation of new laws and regulations, passed in an ad hoc or tactical manner, and diverse administrative procedures'.[5]As examined previously, Reynolds identifies a mid-twentieth century shift in the structural quality of law away from reactive, emergency powers that were characteristic of the colonies, towards forms of securitisation within the law that are more structural and permanent.[6] As argued in Chapter Three, shifts between martial and statute-based law in British-occupied Egypt provided space for the normalisation of violent practices all the while framing them as 'humanising'.

[3] Nasser Hussain 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514.
[4] *Ibid*., 515
[5] *Ibid*., 514
[6] John Reynolds 'The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law' [2010] 6(5) Comparative Research in Law & Political Economy 1

This shift is part of the framing of 'hyperlegality' that Hussain conceptualises to comprehend contemporary methods of countering terrorism. Hyperlegality is characterised by the increasing and overwhelming administrative classification of persons within the law, aided by the use of special tribunals and commissions. Hussain terms this combination of administrative and legal governance as 'bureaucratic legalism'.[7] New classifications within the law go further than simply developing new subcategories or 'types' of terrorism. Instead, 'the process has a strong predictive quality, combining who people supposedly are with what they are likely to do, and, as with much predictive activity, invariably involves racial and cultural presumptions'.[8] In other words, the pre-emptive and securitising formations of contemporary countering terrorism work to mark people as suspicious based upon racialised perceptions of criminality.

While Hussain's framework helps us to understand the development of official legal architecture, it does not speak so much to how the law works on an everyday basis to produce suspect subjects. By looking to the 'everyday' workings of bureaucratic legalism, including the administrative spaces that produce categories of suspicion, and the role that emotions play in constituting subjects, we can expand a version of hyperlegality that moves away from a focus on the official legal archive as the primary form of knowledge. A common framework used to understand the everyday practice of countering terrorism in the UK today is the lens of the 'suspect community' where the expansion of police powers through terrorism legislation marks all subjects of a particular community as suspicious. This phrase was first coined by Hillyard in the 1990s in his work on Irish citizens' experiences of policing and counter terrorism law.[9]

[7] Hussain (n 3) 516.
[8] *Ibid*.
[9] Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press 1993).

This framing has since then been used to depict the experiences of British Muslims.[10] Pantazis and Pemberton explain that in contemporary British terrorism legislation 'suspicion is primarily linked to an individual's perceived membership of a sub-group and not to suspected wrongdoing'.[11] This lens understands the law as working off symbolic racism and therefore providing for the detention of anyone marked under the 'suspect community', 'because the principal arrest required no reasonable suspicion of an offence'.[12] In this formulation, 'because "the risk" exists always and everywhere, it becomes normality; to be harmless is then the exception that has to be proven by the citizen for his or her own person'.[13] Pantazis and Pemberton explain that countering terrorism legislation is underpinned by a political discourse sustained by other social structures, which encourages the circulation of suspicion not necessarily based on a specific legal category.[14] Breen-Smyth further explains how suspicion moves between signifiers so that the 'misidentification of non-Irish or Muslim people has meant that those misidentified experience the same consequences and effects of being suspect as those properly identified as Irish or Muslim'.[15] This has been referred in the scholarship of Yuval-Davis and Sahgal as the 'racialisation of religion'.[16]

One of the most predominant challenges to the suspect community that has stirred debate as to its physical and imagined boundaries is by Greer.[17] He argues that the only people who should be understood as under suspicion are those who have subscribed to a 'radical form of Islam',

[10] Christina Pantazis and Simon Pemberton, 'From the "Old" to the "New" Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation' [2009] 49(5) British Journal of Criminology 646
[11] *Ibid*.
[12] Hillyard (n 9).
[13] E. Denninger in Julia Eckert (ed), *The Social life of Anti-Terrorism Laws: The War on Terror and the Classifications of the "Dangerous Other"* (transcript, 2008) 15
[14] Pantazis and Pemberton (n 10).
[15] Marie Breen-Smyth, 'Theorising the "suspect community": counterterrorism, security practices and the public imagination' [2014] 7(2) Critical Studies on Terrorism 223, 228.
[16] Gita Sahgal and Nira Yuval-Davis (eds) *Refusing Holy Orders: Women and Fundamentalism in Britain.* (Virago 1992)
[17] Steven Greer, 'Anti-Terrorist Laws and the United Kingdom's Suspect Muslim Community; a Reply to Patanzis and Pemberton. [2010] 50 British Journal of Criminology 1171.

or those who, according to Greer, are under 'official' suspicion.[18] Greer maintains that '*feeling* under official suspicion is not the same as *being* under such suspicion.'[19] Greer's critique is problematic for several reasons. For one, he side-lines how states use 'ordinary' people – indeed 'officially' – to carry out countering terrorism work through deradicalisation programmes such as the UK's Prevent duty. As Breen-Smyth puts it in her critique of Greer, 'if a police officer suspects me, then I am under official suspicion, but if my neighbour suspects me, then I am not, according to Greer[?]'.[20] Furthermore, by following a dichotomy that separates feeling and being, Greer's critique disregards modes of being other than those informed by scientific and material approaches. In this way, he effectively ranks the state's actions as rational and truthful in hierarchy over the experiences of Irish and Muslim communities. This works on a racialised and gendered narrative that locates the 'emotional' as unreliable and typical of colonial subjects, reminiscent of the British administration in Egypt as described in Chapter Four.

Counter to Greer, as this thesis has argued, the imagination of racialised, gendered and classed frames of difference is *central* to the state's ability to treat 'suspect' subjects in different ways, through pre-criminal methods. The erasure of alternative modes of being and the discounting of testimony through the universalising ideology of law is *productive* through its disciplinary effects. Furthermore, less visible forms of structural violence manifest upon bodies and script subjects psychosomatically. Gunaratnam makes this clear through her conceptualisation of racialisation as taking place upon the bodies of migrants in palliative care facilities. She explains that racism compounds other forms of anxiety, hypersensitivity and paranoia and are felt on the body at the end of life as a 'total pain… accrued over a lifetime', interwoven with

[18] *Ibid*., 1179.
[19] *Ibid*., 1183.
[20] Breen-Smyth (n 15), 229.

disease.[21] In this way subjects are constituted by forms of structural violence that work to erase and script their emotional being and sense of self.

Greer nevertheless issues a useful warning, albeit one he may not have intended: that taking note of the differences between experiences of suspicion is crucial so as not to collapse one universal victimising and fixed experience of all Muslims or all migrants to the UK. While I am certain that Greer was not advocating for an intersectional feminist account of the 'suspect community', his suggestion that we must differentiate the experiences of those who have physically been referred through deradicalisation programmes from 'everyday' experiences of being a suspect, points to a need to pay attention to the contextual differences that shape forms of suspicion. From a feminist perspective we can read this to mean that while the effects of violence stick and shift across bodies, following Ahmed, that this violence importantly follows the structural logics of racialisation and gendering.[22] Such a perspective interrogates the contemporary claim that white subjects are now part of a new suspect community because 'far right extremism' is included in deradicalisation policy documents. Indeed, as Younis and Jadhav show, despite its 'colour-blind' approach, the Prevent duty is still governed by logics of racialisation.[23]

To avoid assuming the effects of violence, then, this chapter looks to the multidirectional, unpredictable and compounding ways that governance works to render people as *at once*

[21] Yasmin Gunaratnam, *Death and the Migrant: Bodies, Borders and Care* (Bloomsbury 2013), 64.
[22] Sara Ahmed *The Cultural Politics of Emotion* (Edinburgh University Press 2004a); Sara Ahmed, 'Affective Economies' [2004b] 22(2) Social Text 117.
[23] Tarek Younis and Sushrut Jadhav explain that the prevent policy has adopted a 'colourblind' approach after opposition to Islamophobia. They understand this to provide the government a blameless position. 'Islamophobia in the National Health Service: an ethnography of institutional racism in PREVENT's counter-radicalisation policy' [2019] Sociology of Health and Illness 42(3). See also Hilary Aked, Tarek Younis and Charlotte Heath-Kelly, *Racism, mental health and pre-crime policing — the ethics of Vulnerability Support Hubs* (Medact 2021)< https://stat.medact.org/uploads/2021/05/Racism_mental_health_pre-crime_policing_Medact_Report_May_2021_ONLINE.pdf> accessed 28 September 2021.

suspect and citizen. Ragazzi has offered solutions to this through an understanding of 'policed multiculturalism' that accounts for 'first, the differentiated experience of counter-terrorism linked to the inherent heterogeneity of the "community" and second the pro-active involvement of Muslims in their own policing'.[24] Queer feminist theorists have developed understandings of the effects of governance as 'in between' that of biopower and necropower, accounting for how forms of neoliberalism serve to incorporate and co-opt traditionally abandoned subjects through claims to 'multiculturalism' 'tolerance' and 'diversity'.[25] Ahmed explains this as a form of 'conditional hospitality' that restructures the lives of migrants and postcolonial subjects as they are 'welcomed' into the nation. As she explains, 'the nation offers hospitality and even love to would-be citizens as long as they return this hospitality by integrating, or by identifying with the nation.'[26] Chapter Five demonstrated that a narrative of 'conditional welcome' was developing through cosmopolitanism as a new form of imperial influence at the end of the Protectorate system. In Egypt, 'moderate' forms of Islam – those that aligned themselves with the British administration – were increasingly 'tolerated' just as those marked as 'extreme' or 'immoral' were cast out.

This analysis locates regulation in-between life and death as the 'slow death' of bodies, at the same time as they are incorporated for the value of their labour.[27] For Shakhsari, this power does not produce the 'bare life' that I conceives, but an 'unstable life' where a population is produced 'through the discourse of rights […] for which death through sanctions and/or bombs

[24] Francesco Ragazzi, 'Suspect Community or suspect category? The impact of counter-terrorism as "policed multiculturalism"' [2016] 42(5) Journal of Ethnic and Migration Studies 724, 729
[25] Dean Spade, *Normal life: administrative violence, critical trans politics, and the limits of* law (Duke University Press 2015), 34; Sara Ahmed, *On Being Included: Racism and Diversity in Institutional Life* (Duke University Press 2012) 43; Jasbir K. Puar *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press 2007)
[26] Ahmed, (n 25), 43.
[27] Lauren Berlant, 'Slow Death (Sovereignty, Obesity, Lateral Agency)' [2007] 33(4) Critical Inquiry 754.

is legitimized within the rhetoric of the "war on terror"'.[28] Hemmings shows how the affective pathways of forms of governance are not predictable nor necessarily intelligible as having the desired outcome of disciplining a population.[29] Acts of resistance, whether conscious or unconscious speak to the 'unpredictable autonomy of the body's encounter with the event, its shattering ability to go its own way'.[30] This approach that frames affect as a queer energy that resists normativity can help us rethink the truth claims of the archive, theoretical assumptions we make when beginning research and the normalising effects of law.

For Mahmood and Ghannam, unconscious, bodily and unpredictable acts constitute resistance and agency in alternative ways to the liberal progressive narrative.[31] Such resistance for Hartman, looking to acts of redress among slaves can be everyday practices of 'work slowdowns, feigned illness, unlicensed travel, the destruction of property, theft, self-mutilation, dissimulation'.[32] Importantly Hartman explains that such acts acknowledge that conditions of slavery will remain the same, but work instead to counterinvest 'in the body as a site of possibility'.[33] In the context of Palestine, Peteet shows how a Foucauldian analysis is not sufficient to capture the everyday embodied forms of resistance and agency that are a central part of Palestinians' continuing colonial subjection.[34] Such scholars rethink the 'political' as taking place in the very existence and persistence of gendered and racialised communities which further constitutes resistance against hegemonic narratives.

[28] Sima Shakhsari, 'Killing me softly with your rights: Queer death and the politics of rightful killing' in Jin Haritaworn, Adi Kuntsman and Silvia Posocco (eds.) *Queer Necropolitics* (Routledge 2014), 103.
[29] Clare Hemmings, 'Invoking Affect' [2006] 19(5) Cultural Studies 551, 552.
[30] *Ibid*.
[31] Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005) 14; Farha Ghannam, *Live and Die Like a Man: Gender Dynamics in Urban Egypt* (Stanford University Press 2013) 85-105.
[32] Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford University Press 1997), 51
[33] *Ibid*.
[34] Julie Peteet, 'Male Gender and Rituals of Resistance in the Palestinian "Intifada": A Cultural Politics of Violence' [1994] 21(1) American Ethnologist 31.

We also can take an example from British-occupied Egypt to illustrate the unpredictable effects of governance. While Esmeir explains that the British chose to use exile as a 'civilised' form of punishment because it would take anticolonial resistors out of the political space and dampen their voice, Badrawi shows that this could in fact have the opposite effect: the exile of nationalist leader Sa'ad Zaghloul in 1919 for instance, rather than cutting out political speech, encouraged the circulation of anticolonial sentiment, resulting in the 1919 Egyptian revolution.[35] It is important therefore to consider the multiplicity of effects forms of disciplining can have, including resistance. We must understand unconscious and embodied acts of disobedience, even those of simply existing, to be a resistance and agency of kinds.

From these perspectives, I appreciate the necessity of approaching legal categorisation as a changeable and at times paradoxical process. This expands on and rethinks framings of the suspect community as a fixed zone where all Muslims or all migrants are victims of countering terrorism. This chapter therefore uses a feminist approach to theories of hyperlegality and the suspect community to show how law produces 'suspicious' subjects on an everyday basis, and also how the effects of this hegemonic narrative are not necessarily predictable and must be interrogated through attending to emotional experiences.

6.3 Transnational, queer, and intersectional feminist methods

A limitation of my thesis so far is the archival gap of subaltern experiences of violence that as a white British researcher I cannot presume to fill. While my reading of local Egyptian narratives in Chapter Four unsettled ways of thinking about legal truths and evidence, I am

[35] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012); Malak Badrawi, *Political Violence in Egypt 1910-1925: Secret Societies, Plots and Assassinations* (Routledge 2001).

wary of understanding them as a 'truth effect' of the archive in the contemporary. In a similar way, I am wary of uncritically taking the 'suspect community' lens to mean that all people who fall into this 'community' feel the violence of the law in the same way. Therefore, this chapter uses a mixture of legal analysis and interviews to delve into the lived accounts of counter terrorism law on an everyday basis and expose both the persistence and discontinuities of aspects of pre-criminality I have traced so far.

While I spoke to twelve people in total as one of the methods for this thesis, this chapter highlights just four narratives: those of Nour, Ilyas, Mariam and Sara. This is because I am not attempting to present generalisable conclusions as to the effects of law. Instead, through a deeper and layered analysis of the narratives of my interlocutors I attempt to show where lived experiences corroborate with the archive and theories on the suspect community, and where they diverge. Furthermore, the differences between these four interlocutors are considerable and challenge religion as the main framing for the effects of counter terrorism. Ilyas, Mariam and Sara are Coptic Christians and are in the UK for work or education, and Nour is a Muslim woman asylum seeker. While Nour experiences life as 'always a suspect',[36] this appears to be routed through her status as an Egyptian asylum seeker as much as it is about her religiosity. For Ilyas, gender plays a role in shaping forms of suspicion that he is told he embodies. In each narrative I demonstrate how my interlocutors experience counter terrorism law indirectly today and how their experiences are shaped by their memories of Egypt.

To draw out connections between history and the contemporary, I brought archival material into my interviews. To each interview I brought two maps, one of British-occupied Cairo and one of London, both drawn in the early twentieth century. The maps brought stories of my

[36] Interview with Nour, 29 November 2019, SOAS, University of London.

research to the interviews and sparked memories for my interlocutors. Another interlocutor, Mina, offered this perspective when asked about his experience of the mapping interview:

> It's interesting, it brought some insights and ideas. Like some stuff you don't [pause] yeah like associating things like concepts with places is quite um [pause] you wouldn't recognise your, this connection to places unless you've been challenged about this so I think it's interesting. The emotional attachment to places is quite something else. Especially in a research like that when it's exploring between two countries where like one you consider home, one you consider exile.[37]

Mina's conceptualisation of his life as transitionary and shaped in between the spaces of home and exile recalls transnational feminist theories that understand the experiences of migrants as a product of their geopolitical movement. As Mina shows, he carries with him understandings of law and counter terrorism that are routed through the national and everyday contexts of the UK and Egypt and the global war on terror. This is particularly relevant when considering the global characteristics of domestic counter terrorism, which, as Hussain notes are specifically provided for through the Terrorism Act 2000.[38] Koser and Al-Ali explain how in much scholarship on transnationalism, refugees and migrants tend to be homogenised into one victim group.[39] This can also be the case in critical terrorism studies scholarship where the suspect community lens risks homogenising and victimising tendencies.

A transnational feminist lens provides a methodology to understand everyday experiences and the development of new identities among migrants as anchored 'in-between', as '(socially,

[37] Interview with Mina, 17 January 2020, Mina's workplace.
[38] Nasser Hussain 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514, 524.
[39] Khalid Koser and Nadje Sadig Al-Ali (eds) New Approaches to Migration? Transnational Communities and the Transformation of Home (Routledge 2002) 4.

culturally and physically) neither in their place of origin nor in their place of destination'.[40] Transnational feminisms situate the production of identities within their geopolitical and historical contexts, contesting homogenising accounts of categories such as the 'migrant' and the 'refugee' as agentless. Transnational thinking also helps to situate the everyday alongside the global. For Pratt, this approach could be narrated as a:

> situated and embodied geography, a geopolitics of intimacy and community […] an embodied geopolitics […] that problematizes rather than normalizes oppression and inequalities of power across multiple scales and that is attentive to the spatialized dimensions of power and the role of power in constructing space, as well as the implications of this for ordinary women and men.[41]

Simultaneously, Pratt notes that we must pay attention to how agency plays out often in contradictory and complex ways that can bolster and normalise hegemonic power dynamics on different geopolitical scales.[42] In this way, we can understand the production of subjectivities to be formed through not only the contemporary state narrative, but importantly in relation to processes of state formation which include its colonial geographies and the multilayered distribution of vulnerability therein.

Where knowledge on the law is elite and inaccessible for most people, having conversations on everyday experiences can help move away from reformative projects of 'inclusion' and look instead towards transformative projects of 'border thinking'.[43] Mignolo terms this as 'diversality', or projects that look to where 'silenced and marginalized voices are bringing

[40] *Ibid*.
[41] Nicola Pratt, *Embodying Geopolitics: Generations of Women's Activism in Egypt, Jordan, and Lebanon* (University of California Press 2020), 3.
[42] *Ibid*., 5.
[43] Walter D. Mignolo, 'The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism' [2000] 12(3) Public Culture 721, 735.

themselves into the conversation' and providing space for 'the transformation of the hegemonic imaginary'.[44] 'Border thinking' is critical in re-thinking assumptions about migrant lives with regards to how countering terrorism might be presumed to affect all Arab migrants in a similar way, through casting them as suspect. Centring the everyday experiences of the lives of migrants also de-centres the state as the only producer of 'official suspicion' which is the trap that much writing on countering terrorism falls into. In this way we can begin to think about the violence of countering terrorism as both a product of global histories and relations and an intimate everyday effect. Before turning to the interventions offered by my interlocutors, I first give a brief introduction to contemporary counter terrorism laws in the UK. This helps situate and frame the interventions produced in interviews.

6.4 Counter terrorism legislation as pre-criminal governance

This section analyses British counter terrorism legislation through the lens of hyperlegality, which understands the abundance of laws as a form of 'bureaucratic legalism', functioning as a method of governance.[45] I present a short history of the development of counter terrorism law in the UK, showing the trajectory from emergency law to permanent law, and to the further expansion of the spaces where the law can function through pre-criminal methods.

The UK's legal framework for regulating terrorism was formalised through the Prevention of Terrorism Act (Temporary Provisions) 1974.[46] The Act provided for the proscription of 'terrorist groups', where the Irish Republican Army (IRA) was the only group named, support for which was considered a punishable crime of a fine of £200, a term in prison not exceeding

[44] *Ibid*.
[45] Hussain (n 38), 516.
[46] Prevention of Terrorism (Temporary Provisions) (PTA) Act 1974.

three months, or both.[47] Loyalist groups in Northern Ireland were not proscribed under the Act. As Roach notes, terrorism legislation targeting Irish nationalist groups reveal that the proscription of a group was a political means to denounce opposition groups.[48] Terrorism was defined as the 'use of violence for political ends'.[49] Throughout the 1970s and 1980s the 'Irish terrorist' was the primary target of this law that gave UK police extra powers to arrest and detain suspects. Hillyard's work shows how the detention of Irish people under such laws was based not upon suspicion, but upon racialisation.[50] Police methods included trawling for information and detaining members of the Irish community on the off chance they had links to terrorist activity. Around 86 per cent of 7,052 people detained in the UK under the Act were released without charge.[51]

The 1974 Act was renewed each year subject to parliamentary debates. The debates were described more like 'moral panics', where participants suggested bringing back the Treason Acts of 1351 and 1848.[52] Following the 1983 renewal debates, Sim and Thomas published a paper that criticised the Act, stating that it was an example of the 'increasing rightward shift towards authoritarianism and repression' of Thatcherism, and that calls to make the Act permanent normalise repression, making it acceptable within a liberal democracy.[53] There was significant critique that the Act would provide justification for longer detentions, 'thus, what was abnormal in 1982 becomes normal in 1983; likewise emergency powers become standard and unexceptional'.[54] A review by Lord Jellicoe, however, recommended making the Act permanent, and that it should extend to cover newer forms of 'international terrorism' both

[47] PTA 1974, pt 1 and sch 1.
[48] Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press 2012) 252
[49] PTA 1974, pt 1(9)
[50] Hillyard (n 9).
[51] Pantazis and Pemberton (n 10).
[52] Joe Sim and Philip A. Thomas 'The Prevention of Terrorism Act: Normalising the Politics of Repression' [1983] 10(1) Journal of Law and Society 71
[53] *Ibid*., 72
[54] *Ibid*., 75

linked to Northern Ireland and independent of it. As examined in Chapter One, the shift away from martial law to emergency law enabled states to construct themselves as adopting more 'civilised' methods of combating disorder, even as emergency laws provided increased access to issues concerning civilians. The 1983 debates over the 1974 Act suggest the beginnings of greater adoption of permanent laws as a form of national security.

The period following the 1983 debates saw the term 'international terrorism' adopted more broadly in the UK, through the 1990s, and condemned as a 'new' form of terrorism based on religious extremism and ethnic separatism legitimised by 11 September.[55] This was the beginning of the global war on terror, which has seen the tightening of policing on many levels, especially those overlapping with immigration controls. The development of British counter terrorism laws, including the strictness of sentencing, the broad definition of terrorism and the introduction of preparatory offences, has been extremely influential worldwide.[56] The accumulation of laws on terrorism is such that Roach describes the UK as carrying out a 'legislative war on terrorism'.[57]

The UK Terrorism Act 2000 was promulgated one year before 9/11. Roach describes it as one of the toughest and furthest reaching Acts that had its roots in the previous temporary terrorism laws yet extends far beyond it.[58] The broad definition of terrorism and terrorism related offences that the 2000 Act provides is one of its most influential features, allowing it to be 'read into a wide variety of offences, powers of proscription and police powers both in the 2000

[55] Pantazis and Pemberton (n 10).
[56] Alexander Murray, 'Terrorist or Armed Opposition Group Fighter?' [2018] 20(3-4) International Community Law Review 281, 309; Zoe Scanlon, 'Punishing Proximity: Sentencing preparatory terrorism in Australia and the United Kingdom' [2014] 25(3) Current Issues in Criminal Justice 763.
[57] Roach (n 48).
[58] *Ibid*., 241.

legislation and in much post 9/11 legislation'.[59] At the time, Amnesty International considered that the broad definition of terrorism could lend itself to political bias and abusive police practices.[60] A report by the International Law Programme and International Security noted that it granted 'unusually wide discretion to all those concerned with the application of the law' and had repercussions for freedom of speech.[61] Former independent reviewer of terrorism legislation David Anderson QC warned in his 2012 report that the broad definition provides discretion to the police, prosecutors, Home Secretary and the Treasury: 'the broad scope of the counter-terrorism legislation may serve to encourage police in the belief, and public in the acceptance, that it can be used against anyone and at any time'.[62] The preparation of terrorism was thereafter introduced as a new offence in the Terrorism Act 2006, which amended the 2000 Act and expanded the scope of the definition. The 2006 Act criminalises the direct or indirect encouragement of terrorism, where an indirect encouragement includes every statement which 'glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences'.[63]

Following the 2000 Act there have been several more iterations of British terrorism legislation, which the NGO Liberty warns become increasingly strict: with each Act, freedoms are increasingly squeezed, and powers afforded to the police and the Secretary of State are

[59] Roach (n 48), 255; The Terrorism Act 2000 identifies terrorism as 1) the 'use or threat' of ' serious violence against a person, serious damage property, endangering of a person's life, creation of a serious risk to public safety or the interfering with an electronic system; 2) that it is 'designed to influence the government [or an international governmental organisation] or to intimidate the public or a section of the public'; 3) that it is 'made for the purpose of advancing a political, religious, racial or ideological cause'. Terrorism Act 2000 pt 1(1).

[60] Amnesty International 'United Kingdom. Human Rights: A Broken Promise' (2006) <https://www.amnesty.org/en/wp-content/uploads/2021/08/eur450042006en.pdf> accessed 23 September 2021.

[61] International Law Programme and International Security Department Roundtable Summary, 'UK Counterterrorism Legislation: Impact on Humanitarian, Peacebuilding and Development Action' (2015) 2-3, <https://www.chathamhouse.org/sites/default/files/UK-Counterterrorism-Legislation111115.pdf> accessed 23 September 2021.

[62] David Anderson *The Terrorism Acts in 2011: Report of the Independent Reviewer on the Operation of the Terrorism At 2000 and Part 1 of the Terrorism Act 2006* (The Stationary Office 2012) <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2013/04/report-terrorism-acts-2011.pdf> accessed 23 September 2021.

[63] Terrorism Act 2006, s1(3(a))

enhanced.[64] These are the Antiterrorism, Crime and Security Act, 2001; the Prevention of Terrorism Act 2005; the Terrorism Act 2006; the Counter-Terrorism Act 2008; the Terrorism Asset-Freezing etc. Act 2010; the Counter-Terrorism and Security Act 2015; the Counter-Terrorism and Border Security Act 2019.[65] The permanency and increasing ability to curtail freedoms described by Roach as he notes, 'the United Kingdom's experience is consistent with the thesis that laws against terrorism will often expand but are not easily restricted'.[66]

As Walker highlights, many of the Acts have not been promulgated in reaction to an incident of political violence. Instead, the Acts are more often than not constructed as a development of previous legislation.[67] This is in keeping with the hyperlegal promulgation and administration of laws as a method of pre-emptive governance rather than a temporary response to a crisis.[68] To give an example, section 23 of the 2001 Act instituted detention without trial for noncitizens suspected of terrorism with a view to their deportation.[69] The section caused backlash including through the consequential case *A and others v Secretary of State for the Home Department*,[70]

[64] Gracie Bradley, 'Some of the worst excesses of the counter-terror bill are gone, but without further changes it is still a threat to our civil liberties' *Liberty* (20 November 2018) < https://www.libertyhumanrights.org.uk/issue/some-of-the-worst-excesses-of-the-counter-terror-bill-are-gone-but-without-further-changes-it-is-still-a-threat-to-our-civil-liberties/> accessed 28 September 2021. See also Liberty, 'Liberty's Briefing on the Counter-Terrorism and Border Security Bill for Second Reading in the House of Lords' (2018) < https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Libertys-Briefing-on-the-Counter-Terrorism-and-Border-Security-Bill-for-Second-Reading-in-the-House-of-Lords.pdf > accessed 28 September 2021.

[65] A number of these laws have been challenged – and some repealed – on human rights grounds through the European Convention on Human Rights and the UK Human Rights Act 1998. Part 4 of the Anti-terrorism, Crime and Security Act 2011 – which allowed for the detention without charge or trial of those considered a risk to national security pending deportation – was repealed as it was ruled a violation of article 5 of the European Convention on Human Rights (the right to liberty and security). The use of control orders in the 2005 Act was scrapped following a 2010 legislative review, and the Terrorism Act 2006 provided for pre-charge detention of 28 days but was defeated in parliament and reverted back to 14 days. Alice Donald, Jane Gordon and Philip Leach, 'The UK and the European Court of Human Rights' (Equality and Human Rights Commission, Research Report 83 2012) < https://www.equalityhumanrights.com/sites/default/files/83._european_court_of_human_rights.pdf> accessed 19 October 2021.

[66] Roach (n 48).

[67] Clive Walker, 'Human Rights and Counterterrorism in the UK' (2016) <https://www.ohchr.org/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/Walker.pdf> accessed 28 September 2021.

[68] Reynolds (n 6), 4.

[69] Anti-terrorism, Crime and Security Act (ATCSA) 2001 s23.

[70] [2004] UKHL 56.

more commonly known as the 'Belmarsh 9 case'. In this case, nine defendants who were detained without trial in Belmarsh prison challenged the legality of section 23. The House of Lords agreed that section 23 was a breach of Article 5(1)(f) of the European Convention on Human Rights (which had been established as part of UK law through the 1998 Human Rights Act) in that it was discriminatory in its focus on noncitizens. [71]

Despite this successful challenge, Roach argues that the denouncement of the legislation was in word only: 'the Human Rights Act, 1998, allowed the court to make a bold declaration of incompatibility without striking the legislation down or releasing any of the detainees'.[72] What happened next was that the subsequent 2005 and 2006 Acts introduced measures that were increasingly preventative in direct response to the loss of section 23.[73] As Zedner explains, 'the [2005] Act repealed the provisions for detention without trial […] but it introduced in their place an unprecedentedly intrusive device for holding terrorist suspects within the community: the Control Order'.[74]

Control Orders and their subsequent manifestations, Terrorist Prevention and Investigation Measures (TPIMs) are examples of the expansion of the law in increasingly pre-criminal ways. Counter terrorism law claims to work in a preventive way, but as demonstrated throughout this thesis, prevention is used as a way to justify identity-based intervention and 'pre-punishment' relying upon racialised, classed and gendered understandings of suspicion and vulnerability rather than material evidence. Zedner describes Control Orders as 'Future Law, legal

[71] Roach (n 48), 279.
[72] *Ibid*.
[73] One year later, the 2006 Act was promulgated supposedly in response to the 2005 London bombings. However, this Act too must be understood as part of a longer trend in using the law to legitimise forms of state violence. The Act proposed a 90-day pre-charge detention for those suspected of terrorism, which was reduced after much controversy to 28 days, which nonetheless extends the normal 72 hours for a criminal case.
[74] Lucia Zedner 'Preventive Justice or Pre-Punishment? The Case of Control Orders' [2007] 60(1) Current Legal Problems 174, 176.

instruments designed to colonize the future in much the same way as conventional punishment has appropriated the past'.[75] Zedner's use of the term 'colonize' here seem appropriate considering law's development as a tool used to erase and re-write colonial subjects. Control Orders are non-legal preventive orders that impose restrictions on the 'movement, activities, social relations, and life choices of the controlled person'.[76] As instituted by the 2005 Act, they did not require a legal case, only that the Home Secretary 'has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity'.[77] Following the 2005 Act, a joint report by Justice and the International Commission of Jurists stated:

> The suggestion that control order powers are necessary to address the threat posed by terrorist suspects who are UK nationals is difficult to square with the fact that it has not previously been thought necessary to seek such powers in the past three and a half years since the attacks of 11 September 2001.[78]

TPIMs were introduced in the 2011 Act as a new version of the Control Order that were understood as better ensuring the right to liberty because they required not only 'reasonable belief' that someone is involved in terrorism but 'proof'.[79] Ten years later, the 2021 Act amended the 2011 Act, providing that it is enough that the 'Secretary of State "reasonably believes" that the individual is, or has been, involved in terrorism-related activity',[80] in order

[75] *Ibid.*,194
[76] *Ibid.*, 177.
[77] Prevention of Terrorism Act 2005 s2(1(a))
[78] Justice and the International Commission of Jurists, 'Joint Submission to the House of Lords' (2005) <https://www.icj.org/ebulletin/uk-adoption-of-a-controversial-new-control-order-law/> accessed 28 September 2021
[79] Helen Fenwick, 'What's the difference between TPIMs and control orders?' *The Conversation* (8 June 2017) <https://www.dur.ac.uk/news/allnews/thoughtleadership/?itemno=31617> accessed 28 September 2021.
[80] Counter-Terrorism and Sentencing Act 2021 pt 3(34) reads: 'In section 3 of the Terrorism Prevention and Investigation Measures Act 2011 (conditions for imposition of measures), in subsection (1), for "is satisfied, on the balance of probabilities," substitute "reasonably believes"'. Jonathan Hall, Independent Reviewer of Terrorism Legislation, considers that this lowers the standard of evidence and 'carries with it a stronger possibility, as with an arrest, that the individual may be innocent'. Jonathan Hall, 'Note on Counter-Terrorism and Sentencing Bill: TPIM Reforms (1)' (2020) <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2020/06/IRTL-TPIM-1-Note-1.pdf> accessed 28 September 2021.

for a court to impose a TPIM on someone. Explaining a TPIM, Tom Hickman QC notes that they:

> […] often involve the separation of married couples, the separation of fathers from their children, confinement to a residence far from home, a curfew (which the Government proposes to increase to up to 16hrs per day) regular reporting at the police station outside these times, tagging and restrictions on associations and communications. In other words, TPIMs can amount to almost total control over a person's life. To subject individuals to such measures indefinitely, in the absence of a conviction for any crime, requires the most compelling evidence of necessity.[81]

That in the 2021 Act, 'reasonable belief' does not require concrete proof in order to regulate the life of someone raises numerous questions around biases especially when 'the courts have interpreted the standard of suspicion as a belief not that the person *is* a terrorist, only that they *may* be a terrorist'.[82] Furthermore, even during the years where Control Orders necessitated 'proof' rather than 'reasonable belief', the broad scope of the definition of terrorism to include 'preparation' meant that the standard of evidence upon which the Home Secretary can rely to consider someone to be involved in terrorism is low. This is because preparatory offences extend the law's temporality even earlier than traditional preventative offences and therefore cannot rely upon material evidence, as it simply does not exist. The 2006 Act holds the required mens rea for an offence to be the intention to commit or assist one or more acts of terrorism while the actus reus is satisfied by 'any conduct whatsoever that is preparatory to such an

[81] Tom Hickman, 'Counter-Terrorism and Sentencing Bill – TPIMs: A Rule of Law Analysis' (Bingham Centre for the Rule of Law 2020) <https://binghamcentre.biicl.org/documents/97_counter_terroism_and_sentencing_bill_tpims_-_a_rule_of_law_analysis.pdf> accessed 28 September 2021.

[82] Jonathan Hall, 'Note on Counter-Terrorism and Sentencing Bill: TPIM Reforms (1)' (2020) <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2020/06/IRTL-TPIM-1-Note-1.pdf> accessed 28 September 2021.

intention'.[83] As such, these offences allow for the criminalisation of acts that are not innately criminal, 'but that become so when deemed to be carried out in preparation towards acts of terrorism', such as possessing certain items that would be otherwise lawful.[84]

The account of Control Orders and TPIMs is reminiscent of British colonial methods of preventative governance analysed in Chapter Three. Such methods were shown to be based on colonial logics of class and race, without need of evidence or previous criminal record. Central to trials of the fellaheen was an epistemological violence that rendered invisible, irrelevant and inadmissible the testimonies of classed, racialised and gendered subjects, and enabled their arrest, trial and execution. A similar pattern is emerging with contemporary legislation in the UK, justified at times under the global war on terror but persisting both before and after.

This section has demonstrated that the development of terrorism legislation in the UK has been towards an increasing abundance of law or a 'hyperlegality' in which pre-criminal acts and punishments are introduced as identity-based methods of governance. I will now argue that we can glimpse the development of such new administrative venues on an everyday basis, through migrants' interaction with bureaucracy.

6.5 Everyday bureaucracy

Expanding on Hussain's conceptualisation of hyperlegality, this section demonstrates that the opening up of new administrative venues in the law is not only something that happens in official legal spaces, but is a result of the everyday interaction of citizens with local bureaucracy. Speaking to my interlocutors who are migrants, the development of new

[83] Andrew Cornford, 'Terrorist precursor offences: Evaluating the law in practice' [2020] 8 Criminal Law Review 663, 666.
[84] Jude McCulloch and Dean Wilson, *Pre-crime: Pre-emption, Precaution and the Future* (Routledge 2016) 62.

classifications and experiences of suspicion are apparent in the everyday overlapping of frameworks on terrorism and asylum.

Over the past two decades, the global characteristics of the supposedly slippery 'terrorist' figure against whom an 'everywhere war' was considered necessary have made their way into terrorism legislation. As Hussain's analysis shows, the 2000 Act provided a definition of terrorism that included actions taken outside the UK.[85] Furthermore, the layering effect of law is also evident through the use of immigration law as a method of countering terrorism. Roach explains that the attraction of using immigration law as a basis for antiterrorism laws is that it allows 'broad liability rules that would generally not be accepted if applied to citizens' and further, immigration procedures allow secret evidence to be used in a manner not acceptable in criminal courts.[86]

Speaking to my interlocutors the link between immigration and countering terrorism became clear as these two logics are experienced as compounding on an everyday basis. Nour is a Muslim Egyptian woman who was seeking asylum in the UK with her husband and children at the time of our meeting. As the wife and daughter of prominent Muslim Brotherhood members and political activists in Egypt, she had experienced members of her family, including her father, being imprisoned in Egypt multiple times prior to the 2011 Egyptian revolution. The proscription of the Muslim Brotherhood in Egypt had repercussions for Nour as a mother who used to use their community facilities for childcare. I met her in a room of my university where she presented as nervous and shy, but willing to speak with me. Despite having to leave Egypt

[85] Hussain (n 38), 514.
[86] Roach (n 48), 273-4.

because of her family's links to the Muslim Brotherhood, Nour explained to me that 'the main surveillance I have felt ironically is here [the UK].' She elaborated:

> We report everything. Our bank accounts, I mean yeah. I feel like [laughs] I'm totally uh yeah I'm totally watched [laughs] especially with this hostile environment thing. […] I mean it feels like there is no way out. From the surveillance. Especially surveillance. If you get money, your bank account is watched. If you like get money from your family, from your own family, you have to report how you get this money, and from where. Ah, yeah. I don't really know [pause] but you know, because here I felt here the system is more like, *the grip of the system* is more [pause] is stronger than in Egypt. I don't know. But ah, yeah. Egypt is more random and um, yeah there is no like real system. You have a file, so we are watching you. But it's not that detailed [laughs].[87]

Nour's account of 'the system' as being the main location that renders her a suspect is reminiscent of Arendt's depiction of the colonial development of bureaucracy as a systematic form of governance that was entangled with race. Arendt developed the concept of the 'administrative massacre' as a situation in which bureaucrats 'propose[d] mass murder to hold onto the reins of power'.[88] Nour's experience of administrative systems rendering her suspect through 'normal' aspects of life could present a 'slow' conceptualisation of the administrative massacre.[89]

For Nour the intersections of the asylum and countering terrorism systems worked in different ways to those she had experienced previously when entering the UK on a working visa and occurred in the bureaucratic medicalisation of her body through tests and fingerprint taking. Explaining her experience of having her fingerprints taken, she told me that she had to go

[87] Interview with Nour, emphasis my own.
[88] Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace & Company 1973) xvii.
[89] Berlant (n 27).

through the process four times and was told that 'if you made a crime in another country, we need to know'. [90] Considering the difference in treatment she faces as an asylum seeker as opposed to when entering and staying in the UK on a work visa she said:

> It doesn't make it lawful just because it's by law, but ah, the difference between the [pause] the [pause] treatment between the Tier 2 [working visa] people and the asylum people is really [pause] *all the time I'm a suspect.*[91]

Nour's differentiation between immigration statuses speaks to the differential effects that classification can have. As Aked, Younis and Heath-Kelly note, British counter extremism approaches note asylum seekers as potential radicalisation risks because of the distress and trauma they have experienced.[92] Nour also felt the marking of her as suspect in everyday life, which for her particularly meant on her visits to mosques:

> […] because this is the plan always to guard and watch mosques. I used to go to the West London Islamic centre. Ah, yeah I always wonder if there spaces are really available. I'm not really sure about this. If the Imam said anything in the ah prayers that is not [pause] I don't feel comfortable with it. Because we are watched […] because they suspect always these places. I don't know [pause] I'm trying to think like them [pause] I mean if this community we are always afraid of [pause] communities and things like that so it makes sense that we are watching it [laughs].[93]

[90] Interview with Nour, emphasis my own.
[91] *Ibid*.
[92] Aked, Younis and Heath-Kelly (n 23).
[93] Interview with Nour, emphasis my own.

Nour demonstrated her experience of feeling like a suspect in her annotation of the map of London where she drew one long line of the route that she takes each day and labelled it 'surveillance'.

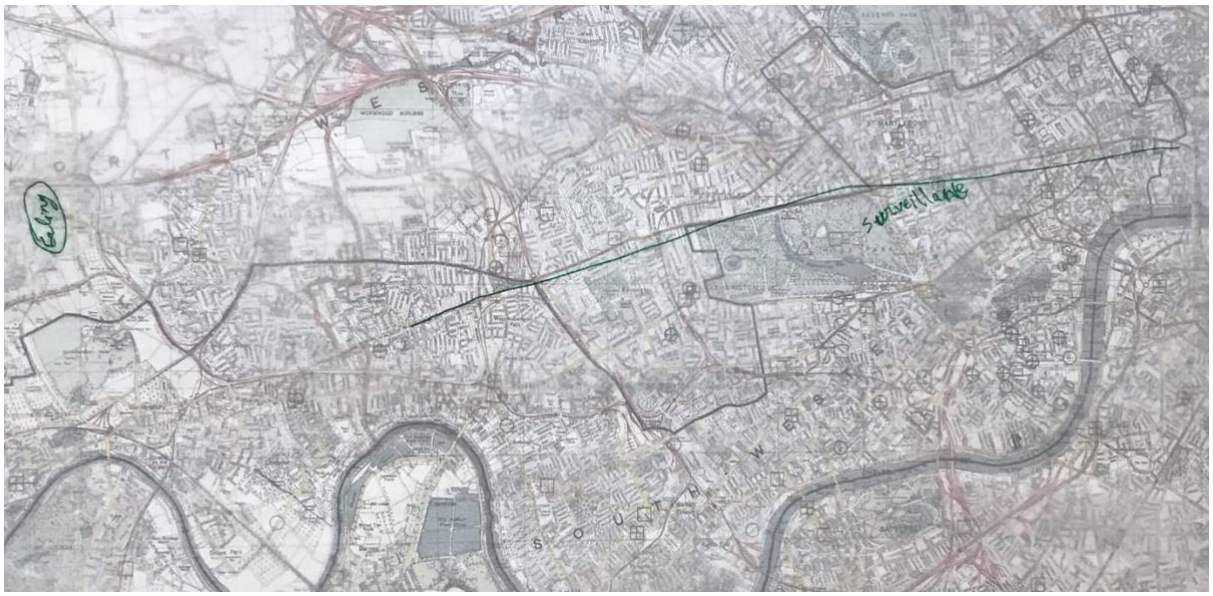

Figure 10: Annotated map of London by Nour

It is important to note that Nour's experience of mosques as surveilled is shaped through her life in Egypt where she experienced them as highly regulated and guarded by security services. For Nour, these everyday experiences of feeling like a suspect in the UK have meant that she tries to pre-empt surveillance and safety as she moves about London. From checking for where CCTV cameras are, to 'trying to think like them', there is a sense with how Nour describes the environment of fear that it is difficult to pinpoint the source of her fears and anxieties, reminiscent of Arendt's conception that the bureaucratic forms of rule, or the 'rule by nobody' is the most tyrannical in that precisely no one can be held accountable.[94]

[94] Hannah Arendt, *On Violence* (Harvest/HBJ 1969) 81.

Another interviewee with whom I spoke was Ilyas. Ilyas is a young Coptic Christian Egyptian in the UK for education and work. Ilyas was very expressive and enthusiastic in our (multiple) interviews. He poured over the colonial map of Egypt and requested we visit the original map together at the British library (he could not make it in the end, but I hope one day we can arrange a trip). He had been active in Egypt during the 2011 revolution and, having had friends arrested by Egyptian authorities, expressed sadness, anger and fear about the state of the country. Despite this, he told me, '[in] my personal life, I have felt the effect or impact of emergency laws and counter terrorism laws more in the UK than in Egypt'.[95] This he also illustrated with stories of the exigencies of immigration law, in particular, the process of police registration which he described as different for a number of 'high risk nationalities':

> Everybody there is looking either North African or South-East Asian or Chinese or [pause] so it's just like a strange feeling of putting all of these people in one room which you know that the common thing between these people are stereotypes of having them from these nationalities on the UK lands and them being high risk, and them being threatening to national security, so we need to gather them in a room and like check them. You know, so actually like they ask you about everything. You have to fill like a long long application about everything in your personal life, like your mother's name, your uncle's name, your addresses in the past five years, outside the UK. You know it's a deep scrutinisation, scrutiny of you that's not done in Egypt.[96]

Ilyas' explanation of the process of police registration brings to life the day-to-day practice of form filling and box ticking that the administration of security structures relies upon. De Goede and Sullivan explain that such processes help us to rethink the notion that lists of information held by officials are merely repositories of neutral information. They suggest that information

[95] Interview with Ilyas 21 January 2020, SOAS, University of London.
[96] *Ibid*.

banks that list details of individuals and categorise them accordingly are instead dynamic and relational 'inscription devices' productive of 'specific material, political and legal effects'.[97] One such effect is the 'flattening' and homogenisation of difference: 'lists promise order by providing concrete inventories of items in a given category, and they flatten complexity by drawing disparate items into abstract, commensurate relation',[98] in exactly the way Ilyas describes.

The everyday bureaucratic encounters of migrants with immigration law are more than just an information gathering exercise, they are a productive interaction in which the requirement to wait in line to take your turn to give information acts in a disciplinary way, reminding people that they are potentially suspected. Furthermore, it is not a coincidence that such listing processes were developing in British-occupied Egypt. As I demonstrated in Chapter Four the colonial blacklist worked to homogenise difference and produce entire new categories of 'friend', 'peril' and 'extremist' Islam, strategically, just as the British administration sought a new form of Empire. In this way, such spaces are the everyday face of hyperlegality in that they act as different methods of governance for a specific group of racialised people.

6.6 Creating vulnerable subjects

This section presents Nour and Ilyas' experiences of feeling suspect alongside legal cases to show that the creation of 'vulnerable' subjects carries over the same effects encountered in early twentieth century Egypt, where law shut out political voices by erasing alternative modes of being. Furthermore, counter to Greer, this section works to depict an understanding of emotions as constituting subjects.

[97] Marieke de Goede and Gavin Sullivan, 'The Politics of Security Lists' [2015] 34(1) Environment and Planning D: Society and Space 67, 70.
[98] *Ibid*.

Contemporary British countering terrorism policies and supposedly 'softer' countering extremism methods are premised upon theories of radicalisation which emphasise the connection between emotional and behavioural signs and vulnerability, undercut by a pathologisation of race.[99] Many of these theories are based upon shaky evidence and have been scientifically disproven.[100] These theories have been developed since 9/11 which saw a mushrooming of academic departments and thinktanks on terrorism studies, many of which are funded by the UK government.[101] As Gunning and Jackson show, terrorism studies literature, which has come to greatly influence methods and theories of deradicalisation, has developed an understanding of 'religious terrorism' that is 'fundamentally different to previous or other forms of terrorism'.[102] Aked, Younis and Heath-Kelly show that the focus on behavioural and emotional signs is a central mechanism in the racialisation of counter extremism approaches because of the historical pathologisation of race.[103]

Early versions of radicalisation were for the most part based on 'conveyor belt' theories that constructed a progressive narrative 'from grievance or personal crisis to religiosity to the adoption of radical beliefs to terrorism'.[104] These came to underscore British government

[99] Aked, Younis and Heath-Kelly (n 23).
[100] United Nations General Assembly 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism' Human Rights Council 43rd Session Supp No 3 UN Doc A/HRC/43/46 (2020) (UNGA), 6.
[101] The Henry Jackson Society received £83,452.32 from the Home Office during 2015-17 to produce a report on UK connections to terrorism. Mark Curtis and Matt Kennard, 'Revealed: UK Home Office paid £80,000 to a lobby group which has funded Conservative MPs' *OpenDemocracy* (14 July 2020) < https://www.opendemocracy.net/en/opendemocracyuk/revealed-uk-home-office-paid-80000-to-a-lobby-group-which-has-funded-conservative-mps/> accessed 28 September 2021. UK universities also have links with major arms manufacturers and the Ministry of Defence jointly. See 'Feature: Inside the Cambridge military-academic complex' *MENA Solidarity Network* (1 October 2018) < https://menasolidaritynetwork.com/2018/10/01/feature-inside-the-cambridge-military-academic-complex/> accessed 28 September 2021.
[102] Jeroen Gunning and Richard Jackson, 'What's so Religious about Religious Terrorism?' [2011] 4(3) Critical Studies on Terrorism 369, 371.
[103] Aked, Younis and Heath-Kelly, (n 23).
[104] Faiza Patel, 'Rethinking Radicalization' [2011] Brennan Center for Justice, 2 <https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf>

policy on methods of countering terrorism. For instance, the now infamous Prevent policy was first developed by the Labour government in 2006 and was proven at the time to target Muslim communities throughout the UK in particular.[105] While more recently theories hold that there is no distinctive 'vulnerability profile,' it is maintained that a common attribute across those susceptible to radicalisation is a 'general moral and cognitive vulnerability' influenced by life history, setting and age.[106]

In a paper commissioned by the UK Home Office, cognitive vulnerability is understood as an 'inability to cope with stress or challenging situations', and moral vulnerability is a 'weak commitment to conventional moral rules and values'.[107] The word 'conventional' is given the example of 'crime-averse'. This suggests that holding moral values is the equivalent of being law abiding. To have a weak sense of moral conventions, or to be 'morally vulnerable' therefore, is to be potentially supportive of criminal activity. Scholars have shown how conceptualisations of 'vulnerability' have come to mark people based on class, gender, race, disability and age.[108] Considering family law cases over the 'welfare' of children rendered vulnerable to 'extremist' influences through family members, Ahdash identifies a difference between the 'inherent vulnerability of children' and a 'structural vulnerability' which reinforces specific social and political mechanisms, giving the state an 'almost unlimited capacity and an endless opportunity to intervene in and regulate the lives of perennially vulnerable individuals in the name of their protection'.[109] In a report by the right-wing

[105] Arun Kundnani (n 30). See also Department for Communities and Local Government (n 29).
[106] Noémie Bouhana and Per-Olof H. Wikström, 'Al Qa'ida-influenced radicalisation: A rapid evidence assessment guided by Situational Action Theory' (Home Office 2011, occasional paper 97) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116724/occ97.pdf> accessed 28 September 2021.
[107] *Ibid.*
[108] Younis and Jadhav (n 23); Aked, Younis and Heath-Kelly (n 23); Fatima Ahdash, 'The interaction between family law and counter-terrorism: a critical examination of the radicalisation cases in the family courts' [2018] Child and Family Law Quarterly 389.
[109] Ahdash (n 108), 396-397.

thinktank Henry Jackson Society, for instance, it is argued that children 'vulnerable' to radicalisation should be 'supported' by the state after they become adults. Stating that the wardship system is insufficient as it ends when a child turns 18, the report encourages the use of the state support system that could put children into care until they are 24 years of age.[110] This points to the creation of a double standard for children from Muslim families whereby their adulthood is not recognised and their supposed vulnerability provides justification for continuing surveillance.

Following the argument of this thesis so far, understandings of suspicion and vulnerability are imbued with the construction of racial, gender and class difference to 'civilised ways of life' which justifies differential treatment. In the contemporary UK, this difference not only works to create a citizen/terrorist binary but also plays out between 'types' of terrorism. For instance *Barot v R* was a landmark case in the development of greater sentencing for terrorism in general and preparatory crimes in particular.[111] *Barot* was one of eight accused of the conspiracy to murder, linked to a plan to set off explosions in the UK. Despite the plans being at a very early stage – no funding had been received and no equipment acquired – the judge took the view that it did not affect the situation, stating it was 'only a matter of time before the grim reality of your plans took effect'.[112] The defendant was sentenced to life imprisonment with a minimum of 40 years to be served which was then appealed. The Appellate Court debated that the ceiling for inchoate offences should be higher for those concerned with terrorism, and it did so by differentiating between 'new' forms of 'fanaticism' as compared with previous understandings of sectarian (Irish) terrorism:

[110] Nikita Malik, *Radicalising our Children: An analysis of family court cases of British children at risk of radicalisation, 2013-2018* (Henry Jackson Society 2019) https://henryjacksonsociety.org/wp-content/uploads/2019/05/HJS-Radicalising-Our-Children-Report-NEW-web.pdf accessed 28 September 2021.
[111] *Barot v The Queen* [2007] EWCA Crim 1119; Zoe Scanlon, 'Punishing Proximity: Sentencing preparatory terrorism in Australia and the United Kingdom' [2014] 25(3) Current Issues in Criminal Justice 763, 772.
[112] *Barot*, 12-14.

> The fanaticism that is demonstrated by the current terrorists is undoubtedly different in degree to that shown by sectarian terrorists with which the United Kingdom had become familiar… IRA terrorists were not prepared to blow themselves up for their cause. It is this fanaticism that makes it appropriate to impose indeterminate sentences on today's terrorists, because it will often be impossible to say when, if even, such terrorists will cease to pose a danger.[113]

Following the appeal, the defendant was still handed a lengthy 30-year sentence, which was linked with a pre-determination of the 'kind of person' that a terrorist is:

> Terrorists who set out to murder innocent citizens are motivated by a perverted ideology. Many are unlikely to be deterred by the length of the sentence that they risk, however long this may be. Indeed, some are prepared to kill themselves in order to more readily kill others.[114]

The account of 'fanaticism' in this ruling and its justification of a 30-year sentence has gone on to influence cases concerning section 5 of the Terrorism Act 2006, preparatory crimes, and has been shaped through the pathologising framework of vulnerability that sees potential terrorists as at once a threat to themselves and to society, relying upon colonial framings of difference and naturally violent tendencies. Thus 'international' or 'religious' terrorism is imagined as unfamiliar and external to the UK and having to do with a sacred duty that will motivate 'terrorists' to no end.[115] 'Religious' or 'Islamic' terrorism is therefore framed as needing more rigorous methods of governance.

[113] *Ibid*., 54.
[114] *Ibid*., 45.
[115] Gunning and Jackson (n 102), 372.

The construction of a naturally dangerous and vulnerable subject was explained by Nour to be a role she was predicted to fill. During our interview I asked her to look at the map of London and to tell me places with which she was familiar. The first place she pointed out was the Home Office Immigration Centre in Croydon. Nour often has to visit the Centre for asylum interviews. I asked her what words she would associate the Centre with, and she said 'surveillance'. Gesturing to her wrists, she explained that she understands the role she is allocated in the Centre to be a predicted source of violence. She knows this because when she sits for an interview, there are handcuffs attached to the tables, the walls and the floors:

> Tables are fastened to the floors. And the on the walls […] it's really strange. Because ah, I don't think that people that go there is […] they wouldn't be violent. But the message is, "we are expecting you to be violent".[116]

Nour's experience of herself as someone expected to be violent can be understood as an everyday deployment of the category 'suspect', for which new administrative venues are developed in the law to manage. For Ilyas, the 'suspect' role as one he is expected to fill makes him feel like he cannot speak out and as calling his existence into question. He told me:

> The idea of movement or legally existing in your homeland is fine, at least like the idea of waking up and being able to exist. But the idea of existing in the UK comes out with a lot of law and legalisation that you have to think about constantly.[117]

[116] Interview with Nour.
[117] Interview with Ilyas.

Legal and bureaucratic procedures for Ilyas, much like the 'grip of the system' for Nour, are experienced as an interrogation of his presence in the UK. Ilyas also considered this to be 'normal' for him and a type of 'ordinariness'[118] that he could not challenge:

> The body language of officers when they talk with me, or when they're talking with someone before me. Their questions, the time they take with giving the entry clearance to someone and other [pause] so it's always different in a lot of means that are really hard to capture in an interview. It's also like something psychological and mental that it it's in my mind like how to see it? *And I cannot even claim with evidence*. You see like this is one other thing about like this informal law of for me having like to surveil more and scrutinise more if someone from this high-risk nationality is entering the country as well on the border, in the airport. *It's not written*. But *it's like normal life* that any officer who would see Egypt and the beard would definitely ask me more questions, definitely, and that's what happens.[119]

Despite their differences in religiosity, age, visa status and gender, Ilyas and Nour both experience forms of violence relating to counter terrorism legislation through the scrutinisation of their everyday lives in Britain. Their everyday interaction with bureaucratic processes point to the reshaping and expanding of new security norms and how such norms 'stick and shift' between different markers of racialisation, religion, class and gendering.[120] Ilyas' explanation that he feels powerless to evidence his mistreatment and Nour's understanding that she is expected to be violent speak to the histories of colonial law-making and the racialised and gendered basis upon which standards of evidence are shaped. Their testimonies also hark back to one of the effects of colonial law-making: that to render someone suspect is also to remove them from being able to participate in formal political life. Here, the 'normal' and everyday

[118] Berlant (n 27), 759.
[119] Interview with Ilyas, emphasis my own.
[120] Ahmed 2004a (n 22).

procedural aspects of countering terrorism and immigration law work to both 'mask legal violence,' while shutting down the voices of those subject to it.[121]

These testimonies counter Greer's consideration that *feeling* suspect is not the same as *being* suspect by pointing to how the dissipation of legal violence in everyday life works to discipline people through fear and erasure of voice. This was not only evident in the transcripts of my interviews, but also during the interview itself. The interviews with both Ilyas and Nour were marked with moments of anxiety and sadness that I could not translate onto paper easily. Nour's manner of speaking with me made me think at the time, and on reflection listening back to our recording, that she was not entirely at ease. Nour's speech was punctuated with laughter, especially in the moments when she would tell me about her experiences of feeling under surveillance or treatment by the asylum system. Such laughter could have been for any number of reasons, and indeed a number of my other participants expressed feeling stressed or upset by the topics we were discussing. However, these others simultaneously felt that the one big difference between the UK and Egypt was that they could at least have this discussion with me in the UK freely, framing this ability as a freedom to express themselves. For Nour, I was not so convinced that this was the case. Possibly the idea of being interviewed reminded her of her experience with the asylum system, or possibly she did not feel as at ease as the other participants when speaking about such issues. What was telling of this was that two other asylum seekers that I approached to speak to refused to be interviewed out of fear of the potential repercussions.

[121] James Martel, The Law of Rules: Hyperlegalism, Emergency and the Violence of Procedure' [2017] 17(1) Law, Culture and the Humanities 53, 59.

6.7 A conditional welcome

The following section explores the experiences of Mariam and Sara and their different and perhaps unexpected experiences of counter extremism in the UK. Countering violent extremism policies have been increasingly tasked with 'engaging communities'. These aspects of British counter extremism policies seem to resonate in part with Mariam and Sara, two Coptic Christians who are in the UK for work and education. For them the law can also feel empowering and give room for voice, seemingly the very opposite of Ilyas and Nour's experiences. At the same time, Mariam and Sara's understandings of such freedoms are relative to their lives in Egypt where they have felt oppression because of gender and faith.

Before moving to the UK, Mariam had stayed in a few other countries. She left Egypt around 2015 in part because she no longer felt safe in the country. Mariam is a well-educated Coptic Christian Egyptian. The persecution of Copts in Egypt and rifts between Islamic and Christian segments of Egyptian society has a long history which involved the British utilising conflicts to frame themselves as peacekeepers.[122] In recent years, there have been upsurges in violence against Copts, by members of the Muslim Brotherhood, but also by the Egyptian state. In the early days of the Egyptian revolution in what was named the 'Maspero massacre', for instance, 30 mostly Copts were killed by state forces and hundreds injured for peacefully protesting the burning of a Coptic Church.[123] This is the background upon which Mariam and Sara left Egypt and came to the UK.

[122] Jason Brownlee, 'Violence against Copts in Egypt' (Carnegie Endowment for International Peace 2013*)* < https://carnegieendowment.org/files/violence_against_copts3.pdf> accessed 28 September 2021.
[123] 'Egypt: Don't Cover Up Military Killing of Copt Protesters' *Human Rights Watch* (25 October 2011) <https://www.hrw.org/news/2011/10/25/egypt-dont-cover-military-killing-copt-protesters> accessed 29 September 2021.

Despite being a Christian, Mariam could easily be understood to fall into the 'suspect community' in the UK by her Egyptianness alone, because of understandings of how religion is racialised through counter extremism, allowing for the criminalisation of innumerable people 'who have no other connection to the perceived threat than their religious identity or regional background'.[124] Contrary to this framing however, Mariam does not consider herself to have been affected by counter terrorism legislation in either the UK or Egypt. She told me: 'I am a person of colour, but I am a woman, so I'm not the stereotypical Muslim man that you were talking about that's usually the target'.[125] By refusing to accept the label of suspect, Mariam resists the discursive and homogenising label and potentially victimising narrative.

At the same time extremism imagery is fluid and prospers across the gendered bodies of those marked as 'vulnerable'. Indeed, the stereotypical imagery of the bearded Muslim man that Mariam points to is part and parcel of vulnerability discourses that consider Muslim and racialised women to be the conduits of extremism. This imagery relies upon mainstream scholarship on terrorism which understands women as playing a peripheral role when they are involved in political violence: from this viewpoint, their involvement is for 'social' rather than 'political' reasons and they are often co-opted.[126] This framing evokes gendered stereotypes of women as 'peaceful' and 'passive' and 'vulnerable' that are central to how narratives of immorality are cast as hereditary. While Mariam's reasoning for not being suspected may not always hold up since gender certainly plays a role in counter extremism, her refusal of the 'suspect' category certainly interrogates the boundaries of the suspect community as a blanket theory that is attached to all migrants in the UK.

[124] Julia Eckert (ed) *The Social life of Anti-Terrorism Laws: The War on Terror and the Classifications of the "Dangerous Other"* (transcript 2008), 15.
[125] Interview with Mariam, 11 January 2020, Mariam's home.
[126] Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (Zed Books, 2007).

From a different perspective, Sara, also a Coptic Christian Egyptian feels as though she *is* marked as someone who could be suspected of terrorism. For her, this is because of her Egyptianness and the activism she engages in both the UK and Egypt. Sara told me that in the UK she feels anxious in public and tries not to speak or read Arabic. In fact, she explained to me that she mobilises her Christianity as a form of protection from this:

> I use constantly constantly use my identity as a Christian to protect me from being profiled as a potential terrorist. And I have made it very very clear in certain important events or when I fly to the US, I only did that once, that I wear, I identify as a Christian. I wear a cross, although I wouldn't do that in Egypt. Or I wouldn't normally like to brand myself, "oh I am a Christian," but I know that because I am Egyptian and because part of that is linked to being profiled as a potentially a terrorist or a danger to the national security, that I want to put myself in [pause] claim another identity that would somehow protect me from that profiling.[127]

Sara's conscious use of Christian symbolism can be understood as a self-constituting act of resistance in that she also resists the suspect narrative.

Mariam framed her experience of law in the UK as making her feel safe and free. One of the most important aspects of British life that made her feel safe was what she called the 'transparency of the system' which she used to refer to how it is possible for her to know what her rights and responsibilities are and what is expected of her, and gave her the reassurance that she could speak freely, something that is regularly cracked down on in Egypt under countering terrorism.

[127] Interview with Sara 27 November 2019, Sara's home.

> At least I know what's going on. That's one thing. The transparency. And the second thing is, I know if there is trouble, I can pick up the phone and call the police and they will respond. And I'm not going to be afraid of what they're going to do. So that to me. If we are talking about basic life safety, not even talking about political activism. So, and feeling safe and in terms of rights just feeling safe to say whatever I want to say, and not fear the repercussions yeah. You know? How can anyone not see that as safety?[128]

At the same time, she explained that she accepts that democratic freedoms are conditional, and that 'there is a balance of what you have to give up, and what you have to gain in return'[129] that she understands as mediated through law and the regulation of beliefs. For Mariam, the UK had not achieved this balance, in fact, the country is not strict enough at all when it comes to countering terrorism. She illustrated this with an example of gender:

> There is this big female genital mutilation problem in the UK […] the fact of the matter is, this needs to be addressed more urgently because this is all, this kind of it all ties together. I was shocked to see so many little girls here, in headscarves, six- and seven-year-olds. And it just sickens me. And that is not respect of peoples' culture, I'm sorry, it's oppression and it's government sanctioned oppression. The one thing I like is that I can say that here. And feel completely OK with it. Um, but that still doesn't excuse that this is happening […] So it just all ties in together because these little girls they grow up, they become mothers, they raise children, they have relationships, and the violence that's been enacted upon them is just transferred on and on and on.[130]

[128] Interview with Mariam.
[129] *Ibid.*
[130] Interview with Mariam.

Mariam's quick linking of female genital mutilation to girls wearing headscarves in the UK to the presence of terrorism mirrors the common narrative about gendered vulnerability and the essentialisation of Islam as oppressive. It could be argued that Mariam plays into the narrative of 'acceptable' British citizen, welcomed in on the 'condition' that she simultaneously internalises and recycles British discourse on terrorism, thus bolstering its affective capacity to discipline society.[131] From a different perspective, while she does not feel entirely at ease in the UK, Sara agrees that British laws are not doing what they should:

> I feel like I think they're attacking the wrong immigrants with this, with the laws, with anything you try to watch people. And to me they're always watching the activists, they're not watching the *real* extremists. Because there are extremists, real ones.[132]

Later in our conversation Sara told me, 'I want to show maybe that this part of the world [Egypt], it has more than just terrorism. Just normal people. Like anyone else'.[133] Sara's explanation that the UK is not successful in countering terrorism, that they are looking for the 'wrong' people and that they need to do more to find the 'real extremists', is an attitude that was shared by a number of my other interviewees. Like Mariam, it could be argued that Sara is also reiterating the state narrative on terrorism. However, it would be unfair to the complex and violent life experiences of my interviewees to uncritically suggest that they are acting in line with the state. Their considerations of terrorism are changeable and at times contradictory. It is important to acknowledge that Mariam and Sara's narratives, like those of Nour and Ilyas, come from a place of anxiety and fear, and one that has been heightened by their experiences of both state and political violence in Egypt and that have travelled with them to frame their

[131] Ahmed (n 25).
[132] Interview with Sara.
[133] *Ibid.*

lives in the UK, as Sara told me: 'I feel like my life there [Egypt] has been so hell that I carry the hell back with me everywhere I go'.[134]

This also became apparent from how Mariam and Sara acted during our interviews. Mariam, like Nour, was one of the most visibly uncomfortable participants throughout our conversation. The topics we were discussing clearly made her anxious and upset which framed how she spoke. In fact, she told me as much when we finished speaking, and requested that we go to lunch together so that she could transition into a happier mindset. While Mariam's story of migration and acceptance into the UK was in part one of relative prosperity and ease, both this sense of ease and her understanding of terrorism are framed by her experiences as part of a marginalised and persecuted group in Egypt. Indeed, it is little recognised that the majority of victims and survivors of religious based political violence are based in the Global South and that the violence, terror and suffering of both political violence and the state-based repercussions are 'geographically unequal in [their] global distribution'.[135]

How, then, do we square Mariam and Sara's visible and verbal acts of resistance with their mirroring of a hegemonic narrative on terrorism? Following Mahmood and Ghannam, agency and resistance can be conceptualised as part of a dispersed and changeable field of action which in turn can structure new actions.[136] In this way, resistance is detached from the specific goals of progressive politics, and is able to capture 'different kinds of bodies, knowledges, and subjectivities whose trajectories do not follow the entelechy of liberal politics'.[137] In this sense, acts of self-constituting resistance by my interlocutors that mirror hegemonic narratives on

[134] *Ibid*.
[135] Suvendrini Perera and Sherene H. Razack (eds), *At the Limits of Justice: Women of Colour on Terror* (University of Toronto Press 2014), 14.
[136] Ghannam (n 31) 85-105.
[137] Mahmood (n 31), 14.

terrorism must be understood as being shaped through their experiences in Egypt as part of a minority community subject to political violence. At the same time, as this form of inclusion is premised upon the suspicion of others, it is perhaps more accurate to name it a 'deadly inclusion', following Haritaworn, Kuntsman and Posocco, suggestive of how liberal democracies work to define the boundaries of the community upon the exclusion of others and the multifaceted way that the law works on different levels and in different spaces to hold people 'in between' statuses with their rights questioned.[138]

6.8 Conclusion

This chapter has argued that pre-criminality as lawful and administrative governance can be seen on an everyday basis through the interaction of people with mechanisms of bureaucratic legalism. I have shown that coloniality persists in framings of 'vulnerability' and 'dangerousness', which provides justification of the creation of new pre-emptive methods inside the law to 'deal' with 'terrorist' subjects. My legal analysis and interviews demonstrated the law's colonisation of emotions and its erasure of alternative and non-hegemonic modes of being.

The experiences of countering terrorism are lived as a dislocation by migrants in the UK: moments where they are suspected work to trigger and 're-open'[139] memories of state violence in Egypt. For someone like Nour who is seeking asylum and is thus entering into a more securitised venue of the law, and whose gender and religion play a part in presenting her as a 'vulnerable' subject; and for someone like Ilyas whose gender, race, and age marks him as a potential terrorist, the legal and bureaucratic systems in the UK reproduce and expand upon

[138] Jin Haritaworn, Adi Kuntsman and Silvia Posocco (eds.), *Queer Necropolitics* (Routledge 2014), 14.
[139] Sara Ahmed, *Strange Encounters: Embodied Others in Post-Coloniality* (Routledge 2000) 8.

the colonial framings of vulnerability through the removal of speech that was considered a 'humane' and 'civilised' method of expulsion from political society.

Simultaneously, I have interrogated some of the conclusions or 'truth effects' of the archives and theories on the suspect community. Using transnational and intersectional feminist approaches I demonstrated that the effects of law are not necessarily predictable. I have shown this through the ways that different logics of race, gender, class, and religion render bodies as both 'vulnerable' and 'acceptable citizen' and further through moments of unconscious and conscious resistance to hegemonic narratives. For instance, the deep scrutiny that Ilyas feels within the space of police registration, and the overwhelming 'grip of the system' felt by Nour, but also the freedom to speak that Sara and Mariam feel, can be attributed to the discriminatory and disciplinary way that the law sets out to allow for certain subjectivities and disallow others.[140] Therefore, the law has multiple meanings: it is at once a force that can overwhelm and interrogate someone's existence, one that can set up discriminatory practices and prevent people from speaking out, and one that can make people feel safe and secure and welcomed.

The engagement with aspects of countering extremism in the UK, in particular the overlap with mainstream rhetoric around vulnerability and terrorism that we see in the speech of Mariam and Sara, could be understood as a structural condition of Britishness. I demonstrated that we must understand the overlap between their speech and the hegemonic British narrative also as a product of their past experiences in Egypt and resistance to being classed as a 'terrorist suspect'. Considering the exclusionary effects upon which every moment of inclusion is premised, I have argued that logics of coloniality persist in contemporary forms of pre-

[140] As Nisha Kapoor and Kasia Narkowicz note, citizenship has always been a privileged category 'defined as much by who is excluded from it as who it includes.' 'Unmaking citizens: passport removals, preemptive policing and the reimagining of colonial governmentalities' [2019] 42(16) Ethnic and Racial Studies 45, 52.

criminality and that they have been adapted to the contemporary ‘multicultural’ and ‘diverse’ British state.

Chapter seven: Hyperlegality, affect, and pre-crime in Egypt

7.1 Introduction

This chapter combines theories on hyperlegality and queer and postcolonial feminist approaches to law to understand the cyclical affects of law and the persistence of colonial forms of pre-criminal thinking in Egypt. It argues that by conceptualising Egyptian legislative forms of countering terrorism through an affective reading of Hussain's hyperlegality, we can view the development of aspects of pre-criminal tools as the persistence of forms of coloniality today. In doing so, this chapter challenges narratives that would posit Egypt as 'lawless' compared to a 'lawful' UK. By paying attention to the differences between logics of gender, religion and class as utilised by the Egyptian state, I argue that the everyday and normalised forms of structural violence upon which national security is shaped define the contours of pre-criminal thinking in much the same way as in the UK.

In Chapter Six I developed Hussain's conceptualisation of hyperlegality as legal and administrative governance, showing how the creation of classifications of persons is premised upon colonial concepts of vulnerability in the UK which allow for the expansion of administrative venues on an everyday basis. Through this I argued that we can understand pre-criminal logics as evidence of the recycling of colonial forms of thinking that are justified through frames of racialised, gendered and classed difference. In this chapter I carry out an affective reading of law and of Hussain's work in Egypt. This approach demonstrates that similar feelings of anxiety and of being overwhelmed by the abundance of law are visible in both the British and Egyptian contexts and further, that an excess of law can in fact *feel* like a

lack of law. Through this, the distinction between the UK and the Egyptian case studies becomes more difficult to discern and render opposite.

This thesis has carried out a genealogy of pre-criminal thinking and practices. This genealogy is easier to research in the contemporary UK setting because as a terminology, the phrase 'pre-criminal space' is used by scholars and policy makers alike. Furthermore, critical literature that uses the 'suspect community' framing, predominantly, if not consistently, uses it in reference to liberal democracies where a racialised minority of the population is considered to be cast as suspect rather than in autocratic societies where entire populations are cracked down upon. This application of theory makes sense when considering the empirically different forms that state violence takes in the UK compared to Egypt. However, this differentiation also ends up framing non-western states as either too 'backward' or too 'draconian' to have developed pre-criminal legal technologies (invariably considered new, post 9/11 and 'soft' phenomena). This approach would therefore suggest that pre-crime is something that exists predominantly in western liberal democracies.

To exceptionalise Arab states' methods of countering terrorism is a misconception based upon an old colonial binary of lawless/lawful, 'reflecting long-standing orientalist tropes about non-European countries'.[1] While Egypt certainly goes far beyond the UK in terms of state violence through its use of arbitrary mass arrest, imprisonment without trial, torture and extrajudicial killing under the guise of countering terrorism, by looking to the persistence of legal methods of governance, I argue that Egypt should not be seen as a qualitatively different 'type' of state to a liberal democracy, more that it is a question of degree.[2] Looking to the socio-political

[1] Nicola Pratt and Dina Rezk, 'Securitizing the Muslim Brotherhood: state violence and authoritarianism in Egypt after the Arab Spring' [2019] 50(3) Security Dialogue 239, 243.
[2] Nasser Hussain, 'Beyond Norm and Exception: Guantánamo' [2007b] 33(4) Critical Inquiry 734, 735.

context surrounding the development of countering terrorism laws in Egypt, it becomes clear that they must be understood as part of the political power struggles that have characterised the postcolonial state before and since independence. Therefore, this chapter extends my genealogy and reformulates it to think about aspects of pre-criminality present in Egypt that have persisted and been reshaped since the British occupation of Egypt.

I argue that much like British forms of pre-criminality, in Egypt, the development of predictive 'administrative venues' to deal with 'terrorism' is premised upon the structural marginalisation of gendered, classed, racialised and religious subjects, cast as threats to the postcolonial Egyptian state. This can also be seen in the use of old colonial legal tools such as Law 10/1914 for Assembly that were created to gatekeep the political arena. While Egypt's postcolonial governance has been primarily based upon the use of emergency law, deemed by some to be suggestive of its lawlessness, I argue that Egypt's use of law works to create and erase subjects in the same way as the UK's bureaucratic style governance. Viewing this as Egypt's own form of pre-criminal thinking, it is possible to conceive of the similar legacies that colonialism has left in both states, while paying attention to their contextual differences.

Methodologically, building on the Chapter Six, this chapter uses queer and postcolonial feminist approaches to present a different story of law in Egypt, combining interviews with legal analysis. Queer approaches speak to the persistence of the affects of societal structures in a way that resists the 'progress' narrative of western liberalism.[3] Affects are understood as transcending time and reconfiguring through new formations of power.[4] From this perspective,

[3] Elizabeth Freeman, *Time Binds: Queer Temporalities, Queer Histories* (Duke University Press, 2010); Rahul Rao, *Out of Time: The Queer Politics of Postcoloniality* (Oxford University Press 2020)
[4] Sara Ahmed, 'Affective Economies' [2004] 22(2) Social Text 117; Sara Ahmed, *The Cultural Politics of Emotion* (Edinburgh University Press 2004); Clare Hemmings, 'Invoking Affect' [2006] 19(5) Cultural Studies 551; Dina Georgis, *The Better Story: Queer Affects from the Middle East* (Suny Press 2013).

we can understand not only the material durability of legal tools such as Law 10/1914 for Assembly, but also the durability of emotions and memories of violence attached to them which evidences my methodological point that it is crucial to trace not only the persistence of physical politico-legal structures but the diffusion of imperial thinking behind them. This perspective also provides a way to understand political methods of postcolonial states as neither the sole product of colonialism or anticolonialism, but as a blending and relationship between the two. Furthermore, in bringing my interlocutors into contact with a colonial map of Cairo, this chapter presents narratives as to how memories of violence remain and are retriggered affectively. It provides hidden everyday stories about the creation of class-based 'dangerous' subjects that are different to the more obvious narratives on terrorism. These methods therefore suggest the power of everyday people in interrogating understandings of politics.

In this chapter I first present a theoretical understanding of everyday hyperlegality as it applies to Egypt. Second, I present my queer and postcolonial feminist methodological approaches to law and temporality. Third, I evidence the persistence of colonial legal structures in Egypt and the more recent development of new pre-criminal law-making to counter terrorism. Fourth, I look to the development of administrative venues in the law as a form of governance specifically shaped around the Muslim Brotherhood as a political opponent. Fifth, I attend to my interlocutors' understandings of the spatialisation of state violence and pre-criminality. Finally, I point to some of the gendered logics upon which pre-criminal law-making rests in Egypt.

7.2 Emergency law as hyperlegality in Egypt

This section presents an understanding of hyperlegality as it applies to Egypt on an everyday basis whereby a politics of respectability comes to inform the creation and justification of

different administrative venues and methods of dealing with 'suspect' subjects. There is a presumption that Egypt as an authoritarian state is conceptually different to the UK.[5] The almost permanent state of emergency in Egypt is often used as evidence for this, and proof of Egypt's undemocratic and lawless style of governing. This perception exists in many different disciplines, not least of which is Middle Eastern Studies which has helped to preserve a colonial conceptualisation of the Arab world as a lawless and fixed area for western study.[6] When studies recognise the use of legislative forms of governance in the Arab world, they are caveated as 'authoritarian technologies' used to limit dissent in various forms, often without an explanation of the international context, the adoption of similar laws in the Global North, or the colonial and postcolonial context of contemporary Arab states.[7]

Despite this, since 2013, under the military regime of Abdel Fattah el-Sisi, the amount of legislation has accelerated at a high rate, with passing of numerous new decrees and laws, many of which aid the country's desire to counter terrorism and mirror Global North laws in their pre-emptive style.[8] President el-Sisi's government has claimed a desire to embrace the rule of law and respond to the Security Council's demands for countering terrorism.[9] In 2015, when

[5] Cooley ties the 'rolling back' of liberal democratic values in the post 9/11 world to the upsurge of non-western states critiquing the universalisms of the liberal democracy, calling for the democratisation of international relations, becoming economic hegemons in their own right, and defending 'traditional values'. Cooley points to China and Russia as the main forces pushing this 'anti-liberal agenda'. Alexander Cooley, 'Authoritarianism Goes Global: Countering Democratic Norms' [2015] 26(3) Journal of Democracy.

[6] Maya Mikdashi and Jasbir K. Puar, 'Queer Theory and Permanent War' [2016] 22(2) GLQ: A Journal of Lesbian and Gay Studies 215; Zachary Lockman, *Contending Visions of the Middle East: The History and Politics of Orientalism* (Cambridge University Press 2010).

[7] This dualist approach to democracy/autocracy has been picked apart by many international relations scholars, examining the fragmented practices of rule through versions of ethnonationalism, authoritarian and democratic enclaves. See for instance Bruce Gilley 'Democratic enclaves in authoritarian regimes' [2010] 17(3) Democratization 389.

[8] Lynn Welchman, 'Rocks, hard places and human rights: anti-terrorism law and policy in Arab states' in Victor V. Ramraj, Michael Hor and Kent Roach (eds), *Global Anti-Terrorism Law and Policy* (Cambridge University Press 2005)

[9] Following 9/11 Security Council Resolution 1373 mandated all States to enhance legislation to prevent terrorism and the preparation of terrorism UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373. The Security Council does not provide a definition for terrorism or extremism.

Law 94/2015 for Combatting Terrorism was promulgated, President el-Sisi told Western Media outlet Bloomberg:

> We don't have any interest of putting any citizen under detention, journalists or otherwise, outside the rule of law… we are trying very hard after four years of turbulence to regain the rule of law and to uphold the independence of the judiciary.[10]

How can we reconcile these two seemingly contrasting positions without positing Egyptian use of law on terrorism as qualitatively different to that in the UK? For Ezzat and Reza, there has been a shift from the almost permanent use of emergency law over the past century towards its embedding within ordinary, permanent legislation over the past couple of decades, which could account for the increased ability of the Egyptian government to crackdown on civilians through law.[11] Brown, Dunne and Hamzawy understand amendments to the Egyptian constitution in 2007 – which provided new powers to the executive in ordinary times to order civilians to be tried in 'ruthless' military courts and widened the jurisdiction of all courts – as an enshrining of 'what was technically a temporary (if ongoing) state of emergency as a permanent part of Egypt's political structure'.[12]

While these works, in focusing on technical legal shifts, present vital research on the state of the law in Egypt, as I have argued throughout this thesis, the conceptualisation of a separation

[10] Bloomberg Quicktake, 'We Are Trying to Regain Rule of Law: Egypt's El-Sisi' https://www.youtube.com/watch?v=iRY_5XShKls&ab_channel=BloombergQuicktake accessed 29 September 2021

[11] Ahmed Ezzat, 'Law, Exceptional Courts and Revolution in Modern Egypt' in Robert Springborg, Amr Adly, Anthony Gorman, Tamir Moustafa, Aisha Saad, Naomi Sakr, Sarah Smierciak (eds), *Routledge Handbook on Contemporary Egypt* (Routledge 2021); Sadiq Reza, 'Endless Emergency: The Case of Egypt' [2007] 10(4) New Criminal Law Review 532.

[12] Nathan J. Brown, Michele Dunne, and Amr Hamzawy, 'Egypt's Controversial Constitutional Amendments' (Carnegie Endowment for International Peace 2007) 2 <https://carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf> accessed 29 September 2021.

between the 'ordinary' and the 'emergency' space of the law can perpetuate an understanding of the rule of law as the ultimate protector of rights.[13] Instead, this chapter takes a broader view of emergency law not as a qualitatively different 'kind' of law or an exception, but more as a continuation of law that provides less checks and transparency than other forms. The purpose of this argument is to show that unlike studies that cast postcolonial governments as qualitatively different in terms of their authoritarian rule from a liberal democracy, and therefore an ill-fit for an assessment of the law, such governments use similar pre-criminal techniques around certain identity-based groups as a method of governance.

As explained in Chapters One and Six, hyperlegality provides a theoretical approach that does not consider the use of emergency laws to be a different 'kind' of law to the 'normal', 'ordinary' law. Routed through critical historical and legal approaches, it shows how situations that are at first considered the most extremely lawless and exceptional, are in fact similarly based upon 'a range of regular law and daily disciplinary state practices… the difference being one more of degree than kind'.[14] Hussain explains this as a 'typically colonial' set up, noting that colonial states cast the permanent use of emergency law as providing 'rules and rights' in the colonies.[15] In this sense, colonial powers held that permanent emergency law could create norms and rules in the same way that the 'ordinary law' could. The difference was the more immediate violence and less checks that emergency law provided. As I have demonstrated, colonial powers considered this difference to be small enough to remain 'humane' yet large enough to provide for the hierarchies of humanity they perceived to exist among colonial subjects. From this perspective, Egypt's persistent use of emergency law acts in the same normalising way as the 'ordinary law', creating norms of citizen and criminal.

[13] Mark Neocleous, 'The problem with Normality: Taking Exception to "Permanent Emergency"' [2006] 31 Alternatives: Global, Local, Political 191, 207.
[14] Hussain, (n 2), 735.
[15] *Ibid.*

As a reminder, Hussain's definition of hyperlegality understands new 'administrative venues' to be developed within the law to deal with new classifications of subjects along predictive lines.[16] In Chapter Six I expanded this, demonstrating how such new classifications can be understood to develop on everyday levels. I argued that in the interaction of gendered, racialised and classed citizens with state bureaucracy, subjectivities and emotions are re-scripted through law and predicted to be vulnerable to violent influences and a source of violence themselves. At the same time, I demonstrated how subjects who are both created and erased through the law can be reimagined using an intersectional feminist approach. From this perspective, the persistent use of emergency law in Egypt can be equally thought to create 'vulnerable' and 'extremist' subjects in the way that the 'ordinary' law does: through creating new forms of 'threat' that justify new 'administrative venues' to deal with them.

The Egyptian postcolonial state interacts similarly through its rendering of potentially violent subjects through logics of gender, sexuality, class, race, and religion. Pratt explains that a particular 'politics of respectability', premised upon heteronormative societal structures, underscores Egyptian national security and allows for different subjects – including activist women, gay men, and Muslim Brotherhood members – to be cast as a 'threat' to Egyptian social mores and norms, and to refuse them access to the political arena.[17] Amar identifies that morality-based forms of governance have developed through a framing of Egyptian nationalism 'in the language of Islamic moralism versus "Westoxified" liberalism or East-versus-West "culture wars"'.[18] Against a backdrop of post-colonial self-determination which

[16] Nasser Hussain 'Hyperlegality' [2007a] 10(4) New Criminal Law Review 514.
[17] Nicola Pratt, *Embodying Geopolitics: Generations of Women's Activism in Egypt, Jordan, and Lebanon* (University of California Press 2020), 33-58.
[18] Paul Amar, *The Security Archipelago: Human-Security States, Sexuality Politics, and the End of Neoliberalism* (Duke University Press 2013) 72.

saw the rejection of western ideals and a 'refashioning of alternative modernities',[19] this framework allows the Egyptian state to deem gendered and queer subjects 'western imports', just as it allows the construction of religious nationalist groups as 'backwards' and 'extremist' at different moments. Amar understands this as informing a logic of securitisation on all levels of society which is 'explicitly aimed to protect, rescue, and secure certain idealized forms of humanity identified with a particular family of sexuality, morality, and class subjects'.[20]

Pratt argues that this respectability politics emerged within anticolonial nationalist movements in the Arab world and the postcolonial states that followed.[21] Women, for instance, were encouraged to take part in anticolonial struggles 'on the condition that this would not challenge the gendered hierarchies underpinning the state'.[22] The Nasserist regime of 1956–1970 took up secular modernising reforms, including 'progressive' state feminist policies, whereby women were encouraged to be active participants in the modern state through labour, while remaining 'modest' and not taking part in public displays of activism.[23] Pratt theorises this expectation of women as 'modern yet modest' to be useful for Egypt's external appearance as 'progressive' while helping it maintain gender inequality internally.[24] She notes that many women in the post-colonial Arab world have adhered to the norms and restraints of this politics of respectability which has allowed for the naturalisation of a gendered version of the state that has 'underpinned regime authority in a context of threats to sovereignty from regional rivals and pan-Arab movements'.[25] In other words, this framing has allow for the Muslim Brotherhood – a political religious group now proscribed as 'terrorist' – to be mobilised as a

[19] Sara Mourad, 'The Naked Body. of Alia: Gender, Citizenship, and the Egyptian Body Politic' [2014] 38(1) Journal of Communication Inquiry 62, 71.
[20] Amar (n 18), 6.
[21] Pratt (n 17), 33.
[22] *Ibid*., 34.
[23] *Ibid*.
[24] *Ibid*., 42.
[25] *Ibid*., 34.

threat to the narrow understanding of morality and respectability as it applies to Egyptian women, as a political manoeuvre. At the same time, the morality politics which the Muslim Brotherhood themselves helps shape is also mobilised to justify crackdowns on working class and non-gender conforming subjects.

Whereas British forms of national security have developed through cosmopolitanism as a reaction to the end of Empire – seen today as a conditional welcome to certain subjects – the creation of 'acceptable' subjects in Egypt hinges upon the state's development as a postcolonial nation where the struggle to create stability and hegemony means that the policing of the political arena is a primary focus of the everyday. As Salem explains, the dependence of postcolonial states on colonial structures has shaped the inability of these newly independent governments to manufacture consent and thus a hegemonic rule.[26] Postcolonial states including Egypt are better characterised by the use of coercion and targeted moral panics around certain parts of society as a form of 'authoritarian bargaining' whereby regimes deploy repressive tactics primarily against one group which provides them room to win legitimacy among other citizens.[27] Indeed, Brown, Dunne and Hamzawy explains that internal divisions between leftists and the Muslim Brotherhood have been constructed through the shifting use of emergency law to both quell and placate the groups at different moments.[28] The multiple and shifting forms of 'threats' in Egypt therefore exemplify the larger power struggles for the control of government in the postcolonial state.

The legislative shaping of dangerous subjects must also be understood on the backdrop of ongoing imperialism in the Arab world and the pressure exerted by the international

[26] Sara Salem, *Anticolonial Afterlives in Egypt: The Politics of Hegemony* (Cambridge University Press 2020) 31-72.
[27] Pratt and Rezk (n 1).
[28] Brown, Dunne, and Hamzawy (n 12).

community. Neoliberal reforms imposed throughout the 1970s and 1980s by international agencies such as the IMF, World Bank and the American USAID shifted the economic dependence of the country to the new global hegemon, the United States. Mitchell explains that dependence on US development aid gave the US a powerful position of influence within the Egyptian state, particularly helping to direct funds towards the expansion of its military and agriculture (which is ultimately at the benefit of the US as such loans are conditional upon the purchase of American goods).[29] Furthermore, adhering to contemporary international norms of countering terrorism is of economic benefit as seen in the bilateral agreements between President el-Sisi and former President Trump in which the US promised to provide Egypt with 1.4 billion dollars in assistance, most of which was to help Egypt purchase US military equipment to counter terrorism.[30] At the same time, countering terrorism is a primary global concern, especially following Security Council Resolution 1373 which mandated all States to enhance legislation to prevent terrorism and the preparation of terrorism.[31] In this way, Egypt, like other states can fulfil its international mandate of countering terrorism through increasingly restrictive laws while garnering little backlash from states around the globe for its human rights abuses.[32]

[29] Timothy Mitchell, *Rule of Experts: Egypt, Technopolitics, Modernity* (University of California Press 2002, 169-195.

[30] Congressional Research Service, 'Egypt: Background and U.S. Relations' (2020) <https://sgp.fas.org/crs/mideast/RL33003.pdf> accessed 29 September 2021.

[31] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373.

[32] Western states were not discouraged from supporting el-Sisi's regime after the 2013 Raba'a square massacre of around 1,150 Muslim Brotherhood protestors, nor following upsurges in forced disappearances, arbitrary arrest, torture and military trials. President Emmanuel Macron of France visited the country in 2019 and is a top supplier of arms, former President Donald Trump of the USA, also formed a special relationship with el-Sisi. See: 'All According to Plan The Rab'a Massacre and Mass Killings of Protesters in Egypt' *Human Rights Watch* (12 August 2014) <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt> accessed 28 September 2021; Sara Khorshid 'Western Leaders Are Promoting Dictatorship, Not Democracy, in Egypt' *Foreign Policy* (14 February 2019) <https://foreignpolicy.com/2019/02/14/western-leaders-are-promoting-dictatorship-not-democracy-in-egypt-sisi-amendments-trump-macron/> accessed 29 September 2021.

Slippery notions of extremism and terrorism in Egypt can therefore be understood as hinged upon varying understanding of 'respectability politics' that are informed by actors both internal and external to Egypt. I understand changeable logics of immorality to shape Egypt's own version of pre-criminality that work to justify the differential treatment of such 'suspect' subjects through the creation of new special venues in the law.

7.3 Queer and postcolonial feminist approaches to law and temporality

This section develops an affective reading of hyperlegality in order to frame my interlocutors' experiences of counter terrorism in Egypt. Throughout my interviews with Egyptians living in the UK, there was a general sense that Egypt is a 'lawless' state, where violence ruled at the discretion of the police authorities. This they contrasted to the UK which was considered 'lawful'. For instance, Youssef made a joking comparison between the 'good old days of Hosni Mubarak' in which he explained that at least 'there's a law and this one is breaking it, and this one is breaking it and this one is breaking it'.[33] Comparatively, regarding el-Sisi's post-2013 rule, he said: 'I seriously don't think it [law] exists I'm not exaggerating. I know it's too much to take. The idea now there is nothing I think, there is nothing called 'to break the law'.[34] Similarly, Mariam told me:

> Policing in Cairo does not happen [pause] does not rely on the law in any shape form or way. It relies on violence. Whether we're talking about social policing, family policing or police policing and government policing. Violence is the key. Overt and subtle displays of power are just a constant daily occurrence. And again, it is so normalised that people don't even see it as something weird.[35]

[33] Interview with Youssef 19 November 2019, SOAS, University of London.
[34] *Ibid*.
[35] Interview with Mariam 11 January 2020, Mariam's home.

While hyperlegality provides a theoretical approach to understanding the persistence of legal structures, it does not speak to the persistence of law's affects and therefore does not provide a framework to understand how an abundance of law might *feel* like a complete lack of law. In looking to the affects of legal violence and its ability to transcend the boundaries of time and space, we can access a different story of contemporary Egyptian law. Queer understandings of law help unsettle linear progress narratives and unearth the dissipating and persistent affects of legal violence and the (hetero)norms upon which they rest.[36] In this way, the experience of marginalised subjects of a persistent and constant violence can be attributed to the normalising effects of emergency law in Egypt and the increasing abundance of national security laws since 2013.

Western liberal understandings of governance are marked temporally and spatially through frames of modernisation that posit the formalisation of emergency measures into counter-terrorism law as progression from the 'draconian' to the 'civilised'.[37] Such narratives litter the colonial archives which fixes the 'Arab dictator' as only able to rule through violence, whereas the 'civilised' UK is cast as a haven of rights and freedoms provided by law. Queer approaches to temporality and law can help to reframe law not as a linear progression away from the emergency and the 'draconian' and towards the 'civilised' but instead as thought through how it affectively regulates society on an everyday basis, and through which the shadows of coloniality persist.

[36] Freeman (n 3).
[37] Kimberly Hutchings, *Time and the Study of World Politics* (Manchester University Press 2008).

Certainly, there are aspects of contemporary Egyptian legal structures that persist from the British occupation. One of the most well-known of these is Law 10/1914 for Assembly, which as we saw in Chapter Three, helped institute methods of collective liability without the need for evidence. Another is the persistent use of emergency law in Egypt as a remnant of British martial law. But more than this, as I have argued, the justification for instituting such violent legal tools has been based upon gendered, racialised and classed structures that permeate and re-write subjects. Rather than solely looking at the material legal structures present in contemporary Egypt and their 'emergency' or 'normal' character, looking to the affective way that legal norms continue to discipline communities can give us a different story of the existence and persistence of coloniality and pre-criminality in particular. This means looking to the creation and disciplining of 'acceptable' and 'suspect' subjects in similar colonising ways that rescripts ways of thinking, feeling and being. I would suggest that my interlocutors' mirroring of the colonial archive in their conceptualisation of a 'lawful' Britain versus a 'lawless' Egypt points to how the language of law acts in a simplifying and homogenising way to seamlessly reframe entire geographical regions as 'regressive'. Here I am not suggesting that it was my interlocutors' intention to perpetuate this binary, but more that as a monopolising and universalising world view, and one that is central in contemporary countering terrorism, the language of law restricts and shapes the ways that we can talk about it.

What my interlocutors all pointed to in different ways was the intense violence that they have experienced in the recent years of Egypt, especially since the 2013 coup d'etat which has seen the massive increase in crackdowns on various groups of people. In casting Egypt as 'lawless', spoken in comparative terms, my interlocutors are speaking more to their own emotional experiences of Egypt as a state that denies political representation and arrests and imprisons people on mass. However, due to the progressive and civilisational accent in which law speaks,

but also due to the overwhelming way that the administration of law 'fills up' and regulates any perceived 'empty' space,[38] such violent acts are not considered or experienced as 'lawful'. Furthermore, due to the economic straightjacketing into which Egypt, like other postcolonial states, has been forced, there remains a global pressure to adhere to the norms of the language of law, as seen in el-Sisi's speech.

As Ngũgĩ explains, 'to impose a language is to impose the weight of experience it carries and its conception of self and otherness'.[39] In this sense, the imposition of the language of law through a variety of colonial and local actors continues to perpetuate racialised and geographically distinctive understandings of legality and violence. Where law has been and continues to be the universal marker of progress therefore, noting how this has shaped and colonised understandings of the world is the first step in pulling apart how it works on a very deep and psychic level to reconfigure how we understand, accept and reject violence. In this way, I understand that within contexts where law is particularly abundant in its attempt to regulate all areas of society – for instance in Guantánamo Bay, in Egypt or for migrants in the UK – the excess of law may actually be experienced as something so overwhelming, something that penetrates so deep into peoples' lives, that it is understood as a *lack* of law, rather than the existence of law.

It is important to note that when talking about Egypt, I am not suggesting that the durability of colonial structural violence through law can simply be understood as the persistence of British influence. Such a view would erase Egyptian agency and cast a blind eye upon the multiple and overlapping forces that developed Egyptian modernity. Furthermore, as Rao notes, for

[38] Fleur Johns, 'Guantanamo Bay and the Annihilation of the Exception' [2005] 16(4) The European Journal of International Law 613; Hussain (n 16).
[39] Ngũgĩ wa Thiong'o, *Something Torn and New: An African Renaissance* (Basic*Civitas* Books 2009), 20.

postcolonial research to be meaningful, it must 'be attentive to shifts in power, including those that enable formerly colonised states to become colonial in their own right'.[40] The various forces we have seen so far came from previous Ottoman efforts to institutionalise identities, power struggles between the Egyptian government and the British administration, British and Egyptian feminist conceptualisations of morality, and class-based uprisings. Scholars like Troutt Powell have argued that we must consider Egypt as a civilising power itself, that pursued a modernising agenda despite the west,[41] and Omar demonstrates how the development of Muslim liberalism has also shaped mainstream political thinking in Egypt.[42]

Thus, it is important to note that while the disciplinary basis of these forms and affects of law persist, they do so in new ways that have been adapted by the postcolonial Egyptian state over the past century. As Georgis puts it:

> […] it is not the ghosts themselves that organize meaning. Ghosts are forceful but have trouble finding their referents. They lurk without attaching to an organizing symbolic, but bump up against it. But they are hardly innocuous. Ghosts speak through affect, what is yet to be narrativized. Indeed, fictional worlds are devised in defence of what strange and queer truths the ghosts hint at. These story-forms become settles in persistent habits and sometimes structures of consciousness.[43]

It is in this way that we can view the 'ghosts' or the persistence of pre-criminal thinking in Egypt as well as in the UK. This chapter uses both legal analysis and contemporary interviews to present a sketch of the persistence of pre-criminal thinking in Egypt. While in Chapter Six,

[40] Rao (n 3), 9.
[41] Eve Troutt Powell *A Different Shade of Colonialism: Egypt, Great Britain, and the Mastery of the Sudan* (University of California Press 2003).
[42] Hussein Omar, 'Arabic Thought in the Liberal Cage' in Faisal Devji and Zaheer Kazmi (eds) *Islam After Liberalism* (Oxford University Press 2017).
[43] Georgis (n 4), 11.

the use of different methods provided instances of clashes and incommensurable conclusions between the archives, theory and empirical evidence, this chapter uses empirical and legal analysis to point to the durability of colonial structures and the way that memories of violence continues to shape the everyday. Similar to Chapter Six, I highlight a handful of interlocutors whose narratives expand understandings of law and pre-criminality in contemporary Egypt. As my interlocutors were more familiar with Cairo than London, their interactions with the colonial map of Cairo brought up more affective understandings of law, and thus this chapter also speaks directly to the spatial dissipation of violence in section six.

7.4 The persistence of legal structures

This section looks to the development of counter terrorism legislation in Egypt and some of the legal structures that have persistence since the British occupation. Through the lens of hyperlegality, I suggest that the abundance of law-making on terrorism and the expansion of pre-criminal venues in the law demonstrates the persistence of colonial thinking in Egypt.

Some form of emergency law has been used almost consistently in postcolonial Egypt since the first, nominal independence of Egypt in 1923 and the eventual retreat of the last of the British troops in 1956 following the 1952 revolution. The first version was Egypt's own martial law, an outcome of the 1923 negotiations between Britain and Egypt around the retraction of British martial law. As demonstrated in Chapter Three, it was in the interests of both parties to keep a form of martial law in place, and a method of pre-emptive arrest. A provision for the imposition of a state of emergency was also included in the 1923 Egyptian constitution, as the first of many subsequent constitutions.[44] The first official state of emergency was declared in

[44] Ezzat notes 'The prerogative of the executive authority in Egypt to declare a state of emergency or martial law was included in Article 45 of the constitutions of 1923 and 1930, Article 8 of the constitutional declaration of 1953, Article 144 of the constitution of 1956, Article 57 of the constitution of 1958, Article 126 of the constitution

Egypt in 1958 with the promulgation of Law 162/1958 Concerning the State of Emergency until 1980. After a year's break it was renewed following the assassination of President Anwar Sadat by a member of the Muslim Brotherhood, again by President Hosni Mubarak in 2006 until after the 2011 Egyptian revolution, and for periods of el-Sisi's current rule. At the time of this writing, el-Sisi's government has renewed the emergency law across Egypt for the sixteenth time since 2017, citing the necessity to confront terrorism and its financing, protect public and private property, and preserve the lives of citizens.[45] Dubbed the 'endless emergency', this law has been used to primarily target political opponents at the discretion of the President,[46] mainly the Muslim Brotherhood, and is framed as essential to the very existence of the Egyptian state.[47] As Hussain would understand it, the persistence of emergency law should be understood as not dissimilar to the development of legal governance in the UK, in the sense that in both states, normative understandings of threat and terrorism are developed through the administrative expansion of the law.

Other legal tools have been left over from the British occupation as Alzubairi notes through the development of understandings of terrorism in the Penal Code.[48] These include Law 10/1914 for Assembly which as I explained in Chapter Three, instituted the concept of collective liability which allows for the mass arrest of people on spurious or non-existent evidence and was part of the development of 'humane' tools to exile people from the political arena. This law is one of the most frequently used by the Egyptian state when citing threats to the public order and is often used to suggest the association of people with terrorism. In the

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of 1964, Article 174 of the constitution of 1971, Article 59 of the constitutional declaration of 2011, Article 148 of the constitution of 2012 and Article 154 of the constitution of 2014'. Ezzat (n 11), 298.

[45] 'Egyptian Parliament approves 16th consecutive state of emergency extension' *Egypt Independent (*12 July 2021) <https://egyptindependent.com/egyptian-parliament-approves-16th-consecutive-state-of-emergency-extension/> accessed 28 September 2021.

[46] Fatemah Alzubairi, *Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World* (Cambridge University Press 2019) 128.

[47] Sadiq Reza, 'Endless Emergency: The Case of Egypt' [2007] 10(4) New Criminal Law Review 532, 544.

[48] Alzubairi (n 46), 121-127.

Adwa police station case[49], 683 individuals faced multiple charges including vandalism, the premeditated intentional killing of 9 police officers, and belonging to a proscribed organisation (the Muslim Brotherhood). The court originally found 681 of the accused collectively responsible, and later confirmed the death sentenced for 183 of those found guilty.[50] In the original hearing, the court stated:

> The agreement between the third to the last accused to commit the intentional killings at that time and place, the type of relationship that binds them, the fact that the crime stemmed from one motive, the fact that the accused aimed in the same way to carry out that motive and the fact that they shared the same intention, makes each of them responsible for the crime of murder.[51]

This wide-reaching law is evident of a purposefully different method of dealing with 'threats' to the state. This can also be seen in the broad reaching definition of terrorism provided by Egyptian law. Countering terrorism is officially legislated in Egypt through Law 97/1992 and Law 94/2015 for Combatting Terrorism. The 2015 law sets out the definition of a terrorist act as follows:

> A terrorist act shall refer to any use of force, violence, threat, or intimidation domestically or abroad for the purpose of disturbing public order, or endangering the safety, interests, or security of the community; harming individuals and terrorizing them; jeopardizing their lives, freedoms, public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; harms national unity, social peace, or national security or damages the environment, natural resources, antiquities, money,

[49] Minya's Felonies Court, Case 300/2014, detailed in International Commission of Jurists, *Egypt's Judiciary: A Tool of Repression. Lack of Effective Guarantees of Independence and Accountability* (2016) 60, <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf> accessed 23 September 2021.
[50] *Ibid*.
[51] *Ibid*.

> buildings, or public or private properties or occupies or seizes them; prevents or impedes public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resists them or disables the enforcement of any of the provisions of the Constitution, laws, or regulations.[52]

The broad range of acts included in this definition provide for the pre-emptive arrest of a wide range of different people. The Egyptian law punishes an attempt to commit a terrorist crime by the same penalty prescribed for the completed offence. This includes incitement and collaboration, even if the act did not take place.[53] The punishment for establishing or leading a terrorist group is the death penalty or life imprisonment, and for joining a terrorist group is hard labour or no less than ten years imprisonment.[54] The execution or the attempt to execute a terrorist crime inside Egypt in collaboration with a foreign party is punished by death.[55] Article 28 criminalises the promotion or preparation to promote, directly or indirectly, the perpetration of any terrorist crime, verbally or by writing. The punishment is no less than five years in prison and is raised to seven years if the promotion occurs inside a house of worship or among members of the armed or police forces.[56]

As Chiha explains, the *mens rea* required by Egyptian Law 97/1992 for Combatting Terrorism (and Law 94/2015), broadly 'classifies acts intended to "disturb the peace or the public order

[52] Law 94/2015 for Combatting Terrorism.
[53] *Ibid*., Art 5-6 states 'A terrorist act shall likewise refer to any conduct committed with the intent to achieve, prepare, or instigate one of the purposes set out in the first paragraph of this article, if it is as such to harm communications, information, financial or banking systems, national economy, reserves, security stock of goods, food and water, or their integrity, or medical services in disasters and crises'.
[54] *Ibid*., Art 12.
[55] *Ibid*., Art 14.
[56] *Ibid*., Art 28.

or jeopardize the safety and security of the society" as terrorism'.[57] It follows that any act committed which the authorities deem as meeting the requirement of disturbing the peace – as Chiha explains, acts from murder and battery to otherwise non-legal acts such as demonstrations and strikes – could be named terrorism.[58] This is strikingly similar to how pre-criminal offences allow for the criminalisation of acts as terrorism that would otherwise be lawful.[59] It appears that in Egypt it is more a matter of scope or 'degree' as Hussain puts it, than of kind.[60]

The broadening of definitions of terrorist threat is aided through the compounding of different legal tools to be used together. For instance, when Law 10/1914 for Assembly is used in mass trials, the courts often cite terrorism as a motive. In the *al-Azhar university demonstrations case*[61], protesting students were charged with having:

> … participated, with others, in an assembly consisting of more than five persons liable to endanger the public peace… they, with other unknown persons, destroyed some buildings designated for a public institution (Azhar University) and damaged public property in pursuance of a terrorist purpose with intent to create alarm and spread chaos among staff and prevent students from taking their examinations.[62]

The charge of 'breaching the peace' was explained by my interlocutors as helping the state to justify the mass arrest of activists and revolutionaries, thus providing the possibility of shutting

[57] Islam Ibrahim Chiha, 'Redefining Terrorism under the Mubarak Regime: Towards a New Definition of Terrorism in Egypt', [2013] 46(1) The Comparative and International Law Journal of Southern Africa 90, 115.
[58] *Ibid*., 116.
[59] Jude McCulloch and Dean Wilson, *Pre-crime: Pre-emption, Precaution, and the Future* (Routledge 2016) 62.
[60] Hussain (n 2), 735.
[61] Case of 28 December 2013 Case information not available. Case detailed in Cairo Institute for Human Rights Studies 'Towards the Emancipation of Egypt: A Study of Assembly Law 10/1914' (2017) 59 <https://cihrs.org/wp-content/uploads/2017/01/Towards_the_em_of_Eg_eng.pdf> accessed 23 September 2021.
[62] *Ibid*.

down opposition to the government. The expansion of legislative methods of governance for this purpose can be seen quite clearly after the 2011 Egyptian revolution, the coup of 2013, and the inauguration of President el-Sisi.[63] President el-Sisi has overseen the passing of numerous pieces legislation and executive orders, all of which are used in tandem to shut down dissent. Since 2013, there has been an 'unprecedented' crackdown on those who are cast as a threat to the Egyptian state, including journalists, protestors, queer and gender non-conforming people, NGOs, lawyers, workers, and members of the Muslim Brotherhood, using counter terrorism legislation.[64] As Ilyas told me:

> The general narrative of this society [Egyptian] now you can justify anything by saying that "this guy is a terrorist", or "this girl is a terrorist" or "this like group is a terrorist" because they just want to change something about the country.[65]

Hamzawy considers the expansion of legislation to be a political move to quell increasing dissent after a coup that deposed the first democratically elected president.[66] Other laws used in tandem to broaden the definition of threat include: Law 107/2013 For Organizing the Right

[63] The 2011 Egyptian revolution from 25 January saw the uprisings of people from all different walks of life opposing the thirty-year rule of President Hosni Mubarak, whose presidency saw the almost consistent use of emergency law, high unemployment, low wages, inflation, corruption, and lack of political freedoms. After Mubarak stepped down on 11 February 2011, the Supreme Council of the Armed Forces (SCAF) formed a transitionary government until Mohammed Morsi, Muslim Brotherhood leader, was voted in as President. Shortly after, following secular opposition, the military staged a coup d'état, and General Abdel Fattah el-Sisi became President of Egypt.

[64] See Public Prosecution v. Alaa Abd El-Fattah and Twenty-four others, Cairo Felonies Court case no. 1343/2013; See Minya's Felonies Court, Case No. 300 of 2014 in which 683 Muslim Brotherhood members were initially sentenced to death in a grossly unfair trial. Other cases detailed in International Commission of Jurists (n 49); See also Amnesty International, 'Egypt frees Al Jazeera staff jailed for journalism' *Amnesty International* (18 May 2018) <https://www.amnesty.org.uk/egypt-frees-al-jazeera-staff-mohammed-fahmy-baher-mohamed-prison-journalism> accessed 28 September 2021; Egyptian Initiative for Personal Rights 'The Trap: Punishing Sexual Difference in Egypt' (2017) <https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf> accessed 29 September 2021.

[65] Interview with Ilyas 13 January 2020, SOAS, University of London.

[66] Amr Hamzawy, 'Legislating Authoritarianism: Egypt's New Era of Repression' (Carnegie Endowment for International Peace 2017) < https://carnegieendowment.org/files/CP_302_Hamzawy_Authoritarianism_Final_Web.pdf> accessed 28 September 2021.

to Peaceful Public Meetings, Processions and Protests (which replaces Law 14/1923 on Protests, instated as a negotiation between the British and the Egyptian governments following Egyptian semi independence); Law 70/2017 For the Regulation of Non-Governmental Organizations and Foundations Operating in Civil Society;[67] Presidential Decree 128/2014, amending article 78 of the Penal Code;[68] Law 175/2018 Regarding Anti-Cyber and Information Technology Crimes.[69] That this abundance of legislation is used to expand the definition of terrorism is corroborated by Mina, who has worked for various human rights organisations on Egyptian cases for years. Mina explained that the increasing legislation changes how he approaches his work:

> [With] the terrorism law there is no significant difference when they use, when the prosecution charges anyone. They just use um, like they don't have specific um like they don't say "this is the law", they just list tens of charges, some of them penal code, some of them terrorism law. They, you just you just end up with a bunch of charges mixed from different laws. So, we focus mostly on the, on the trial and the charges rather than the like, we are not fighting a specific law and um, yeah well if you're talking about emergency law for example, it's it's still just one element now. It's not [pause] maybe during Mubarak's time it was the main thing that all the problems are coming from, emergency law,

[67] The law gives the Ministry of Social Solidarity the power to decline the registration of an NGO based on 'the involvement of founders in prohibited or punishable activities'. It prohibits NGOs from working with labour unions and professional syndicates such as the journalists' or doctors' syndicate. Hamzawy (n 66). This law follows multiple cases against NGOs after the 2011 revolution. The best known is case No. 173/2011 (also known as *the foreign funding case*) in which a Cairo criminal court sentenced forty-two employees from various NGOs to terms in prison. Since then investigative judges have issues bans and asset freezes on more NGOs., see 'Case 173 Dropped Against Four Human Rights Defenders and their NGOs' (*Frontline Defenders* n.d.) <https://www.frontlinedefenders.org/en/case/arrest-azza-soliman> accessed 29 September 2021. Azza Soliman was charged with 'receipt of illegal foreign funding' and 'working without legal permission', and as such was considered a threat to national security. Her assets were frozen, and she was banned from travel.

[68] The 2014 amendment of the penal code stipulates a penalty of life imprisonment and a fine of no less than 500,000 pounds for the requesting of funds or equipment to intentionally commit any act that 'harms the national interest'… or 'breach[es] public peace and order'. The death penalty applies to 'cases of mediation' where this is vaguely defined. Hamzawy (n 66).

[69] It provides harsher sentences for counts of 'blasphemy' and 'incitement to protest' online than other laws do for the same crimes committed by other means. 'Rights groups condemn Egypt's cybercrime draft law' *Ahramonline* (14 June 2016) <https://english.ahram.org.eg/NewsContent/1/64/223035/Egypt/Politics-/Rights-groups-condemn-Egypts-cybercrime-draft-law.aspx> accessed 29 September 2021.

> but nowadays it's just like the whole package. You just get a package of charges from mixed laws. Yeah, they just charge you with the whole thing.[70]

Mina's depiction of law as fragmented and overlapping and providing for the conviction of people on 'tens of charges' is consistent with Hussain's conceptualisation of hyperlegal forms of governance as an excess of law, where administrative processes create new 'classifications' of people.[71] As Hussain states, 'the juridification and bureaucratization of modern governance means that not only are there no empty spaces in law but that the invocation of multiple legal orders is itself a particular form of disciplinary rule'.[72] Amir who has been active in protests in Egypt gave the same sentiments, pointing to the expansion of laws in spaces of culture and the arts:

> When I think of law, I just think about like getting our friends out of prison to be honest. Just like being in a court waiting for the hearing of my friends that did nothing. Yeah. And when I think about law, I think about all my work and all the people that got arrested for doing nothing as well. And people who got arrested for their work and got arrested for their opinions. Um, yeah like the penal code and emergency law, and um, this like set of laws that is somehow designed to tighten control over Egypt which is those laws, the syndicate laws, like ah, the artistic syndicate laws, as well. Um, which basically prohibits any practition (sic) of art if it's not by a permit.[73]

In speaking about being made to wait to hear the outcome of the court cases of friends, Amir reveals something about law that runs deeper than it simply being a judicial function of society. Being forced to wait allows anxieties to accumulate and renders a person at the will of the

[70] Interview with Mina 17 January 2020, Mina's workplace.
[71] Hussain (n 16).
[72] Hussain (n 2), 738.
[73] Interview with Amir 6 December 2019, SOAS, University of London.

authorities, which is reminiscent of Nour's experiences with the UK Home Office. Esmeir explains that the use of techniques to pain the mind instead of the body are characteristic of nineteenth century theories on torture that cast it as dehumanising and thus not useful for the consolidation of a productive population.[74] 'Humanising' juridical tools therefore shifted the site of 'acceptable' pain to the mind through lengthy trials and long period of waiting.[75] These can be seen in the contemporary Egyptian legal system which is characterised by delays such as switching hearing locations at the last minute without informing solicitors; holding defendants incommunicado for months; not providing the defence time to prepare for a trial; and holding trials for five minutes before proclaiming the judgement. [76]

At a time of instability for the counter revolutionary regime and on the backdrop of international calls for legislative forms of countering terrorism such as Security Council Resolution 1373, it is perhaps unsurprising to see the increasing deployment of new laws through which el-Sisi's government can externally cast itself as legitimate. As Hamzawy puts it: 'Egypt's new government is essentially using law-making to legalize its behaviour and guarantee impunity for its generals'.[77] However, as Welchman notes, the deployment of numerous laws that provide for increasingly pre-emptive punishments is consistent with jurisdictions the world over and Security Council demands.[78] Indeed, a similar development is visible in the UK's promulgation of increasingly pre-emptive versions of counter terrorism legislation year after year. Furthermore, pre-criminal aspects of these laws appear to have a much longer history as direct remnants of colonial endeavours to curtail political dissent through the creation of different yet 'humane' methods of treating new classifications of

[74] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012) 124.
[75] *Ibid*.
[76] International Commission of Jurists (n 49); Cairo Institute for Human Rights Studies (n 61).
[77] Hamzawy (n 66).
[78] Welchman, (n 8).

'threat'. While legal tools certainly persist, what are the everyday forms of disciplining they provide for, and what logics do they work from? The next sections explore the everyday deployment of such laws.

7.5 Identity-based law: gatekeeping the political arena from the Muslim Brotherhood

The development of national security laws in Egypt is consistent with the silencing of the Muslim Brotherhood to gatekeep the political arena. Such laws are therefore more pre-emptive than they are reactive, and consistent with Reynolds' conceptualisation of law as a 'technique of governance'.[79] The targeting of the Muslim Brotherhood – through different sources of legislation, the creation of special tribunals and exceptional courts, and its 2013 proscription as a terrorist group – exemplifies how emergency law has been consistently used as a pre-planned method of governance through the expansion of a wide variety of pre-emptive and identity-based administrative venues. This is using both colonial tools and the development of them in new ways.

The Muslim Brotherhood is a long standing and influential Islamic organisation that has political wings. It was founded in Egypt by Hassan al-Banna in 1928. Since then, variations of the Muslim Brotherhood have been set up worldwide.[80] The group, as a grassroots organisation that has been historically supported by the working and lower middle classes, has represented the largest political opposition to the consecutive postcolonial Egyptian regimes and has long

[79] John Reynolds 'The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law' [2010] 6(5) Comparative Research in Law & Political Economy 1, 18.
[80] Lorenzo Vidino, *The Closed Circle: Joining and Leaving the Muslim Brotherhood in the* West (Columbia University Press 2020).

been the target of arrests and imprisonment.[81] Since the proscription of the Muslim Brotherhood as a terrorist organisation in 2013 by President el-Sisi, directly following the coup in which democratically elected Muslim Brotherhood member, former President Mohamed Morsi was deposed, there has been an 'unprecedented' crackdown on the group,[82] where tens of thousands of Brotherhood members have been arrested for joining an illegal organisation.[83] Kamal el-Helbawy, who we met in Chapter Four, was a prominent member of the Muslim Brotherhood who now lives in the UK. Kamal cannot return to Egypt because of the crackdown on the Muslim Brotherhood. Despite his resignation from the group in 2012, being selected as a member of the National Council of Human Rights and a member of the Constitutional Fifty Members Committee, he fears arrest and imprisonment if he returns. He told me:

> There are no rights for the opposition, because of ah, fear from political Islam and from the Muslim Brotherhood specifically. So, I can't travel to my original country, I can't see my relatives. It is bad to feel you are restricted or banned to travel anywhere. No proper course and hope for a better future. The main problem really is in freedom and the curtailment of human rights. This is the main problem now. The curtailment of human rights and freedom of the people in spite of the fact they [the Egyptian government] agree to international protocols in international forums. The good ground for better future is not there. This is also one of the main problems. It is human rights is still a theory, and the freedom is still a theory. It is not in practice whatsoever.[84]

Throughout the regimes of Nasser, Sadat and Mubarak, special tribunals and exceptional courts were created to shut the Muslim Brotherhood out of politics. Following the Free Officers coup

[81] Saad Eddin Ibrahim, 'An Islamic Alternative in Egypt: The Muslim Brotherhood and Sadat' [1982] 4(1/2) Arab Studies Quarterly 75.
[82] Pratt and Rezk, (n 1).
[83] Human Rights Watch "*We Do Unreasonable Things Here": Torture and National Security in al-Sisi's Egypt* (2017) <https://www.hrw.org/sites/default/files/report_pdf/egypt0917_web.pdf> accessed 29 September 2021.
[84] Interview with Kamal el-Helbawy, 1 April 2020, over the phone.

1952, in 1954, the People's Court was created to deal with the Muslim Brotherhood where defendants were allegedly subject to torture and appeals were prevented.[85] The Court's mandate was extremely broad, setting no limits for interpretation, it allowed for the trial of Brotherhood members and sympathisers.[86] The mandate of the court was to try 'actions considered as treason against the Motherland or against its safety internally and externally as well as acts considered as directly against the present regime or against the bases of the Revolution'.[87] The Court provided trials in absentia, disregarded the right to appeal, and provided for collective punishment.

It is no coincidence that this court was set up under emergency law just as the newly independent government needed to make changes to the style of governing to push the country in a new direction, that of protectionism and nationalisation. As the leader of the postcolonial state, President Gamal Abdel Nasser, concerned about challenges to his rule, took example from British martial law and set up exceptional courts and eventually, Law 162/1958 Concerning the State of Emergency, which helped establish the separate system of military justice under which civilians could be tried.[88] The subsequent rules of Sadat and Mubarak were no different in altering the state's use of the law to the political situation.[89]

[85] Ezzat (n 11), 299.
[86] Alzubairi (n 46), 130.
[87] *Ibid*.
[88] Reza (n 47), 540.
[89] This has been understood by some as due to structural corruption and autocratic tendencies within the judiciary whereas others note that it is exceptional to individual members of the judiciary, Ezzat (n 11), 304. Several courts in Egypt *have* checked the power of the executive and reversed decisions to use emergency powers at different times, such as acquitting defendants throughout the 1980s and 1990s, Reza (n 47) 533-534 and 546. Reza frames this as a negotiation of power, noting that 'the regime's exercise of exceptional authority to suppress political opposition, in particular its use of emergency state security courts and military courts, has enabled Egypt's *ordinary* judiciary, particularly its Supreme Constitutional Court, to pursue a liberal agenda,' and political liberalisation in other spheres.

Mubarak's regime was perhaps the most notorious for its use of military courts to try civilians, which was facilitated by a Presidential Decree of 1981 that referred a variety of ordinary crimes to such courts, including crimes relating to state security, public incitement and public demonstrations.[90] In 2007, under Mubarak, following concerns around the gaining of popularity that the Muslim Brotherhood had secured, changes were made to the Constitution to restrict challenges to the Egyptian state including amendments on political rights, the electoral system and the President's mandate.[91] For instance, the Egyptian Constitution was amended in Article 179, authorising the President to 'refer all cases [regarding terrorism] to any court, including the ordinary courts',[92] and suspending constitutional guarantees for rights of liberty and privacy in the investigation of terrorist activity. This new article allowed the president in ordinary times to order civilians to be tried in military courts and widened the jurisdiction of all courts, meaning that defendants can be referred on the 'whim of an official, the political circumstances of a case, or the identity of the accused'.[93] This had previously been provided for only by the Emergency Law and the Code of Military Justice.[94] New constitutions were approved in 2012 and 2014 as a result of the 2011 revolution. However, the 2014 Constitution effectively enacted the same discretionary powers as Article 179 did in the 2007 Constitution, by obliging the state to counter terrorism in article 237 and granting emergency powers in article 154.[95] Thus, the development of new administrative venues in the law with which to try civilians has been shaped through the policing of the political arena in Egypt, especially with regard to the Muslim Brotherhood.

[90] Reza (n 47), 539
[91] Brown, Dunne, and Hamzawy (n 12).
[92] Ezzat (n 11), 300.
[93] Brown, Dunne, and Hamzawy (n 12).
[94] Reza (n 47), 542.
[95] Article 179 of the Egyptian Constitution of 2014; Alzubairi (n 46),140.

The normalising effects of law, through the 'necessary' creation of a threatening subject, can be seen in Ilyas' astonishment that the regime uses the same laws to target Christians today:

> There have been Christians arrested, in the demonstrations […] telling the public that their charges are belonging to a terrorist brotherhood, a terrorist organisation which is the Muslim Brotherhood. I swear like Christians, Christians like this is, it's fucking hilarious, people don't have a mind to justify it. But people believe, that's the thing that's the everyday narrative of counter terrorism law. That it makes the public reach the point where they're really blinded. And really securitised. Like this issue 'til the point that you can say anything, and it will be believed. If Sisi comes tomorrow and says anything, people will believe him, that's the craziest thing about counter terrorism law in Egypt. And emergency law as well. Like, as in like ah we need to do this because of counter terrorism law.[96]

Reactions like Ilyas' to the Egyptian government's shift from the Muslim Brotherhood as primary target to the indiscriminate targeting of many different people after the 2013 coup is suggestive that the Brotherhood has long played a role in holding together state and society through a normalised politics of emergency. In other words, up until 2013, crackdowns on the Muslim Brotherhood were a 'normal' and almost accepted way of life that was structural to Egyptian governance itself through the consistent use of emergency law.

This is not to say that the Muslim Brotherhood has been a voiceless or non-violent party. After being subject to major crackdowns throughout Nasser's presidency, the group found leniency in Sadat's rule, being given space to prosper, their comeback symbolised through the

[96] Interview with Ilyas.

reappearance of their magazine *al-Da'wah* (The Call).[97] Throughout the 1970s the group grew and some factions began increasingly violent attacks on Sadat's government, opposing the policies of political and economic liberalisation. Finally, Sadat was assassinated by a member of the Muslim Brotherhood in 1981, after which emergency law was re-instated. Some of those following Muslim Brotherhood President Mohammed Morsi took part in sectarian attacks on Coptic churches following the 2013 coup which Morsi failed to condemn.[98] Kamal, however, denies the consideration of the Brotherhood as violent:

> There is a misunderstanding about Muslim Brotherhood as organisation and individuals or members and the relation to other groups, like Salafi groups, like Daesh, ISIS [pause] violence is relative. Islam is one but there are different interpretations […] Whereas other groups believed in violence from the beginning, their systems or their way of treatment is violent. But the Muslim Brotherhood is not a terrorist or violent organisation as laid down by Imam Hassan al-Banna, the founder, although some individuals may have become violent later […] Maybe some individuals have lost hope in a change and lost trust in the government and maybe they make plans against the dictatorship and maybe they want to come to power rapidly […] There is a right case for them but the means adopted by some are not the proper means, I mean the peaceful means.[99]

Kamal provides an alternative understanding to simplistic and essentialising proscriptions of terrorism and Islamophobic framings of violence as cultural, hereditary or natural. However, it is also necessary to recognise the forms of structural violence that others hold the Muslim

[97] Ibrahim (n 81). Sadat's leniency has been understood as a strategic move by the president, believing that the Muslim Brotherhood would counterweigh 'the combined opposition to his regime (mounted by Nasserite and leftist elements)'.

[98] 'Egypt: Mass Attacks on Churches' *Human Rights Watch* (21 August 2013) <https://www.hrw.org/news/2013/08/21/egypt-mass-attacks-churches> accessed 29 September 2021; Pratt and Rezk, (n 1).

[99] Interview with Kamal.

Brotherhood as perpetuating. Feminist scholars such as Al-Ali have argued that the Muslim Brotherhood has limited choices available to women and, through accusing them of collaborating with western imperialism, have justified the strict patriarchal gender orders that the state has bolstered.[100] For Mahmood however, Al-Ali's framing can risk homogenising all religious groups as an 'existential threat' and condemning women who support them. She notes that moral panics around religious groups have been fuelled by a 'broad range of feminists' who have helped frame women's support of Islamist movements as evidence of the latter's oppressive and patriarchal nature.[101] Debates around the framing of the Muslim Brotherhood are complicated. By approaching understandings of power as fragmented and overlapping we can appreciate how a wide range of actors can at once be both 'suspect' or 'threat' *and* bolster the broader structures of society. Furthermore, we can come to see how the deployment of law-based governance targeting the Muslim Brotherhood is 'shorthand for a larger set of formations,' through the dissipating effects of legal governance.[102]

7.6 The spatial persistence of class-based violence

This section details my interlocutors' experience of the British colonial map, presenting an affective understanding of law, and how this suggests that national security laws are premised upon stratifications of class as a persistent form of coloniality. A British military map of Cairo dating 1942 is filed away in the British library.[103] The map comes with little description, but the legend gives away suggestions as to the reason it was drawn. Four items appear in the legend: 'roads maintained open for military traffic' are marked with a continuous brown line; 'potential centres of disturbance' are circled by a broken brown line; 'Bn H.Q.s' or Battalion

[100] Nadje Sadig Al-Ali, *Secularism, gender and the state in the Middle East* (Cambridge University Press 2000)
[101] Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005) 14.
[102] Hussain (n 2), 736
[103] Cairo [Civil security scheme] 1942 in *Maps* (The British Library, London) MDR Misc 875. <http://www.bl.uk/onlinegallery/onlineex/maps/africa/5000632.html> accessed 25 September 2021.

HQs are marked with a small brown flag; and ‘sector boundaries’ are marked with a thick green line. The map dissects inner city Cairo along straight lines and labels administrative districts in roman numerals I, II, III and so on.

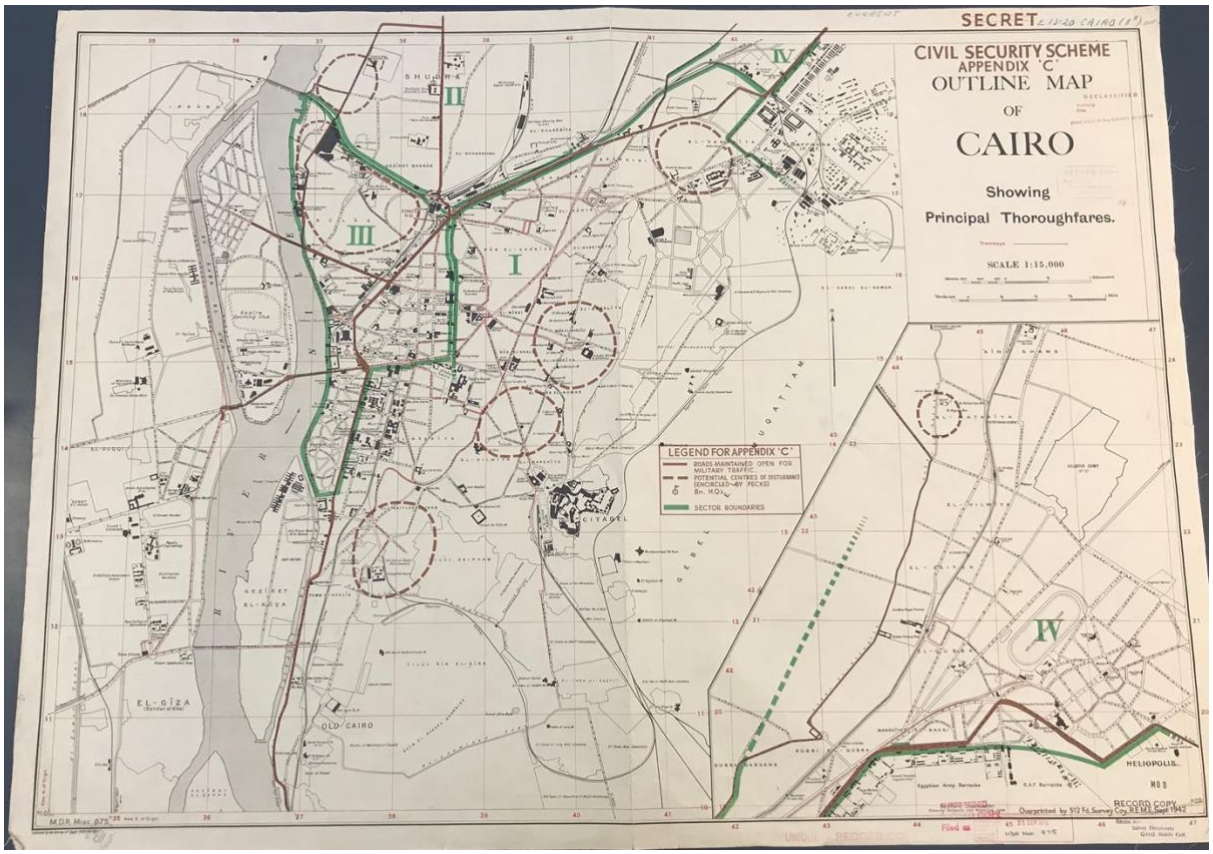

Figure 11: Military map of Cairo, 1942

By 1942, the British protectorate over Egypt had long ended after the semi-independence of 1922. However, the negotiations that brought it to an end provided for the continued presence of Britain in the country and as Mussallam explains, were felt on an everyday basis by ordinary citizens in Cairo.[104] This presence is represented visibly on the 1942 map. This sparks the

[104] The next twenty years were marked by power struggles between the parliamentary monarchical regime and the nationalist Wafd party. The British continued to muddle in Egyptian internal affairs, working with the King for the benefit of their strategic interests. When, in 1939, World War Two came, Egypt found itself back as a key resource in a war that was not its own through the Anglo-American Middle East Supply Center that had total control over supplies to civilians in Egypt and elsewhere in the Arab world. Musallam explains that the impact on the lives of everyday Egyptians was felt through the stationing of Allied forces in Cairo and shifts in the economy resulting in a widen of gap between the rich and the poor. Adnan Mussallam, *From Secularism to Jihad: Sayyid Qutb and the Foundations of Radical Islamism* (Greenwood Publishing 2005) 12-14.

question, which subjects was the cartographer of the 1942 map imagining when they cordoned off 'potential centres of disturbance', and can this map tell us anything about the persistence of certain framings of 'vulnerability' and 'extremism' today?

Speaking to my interlocutors about their understandings of the map, echoes of a past that persists in contemporary Egypt rang through. Areas circled on the map include Bulaq, Sayida Zeinab, Abasiyya, Gamaliyya, el-Hilmiya, el-Manshiya and el-Matariyya. Each interlocutor was surprised at the resonances with areas of Egypt cast as 'disturbances' today in that the areas are all home to poor and working-class Egyptians. The map for many was reminiscent of how they felt Egypt was being governed today. Salma told me that the map is:

> […] really disturbing […] what the legend is saying that this is what colonisers deemed to be areas of disturbance and how that kind of echoes with how Egyptians who are like the regime right now […] they still have that same kind of um, way of projecting things onto the geography of the city.[105]

Such echoes came across in a conversation I had with Amir. Amir is a young Egyptian man who has been involved in a lot of activism in Egypt. Many of his friends have been arrested under el-Sisi's regime and he himself has been targeted by police in Egypt. When Amir looked at the map of 1942 Cairo with me, he understood the 'areas of potential disturbance' to be associated with the regulation of poorer Egyptians. He explained that his family had lived for generations in areas like those marked on the map. Amir associated the working-class aspect of these areas to mean a sense of community, of neighbourhoods full of 'families that descend from families':

[105] Interview with Salma, 4 October 2019, Salma's home.

> These neighbourhoods, those are like the basically the old Cairenes. Those are the people that have these houses that are more than 100 years old. Or more. And there is like families there known by, it could be like that or this [person] from this family. That's the son of that and this son of [pause] and everybody knows each other. And what I mean is that people that lived there, um, has lived there for a long time. Probably maybe classes changed, but then um, generally it is a working-class neighbourhood still […] my grandfather is from the same place that I grew up in as well, in that sense.[106]

Others also expressed a resistance to what they understood to be stereotyping of these areas as 'dangerous'. Together their reflections painted a picture of these areas as bursting with difference, different ways of living, and areas that preceded British intervention and interpretation. The 'centres of disturbance' were understood as extremely poor but proud and places of traditional family values. As Amir explained, there was a sense that such areas might be places of communal living, which was even noted as challenging the 'individuality' of the more westernised areas of Cairo. They were also understood as the sites of busy commerce, bustling markets, noise and 'local demonstrations of life'.[107]

They were places of various religiosity, but there was an understanding that around the places where Mosques were located, there would have been rallies and protests. Demonstrations and labour strikes also took place in these areas. They were understood as dangerous because of the police presence, which was presumed to be targeting working classes. For Youssef, the circled areas varied hugely from one another, and so to depict them all as the same 'centres of disturbance' did not make sense.[108] Many also refuted the term 'disturbance', like Ilyas who told me, 'this is not disturbance for me, this is like actually like my… again these are my

[106] Interview with Amir.
[107] Interview with Ilyas.
[108] Interview with Youssef: 'Abasiyya is different than those three. Social composition different, history different. It's different.'

favourite places in Cairo'.[109] As presented below, Ilyas annotated the map to show that for him, each centre of disturbance represented safety.

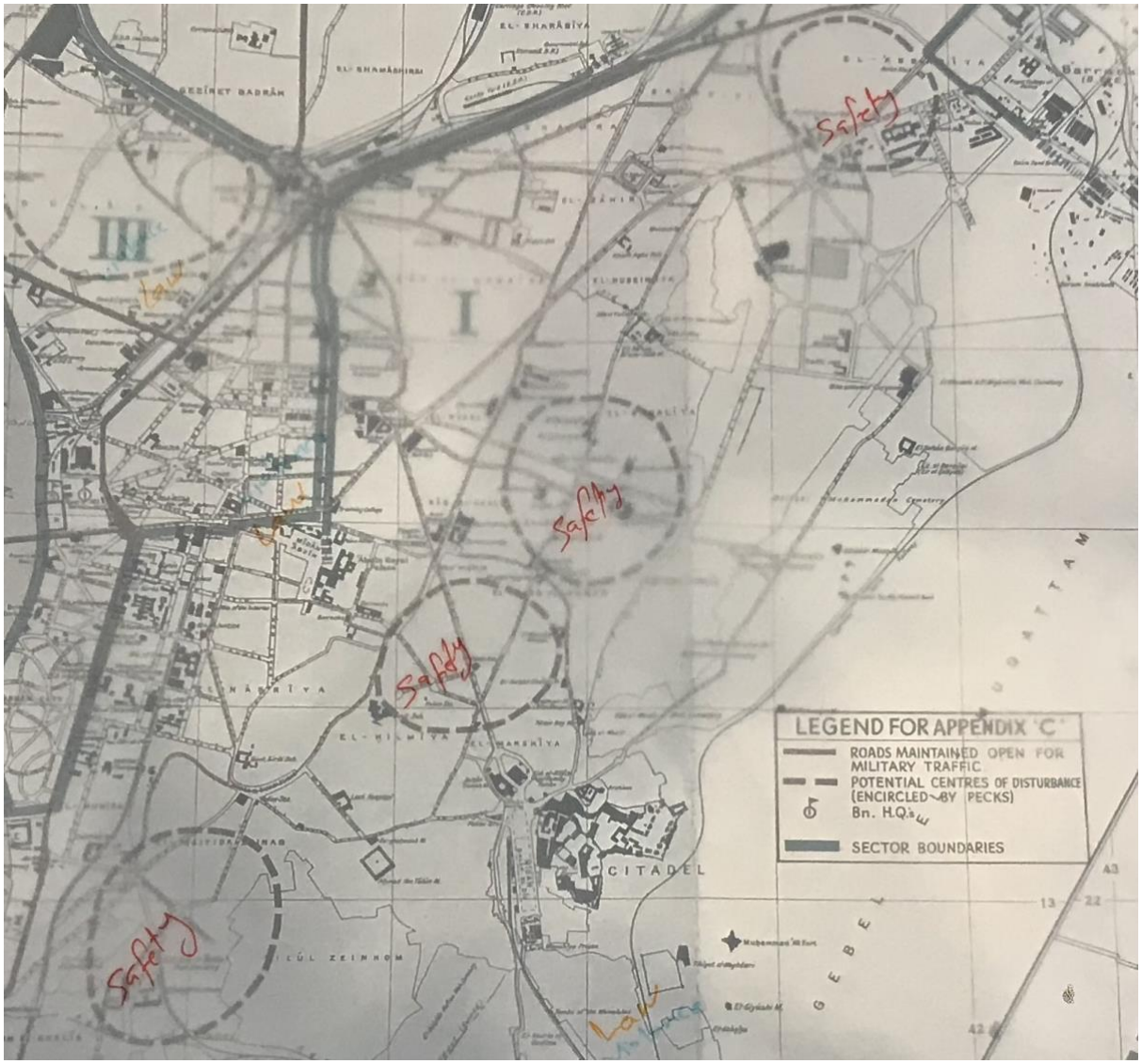

Figure 12: Annotated map of Cairo by Ilyas

For Amir, such areas had been misinterpreted as violent:

> There's this theory that says that if you go to a neighbourhood and you see the broken windows, it means that this neighbourhood is not safe, as in like people don't care for the windows of their neighbours or something like that. But I

[109] Interview with Ilyas.

> think that this is not right. Because there, in Bab el-Shariya you will see a lot of houses with broken windows and you wouldn't care because basically if somebody stole something from you, you would know who they are. And no strangers are going to enter the houses. People don't lock their doors and stuff like that. People are basically living in the streets. So, there is a lot of safety in that sense.[110]

These areas could therefore have been the targets of the British because they represented something outside of their control: a bubbling collective of possibility created through a closeness that was written off as potentially dangerous and immoral. These are similar to the images I analysed in Chapter Four, where downtown areas of Cairo were painted by colonial administrators and feminists as the 'breeding grounds' of political dissent and forms of immorality both because of chosen communal ways of living and because of socioeconomic abandonment by the state. Alzubairi explains that the definition of terrorism in the newly independent Egypt was shaped through the regime's concerns over 'communism' through which the authorities justified setting up new venues in the law to deal with them as 'second-class citizens'.[111]

For Amir, growing up in an area similar to the marked 'centres of potential disturbance', these areas represent both safety and violence. However, this is not a violence intelligible through the contours of the British map. As he explained to me:

> I would argue that violence is coming from the neg, neg, neglection by the state and um, somehow how like young generations are growing more desperate and and with nothing to do. And basically these areas is all like people [pause] like I was the only kid of my age that went to university. So [the area] it's all about

[110] Interview with Amir.
[111] Alzubairi (n 46), 136. Alzubairi notes that despite Nasser's regime being socialist it provided the same methods of shutting down so-called communist dissent.

> skills and workshops and stuff like that. And um, somehow, it's getting hard with gentrification. And all like you know, the rising capitalism and neoliberal policies by the government all of that. And so a lot of people are not earning as much money and there's a lot of drugs and therefore there's a lot of violence. But of course, it used to be safer than now, like it's getting worse.[112]

Amir's perception of poorer and working-class areas as violent because of economic stratification strikes a chord with Amar's analysis of the securitising characteristics of processes of gentrification in Cairo. As he demonstrates, throughout the 1970s, 1980s and 1990s, along with the pressure of structural adjustment policies and neoliberal reforms, both the Egyptian state and the Muslim Brotherhood targeted working class and red-light districts for re-structure through a narrative that depicted these areas as 'a high-risk space that threatened the security of boundaries of social categories, gender and religious norms, and national independence'.[113] Such has been the ongoing battle for the residents of al-Warraq district, a small Island in Cairo, and several other governates in Cairo, where el-Sisi's government has used legal decrees to forcibly evict communities in order to develop luxury properties. Decree No. 57 of 2016 created the land reclamation commission under which communities who have lived in areas for hundreds of years are being targeted and criminalised.[114] In one instance in 2020, when residents refused to leave their homes, protestors were arrested and convicted under Law 10/1914 for Assembly and given sentences ranging between lifetime in prison to five years.[115] As Ilyas understood it, 'the state wants to completely erase the existence of people in al-Warraq'.[116]

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[112] Interview with Amir.
[113] Amar (n 18), 90.
[114] Dania Akked 'Gezirit Al-Waraq: Cairo's Forgotten Island' *LSE Blog* (4 October 2012) <https://blogs.lse.ac.uk/mec/2012/10/04/geziri-al-waraq-cairos-forgotten-island/> accessed 28 September 2021.
[115] 'Cairo court imprisons 35 people over Warraq Island clashes' *Egyptian Independent* (27 December 2020) <https://egyptindependent.com/cairo-court-imprisons-35-people-over-warraq-island-clashes/> accessed 29 September 2021.
[116] Interview with Ilyas.

My interlocutor's interpretations of the map speak not only to their own understandings of security 'threats' today, but to more hidden and insidious forms of securitisation that sit within claims of 'development' and 'progress' and the erasure of lesser heard forms of knowledge. Whereas the Muslim Brotherhood have become a hypervisibilised group against which the Egyptian state can mobilise, my interlocutors' references to class-based threats point to how such politics works also destroy subjectivities. Working class spaces that are historically home to gendered and 'immoral' subjects, as we saw in Chapter Five, represent locations that both the Egyptian state and the Muslim Brotherhood can justify entering and 'developing' out of bad morals, using legal tools as a form of intervention and pre-emptive governance. The voices presented here provide alternative and everyday understandings of politics that are crucial in resisting the homogenising and universalising tendencies of the law as it constructs categories of dangerousness and criminality.

7.7 Legal violence shaping the everyday

This section demonstrates how the persistence of an imagined class-based and gendered 'threat' shapes everyday experiences of Egyptians by regulating public spaces and underscoring the justification for pre-criminal practices. This can be seen in the differential experiences of my interlocutors through frames of gender, class and religion that are understood through a logic of 'respectability'. Youssef, a middle-class Coptic Christian Egyptian man who has lived in the UK for more than a decade now, illustrates the mundaneness of narratives on terrorism with a story of when he last visited Egypt. He had parked his car in the centre of Cairo and then returned to find that it had been moved by a police officer:

> I found it [the car] stopped somewhere else [behind a barrier] […] There was an officer there, obviously he wanted a bribe […] He said OK so let me see your license first. I said "OK", got the license. [Youssef remembers what he said to the police officer] "You moved my car, you put it here in the wrong place, and then you are fining me for you throwing it" [the police officer said] "yeah you don't like it?" I said "no I don't like it" […] Then he wrote something that would really put me in prison under the terrorism law. That you have intended, this driver has intended, to put […] [the car] in Tahrir Square in order to stop traffic for terroristic reasons.[117]

Youssef was then taken to the public prosecution office. However, being someone with *wasta* or 'big connections' through his father he was able to get off the charge. His father entered the office and after some bargaining, Youssef was free to leave. He told me about his experience quite lightly, as though we could be sharing a joke. The same easy tale cannot be said for others in Egypt who do not have the same social or financial capital, however.

In September 2017, Sarah Hegazi, a queer Egyptian woman, attended a concert of the band Mashrou' Leila and raised the rainbow flag. Days later, Sarah was arrested on charges of 'promoting debauchery' and for joining an illegal organisation that 'threatens public and societal peace'.[118] She was interrogated by the state security prosecution, usually reserved for cases of terrorism. In detention she was subject to torture by electrocution and sexual harassment. After she was released, she sought asylum in Canada, but suffered from PTSD and panic attacks. Sarah died by suicide in Canada on 14 June 2020.

[117] Interview with Youssef.

[118] Zeina Zaatari, 'Sarah Hegazy and the Struggle for Freedom' *MERIP* (22 September 2020) < https://merip.org/2020/09/sarah-hegazy-and-the-struggle-for-freedom/> accessed 29 September 2021. Shaimaa Magued, 'The Egyptian LGBT's transnational cyber-advocacy in a restrictive context' [2021] Mediterranean Politics.

The hierarchy in social positionality between Youssef and Sarah makes all the difference when it comes to being a target of the Egyptian state. Indeed the Egyptian state has a history of cracking down on gender non-conforming and working class subjects that El-Hameed, Pratt and Rezk understand as being equally accepted as moral panics whipped up around the Muslim Brotherhood (and indeed perpetuated by them).[119] Such a politics was made evident throughout many of the demonstrations and protests of the 2011 Egyptian revolution where women protestors, were sexually assaulted, arrested and subjected to 'virginity tests' by state security forces.[120] El-Hameed explains that courts in Egypt 'capitalize on… wider social rejection by targeting gender and sexually nonconforming people'.[121] Moral panics around gay men in particular have seen crackdowns where police entice gay men through mobile phone apps to then arrest them and have them medically examined for charges of debauchery.[122] The Queen Boat Affair in 2001, where police raided a boat on the river Nile and arrested 52 men on charges of debauchery and subjected them to anal probes, is conceptualised by Pratt as an opportunity to '"perform" a discourse of national security through which national sovereignty was (re)produced and political order maintained'.[123] Mourad suggests that the unwillingness to react to this crackdown by liberals suggests the strength of cultural and moral codes in Egyptian society.[124]

Specific nods to the family and gender are incorporated into security laws, such as in Law 175/2018 Regarding Anti-Cyber and Information Technology Crimes, which as Mina pointed

[119] Dalia Abd El-Hameed, 'The Egyptian General Directorate for Protecting Public Morality: Purveyors and Guardians of Penetrating Masculinity' [2018] 14(2) Journal of Middle East Women's Studies 252; Pratt and Rezk (n 1).
[120] Mariam Kirollos, "The Daughters of Egypt are a Red Line:" The Impact of Sexual Harassment on Egypt's Legal Culture [2016] 2(1) Kohl: A Journal for Body and Gender Research.
[121] El-Hameed (n 119), 252.
[122] Egyptian Initiative for Personal Rights (n 63).
[123] Nicola Pratt The Queen Boat Case in Egypt: Sexuality, National Security and State Sovereignty [2007] 33(1) Review of International Studies 129.
[124] Mourad (n 19), 71.

our earlier, is used alongside other laws for terrorist prosecutions. The law, ostensibly promulgated to assist in online terrorist crimes, criminalises in Chapter 3, Article 25:

> Anyone who infringes a family principle or value of the Egyptian society, encroaches on privacy, sends many emails to a certain person without obtaining his/her consent, provides personal data to an e-system or website for promoting commodities or services without getting the approval thereof, or publishes, via the information network or by any means of information technology, information, news, images or the like, which infringes the privacy of any person involuntarily, whether the published information is true or false, shall be punishable by imprisonment for no less than six months and a fine of no less than fifty thousand Egyptian Pounds and no more than one hundred thousand Egyptian Pounds, or by one of these two penalties.[125]

The law has been highly criticised by NGOs for the excessive sentences it delivers for online crimes such as blasphemy, threatening public order and inciting protest.[126] Such was the fate of 17-year-old Menna Abdel Aziz who was charged under this article after she used the social media platform TikTok to name the man who had sexually attacked her.[127] In this way, 'unrespectable' and 'immoral' subjects are cast as simultaneously infringing on family principles and the values of the Egyptian state and can very quickly be cast as a threat to national security. For Sarah Hegazi, writing before her death, the Muslim Brotherhood are equally to blame for the marginalisation and policing of gendered subjects which structures Egyptian society: 'the regime uses its tools – such as the media, and mosques – to tell Egyptian

[125] Law 175/2018 Regarding Anti-Cyber and Information Technology Crimes, ch 3(25).
[126] Editorial, 'Rights groups condemn Egypt's cybercrime draft law' *Ahramonline* (14 June 2016) <https://english.ahram.org.eg/NewsContent/1/64/223035/Egypt/Politics-/Rights-groups-condemn-Egypts-cybercrime-draft-law.aspx> accessed 29 September 2021.
[127] 'After Menna Abdel Aziz's release and the prosecution's decision that there are no grounds in bringing a case for the charges against her, EIPR calls on the prosecution to take the same approach in similar cases to protect victims of sexual violence' *Egyptian Initiative for Personal Rights* (17 September 2020) <https://eipr.org/en/press/2020/09/after-menna-abdel-aziz%E2%80%99s-release-and-prosecutions-decision-there-are-no-grounds> accessed 29 September 2021.

society, which is understood to be 'religious by nature': We too protect religion and social morality, so there is no need for Islamists to compete with us!'.[128]

Situated on the boundary between 'modern yet modest',[129] the figure of the Muslim woman in Egypt as the one with the ability to 'pass on' extremist tendencies illuminates how the struggle between gender and religion in framings of respectability works to naturalise logics of countering terrorism and to legitimise pre-criminal practices. The suspicion and arrest of Muslim women whose family members are involved in the Muslim Brotherhood exemplifies this. For Nour who grew up in a 'really political' family that supported the Muslim Brotherhood, life has been dictated by whether or not the Muslim Brotherhood is on good terms with the government. When she was in Egypt, she would send her children to religious education programmes run by the group, which were part of their larger campaign to secure electoral votes. However, these programmes were shut down by the government, citing that they were attempting to influence and radicalise children. Nour did not agree with this perception, explaining that many people would just benefit from the childcare facilities, knowing the Muslim Brotherhood's purpose, but make their own choices in the end. After the programmes were banned, Nour felt an increased fear around attending the Mosque. She told me:

> Mosques are ah policed always. The guards or the imam of the masjid or anything is usually ah collaborating with the police to make sure there is, that this space is not used for any activities that the police is not happy about it. So basically, the mosques are heavily like ah controlled.[130]

[128] Sarah Hegazy, 'A year after the rainbow flag controversy' *madamasr* (first published 2018, 15 June 2020) <https://www.madamasr.com/en/2020/06/15/opinion/u/a-year-after-the-rainbow-flag-controversy/> accessed 29 September 2021.
[129] Pratt (n 17), 42.
[130] Interview with Nour, 29 November 2019, SOAS, University of London.

Nour's father was imprisoned for his involvement in the Muslim Brotherhood twice and she used to visit him there. She explained that in this way, 'I have experienced violence if not directly, I mean through family'.[131] For Nour, while her experiences of everyday countering terrorism differed in the UK and Egypt in that she felt 'the grip of the system' much more in the British context, her feeling of being a suspect is something that travels with her across borders and in her home country. For Aisha al-Sharter, the daughter of former presidential candidate and Muslim Brotherhood leader, Khairat al-Sharter, familial connection to the Muslim Brotherhood has meant imprisonment and conviction of joining a terrorist organisation. She has been kept in solitary confinement in Qanatar Prison without access to medicine or sanitation, refused visits from family members, and exposed to electric shocks.[132] As seen in Nour and Aisha's cases, familial connection that provides a link to the everyday or more official treatment as a terrorist suspect. This social policing can be understood as a formulation of pre-criminality as it often represents the first step in an identity-based arrest and has become a normal aspect of Egyptian society alongside the normalisation of the state of emergency.

7.8 Conclusion

Contrary to studies that regard the Egyptian state and other postcolonial governments as a poor choice for a study of legal forms of governance because of their authoritarian structures, I have argued that it is possible to conceptualise Egyptian governance through the frame of

[131] *Ibid.*

[132] 'Egypt: Aisha Al-Shater transferred to prison hospital after health deteriorates' *Middle East Monitor* (6 September 2019) <https://www.middleeastmonitor.com/20190906-egypt-aisha-al-shater-transferred-to-prison-hospital-after-health-deteriorates/> accessed 29 September 2021; 'Egypt: Jailed Activist's Life May Be at Risk' *Human Rights Watch* (19 December 2019) <https://www.hrw.org/news/2019/12/19/egypt-jailed-activists-life-may-be-risk> accessed 27 October 2021.

hyperlegality and the development of pre-criminal methods and that this is suggestive of the persistence of colonial legal logics. I have argued that everyday forms of structural violence – including technologies of class, gender, sexuality and religion – work to underpin justifications for the development of different administrative venues in the law. Furthermore, in approaching law from a queer feminist perspective, I have conceptualised the law not as a linear progression or the development of modernity, but as the affective persistence of classed, gendered, and religious technologies. By looking to memories and imaginations of where state violence might have taken place in British-occupied Egypt through the creation of categories of difference and 'disturbance', this chapter has presented glimpses of the everyday spaces in which colonial pre-criminal thinking persists.

By carrying over the remnants of martial law from British to Egyptian hands in 1923 while co-currently setting up new legal methods for dealing with the Muslim Brotherhood and classed and gendered communities it is possible to conceptualise Egypt governance as a form of hyperlegality shaped through both the colonial legacy of emergency law left behind and the anxiety over remaining in power that led the new postcolonial rulers to adopt an almost permanent use of emergency law from 1952. From this perspective, the formation of Egyptian counter terrorism law is primarily aimed at gatekeeping the political arena, which builds on the British use of such laws.

Using Hussain's conceptualisation of hyperlegality, I have shown that governments that primarily use emergency laws are *not* qualitatively different from western liberal democracies that primarily use the 'ordinary' law. Instead, I have argued that the consistent use of emergency law, including the development of new administrative venues, and the contemporary use of abundant and overlapping laws to counter terrorism, are examples of a

colonial legacy of legal forms of governance which has been used mainly to curtail access to the political arena. The latest adoption of laws has therefore been less a 'response to new social or political developments' and more 'an official acknowledgement of the status quo'.[133]

Basing the development of legal tools in its postcolonial context, I have shown that the creation of new 'administrative venues' has been part of a pre-emptive governance which is best known to have been shaped around the Muslim Brotherhood as the primary political opponent. At the same time, while the Muslim Brotherhood has been hypervisibilised and therefore mobilised as a threat to Egyptian national security, other classed and gendered subjectivities have been targeted through the same legislation with a view to their erasure. Furthermore, the contestation for the political arena has meant the actors on all levels of society have contributed towards narratives of 'immorality' upon which countering terrorism finds its legitimacy.

By bringing my interlocutors into conversation with a colonial map of Cairo, I have demonstrated the necessity for the thinking of 'everyday' people on such an elite topic as the law. While the law is difficult to speak about, through providing tangible tools to trace it, my interlocutors were able to give clashing accounts of what 'disturbance' might mean, thus interrogating mainstream homogenising frames of colonial national security. Furthermore, in reading the map for its potential continuities today, and in speaking about emotional accounts of Egypt as 'lawless', my interlocutors undo linear narratives of progress attached to the promulgation of 'ordinary' law thereby also interrogating the difference between 'emergency' and 'ordinary' law. This is aided by a queer feminist interpretation of emotionality as persisting and shifting over time.

[133] Ezzat (n 11), 296.

Chapter Eight: Conclusion

Interviewing Ilyas was one of the many joys of this project that. Every interview was laced with moments of sadness, anger and uncertainty because of the difficulty of the topics we were discussing. Ilyas too shared such moments with me. But Ilyas also shared his enthusiasm and his highs with me. He consumed the maps with hunger and requested more time and more discussion. Some of the wonderful, touching moments were when Ilyas would talk about the areas of Cairo and London in which he felt safety, joy, and more than anything, 'life'. These areas for Ilyas were always the more precarious districts: those that were highlighted on the British colonial map as 'centres of potential disturbance' and those about which present day authorities bring together crime statistics and condone as 'dangerous'. He spoke to me about feeling the best in the Turkish areas of London:

> The public space in these areas are more of comfortable to me and communal to me, being in a Turkish neighbourhood […] seeing a lot of people who I can be more comfortable approaching, or they wouldn't find what I'm doing weird. You know? I honestly felt it with like encounters with random strangers in the street like making victory signs to me, or like really solidarity signs with me you know? And this, this brightens my day as well, like it's something that tells me that, yeah, I'm like, there is solidarity among people who are oppressed in the society for either their colour or their class or oppressed by certain like implications of law in everyday life. They can still create like their own norms, their own cultural norms in their neighbourhoods.[1]

Such sentiments were shared by Nour. She felt safest and a sense of solidarity in areas populated by migrant families in the UK. While such perspectives were not explored

[1] Interview with Ilyas 21 January 2020, SOAS, University of London.

throughout this thesis to a great extent, they are central to finding resistance to the colonising narratives of the global war on terror. When colonising narratives endeavour to erase or re-write subjects, such locations of happiness, safety and joy challenge hegemonic claims to power and expose their weaknesses. This is reminiscent of what Mignolo terms 'diversality', 'critical cosmopolitanism' or 'border thinking'. This is thinking from the perspectives of marginalised subjects that is not 'included' by the majority, but is self-establishing. It is not a 'conditional welcome' to certain migrants so long as they make sacrifices and align with hegemonic ideals of countering terrorism. It is also not any form of singular politics, whether it be secular or religious and whether it be situated in Europe of the Arab world. Instead, it is 'new forms of projecting and imagining, ethically and politically, from subaltern perspectives'.[2]

8.1 A summary of my conclusions

This thesis has argued first and foremost that the contemporary development of the pre-criminal space should be understood as the persistence of coloniality as a legal and administrative form of governance and part of 'normal' life. Within political and critical terrorism studies, the pre-criminal space is often understood as a form of exceptionalism developing since 9/11, following the theoretical framing of the state of exception. In contextualising pre-criminality in its colonial history and bringing together critical terrorism studies with critical legal studies, I have argued that pre-criminality should instead be understood as part of a wider legal and administrative governance that relies upon forms of everyday and structural violence. I have looked to the thinking behind the development of pre-emptive policies to show that the colonial creation of difference is what provides the ability to disregard gendered, classed and racialised

[2] Walter D. Mignolo, 'The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism' [2000] 12(3) Public Culture 721, 742.

testimony, thus justifying the development of pre-criminal practices that do not need material evidence. In order to make this argument I have carried out a feminist genealogical study of the pre-criminal space, based on instances of legal violence in British-occupied Egypt and the contemporary UK and Egypt. My feminist methodology encompasses postcolonial, intersectional, transnational, and queer feminist approaches and deploys a mixed methods model.

Chapter One introduced my conceptual argument. I argued that pre-criminality and actions taken under the global war on terror should not be considered forms of exceptionalism using the state of exception lens. This lens characterises modern liberal democratic states as regressing 'backwards' to 'pre-legal' times, suggesting that the violent treatment of suspected terrorists in places like Guantánamo Bay are devoid of law. I refuted this lens for several reasons. First, this lens ends up idealising the rule of law as the ultimate granter of rights and freedoms, whereas much countering terrorism is enacted through law. Second, this lens relies upon western conceptualisations of 'the political' whereby to be subject to the exception, or to bare life, is to be rendered voiceless and stripped of rights. This state-centric perspective does not recognise agency and politics other than those of the traditionally male, white, heterosexual, middle class public space. Furthermore, even when the state of exception lens is expanded to think about the everyday, it can still end up reaffirming law as the insurer of rights. Third, because this lens is built around the liberal democracy, it relies upon a teleological spatialisation of the globe where Arab states are less 'civilised', despite using the same tools to counter terrorism. This also means that the western liberal democracy ends up becoming the ultimate victim of both terrorism and counter terrorism, with great cost to queer, gendered and othered bodies to whom violence becomes normalised.

Conceptualising pre-criminality instead as an outcome of legal and administrative governance, I have shown that the expansion of the law to allow for preparatory crimes and deradicalisation programmes is part of a 'hyperlegality' whereby new categorisations are created to 'fill up' the space in which the law can govern. I have shown that the law creates categories of dangerousness and suspicion through the destruction and re-writing of alternative modes of being in everyday spaces which helps bolster the juridical 'truths' of the law itself. Such 'truths' are constructed in situations where evidence and witness statements for the suspected parties are cast as inadmissible through the depiction of colonial subjects as emotional, irrational and unreliable. In this way, a central form of law's violence is its ability to expel colonial subjects from the political arena. The colonial production of hierarchies of humanity as a 'truth' further justifies the differential, inferior and violent treatment of racialised, gendered and classed subjects. This violence is evident in the archival erasures of testimony and in interviews with my interlocutors who experience being suspected. Such experiences suggest not only the persistence of legal structures, but of the capacity of the law's affects to remain and persist across generations.

Chapter Two laid out my methodological contributions and argument. Methodologically, this thesis has used postcolonial, queer, transnational, and intersectional feminist approaches to inform how I interact with various locations of knowledge and to help guide my genealogical approach. By expanding the methodological framing of the imperial boomerang, I developed a feminist genealogy that accounts for not only the movement of colonial policies but further for how the universalising and normalising effects of law are formed from the interaction of a multiplicity of different forces. This approach helped me to de-centre the state as the central actor in countering terrorism and to rethink the truth effects of the archive.

I used queer and postcolonial approaches to interrogate the linear progress narrative of modern law by rethinking violence as perpetual and slow. In this way, I showed how such feminist approaches challenge the concept of emergency as aberrational and temporary and further interrogate countering terrorism as a more 'civilised' form of martial law. Additionally, I used intersectional and transnational feminist approaches to consider the changeable and contextual effects of legal violence as seen throughout my interviews with Egyptian migrants to the UK. By interrogating the truth effects of different voices and spaces of knowledge production and of different methods and theories, I argued against the use of grand or singular theories. By combining different methods, I presented a reading of law that adds layers of affect and brings it into contact with the violence upon which it relies. In this way, my interviewees helped to challenge the elitism of legal language and to expose its bias. This demonstrates the power and necessity of attending to 'ordinary' spaces to comprehend law.

Looking to the historical context of British-occupied Egypt I traced the intentional deployment of narratives of the law as 'humanising' even while it provided for violent practices. Chapter Three demonstrated this through a critical interrogation of archival material that showed that martial law provided a normalising force through its ability to be 'stretched' to fit the new situation of British-occupied Egypt. I demonstrated that the framing of martial law as a civil tool provided for increased access to everyday Egyptian society and the development of new categories of suspicion. I argued that processes of liberalisation, seen in this period as the move between martial law and statute-based emergency law, provided for the institutionalisation of aspects of pre-criminality. In this way, I argued that variations of emergency can be understood as pre-emptive governance rather than a temporary response to a crisis.

Chapter Four demonstrated the racialised, classed, and gendered basis for the development of legal evidence and argued that this bias is what provides the ability of contemporary pre-crime laws to disregard evidence. In reading two moments of legal violence in British-occupied Egypt – the 1906 Dinshaway massacre and the 1919 Shobak affair – together, I demonstrated how classed and gendered forms of testimony and evidence were treated as fictions and therefore inadmissible to 'rational' and 'objective' legal proceedings. I further showed how such juridical truths provided for the pre-emptive governance of rural communities and the material exploitation of Egypt. Empirically, I asked questions about how each event was memorialised and forgotten as either an 'exceptional' and 'draconian' measure or a 'normal' feature that resembled the rule of law.

Demonstrating how both the events were represented in changeable ways, I suggest that the depiction of Dinshaway as exceptional allowed for the Shobak affair to be considered a form of 'justice' in a move that instituted martial law as humanising and invisibilised systematic violence. Methodologically, this chapter read different forms of narrative together, demonstrating the importance of attending not only to marginalised subjects but also different forms of voice and 'types' of knowledge in research projects that decentre the state. Furthermore, attending to the persistence of affect through memories and stories, this chapter presented how feminist approaches interrogate framings of emergency law as aberrational and temporary.

Chapter Five added to my de-centring of the state through attending to narratives of immorality and vulnerability bolstered through colonial feminisms. I argued that the arrival of the Association of Moral and Social Hygiene (AMSH) in Egypt in the 1920s expanded the development of new, 'softer' methods of dealing with 'immoral' and 'extremist' subjects. I

demonstrated that AMSH helped bolster imperial forms of governance through expanding rather than critically challenging framings of 'moderacy' and 'extremism'. I showed that AMSH helped develop understandings of immorality and vulnerability that were contagious and hereditary among classed, gendered and racialised communities, and subsequently developed 'educational' methods to prevent and pre-empt their spreading. I therefore understood AMSH's feminism as helping to produce an early version of contemporary pre-criminal methods through bolstering links between care and security. Methodologically, this chapter warned of the dangers of approaching gender as a single issue and contended that by arguing for the mainstreaming of gender in counter terrorism approaches, liberal feminisms help bolster normative forms of gender as significant of an 'acceptable' morality.

The next two chapters moved to our contemporary moment in the UK and Egypt to trace the continuities and ruptures of this colonial legal pre-criminal governance. I did this by considering the socio-political changes that have shaped both states. In both chapters I reframed Hussain's conceptualisation of 'hyperlegality' through a feminist lens that could speak to the everyday and affective creation of new categories of suspicion. I used interviews with Egyptian migrants to the UK to access an emotional rendering of the law. This methodological approach contributed several findings. It reframed the law as an accessible topic of conversation and inquiry. Furthermore, in speaking to the continuous and dissipating effects of legal violence, this methodology not only challenged the notion that forms of countering terrorism are temporary and aberrational, but also shattered the spatial and political distinction made between the Arab world and the west. There are great differences between the forms of state violence employed in the UK and Egypt. However, approaching hyperlegality on an everyday and affective basis, and considering the history I have engaged with, I found that countering terrorism in Egypt should not be considered qualitatively different than that of the UK. In other

words, both states' versions of pre-criminality developed from the legal and administrative disciplining of racialised, gender and classed subjects and their exclusion from the political arena.

In Chapter Six I looked to the centrality of bureaucracy in the UK's creation of categories of suspicion and argued that versions of cosmopolitanism deployed as a mechanism to preserve a version of Empire are visible in how 'acceptable' subjects are conditionally welcomed into the UK. Attending to my interlocutors' experiences of law in the UK, I demonstrated the persistence of legal violence through interactions that turn people into sources of violence, interrogate their existence, and erase their voices. Simultaneously I interrogated the truth claims of both the archive and theories on the suspect community through a feminist lens, showing how experiences of law are changeable and unpredictable.

Finally in Chapter seven, I looked to the particularities of political instability in the postcolonial Egyptian state that have shaped the way logics of race, gender, class, and religion have come to inform versions of pre-criminality. Attending to my interlocutors' experiences in Egypt with a postcolonial and queer feminist reading of hyperlegality, I demonstrated that an 'excess' of law may actually be experienced as a *lack* of law. In bringing together archives and interviews, my interlocutors demonstrated the lasting effects of violence upon classed and gendered communities. In this chapter I conceptualised the law not as a linear progression or the development of modernity, but as the affective persistence of classed, gendered, and religious technologies.

All in all, this thesis has presented a feminist genealogical study of the contemporary pre-criminal space, arguing that it should be understood as a form of legal and administrative

governance. This argument is important because the essentialising, universalising and legitimising 'truth regime' of the law is precisely what provides it with a measure of distance from state violence even as it allows for it. Pre-criminality is, in this way, the persistence of colonial legal and administrative governance.

8.2 Challenges and limitations

As a genealogical study, this thesis is limited to the empirical context of British-occupied Egypt and the contemporary UK and Egypt. While at points I refer to other contexts, the conclusions in this thesis are contextual to the socio-political history I have traced. Such an empirical approach is necessary if we are to present a genealogical account of pre-criminality. A major critique of the state of exception is that Agamben's work is ahistorical and therefore essentialising.[3] A historical and empirical account on the other hand, pays attention to the micro and macro shifts in power and thus can provide a more dynamic and multi-layered story that refuses a homogenising depiction of 'Islam' or 'terrorism'. While my substantive conclusions may be contextual, I have attempted to bring together a methodological approach that can be adapted to different contexts. My mixed and multi-layered feminist genealogy provides a methodological tool to unpick the historical presents of pre-criminality elsewhere.

One of the biggest challenges I faced throughout this thesis was the process of writing an interdisciplinary and mixed-methods piece of work. This was true for bringing together different disciplines such as law and politics but also in bringing together different forms of voice and knowledge production through my mixed methods approach. Particularly in my final two chapters which engage more with legal analysis, the gap between the law as an elite space

[3] C. Heike Schotten, *Queer Terror: Life, Death, and Desire in the Settler Colony* (Columbia University Press, 2018)

and the everyday became painfully clear. First, it was a challenge to find ways to speak to my participants about law. While a couple of my participants knew about legal processes, conversations would lean more to their 'objective' knowledge of the law, rather than their personal experience of it. With the majority of my participants, it was a struggle to know where and how to begin asking questions. While my theoretical understanding is that everyone is shaped by legal processes on an everyday basis, proving this through discussions and memories is challenging.

Furthermore, the seeming incommensurability between law and everyday experiences is such that bringing the two together in writing is very difficult. Linguistic differences make it hard to create narratives. Even more than this, legal language works to create distance so that the law might act as an 'objective' and 'impartial' institution. While as I have shown throughout this thesis, claims of objectivity and impartiality in the law are political and provide for the invisibilisation of structural violence, such language makes writing about the law difficult. My task was therefore to effectively 'humanise' the law by exposing its partiality and the politics upon which it sits.

These challenges suggest the inaccessibility of the law and the forms of knowledge production that it will and will not allow for. The process of bringing together this thesis itself speaks to one of my main arguments around the hierarchies of evidence as they corollate to colonial hierarchies of humanity. At the same time, I did not want to simply smooth over the differences and clashes between these types of knowledge. The very awkwardness of their sitting together suggests the particular world view upon which the law is constructed and helps to interrogate the truth claims of not only the law but also of the archive and theory.

A second major challenge I encountered when writing this thesis was in 'proving' my claims when the evidence does not necessarily materially 'exist' in the archive. When giving presentations on my research I encountered significant criticism over my claims that we can glimpse contemporary pre-criminal thinking and methods in the archives. I was asked how it is possible to 'prove' such a claim without actually 'coming across' archival material that specifically uses pre-criminal terminology and speaks about risk in the same way as today. As I have explained, it would be misguided to rely uncritically on the colonial archive, not only because of the voices that are erased or left out, but also because of the micro and macro politics that guided its writing and formation into an archive. I looked to exploit silences and to bring in different and lesser heard voices to look not to the physical existence of policies themselves but of the thinking and justification behind such policies.

This challenge speaks to the wide gaps between disciplines and the different language in which scholarly writing speaks. I do not believe this to be to do with the difference between qualitative and quantitative work per se, as such a divide is often false and can lead to misjudgements and essentialisations of the 'other side'. I would instead suggest that this challenge is suggestive of the continued reliance on liberal narratives of progress and perhaps also increasing reservedness towards 'critical race theory' as suggestive of 'unscholarly' and 'unobjective' research.

As researchers we must recognise the political nature of our work. Particularly in work on terrorism, it is crucial that we address the possibility that our work can be used to further national security and defence programmes, to help create narratives that justify invasions and drone attacks, and to bolster the incarceration of racialised, gendered and classed people. Said showed this when he depicted orientalist thought as providing legitimacy to the material

exploitation, occupation, destruction, and reinvention of the Arab world. Heath-Kelly showed this when she explained that scholarship on the radicalisation discourse helps bolster the creation of categories of risk and the deployment of pre-criminal technologies. Looking to lesser heard narratives, accepting non-traditional forms of knowledge production like emotion and creativity *as* knowledge, and centring the perspectives of subaltern and marginalised people who challenge scholarly assumptions is non-negotiable if we are to confront coloniality, decolonise academic practices and work towards social justice.

Bibliography

Books, Book chapters and Journal Articles

Abourahme N, 'Of monsters and boomerangs: Colonial returns in the late liberal city' [2018] 22(1) City: Analysis of Urban Change, Theory, Action 106

Abu-Lughod L, 'Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others' [2002] 104(3) American Anthropologist 783

Abul-Magd Z, Imagined Empires: A History of Revolt in Egypt (University of California Press 2013)

Agamben G, *Homo Sacer: Sovereign Power and Bare Life*, (Heller D tr, Stanford University Press 1998)

Agamben G, *State of Exception*, (Attell K tr, University of Chicago Press 2005)

Ahdash F, 'The interaction between family law and counter-terrorism: a critical examination of the radicalisation cases in the family courts' [2018] Child and Family Law Quarterly 389

Ahmed L, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992)

Ahmed S, 'Affective Economies' [2004] 22(2) Social Text 117

Ahmed S, *On Being Included: Racism and Diversity in Institutional Life* (Duke University Press 2012)

Ahmed S, *Strange Encounters: Embodied Others in Post-Coloniality* (Routledge 2000)

Ahmed S, *The Cultural Politics of Emotion* (Edinburgh University Press 2004)

Ahsan H, Shy Radicals, *جذريون خجولون: The Antisystemic Politics of the Militant Introvert* (Book Works 2019)

Al-Ali N, *Secularism, gender and the state in the Middle East* (Cambridge University Press 2000)

Alzubairi F, *Colonialism, Neo-Colonialism, and Anti-Terrorism Law in the Arab World* (Cambridge University Press 2019)

Amar P, *The Security Archipelago: Human-Security States, Sexuality Politics, and the End of Neoliberalism* (Duke University Press 2013)

Anderson B, *Doing the Dirty Work? The Global Politics of Domestic Labor* (Zed Books 2000)

Arendt H, *On Violence* (Harvest/HBJ 1969)

Arendt H, *The Origins of Totalitarianism* (Harcourt Brace & Company 1973)

Aristodemou M, 'The Introduction didn't do it' in Aristodemou M, Macmillan F and Tuitt P (eds) *Crime Fiction and the Law* (Birkbeck Law Press 2017)

Arondekar A, 'Without a Trace: Sexuality and the Colonial Archive' [2005] 14(1/2) Journal of the History of Sexuality 10

Asad T, *Thinking about Secularism and Law in Egypt* (ISIM 2001) <https://openaccess.leidenuniv.nl/bitstream/handle/1887/10066/paper_asad.pdf?sequence=1>

Awan I, Spiller K and Whiting A, *Terrorism in the Classroom: Security, Surveillance and a Public Duty to Act* (Palgrave Pivot 2019)

Back L, 'Live sociology: social research and its futures' in Back L and Puwar N (eds) *Live Methods* (Wiley-Blackwell/The Sociological Review 2012)

Badrawi, M *Political Violence in Egypt 1910-1925: Secret Societies, Plots and Assassinations* (Routledge 2001)

Baron B, *Egypt as a Woman: Nationalism, Gender, and Politics* (University of California Press 2005)

Bashford A, *Imperial Hygiene*: *A Critical History of Colonialism, Nationalism and Public Health* (Palgrave Macmillan 2004)

Bassett T, 'Cartography and Empire Building in Nineteenth-Century West Africa' [1994] 84(3) Geographical Review

Benhabib S, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge University Press 2004)

Berlant L, 'Slow Death (Sovereignty, Obesity, Lateral Agency)' [2007] 33(4) Critical Inquiry 754

Berridge W, Imperialist and Nationalist Voices in the Struggle for Egyptian independence, 1919–22' [2014] 42(3) Journal of Imperial and Commonwealth History 420

Bhabha H, 'Sly Civility' [1985] 34 The MIT Press 71

Bhambra G, 'Postcolonial and decolonial dialogues' [2014] 17(2) Postcolonial Studies 115.

Bhandar B, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Duke University Press 2018)

Biancani F, *Sex Work in Colonial Egypt: Women, Modernity and The Global Economy* (I.B. Tauris, 2013)

Bier L, *Revolutionary womanhood: Feminisms, Modernity and the State in Nasser's Egypt*, (Stanford University Press 2011)

Breen-Smyth M, 'Theorising the "suspect community": counterterrorism, security practices and the public imagination' [2014] 7(2) Critical Studies on Terrorism 223

Brown N, 'Retrospective: Law and Imperialism: Egypt in Comparative Perspective' [1995] 29(1) Law & Society Review 103

Brown N, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press 1997)

Butler J, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 2006)

Butler J, *Precarious Life: The Powers of Mourning and Violence* (Verso 2004)

Cammett M, Diwan I, Richards A, Waterbury J, *A Political Economy of the Middle East* (fourth ed., Westerview Press 2015)

Carby H, Imperial Intimacies: A Tale of Two Islands (Verso 2019)

Carby H, 'White woman listen! Black feminism and the boundaries of sisterhood' in: *The Empire Strikes Back: Race and Racism in 70s Britain* (Routledge 1982)

Chamberlain M, 'Lord Cromer's "Ancient and Modern" Imperialism: A Proconsular View of Empire' [1972] 12(1) Journal of British Studies 61

Chiha I, 'Redefining Terrorism under the Mubarak Regime: Towards a New Definition of Terrorism in Egypt', [2013] 46(1) The Comparative and International Law Journal of Southern Africa 90

Cohn C (ed) *Women and Wars: Contested Histories, Uncertain Futures* (Wiley 2012)
Coppock V and McGovern M, '"Dangerous Minds"? Deconstructing Counter-Terrorism Discourse, Radicalisation and the 'Psychological Vulnerability' of Muslim Children and Young People in Britain' [2014] 28(3) Children & Society 242

Cooley A, 'Authoritarianism Goes Global: Countering Democratic Norms' [2015] 26(3) Journal of Democracy.

De Goede M and Sullivan G, 'The Politics of Security Lists' [2015] 34(1) Environment and Planning D: Society and Space 67

Dhenin M, 'The Construction of Motherhood in Semi-Colonial Egypt' [2021] Australian Feminist Law Journal

Dicey A, Introduction to the Study of the Law of the Constitution (First published 1915, LibertyClassics 1982)

Doty R. L, *Imperial Encounters: The Politics of Representation in North-South Relations* (University of Minnesota Press, 1996)

Dyzenhaus D, 'The Puzzle of Martial Law' [2009] 59(1)The University of Toronto Law Journal 1.

Eckert J (ed), *The Social life of Anti-Terrorism Laws: The War on Terror and the Classifications of the "Dangerous Other"* (transcript, 2008)

El-Hameed D, 'The Egyptian General Directorate for Protecting Public Morality: Purveyors and Guardians of Penetrating Masculinity' [2018] 14(2) Journal of Middle East Women's Studies 252

Elshimi M, 'De-radicalisation interventions as technologies of the self: a Foucauldian analysis' [2014] 8(1) Critical Studies on Terrorism 110

Enloe C, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (University of California Press 1994)

Esmeir S, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012)

Ezzat A, 'Law and Moral Regulation in Modern Egypt: Ḥisba from Tradition to Modernity' [2020] 52(4) International Journal of Middle East Studies, 665

Ezzat A, 'Law, Exceptional Courts and Revolution in Modern Egypt' in Springborg R, Adly A, Gorman A, Moustafa T, Saad A, Sakr N, Smierciak S (eds), *Routledge Handbook on Contemporary Egypt* (Routledge 2021)

Fahmy K, 'Prostitution in Nineteenth-Century Egypt' in Rogan E (ed) *Outside In: On the Margins of the Modern Middle East* (I.B. Tauris 2002)

Fahmy K, 'The Birth of the 'Secular' Individual: Medical and Legal Methods of Identification in Nineteenth-Century Egypt' in Breckenridge K and Szeter S (eds) *Registration and Recognition: Documenting the Person in World History* (The British Academy 2012)

Fahmy Z, *Ordinary Egyptians: Creating the Modern Nation through Popular Culture* (Stanford University Press 2011)

Falcón S and Philipose E, 'the neo-liberal university and academic violence: the women's studies quandary' [2017] 117 Feminist Review 187

Fanon F, *Black Skin White Masks* (Charles Lam Markmann tr., Pluto Press 1968)

Fanon F, *Towards the African Revolution: Political Essays* (Chevalier H tr., Grove Press 1967)

Farrier D and Tuitt P, 'Beyond Biopolitics: Agamben, Asylum, and Postcolonial Critique' in Huggen G (ed) *The Oxford Handbook of Postcolonial Studies* (Oxford University Press 2018)

Finnane M and Donkin S, 'Fighting Terror with Law? Some Other Genealogies of Pre-emption' [2013] 2(1) International Journal for Crime and Justice 3

Fitzpatrick P *The Mythology of Modern Law* (Routledge 1992)

Foucault M, 'The political function of the intellectual' (Gordon C tr., Radical Philosophy 017, Summer 1977)

Foucault M, *"Society Must Be Defended": Lectures at the Collège de France, 1976-76* (Bertani M and Fontana A eds., Macey D tr., Picador 1997)

Foucault M, The Archaeology of Knowledge and Discourse on Language (Smith A, tr. Pantheon Books 1972)

Foucault, M *The History of Sexuality Volume 1: An Introduction* (Hurley R tr, Random House Inc 1978)

Freeman E, *Time Binds: Queer Temporalities, Queer Histories* (Duke University Press, 2010)

Garland D, ‘What is a “history of the present”? On Foucault’s genealogies and their critical preconditions’ [2014] 16(4) Punishment & Society 365

Garland D, *Punishment and Welfare: A History of Penal Strategies* (Gower Publishing Company Limited, 1985)

Georgis D, The Better Story: Queer Affects from the Middle East (Suny Press 2013)

Ghannam F, *Live and Die Like a Man: Gender Dynamics in Urban Egypt* (Stanford University Press 2013)

Gilley B, ‘Democratic enclaves in authoritarian regimes’ [2010] 17(3) Democratization 389
Gökariksel S and Türem Z, ‘The Banality of Exception? Law and Politics in “Post-Coup” Turkey’ [2019] 118(1) South Atlantic Quarterly 175

Goldberg D, Jadhav S and Younis T, ‘Prevent: what is pre-criminal space?’ [2017] BJPsych Bulletin 208

Greer S, ‘Anti-Terrorist Laws and the United Kingdom’s Suspect Muslim Community: a Reply to Patanzis and Pemberton. [2010] 50 British Journal of Criminology 1171

Guiora A, ‘Anticipatory Self-Defence and international Law – A Re-Evalutation [2008] 13(1) Journal of Conflict and Security Law 3

Gunaratnam Y and Hamilton C, ‘The wherewithal of feminist methods’ [2017] 115(1) Feminist Review 1

Gunaratnam Y, *Death and the migrant: bodies, borders and care* (Bloomsbury Publishing Plc 2013)

Gunning J and Jackson R, ‘What’s so Religious about Religious Terrorism?’ [2011] 4(3) Critical Studies on Terrorism 369

Gunning J, ‘A Case for Critical Terrorism Studies?’ [2007] 42(3) Government and Opposition 363

Haggis J, ‘White Women and Colonialism: Towards a Non-Recuperative History’ in Midgley C (ed) *Gender and Imperialism* (Manchester University Press 1998) 45

Halley J, Kotiswaran P, Rebouché R, and Shamir H, (eds) *Governance Feminism: Notes from the Field* (University of Minnesota Press 2019)

Hamilton J, *Gallipoli Sniper: The Remarkable Life of Billy Sing* (Pen & Sword Books 2015)

Hammad H, *Industrial Sexuality: Gender, Urbanization, and Social Transformation in Egypt* (University of Texas Press 2016)

Hamzić V, 'International law as violence: Competing absences of the other' in Otto D (ed.) *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2018)

Haritaworn J, Kuntsman A and Posocco S (eds) *Queer Necropolitics* (Routledge 2014)

Hartman S, 'Venus in Two Acts' [2008] 12(2) Small Axe 12(2) 1

Hartman S, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford University Press 1997)

Heath-Kelly C and Shanaáh S, 'The long history of prevention: Social Defence, security and anticipating future crimes in the era of "penal welfarism"' [2022] Theoretical Criminology 1-20

Heath-Kelly C and Strausz E, 'The banality of counterterrorism "after, after 9/11"? Perspectives on the Prevent duty from the UK health care sector' [2019] 12(1) Critical Studies on Terrorism 89

Heath-Kelly C, 'Counter-Terrorism and the Counterfactual: Producing the 'Radicalisation' Discourse and the UK PREVENT Strategy' [2013] 15(3) The British Journal of Politics & International Relations 394

Heath-Kelly C, 'Critical Terrorism Studies, Critical Theory and the "Naturalistic Fallacy"' [2010] 41(3) Security Dialogue 235

Heath-Kelly C, 'Reinventing prevention or exposing the gap? False positives in UK terrorism governance and the quest for pre-emption' [2012] 5(1) Critical Studies on Terrorism 69

Heath-Kelly C, 'The Geography of Pre-criminal Space: Epidemiological Imaginations of Radicalisation in the UK Prevent Strategy, 2007-2017' [2017] 10(2) Critical Studies on Terrorism 297

Heath-Kelly C, *Death and Security: Memory and Mortality at the Bombsite* (Manchester University Press 2017)

Heath-Kelly C, *Politics of Violence: Militancy, International Politics, Killing in the Name* (Routledge 2013)

Heathcote G, *The Law on the Use of Force: A Feminist Analysis* (Routledge 2012)

Hemmings C, ‘Invoking Affect’ [2006] 19(5) Cultural Studies 551

Hillyard P, *Suspect Community: People’s Experience of the Prevention of Terrorism Acts in Britain* (Pluto Press 1993)

Humphreys, S ‘Legalizing Lawlessness: On Giorgio Agamben’s *State of Exception*’ [2006] 17(3) European Journal of International Law 677

Hussain N, ‘Beyond Norm and Exception: Guantánamo’ [2007b] 33(4) Critical Inquiry 734

Hussain N, ‘Hyperlegality’ [2007a] 10(4) New Criminal Law Review 514

Hussain N, ‘Towards a Jurisprudence of Emergency: Colonialism and the Rule of Law’ [1999] 10 Law and Critique 93

Hutchings K, *Time and the Study of World Politics* (Manchester University Press 2008)

Ibrahim S, ‘An Islamic Alternative in Egypt: The Muslim Brotherhood and Sadat’ [1982] 4(1/2) Arab Studies Quarterly 75

Innes M and Sheptycki J, ‘From Detection to Disruption: Intelligence and the changing logic of police crime control in the United Kingdom’ [2004] 14 International Criminal Justice Review 1

Innes M, Roberts C and Lowe T, ‘A Disruptive Influence? “Prevent-ing” Problems and Countering Violent Extremism Policy in Practice’ [2017] 51(2) Law & Society Review 252

Jakes A, ‘The Scales of Public Utility: Agricultural Roads and State Space in the Era of the British Occupation’ in Booth M and Gorman A, *The Long 1890s in Egypt: Colonial Quiescence, Subterranean Resistance* (Edinburgh University Press 2014)

Jarvis L, ‘Critical Terrorism Studies After 9/11’ in Jackson R (ed), *Routledge Handbook of Critical Terrorism Studies* (Routledge 2016)

Johns F, ‘Guantanamo Bay and the Annihilation of the Exception’ [2005] 16(4) The European Journal of International Law 613

Kant I, ‘Perpetual Peace: A Philosophical Sketch’ [1795] in *Immanuel Kant: Practical Philosophy* (Mary J. Gregor tr and ed., Cambridge University Press 1996)

Kapoor N and Narkowicz K ‘Unmaking citizens: passport removals, preemptive policing and the reimagining of colonial governmentalities’ [2019] 42(16) Ethnic and Racial Studies 45

Kapoor N, *Deport, Deprive, Extradite: 21st Century State Extremism* (Verso Books 2018)

Khalili L, 'Gendered Practices of Counterinsurgency' [2011] 37(4) Review of International Studies 1471

Khalili L, *Time in the Shadows: Confinement in Counterinsurgencies* (Stanford University Press 2012)

Khan R, 'Race, Coloniality and the Post 9/11 Counter-Discourse: Critical Terrorism Studies and the Reproduction of the Islam-Terrorism Discourse' [2021] Critical Studies on Terrorism.

Khatun S, *Australianama: The South Asian Odyssey in Australia* (Hurst 2018)

Kholoussy H, 'Monitoring and Medicalising Male Sexuality in Semi-Colonial Egypt' [2010] 22(3) Gender & History 677

Kirollos M, "The Daughters of Egypt are a Red Line:" The Impact of Sexual Harassment on Egypt's Legal Culture [2016] 2(1) Kohl: A Journal for Body and Gender Research 49

Klein N, *The Shock Doctrine: The Rise of Disaster Capitalism* (Metropolitan Books 2007)

Koser K and Al-Ali N, (eds) New Approaches to Migration? Transnational Communities and the Transformation of Home (Routledge 2002)

Kotiswaran P, 'Transnational Criminal Law in a Globalised World: The Case of Trafficking' [2019] 4 UC Irvine Journal of International, Transnational and Comparative Law 52.

Kruse M, 'Countering Violence Extremism Strategies in the Muslim World' [2016] 668(1) The ANNALS of the American Academy of Political and Social Science 198

Lambert C, *The Live Art of Sociology* (Routledge 2018)

Lammasniemi L, 'Regulation 40D: Punishing promiscuity on the home front during the First World War' [2016] 26(4) Women's History Review 584

Lammasniemi L and Sharma K, 'Governing Conjugality: Social Hygiene and the Doctrine of Restitution of Conjugal Rights in England and India in the Nineteenth Century' [2021] Australian Feminist Law Journal

Likhovski A, *Law and Identity in Mandate Palestine* (University of North Carolina Press 2006)

Lockman Z, *Contending Visions of the Middle East: The History and Politics of Orientalism* (Cambridge University Press 2010)

Madhok S 'Coloniality, political subjectivation and the gendered politics of protest in a "state of exception"' [2018] 119 Feminist Review 46

Magued S, 'The Egyptian LGBT's transnational cyber-advocacy in a restrictive context' [2021] Mediterranean Politics

Mahmood S, 'Feminism, Democracy, and Empire: Islam and the War on Terror' in: Herzog H and Braude A (eds) *Gendering Religion and Politics* (Palgrave Macmillan 2009)

Mahmood S, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005)

Makdisi S, 'Spectres of "Terrorism"'[2002] 4(2) Interventions: International Journal of Postcolonial Studies 265

Martel J, The Law of Rules: Hyperlegalism, Emergency and the Violence of Procedure' [2017] 17(1) Law, Culture and the Humanities 53

Martin T, 'Governing an unknowable future: the politics of Britain's Prevent policy' [2014] 7(1) Critical Studies on Terrorism 62

Martini A, Ford K and Jackson R (eds) *Encountering Extremism: Theoretical Issues and Local Challenges* (Manchester University Press 2020)

Mbembe A, 'Necropolitics' [2003] 15(1) Public Culture 11

McCulloch J and Wilson D, *Pre-crime: Pre-emption, Precaution and the Future* (Routledge 2016)

Mehta U, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (The University of Chicago Press 1999)

Mignolo W, 'The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism' [2000] 12(3) Public Culture 721

Mikdashi M and Puar J, 'Queer Theory and Permanent War' [2016] 22(2) GLQ: A Journal of Lesbian and Gay Studies 215

Mitchell T, *Carbon Democracy: Political Power in the Age of Oil* (Verso 2013)

Mitchell T, *Colonising Egypt* (University of California Press 1991)

Mitchell T, *Rule of Experts: Egypt, Technopolitics, Modernity* (University of California Press 2002)

Mohanty C, 'Transnational Feminist Crossings: On Neoliberalism and Radical Critique' [2013] 38(4) Signs: Journal of Women in Culture and Society 967

Morgan K, 'Imperialists at bay: British labour and decolonization' [2008] 27(2) The Journal of Imperial and Commonwealth History 233

Morton S, *States of Emergency: Colonialism, Literature and Law* (Liverpool University Press 2012)

Mourad S, 'The Naked Body of Alia: Gender, Citizenship, and the Egyptian Body Politic' [2014] 38(1) Journal of Communication Inquiry 62

Murray A, 'Terrorist or Armed Opposition Group Fighter?' [2018] 20(3-4) International Community Law Review 281

Mussallam A, *From Secularism to Jihad: Sayyid Qutb and the Foundations of Radical Islamism* (Greenwood Publishing 2005)

Naber N, Atshan S, Awad N, Mikdashi M, Merabet S, Abusalim D and Elia N, 'Roundtable on Palestinian Studies and Queer Theory' [2018] 47(3) Journal of Palestine Studies 62

Neal A, 'Goodbye War on Terror: Foucault and Butler on Discourses of Law, War and Exceptionalism' In: Dillon M and Neal A (eds) *Foucault on Politics, Security and War* (Palgrave Macmillan 2008) 43-64.

Neocleous M, 'From Martial Law to the War on Terror' [2007] 10(4) New Criminal Law Review: An International and Interdisciplinary Journal 489

Neocleous M, 'The problem with Normality: Taking Exception to "Permanent Emergency"' [2006] 31 Alternatives: Global, Local, Political 191

Njoku E, '"Laws for Sale:" The Domestication of Counterterrorism Legislations and its impact in Nigeria' in Romaniuk S, Grice F, Irrera D and Webb S (eds), *The Palgrave Handbook of Global Counterterrorism Policy* (Palgrave Macmillan 2017)

Nkrumah K, *Neo-Colonialism, The Last Stage of Imperialism* (Thomas Nelson & Sons, Ltd 1965)

Novelli M, 'Education and countering violent extremism: Western logics from south to north?' [2017] 47(6) 835

Nussbaum M, *Sex and Social Justice*. (Oxford University Press 1999)

Oando S and Achieng S, 'An Indigenous African Framework for Counterterrorism: Decolonising Kenya's Approach to Countering "Al-Shabaab-ism"' [2021] 14(3) Critical Studies on Terrorism 354

Okin S, 'Part 1: Is Multiculturalism Bad for Women?' In: Cohen J, Howard M and Nussbaum M (eds), *Is Multiculturalism Bad for Women?*, (Princeton University Press 1999)

Oliveira A, '"Sterilisation Must be Done Against Her Will": Coloniality, Eugenics and Racism in Brazil 2018 — The Case of Janaína Quirino' [2021] 47(1) Australian Feminist Law Journal

Omar H, 'Arabic Thought in the Liberal Cage' in Devji F and Kazmi Z (eds) *Islam After Liberalism* (Oxford University Press 2017)

Osiel M, 'Ever Again: Legal Remembrance of Administrative Massacre' [1995] 144(2) University of Pennsylvania Law Review 463

Page T, 'vulnerable writing as a feminist methodological practice' [2017] 115 Feminist Review 13

Pantazis C and Pemberton S, 'From the "Old" to the "New" Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation' [2009] 49(5) British Journal of Criminology 646

Parker T and Sitter N, 'The Four Horsemen of Terrorism: It's Not Waves, It's Strains.' [2016] 26(2) Terrorism and Political Violence 197

Pateman C, *The Sexual Contract* (Polity Press 1988)

Perera S and Razack S (eds), *At the Limits of Justice: Women of Colour on Terror* (University of Toronto Press 2014)

Perry-Kessaris A, 'Legal Design for Practice, Activism, Policy and Research' [2019] 46(2) Journal of Law and Society 185

Peteet J, 'Male Gender and Rituals of Resistance in the Palestinian "Intifada": A Cultural Politics of Violence' [1994] 21(1) American Ethnologist 31

Pettinger T, 'CTS and normativity: the essentials of preemptive counter-terrorism interventions' [2019] 13(1) Critical Studies on Terrorism 118

Polizzi D, ‘The Negation of Innocence: Terrorism and the State of Exception’ in: Arrigo B and Sellers B (eds) *The Pre-Crime Society: Crime, Culture and Control in the Ultramodern Age* (Bristol University Press 2021)

Pratt N and Rezk D, ‘Securitizing the Muslim Brotherhood: state violence and authoritarianism in Egypt after the Arab Spring’ [2019] 50(3) Security Dialogue 239

Pratt N, *Embodying Geopolitics: Generations of Women’s Activism in Egypt, Jordan, and Lebanon* (University of California Press 2020)

Pratt N, The Queen Boat Case in Egypt: Sexuality, National Security and State Sovereignty [2007] 33(1) Review of International Studies 129

Puar J *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press 2007)

Puar J, *The Right to Maim* (Duke University Press 2017)

Ragazzi F, ‘Suspect Community or suspect category? The impact of counter-terrorism as “policed multiculturalism”’ [2016] 42(5) Journal of Ethnic and Migration Studies 724

Ramsay P, ‘Democratic Limits to Preventive Criminal Law’ in Ashworth A, Zedner L and Tomlin P (eds), *Prevention and the Limits of the Criminal Law* (Oxford University Press 2013)

Rao R, *Out of Time: The Queer Politics of Postcoloniality* (Oxford University Press 2020)

Rashid N, *Veiled Threats: Representing the Muslim Woman in Public Policy Discourses* (Policy Press 2016)

Reynolds J, ‘The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law’ [2010] 6(5) Comparative Research in Law & Political Economy 1

Reynolds J, *Empire, Emergency, and International Law* (Cambridge University Press 2017)
Reza S, ‘Endless Emergency: The Case of Egypt’ [2007] 10(4) New Criminal Law Review 532

Rizq R, ‘“Pre-crime”, *Prevent*, and practices of exceptionalism: Psychotherapy and the new norm in the NHS’ [2017] 23(4) Psychodynamic Practice 336

Roach K, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press 2012)

Roberts P, ‘Wilson, Europe’s Colonial Empires and the Issue of Imperialism’ in Kennedy R, (ed) *A Companion to Woodrow Wilson* (Wiley-Blackwell 2013)

Robinson B, *Bureaucratic Fanatics: Modern Literature and the Passions of Rationalization* (De Gruyter 2019)

Robinson R, *Khaki Crims and Desperadoes* (Macmillan Australia 2014)

Sadowski Y, ‘The New Orientalism and the Democracy Debate’ (Middle East Report 183, Political Islam 1993)

Sahgal G and Yuval-Davis N, (eds) *Refusing Holy Orders: Women and Fundamentalism in Britain.* (Virago 1992)

Said E, Orientalism (First published 1978, Penguin Books 2003)

Salem S, ‘On Transnational Feminist Solidarity: The Case of Angela Davis in Egypt’ [2018] 43(2) Signs: Journal of Women in Culture and Society 245

Salem S, *Anticolonial Afterlives in Egypt: The Politics of Hegemony* (Cambridge University Press 2020)

Sampaio A, ‘Transnational Feminisms in a New Global Matrix’ [2004] 6(2) International Feminist Journal of Politics 181

Scanlon Z, ‘Punishing Proximity: Sentencing preparatory terrorism in Australia and the United Kingdom’ [2014] 25(3) Current Issues in Criminal Justice 763;

Scarry E, *The Body in Pain: The Making and Unmaking of the World* (Oxford University Press 1985)

Schiffauer W, ‘Suspect Subjects: Muslim Migrants and the Security Agencies in Germany’ in Eckert J (ed), *The Social life of Anti-Terrorism Laws: The War on Terror and the Classifications of the “Dangerous Other”* (transcript, 2008)

Schmitt C, *Political Theology: Four Chapters on the Concept of Sovereignty*, (Schwab G tr., University of Chicago Press 2005)

Schotten C, *Queer Terror: Life, Death, and Desire in the Settler Colony* (Columbia University Press 2018)

Shakhsari S, ‘Killing me softly with your rights: Queer death and the politics of rightful killing’ in Haritaworn J, Kuntsman A and Posocco S (eds) *Queer Necropolitics* (Routledge 2014)

Sharlach L, ‘Veil and four walls: a state of terror in Pakistan’ [2008] 1(1) Critical Studies on Terrorism 95

Shukla R, ‘Presidential Address: British Colonialism at Work in India and Egypt, a Comparative View’ [1987] 48 Proceedings of the Indian history Congress 603

Sim J and Thomas P ‘The Prevention of Terrorism Act: Normalising the Politics of Repression’ [1983] 10(1) Journal of Law and Society 71

Sjoberg L and Gentry C (eds) *Women, Gender, and Terrorism* (University of Georgia Press 2011)

Sjoberg L and Gentry C, *Mothers, Monsters, Whores: Women’s Violence in Global Politics* (Zed Books, 2007)

Spade D, *Normal life: administrative violence, critical trans politics, and the limits of* law (Duke University Press 2015)

Starr D, *Remembering Cosmopolitan Egypt: Literature, Culture, and Empire* (Taylor & Francis Group 2009)

Stauffer J, ‘Listening to the Archive: Failing to Hear’ in Motha S and van Rijswijk H *Law Memory and Violence: Uncovering the Counter-Archive* (Routledge 2016)

Steedman C, Dust (Manchester University Press 2002) 11

Stoler A, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton University Press, 2010)

Stoler A, *Duress: Imperial Durabilities in Our Times* (Duke University Press 2016)
Stump J and Dixit P, *Critical Terrorism Studies: An Introduction to Research Methods* (Routledge 2013)

Sudbury J (ed), Global Lockdown: Race, Gender, and the Prison-Industrial Complex (Routledge 2005)

Sullivan G, *The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law* (Cambridge University Press 2020)

Sullivan L and Mittman I, ‘The State of Diversity in the Health Professions a Century After Flexner’ [2010] 85(2) Academic Medicine 246

Suresh M, ‘The File as Hypertext: Documents, Files and the Many Worlds of the Paper State’ in Motha S and van Rijswijk H (eds) *Law Memory and Violence: Uncovering the Counter-Archive* (Routledge 2016)

Suresh M, ‘The social life of technicalities: “Terrorist” lives in Delhi’s courts’ [2019] 53(1) Contributions to Indian Sociology 72

Theron L, Smith A and Stuart J (eds) *Picturing Research: Drawing as Visual Methodology* (Sense Publishers 2011)

Thobani S, ‘White Wars: Western Feminisms and the “War on Terror”’ [2007] 8(2) Feminist Theory 169

Tickell A, *Terrorism, Insurgency and Indian-English Literature: 1830-1947* (Routledge 2012)

Trafford J, *The Empire at Home: Internal Colonies and the End of Britain* (Pluto Press 2021)

Troutt Powell E, *A Different Shade of Colonialism: Egypt, Great Britain, and the Mastery of the Sudan* (University of California Press 2003)

Tuitt P, ‘Critique, Crime Fiction and the No Right Answer Thesis’ in Aristodemou M, Macmillan F and Tuitt P (eds) *Crime Fiction and the Law* (Birkbeck Law Press 2017)

Van Munster R, ‘The War on Terrorism: When the Exception Becomes the Rule’ [2004] 17 International Journal for Semiotics of Law 141.

Vidino L, *The Closed Circle: Joining and Leaving the Muslim Brotherhood in the* West (Columbia University Press 2020)

wa Thiong’o N, *Something Torn and New: An African Renaissance* (Basic*Civitas* Books 2009)

Walker C and Cawley O, ‘The juridification of the UK’s counter-terrorism prevent policy’ [2020] Studies in Conflict & Terrorism 2

Weiss M, *In the Shadow of Sectarianism: Law, Shi`ism, and the Making of Modern Lebanon* (Harvard University Press 2010)

Welchman L, ‘Rocks, hard places and human rights: anti-terrorism law and policy in Arab states’ in Ramraj V, Hor M and Roach K (eds), *Global Anti-Terrorism Law and Policy* (Cambridge University Press 2005)

Wilcox L, ‘Embodying Algorithmic War: Gender, Race, and the Posthuman in Drone Warfare’ [2017] 48(1) Security Dialogue 11

Wood, L, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt*, 1875-1952 (Oxford University Press 2016)

Yegenoglu M, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge University Press 1998)

Younis T and Jadhav S ‘Islamophobia in the National Health Service: an ethnography of institutional racism in PREVENT’s counter-radicalisation policy’ [2019] 42(3) Sociology of Health and Illness 610

Zedner L, ‘Preventive Justice or Pre-Punishment? The Case of Control Orders’ [2007] 60(1) Current Legal Problems 174

Zeitlyn D, ‘Anthropology in and of the Archives: Possible Futures and Contingent Pasts. Archives as Anthropological Surrogates’ [2012] 41 Annual Review of Anthropology 461

Zichi P, ‘Prostitution and Moral and Sexual Hygiene in Mandatory Palestine: The Criminal Code for Palestine (1921–1936)’ [2021] 47(1) Australian Feminist Law Journal

Websites, Newspapers and Blogs

—‘After Menna Abdel Aziz’s release and the prosecution's decision that there are no grounds in bringing a case for the charges against her, EIPR calls on the prosecution to take the same approach in similar cases to protect victims of sexual violence’ *Egyptian Initiative for Personal Rights* (17 September 2020) <https://eipr.org/en/press/2020/09/after-menna-abdel-aziz%E2%80%99s-release-and-prosecutions-decision-there-are-no-grounds> accessed 29 September 2021

—‘All According to Plan The Rab’a Massacre and Mass Killings of Protesters in Egypt’ *Human Rights Watch* (12 August 2014) <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt> accessed 28 September 2021

—‘Annex A – Prosecutions of Activists and Journalists under Egypt’s Terrorism Law’ *Human Rights Watch* (15 July 2018) <https://www.hrw.org/news/2018/07/15/annex-prosecutions-activists-and-journalists-under-egypts-terrorism-law> accessed 23 September 2021

—‘Cairo court imprisons 35 people over Warraq Island clashes’ *Egyptian Independent* (27 December 2020) <https://egyptindependent.com/cairo-court-imprisons-35-people-over-warraq-island-clashes/> accessed 29 September 2021

—‘Case 173 Dropped Against Four Human Rights Defenders and their NGOs' *Frontline Defenders* (n.d.) <https://www.frontlinedefenders.org/en/case/arrest-azza-soliman> accessed 29 September 2021

—‘Egypt begins trial of researcher Patrick George Zaki’ *Al Jazeera* (14 September 2021) <https://www.aljazeera.com/news/2021/9/14/egypt-begins-trial-of-researcher-patrick-george-zaki> accessed 16 October 2021

—‘Egypt frees Al Jazeera staff jailed for journalism’ *Amnesty International* (18 May 2018) <https://www.amnesty.org.uk/egypt-frees-al-jazeera-staff-mohammed-fahmy-baher-mohamed-prison-journalism> accessed 28 September 2021

—‘Egypt: Aisha Al-Shater transferred to prison hospital after health deteriorates’ *Middle East Monitor* (6 September 2019) <https://www.middleeastmonitor.com/20190906-egypt-aisha-al-shater-transferred-to-prison-hospital-after-health-deteriorates/> accessed 29 September 2021

‘Egypt: Detained activist Alaa Abdel Fattah 'at risk of suicide' over conditions, says lawyer’ *Middle East Eye* (14 September 2021) <https://www.middleeasteye.net/news/egypt-alaa-abdel-fattah-activist-detained-risk-suicide-conditions> accessed 16 October 2021

—‘Egypt: Jailed Activist’s Life May Be at Risk’ *Human Rights Watch* (19 December 2019) <https://www.hrw.org/news/2019/12/19/egypt-jailed-activists-life-may-be-risk> accessed 27 October 2021

—‘Egypt: Mass Attacks on Churches’ *Human Rights Watch* (21 August 2013) <https://www.hrw.org/news/2013/08/21/egypt-mass-attacks-churches> accessed 29 September 2021

—‘Egyptian Parliament approves 16th consecutive state of emergency extension’ *Egypt Independent (*12 July 2021) <https://egyptindependent.com/egyptian-parliament-approves-16th-consecutive-state-of-emergency-extension/> accessed 28 September 2021

—‘Feature: Inside the Cambridge military-academic complex’ *MENA Solidarity Network* (1 October 2018) < https://menasolidaritynetwork.com/2018/10/01/feature-inside-the-cambridge-military-academic-complex/> accessed 28 September 2021

—‘Rights groups condemn Egypt's cybercrime draft law’ *Ahramonline* (14 June 2016) <https://english.ahram.org.eg/NewsContent/1/64/223035/Egypt/Politics-/Rights-groups-condemn-Egypts-cybercrime-draft-law.aspx> accessed 29 September 2021

—Egypt: Don’t Cover Up Military Killing of Copt Protesters’ *Human Rights Watch* (25 October 2011)

<https://www.hrw.org/news/2011/10/25/egypt-dont-cover-military-killing-copt-protesters> accessed 29 September 2021

al-Hafeez M, 'Al-Hilbāwī... ʿUqdat Jallād Dinshwāī Tulāḥiq Muḥāmī al-Ḥaraka al-Waṭaniyya Ḥata Qabruh' *Aswat Online* (31 July 2019) <https://aswatonline.com/2019/07/31/%D8%A7%D9%84%D9%87%D9%84%D8%A8%D8%A7%D9%88%D9%8A-%D8%B9%D9%82%D8%AF%D8%A9-%D8%AC%D9%84%D8%A7%D8%AF-%D8%AF%D9%86%D8%B4%D9%88%D8%A7%D9%8A-%D8%AA%D9%84%D8%A7%D8%AD%D9%82-%D9%85%D8%AD%D8%A7/> accessed 1 October 2021

Akked D, 'Gezirit Al-Waraq: Cairo's Forgotten Island' *LSE Blog* (4 October 2012) <https://blogs.lse.ac.uk/mec/2012/10/04/geziri-al-waraq-cairos-forgotten-island/> accessed 28 September 2021

Bloomberg Quicktake, 'We Are Trying to Regain Rule of Law: Egypt's El-Sisi' <https://www.youtube.com/watch?v=iRY_5XShKls&ab_channel=BloombergQuicktake>accessed 29 September 2021

Bradley G, 'Some of the worst excesses of the counter-terror bill are gone, but without further changes it is still a threat to our civil liberties' *Liberty* (20 November 2018) < https://www.libertyhumanrights.org.uk/issue/some-of-the-worst-excesses-of-the-counter-terror-bill-are-gone-but-without-further-changes-it-is-still-a-threat-to-our-civil-liberties/> accessed 28 September 2021

Cairo Institute for Human Rights Studies (CIHRS) <https://cihrs.org/?lang=en>

CAGE < https://www.cage.ngo/>

Cage NGO, 'Interview with Mohammed Umar Farooq' (29 September 2015) < https://www.youtube.com/watch?v=tbaUxBjZmLo&ab_channel=CAGE> accessed 23 September 2021

Curtis M and Kennard M, 'Revealed: UK Home Office paid £80,000 to a lobby group which has funded Conservative MPs' *OpenDemocracy* (14 July 2020) < https://www.opendemocracy.net/en/opendemocracyuk/revealed-uk-home-office-paid-80000-to-a-lobby-group-which-has-funded-conservative-mps/> accessed 28 September 2021

Egyptian Initiative for Personal Rights (EIPR) <https://eipr.org/en>

Fenwick H, 'What's the difference between TPIMs and control orders?' *The Conversation* (8 June 2017) <https://www.dur.ac.uk/news/allnews/thoughtleadership/?itemno=31617> accessed 28 September 2021

Graham S, ‘Foucault’s boomerang: the new military urbanism’ *OpenDemocracy* (14 February 2013) < https://www.opendemocracy.net/en/opensecurity/foucaults-boomerang-new-military-urbanism/> accessed 23 September 2021

Hegazy S, ‘A year after the rainbow flag controversy’ *madamasr* (first published 2018, 15 June 2020) <https://www.madamasr.com/en/2020/06/15/opinion/u/a-year-after-the-rainbow-flag-controversy/> accessed 29 September 2021

Khorshid S, ‘Western Leaders Are Promoting Dictatorship, Not Democracy, in Egypt’ *Foreign Policy* (14 February 2019) <https://foreignpolicy.com/2019/02/14/western-leaders-are-promoting-dictatorship-not-democracy-in-egypt-sisi-amendments-trump-macron/> accessed 29 September 2021

Massad J, ‘Against Self-Determination’ *Humanity Journal* (11 September 2018) <https://www.humanityjournal.org/issue9-2/against-self-determination/> accessed 7 October 2021.

Michaelson R, ‘Giulio Regeni: trial of Egyptian security agents charged over death begins in Rome’ *The Guardian* (14 October 2021) <https://www.theguardian.com/global-development/2021/oct/14/giulio-regeni-trial-of-egyptian-security-agents-charged-over-death-begins-in-rome> accessed 16 October 2021.

Muslim Engagement and Development (MEND) <https://mend.org.uk>

Ní Aoláin F, ‘European Counter-Terrorism Approaches: A Slow and Insidious Erosion of Fundamental Rights’ *Just Security* (17 October 2018) ≤https://www.justsecurity.org/61086/european-counter-terrorism-approaches-slow-insidious-erosion-fundamental-rights/≥ accessed 23 September 2021

Recovery in the Bin: A critical theorist and activist collective <https://recoveryinthebin.org/>

Speri A, ‘Tortured by Guantánamo’ *The Intercept* (10 September 2021) < https://theintercept.com/2021/09/10/guantanamo-bay-detained-fathers-911/?utm_medium=social&utm_source=twitter&utm_campaign=theintercept> accessed 23 September 2021

UK Government ‘Statutory Guidance: Revised Prevent Duty Guidance for England and Wales *gov.uk* (1 April 2021) <https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales> accessed 23 September 2021

Woodman C, ‘The Imperial Boomerang: How colonial methods of repression migrate back to the metropolis’ *Verso* (9 June 2020) < https://www.versobooks.com/blogs/4383-the-imperial-

boomerang-how-colonial-methods-of-repression-migrate-back-to-the-metropolis?fbclid=IwAR3gsFcfk7RYeTtNxWtc7mWj8s8MlDqNugpYfeRF36Csxx7F9Q4DCuh9VDw> accessed 27 October 2020

Wright-Mendoza J, 'The 1910 Report That Disadvantaged Minority Doctors' *Jstor Daily* (3 May 2019) <https://daily.jstor.org/the-1910-report-that-unintentionally-disadvantaged-minority-doctors/> accessed 27 October 2020

Zaatari Z, 'Sarah Hegazy and the Struggle for Freedom' *MERIP* (22 September 2020) < https://merip.org/2020/09/sarah-hegazy-and-the-struggle-for-freedom/> accessed 29 September 2021

Reports and Governmental Documents

Aked H, Younis T and Heath-Kelly C, *Racism, mental health and pre-crime policing — the ethics of Vulnerability Support Hubs* (Medact 2021)< https://stat.medact.org/uploads/2021/05/Racism_mental_health_pre-crime_policing_Medact_Report_May_2021_ONLINE.pdf> accessed 28 September 2021

Amnesty International 'United Kingdom. Human Rights: A Broken Promise' (2006) <https://www.amnesty.org/en/wp-content/uploads/2021/08/eur450042006en.pdf> accessed 23 September 2021

Amnesty International 'Egypt: "Officially, You Do Not Exist". Disappeared and Tortured in the Name of Counter-Terrorism' (2016) <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1243682016ENGLISH.pdf> accessed 16 October 2021.

Anderson D, *The Terrorism Acts in 2011: Report of the Independent Reviewer on the Operation of the Terrorism At 2000 and Part 1 of the Terrorism Act 2006* (The Stationary Office 2012) <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2013/04/report-terrorism-acts-2011.pdf> accessed 23 September 2021

Azarbaijani-Moghaddam S, 'Seeking out their Afghan sisters: Female Engagement Teams in Afghanistan' (CMI Working Paper 2014) < https://open.cmi.no/cmi-xmlui/bitstream/handle/11250/2474930/Seeking%20out%20their%20Afghan%20sisters%3a%20Female%20Engagement%20Teams%20in%20Afghanistan?sequence=1&isAllowed=y> accessed 18 October 2021.

Bouhana N and Wikström P, 'Al Qa'ida-influenced radicalisation: A rapid evidence assessment guided by Situational Action Theory' (Home Office 2011, occasional paper 97) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116724/occ97.pdf> accessed 23 September 2021

Brown N, Dunne M and Hamzawy A, 'Egypt's Controversial Constitutional Amendments' (Carnegie Endowment for International Peace 2007)

<https://carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf> accessed 29 September 2021

Brownlee J, 'Violence against Copts in Egypt' (Carnegie Endowment for International Peace 2013*)* < https://carnegieendowment.org/files/violence_against_copts3.pdf> accessed 28 September 2021

Cairo Institute for Human Rights Studies 'Towards the Emancipation of Egypt: A Study of Assembly Law 10/1914' (2017) <https://cihrs.org/wp-content/uploads/2017/01/Towards_the_em_of_Eg_eng.pdf> accessed 23 September 2021

Chowdhury Fink N and El-Said H, 'Transforming Terrorists: Examining International Efforts to Address Violent Extremism' (International Peace Institute 2011) <https://www.files.ethz.ch/isn/128781/2011_05_trans_terr_final.pdf> accessed 23 September 2021

Congressional Research Service, 'Egypt: Background and U.S. Relations' (2020) <https://sgp.fas.org/crs/mideast/RL33003.pdf> accessed 29 September 2021

Crawford N, 'Human Cost of the Post-9/11 Wars: Lethality and the Need for Transparency' (Watson Institute, International & Public Affairs, Brown University 2018) <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Human%20Costs,%20Nov%208%202018%20CoW.pdf> accessed 29 September 2021

Department for Communities and Local Government, 'Preventing Violent Extremism Pathfinder Fund 2007/8: Case Studies' (2007) < https://webarchive.nationalarchives.gov.uk/ukgwa/20120920021555/http:/www.communities.gov.uk/documents/communities/pdf/324967.pdf> accessed 23 September 2021

Donald A, Gordon J and Leach P, 'The UK and the European Court of Human Rights' (Equality and Human Rights Commission, Research Report 83 2012) < https://www.equalityhumanrights.com/sites/default/files/83._european_court_of_human_rights.pdf> accessed 19 October 2021

Egyptian Initiative for Personal Rights 'The Trap: Punishing Sexual Difference in Egypt' (2017) <https://eipr.org/sites/default/files/reports/pdf/the_trap-en.pdf> accessed 29 September 2021

Hall J, 'Note on Counter-Terrorism and Sentencing Bill: TPIM Reforms (1)' (2020) <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2020/06/IRTL-TPIM-1-Note-1.pdf> accessed 28 September 2021

Hamzawy A, 'Legislating Authoritarianism: Egypt's New Era of Repression' (Carnegie Endowment for International Peace 2017) <

https://carnegieendowment.org/files/CP_302_Hamzawy_Authoritarianism_Final_Web.pdf> accessed 28 September 2021

Hickman T, 'Counter-Terrorism and Sentencing Bill – TPIMs: A Rule of Law Analysis' (Bingham Centre for the Rule of Law 2020) <https://binghamcentre.biicl.org/documents/97_counter_terroism_and_sentencing_bill_tpims_-_a_rule_of_law_analysis.pdf> accessed 28 September 2021

HM Government, *Channel Duty Guidance: Protecting People Vulnerable to Being Drawn into Terrorism* (Crown Copyright 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964567/6.6271_HO_HMG_Channel_Duty_Guidance_v14_Web.pdf> accessed 23 September 2021

HM Government, *Counter-Terrorism Local Profile: An Updated Guide* (Crown Copyright 2012) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118203/counter-terrorism-local-profiles.pdf> accessed 23 September 2021

Human Rights Watch "*We Do Unreasonable Things Here": Torture and National Security in al-Sisi's Egypt* (2017) <https://www.hrw.org/sites/default/files/report_pdf/egypt0917_web.pdf> accessed 29 September 2021

International Commission of Jurists, *Egypt's Judiciary: A Tool of Repression. Lack of Effective Guarantees of Independence and Accountability* (2016), <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf> accessed 23 September 2021

International Law Programme and International Security Department Roundtable Summary, 'UK Counterterrorism Legislation: Impact on Humanitarian, Peacebuilding and Development Action' (2015) <https://www.chathamhouse.org/sites/default/files/UK-Counterterrorism-Legislation111115.pdf> accessed 23 September 2021

Justice and the International Commission of Jurists, 'Joint Submission to the House of Lords' (2005) <https://www.icj.org/ebulletin/uk-adoption-of-a-controversial-new-control-order-law/> accessed 28 September 2021

Kundnani A and Hayes B, 'The globalisation of Countering Violent Extremism policies: Undermining human rights, instrumentalising civil society' (Transnational Institute 2018) <https://www.tni.org/files/publication-downloads/cve_web.pdf> accessed 23 September 2021

Kundnani A, *Spooked! How not to prevent violent extremism* (Institute of Race Relations 2009) <https://www.kundnani.org/wp-content/uploads/spooked.pdf> accessed 23 September 2021

Liberty, 'Liberty's Briefing on the Counter-Terrorism and Border Security Bill for Second Reading in the House of Lords' (2018) < https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Libertys-Briefing-on-the-Counter-Terrorism-and-Border-Security-Bill-for-Second-Reading-in-the-House-of-Lords.pdf > accessed 28 September 2021

Malik N, *Radicalising our Children: An analysis of family court cases of British children at risk of radicalisation, 2013-2018* (Henry Jackson Society 2019) https://henryjacksonsociety.org/wp-content/uploads/2019/05/HJS-Radicalising-Our-Children-Report-NEW-web.pdf accessed 28 September 2021

The Ministry of Refugee, Immigration and Integration Affairs, 'The Challenge of Extremism: Examples of Deradicalisation and Disengagement Programmes in the EU' (2010) <https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuid=2A283FA8-A7BE-C748-F9C58D204801D86A> accessed 12 October 2021

Patel F, 'Rethinking Radicalization' (Brennan Center for Justice 2011) <https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf> accessed 23 September 2021

Physicians for Social Responsibility, Physicians for Global Survival and International Physicians for the Prevention of Nuclear War, *Body Count: Casualty Figures after 10 years of the "War on Terror", Iraq, Afghanistan, Pakistan* (2015) <https://www.psr.org/wp-content/uploads/2018/05/body-count.pdf> accessed 24 September 2021

United Nations General Assembly 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism' Human Rights Council 43rd Session Supp No 3 UN Doc A/HRC/43/46 (2020)

Walker C, 'Human Rights and Counterterrorism in the UK' (2016) <https://www.ohchr.org/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/Walker.pdf> accessed 28 September 2021

Weine S and Cohen J, 'Moving Beyond Motive-Based Categories of Targeted Violence' (Argonne National Laboratory, Risk and Infrastructure Science Center, Global Security Studies Division 2015, ANL/GSS-15/6) < https://publications.anl.gov/anlpubs/2015/10/122067.pdf> accessed 23 September 2021

Archival material

Collections

The London School of Economics and Political Science, The Women's Library, 3AMS/D13 Box 113
The National Archives FO 141/430/4-6
The National Archives FO 141/466/1429
The National Archives FO 141/671/4337
The National Archives FO 141/825
The National Archives FO 800/46-48
The National Archives FO 881/8986
The National Archives FO 891/62/14

Maps

Cairo [Civil security scheme] 1942 in *Maps* (The British Library, London) MDR Misc 875. <http://www.bl.uk/onlinegallery/onlineex/maps/africa/5000632.html>

The County of London, G.S.G.S. no. 3786A, 1926 in *Cartographic Items Map* (The British Library, London) *C.C.5a.170.* and *216.e.33* <http://explore.bl.uk/primo_library/libweb/action/dlDisplay.do?vid=BLVU1&afterPDS=true&institution=BL&docId=BLL01005010728&_ga=2.217216086.1771357446.1568294493-137159136.1567340069>

The Railway System of Egypt in *Maps Historical Collection* (The American University in Cairo) DT45. E4 1909 <http://digitalcollections.aucegypt.edu/digital/collection/p15795coll6/id/151>

Literature

Baring E, 'The Government of Subject Races' in *Political & Literary Essays 1908-1913* (Macmillan and C. 1913) <https://archive.org/details/poliliteressays00cromiala/page/14/mode/2up>

Baring E, *Modern Egypt* (Cambridge University Press 1910)

Butler J, *Personal Reminiscences of a Great Crusade* (Horace Marshal & Son 1910)

Foerster F, *Marriage and the sex-problem* (Booth M tr. Wells Gardner, Darton & Co Ltd 1912) <https://wellcomecollection.org/works/w8rnuq25/items?canvas=207>

Gwynn C, *Imperial Policing* (Macmillan and Co. 1939) <https://archive.org/details/in.ernet.dli.2015.275121/page/n77/mode/2up> accessed 26 September 2021

Haqqi M, 'The Maiden of Dinshaway ('Adhra Dinshaway)' in *Three pioneering Egyptian novels: The Maiden of Dinshway (1906), Eve without Adam (1934) and Ulysses's hallucinations or the like (1985) / translated with a critical introduction by Saad el-Gabalawy* (The British Library) Asia, Pacific & Africa ARB.1987.a.1756

Hansard Parliamentary Debates
HC Deb 2 July 1906, vol 159, col 1411-4 <https://api.parliament.uk/historic-hansard/commons/1906/jul/02/the-denshawi-executions#S4V0159P0_19060702_HOC_195> accessed 27 September 2021

HC Deb 5 July 1906, vol 160, col 225-8< https://api.parliament.uk/historic-hansard/commons/1906/jul/05/the-denshawi-affray> accessed 27 September 2021

HC Deb 12 July 1906, vol 160, col 1054-7 https://api.parliament.uk/historic-hansard/commons/1906/jul/12/the-denshawi-trial accessed 27 September 2021

HC Deb 4 August 1906, vol 162, col 1804-24 <https://api.parliament.uk/historic-hansard/commons/1906/aug/04/adjournment-autumn-sitting#column_1823> accessed 27 September 2021
HC Deb 15 November 1906, vol 165, col 98-9 <https://api.parliament.uk/historic-hansard/commons/1906/nov/15/conduct-of-the-denshawi-trial#S4V0165P0_19061115_HOC_108> accessed 27 September 2021

Reports and newspapers
—'Allies United: Mr Shortt on the Near East Peril. More Troops. Freedom of the Straits Essential' *The Observer (1901 – 2003)* (17 September 1922) <https://0-search-proquest-com.serlib0.essex.ac.uk/hnpguardianobserver/docview/480829353/D5192662241B49DDPQ/1?accountid=10766> accessed 27 September 2021

Special Correspondent for the Egyptian Gazette 'Denishwai Trial. Passing of Judgment. Sentences Received Calmly. Preparations for Execution.' *Egyptian Gazette* (28 June 1906) < https://dig-eg-gaz.github.io/post/2017-03-16-pearce-blog/> accessed 27 September 2021

Report dated 29 March 1919 in *Egyptian delegation to the Peace conference, collection of official correspondence from November 11, 1918, to July 14, 1919* (Paris Peach Conference 1919), 37 <https://archive.org/details/egyptiandelegati00pari/page/36/mode/2up> accessed 27 September 2021

Legal instruments

International law
United Nations Security Council Resolution 2422 (13 October 2015) UN Doc S/RES/2422
United Nations Security Council Resolution 2178 (24 September 2014) UN Doc S/RES/2178

United Nations Security Council Resolution 1373 (28 September 2001) UN Doc S/RES/1373

UK law
Prevention of Terrorism (Temporary Provisions) Act 1974.
Terrorism Act 2000
Anti-terrorism, Crime and Security Act 2001
Prevention of Terrorism Act 2005
Terrorism Act 2006
Counter-Terrorism and Security Act 2015 (CTSA 2015)
Counter-Terrorism and Sentencing Act 2021

UK Cases
A and others v Secretary of State for the Home Department [2004] UKHL 56
Barot v The Queen [2007] EWCA Crim 1119

Egyptian law
Law 10/1914 for Assembly
Law 14/1923 for Protests and Demonstrations
Law 97/1992 for Combatting Terrorism
Law 107/2013 for Organizing the Right to Peaceful Public Meetings, Processions and Protests
Egyptian Constitution of 2014
Presidential Decree 128/2014, amending article 78 of the Penal Code
Law 94/2015 for Combatting Terrorism
Law 70/2017 for the Regulation of Non-Governmental Organizations and Foundations Operating in Civil Society
Law 175/2018 Regarding Anti-Cyber and Information Technology Crimes

Egyptian cases
Cairo Criminal Court, Case 173/2011 (also known as 'the foreign funding case')

Minya's Felonies Court, Case 300/2014 (also known as 'Adwa Police Station Case')

Public Prosecution v. Alaa Abd El-Fattah and Twenty-four others, Cairo Felonies Court, Case 1343/2013

Public Prosecution v. Yara Sallam and Twenty-two others, Appeals Misdemeanour Court, Case 1343/2014

Appendices

Appendix A – Interviews

For this thesis I carried out 12 in-depth interviews with Egyptian migrants living in the UK. The interviews took place between 2019 and 2020 for the most part in London. I travelled outside of London for one interview. I met a number of my interlocutors at my university, SOAS, University of London. Others I met either at their home or at another location of their choosing. I have chosen not to include the transcripts for these interviews in this appendix to protect their privacy and anonymity. The recordings and the transcripts are stored safely with the researcher.

Appendix B – People who feature in the archives

Below are some lists of names of those who feature in the archives and regularly throughout this thesis. The reasons I have included these lists are twofold. First, practically I hope they are useful to give more background information on the various administrators and government officials I discuss and to pinpoint when they were in Egypt and what they were doing. Second, the lists of names of those sentenced at Dinshaway and attacked at Shobak are included so that they might be more than simply a figure or a number of casualties. The names of those who were killed and who suffered at both events do not frequent the archives in the way that those of the Consul-Generals and High Commissioners do. They are without voice and presence in the British archive, and most of the time their existence is only inferred from conversations around what was happening. The witness statements at Shobak, although providing space for name and story, work to bolster British claims to justice since their function in the archive is just that. Haqqi's novel presents a rethinking of the events and a way to memorialise violence that is framed as exceptional and necessary or normal and invisible. While I cannot include all

excerpts of the archives in this appendix, I have also included in Appendix B, some of the witness statements from the Shobak Affair.

British Consul-Generals/ High Commissioners in Egypt for the period 1883–1925

Evelyn Baring, First Earl of Cromer (Lord Cromer), 1883–1907

Eldon Gorst, 1907–1911

Herbert Kitchener, 1911–1914

Milne Cheetham, 1914–1915

Henry McMahon, 1915–1917

Reginald Wingate, 1917–1919

Edmund Allenby, 1919–1925

Recurring names in the archives with relevant positions noted

Abdel Khalek Sarwat Pasha, Prime Minister of Egypt, 1922 and 1927-1928

Adly Yakan Pasha, Prime Minister of Egypt, 1921 – 1922 and 1926 – 1927

Alexander Keown-Boyd, various positions in the Ministry of the Interior 1917–1937

Alison Neilans, Secretary for the Association for Moral and Social Hygiene from 1929

Austen Chamberlain, Secretary of State for Foreign Affairs 1924–1929

Boutros Ghali, Prime Minister of Egypt 1908–1910

Cicely McCall, International Bureau for the Suppression of Traffic in Women and Children

Edward Grey, Secretary of State for Foreign Affairs, 1905–1916

George Nathaniel Curzon, Secretary of State for Foreign Affairs 1919–1924

Ibrahim el-Helbawy, Public Prosecutor for the 1906 Dinshaway Special Tribunal

Ibrahim Nassif al-Wardani, alleged assassinator of Boutros Ghali, 1910

Louise Dorothy Potter, envoy for the Association for Moral and Social Hygiene in Egypt

Percy Maurice Maclardie Sheldon Amos, judge in Egypt 1903–1922

Robert Allason Furness, civil servant in Egypt

Sa'ad Zaghloul, leader of Wafd party, Prime Minister of Egypt 1924

Names of those sentenced in the Dinshaway Special Tribunal

Hassan Ali Mahfouz

Youssef Hussein Salem

Said Issa Salem

Mohamed Darweesh Zohran

Mohamed Abdel Nebi Moazzin

Ahmed Abdel Asl Mahfouz

Ahmed Mohamed Assissi

Mohamed Ali Abou Sanak

Bakli Ali Shaalan

Mohamed Mustafa Mahfouz

Raslan Said Ali

Asawi Mohamed Mahfouz.

Hassan Ismail Assissi

Ibrahim Hassan Assissi

Mohamed el Ghurbasi Said Ali.

Said el Afi

Azab Omar Mahfouz

Said Suleiman Kheirulla

Abd el Ali Hassan Ibrahim

Mohamed Ahmed Assissi

Mabrukah ‘Abd al-Nabi (not sentenced but killed by a British officer)

Names of those who gave evidence at Shobak

Dessuki Ibrahim el Dessuki Rashdani, Omda of el Azizia

Mohamed Manzur el Dali, Omda of Badreshein

Sayed Mahmud Hammad, Sheikh at Badreshein

Mohammed Abdul Muttaleb, Sheikh Balad at Badreshein

Haiba Haiba Torki, Sheikh Balad at el Azizia

Mahmud Okbi, Sheikh at el Azizia

Abdel Sami Abdel Wahed, Sheikh at al Azizia

Goma Abdullah, sub-chief of the guards at el-Azizia

Mahmud Abdel Aal, Guard at el Azizia

Abdullah Mohammed Torki, Guard at el Azizia

Ali Abdulla, Chief Guard of the Hawamdia Sugar Factory

Abdel Meguid Sarwat, police officer at Hawamdia outpost

Bilal Abdulla, Sergeant Major of Badrashein outpost

Mustapha Eissa, Corporal at Hawamdia outpost

Mohammed Hamdy Hussein, Ombashi of Mazghouna Police Station

Om El Sayed Bint Mohammed, living at Nazlet al Shobak

Zenab Bint Khalil, living at Nazlet al Shobak

Saada Bint Mohamed Hassanein, living at Nazlet al Shobak

Soliman Mohammed el Fouli, living at Nazlet al Shobak

Mohammed el Kordi, living at Nazlet al Shobak

Hussein Sayed el Mohr, living at Nazlet al Shobak

Mahmud Ibrahim Abdel Hadi, living at Nazlet al Shobak

Galal Abdel Wahed, living at Nazlet al Shobak

Aly Sayed Mansour, living at Nazlet al Shobak

Fatma Bint Hag Hassan Abou Taleb, living at Nazlet al Shobak

Abdel Latif Abou el Magd, son of the the Omda of Nazlet al Shobak

Mohammed Mohammed Raouf, living at Nazlet al Shobak

A note on Ibrahim el-Helbawy

The story of Ibrahim el-Helbawy is one that exposes the tensions between British and Egyptian power dynamics and the persistence of colonialism. As explored in Chapter Four, in Haqqi's novel, Lord Cromer is quoted as saying that the appointment of el-Helbawy as prosecutor would serve a 'double blow' to the Egyptian nation. Whether or not Cromer did perceive it as such, this appointment was indeed troubling for Egypt at the time, because el-Helbawy had up until this point been revered as a national figure, having worked to lighten the sentences of Egyptian nationals in the past.[1] In Haqqi's narration, el-Helbawy wrestles with his internal torment and debate he feels upon receiving the letter which officially appointed him as public prosecutor. He deplores his desire to take up the position, describing it a crime of self-betrayal and a moral death.[2] Finally, 'the voice of conscience was silenced by ambition', as el-Helbawy takes up the position of prosecutor.[3] Esmeir explains that the appointment of Egyptian officials

[1] Mahmoud Saad Abd al-Hafeez, 'Al-Hilbāwī.. ʿUqdat Jallād Dinshwāī Tulāḥiq Muḥāmī al-Ḥaraka al-Waṭaniyya Ḥata Qabruh *Aswat Online* (31 July 2019) <https://aswatonline.com/2019/07/31/%D8%A7%D9%84%D9%87%D9%84%D8%A8%D8%A7%D9%88%D9%8A-%D8%B9%D9%82%D8%AF%D8%A9-%D8%AC%D9%84%D8%A7%D8%AF-%D8%AF%D9%86%D8%B4%D9%88%D8%A7%D9%8A-%D8%AA%D9%84%D8%A7%D8%AD%D9%82-%D9%85%D8%AD%D8%A7/> accessed 1 October 2021.

[2] Mahmud Tahir Haqqi, 'The Maiden of Dinshaway' ('*Adhra Dinshaway)* 1906 in *Three pioneering Egyptian novels : The Maiden of Dinshway (1906), Eve without Adam (1934) and Ulysses's hallucinations or the like (1985) / translated with a critical introduction by Saad el-Gabalawy*. (The British Library) Asia, Pacific & Africa ARB.1987.a.1756., 31.

[3] Mahmud Tahir Haqqi, 'The Maiden of Dinshaway' ('*Adhra Dinshaway)* 1906 in *Three pioneering Egyptian novels : The Maiden of Dinshway (1906), Eve without Adam (1934) and Ulysses's hallucinations or the like (1985) / translated with a critical introduction by Saad el-Gabalawy*. (The British Library) Asia, Pacific & Africa ARB.1987.a.1756., 31.

to administer the special tribunal, and later the executions, introduced a measure of distance where the British could remove themselves from the 'materiality of the excessive violent legalities in which they were implicated'.[4] And indeed, the British often went at length to show that the fault and fact of violence should be with the Egyptian authorities as we have witnessed throughout this thesis.

Interestingly, Kamal el-Helbawy, one of my interlocutors, is a relative of Ibrahim el-Helbawy. In our first meeting he referred to him as his grandfather, and then later on went on to tell me this was incorrect (but he did not clarify the relationship). Kamal gives a different account of Ibrahim el-Helbawy's decisions to act as public prosecutor. He told me:

> He was a brilliant lawyer. The main point is that he was afraid that British troops at the time would destroy the whole village, so he thought that it was better to sacrifice some of the farmers to be sentenced than to destroy the whole village, because he was afraid from the ruthlessness of some of the occupation troops at the time. So he came to Shibin el-Kom, this is the main village or centre of the Menoufiyya Governate and the court place for Dinshaway.

The accounts of Kamal and Haqqi clash in their memorialisation of a contentious figure. The clash speaks to the scholarly debate that I have highlighted throughout this thesis: that when it comes to British colonialism in Egypt, the scope of British influence is contested. This clash suggests that there is still today contention around the role played by Egyptian elites in shaping

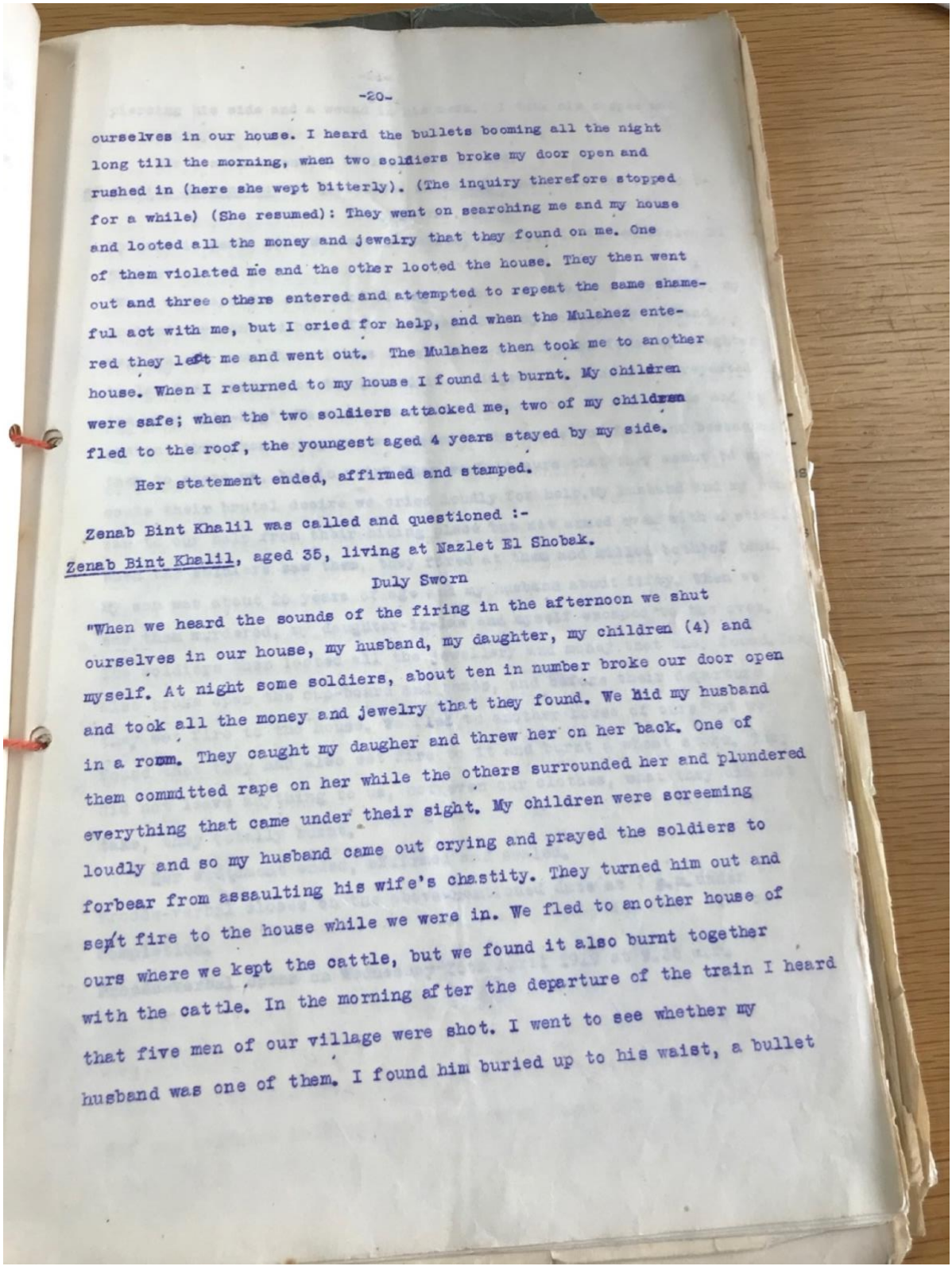
[4] Samera Esmeir S, *Juridical Humanity: A Colonial History* (Stanford University Press, 2012) 255

tools of governance and therefore also the analytical role that colonialism should play when carrying out research.

Appendix C – Excerpts from the Shobak Affair

The images below are taken from the archival collection that records the Shobak affair.[5] The records go on for pages and pages. I have chosen to highlight some of the testimonies from people without any official title, just those living at Nazlet el Shobak in the hope that they may give more voice to the names listed above and the structural violence that they faced because of their classed, racialised and gender locations.

[5] A collection of Procès-verbal recorded in March and April 1919 in *Foreign Office and Foreign and Commonwealth Office: Embassy and Consulates, Egypt: General Correspondence* (The National Archives, Kew Gardens) FO 141/825



-20-

ourselves in our house. I heard the bullets booming all the night long till the morning, when two soldiers broke my door open and rushed in (here she wept bitterly). (The inquiry therefore stopped for a while) (She resumed): They went on searching me and my house and looted all the money and jewelry that they found on me. One of them violated me and the other looted the house. They then went out and three others entered and attempted to repeat the same shameful act with me, but I cried for help, and when the Mulahez entered they left me and went out. The Mulahez then took me to another house. When I returned to my house I found it burnt. My children were safe; when the two soldiers attacked me, two of my children fled to the roof, the youngest aged 4 years stayed by my side.

Her statement ended, affirmed and stamped.

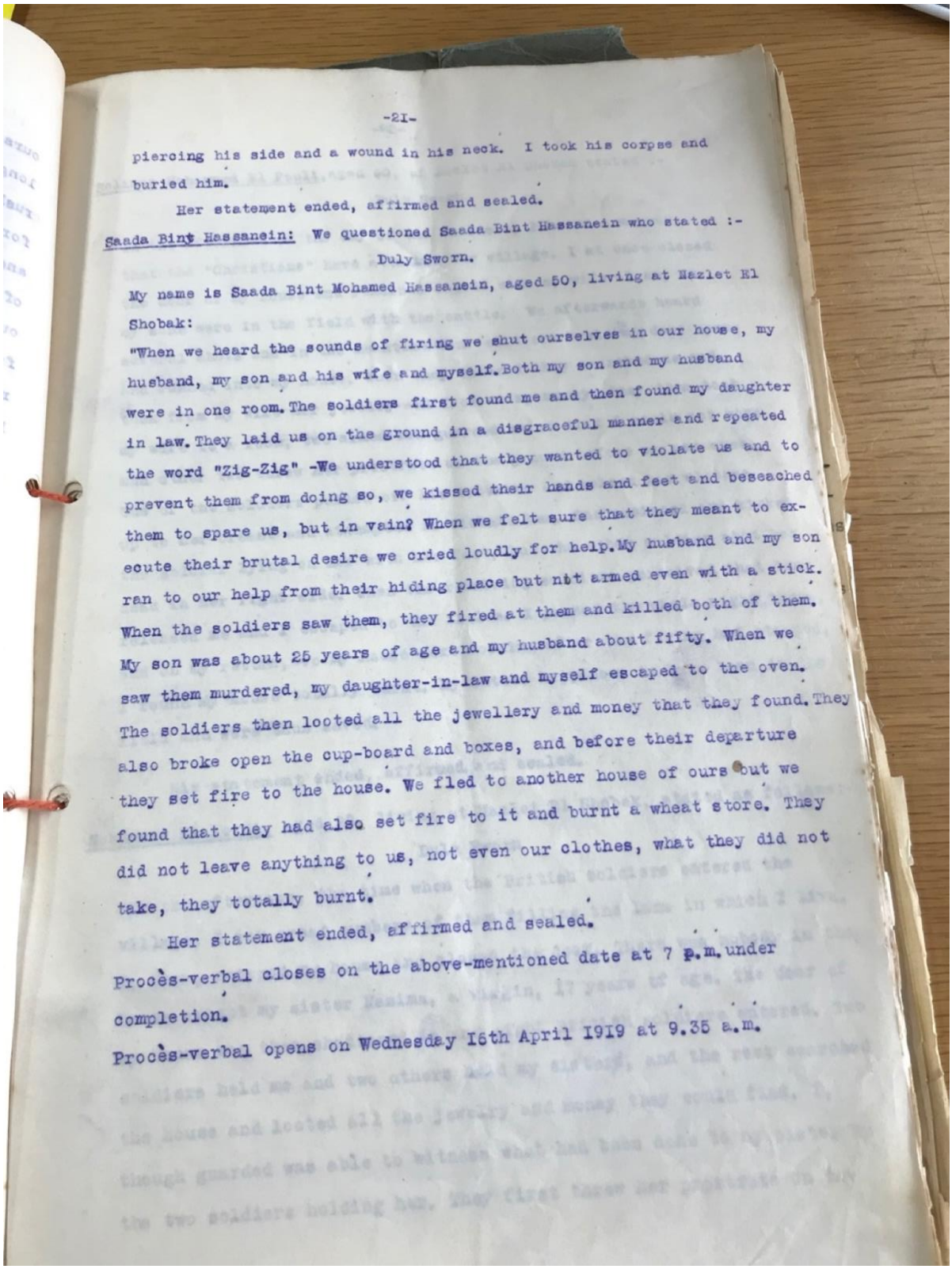
Zenab Bint Khalil was called and questioned :-

Zenab Bint Khalil, aged 35, living at Nazlet El Shobak.

Duly Sworn

"When we heard the sounds of the firing in the afternoon we shut ourselves in our house, my husband, my daughter, my children (4) and myself. At night some soldiers, about ten in number broke our door open and took all the money and jewelry that they found. We hid my husband in a room. They caught my daugher and threw her on her back. One of them committed rape on her while the others surrounded her and plundered everything that came under their sight. My children were screeming loudly and so my husband came out crying and prayed the soldiers to forbear from assaulting his wife's chastity. They turned him out and sept fire to the house while we were in. We fled to another house of ours where we kept the cattle, but we found it also burnt together with the cattle. In the morning after the departure of the train I heard that five men of our village were shot. I went to see whether my husband was one of them. I found him buried up to his waist, a bullet

Figure 13: Procès-verbal from the Shobak Affair 1919, The National Archives.



-21-

piercing his side and a wound in his neck. I took his corpse and buried him.

Her statement ended, affirmed and sealed.

Saada Bint Hassanein: We questioned Saada Bint Hassanein who stated :-

Duly Sworn.

My name is Saada Bint Mohamed Hassanein, aged 50, living at Hazlet El Shobak:

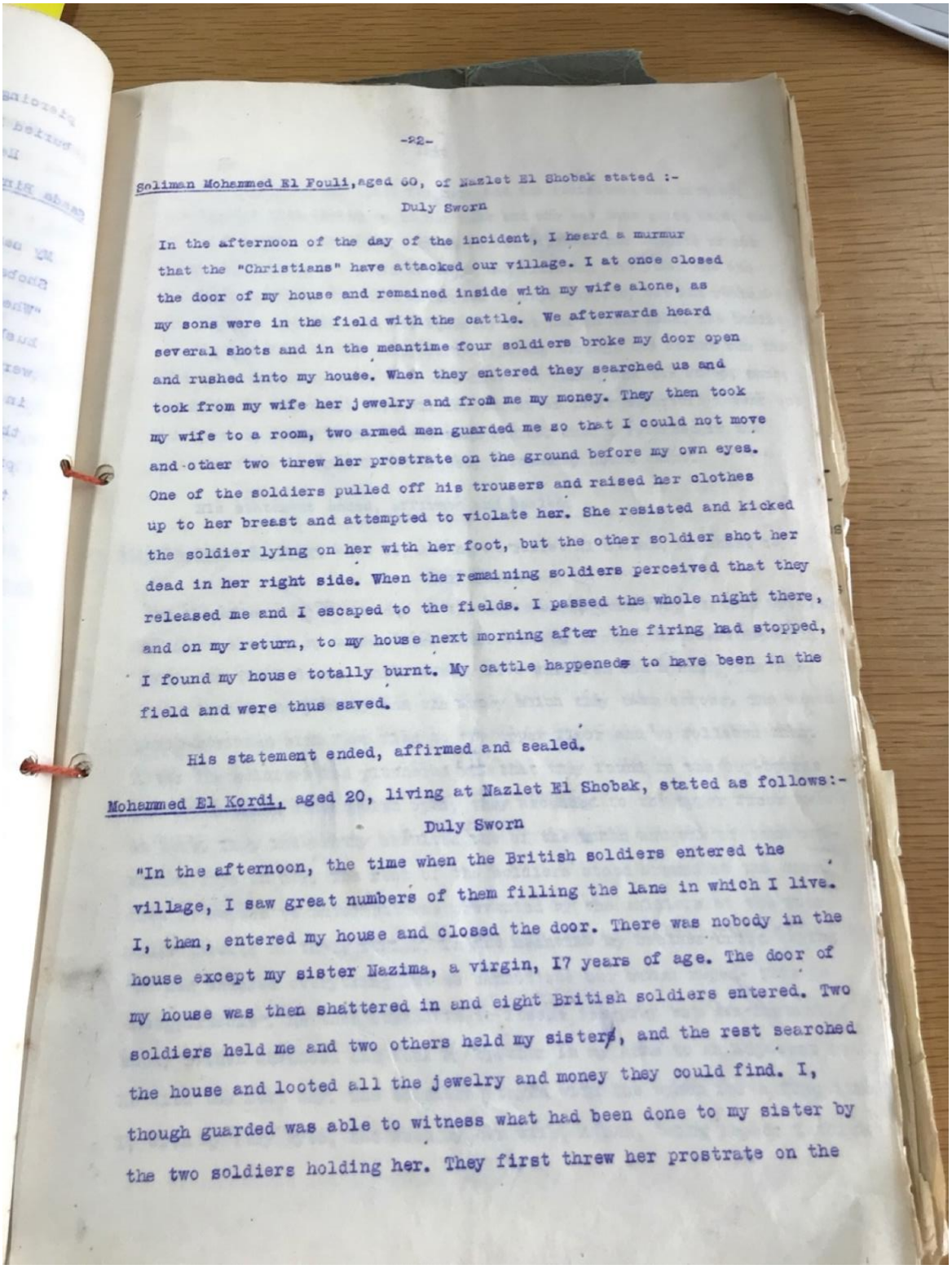
"When we heard the sounds of firing we shut ourselves in our house, my husband, my son and his wife and myself. Both my son and my husband were in one room. The soldiers first found me and then found my daughter in law. They laid us on the ground in a disgraceful manner and repeated the word "Zig-Zig" -We understood that they wanted to violate us and to prevent them from doing so, we kissed their hands and feet and beseached them to spare us, but in vain? When we felt sure that they meant to execute their brutal desire we cried loudly for help. My husband and my son ran to our help from their hiding place but nbt armed even with a stick. When the soldiers saw them, they fired at them and killed both of them. My son was about 25 years of age and my husband about fifty. When we saw them murdered, my daughter-in-law and myself escaped to the oven. The soldiers then looted all the jewellery and money that they found. They also broke open the cup-board and boxes, and before their departure they set fire to the house. We fled to another house of ours but we found that they had also set fire to it and burnt a wheat store. They did not leave anything to us, not even our clothes, what they did not take, they totally burnt.

Her statement ended, affirmed and sealed.

Procès-verbal closes on the above-mentioned date at 7 p.m. under completion.

Procès-verbal opens on Wednesday 16th April 1919 at 9.35 a.m.

Figure 14: Procès-verbal from the Shobak Affair 1919, The National Archives.



-22-

Soliman Mohammed El Fouli, aged 60, of Nazlet El Shobak stated :-

Duly Sworn

In the afternoon of the day of the incident, I heard a murmur that the "Christians" have attacked our village. I at once closed the door of my house and remained inside with my wife alone, as my sons were in the field with the cattle. We afterwards heard several shots and in the meantime four soldiers broke my door open and rushed into my house. When they entered they searched us and took from my wife her jewelry and from me my money. They then took my wife to a room, two armed men guarded me so that I could not move and other two threw her prostrate on the ground before my own eyes. One of the soldiers pulled off his trousers and raised her clothes up to her breast and attempted to violate her. She resisted and kicked the soldier lying on her with her foot, but the other soldier shot her dead in her right side. When the remaining soldiers perceived that they released me and I escaped to the fields. I passed the whole night there, and on my return, to my house next morning after the firing had stopped, I found my house totally burnt. My cattle happened to have been in the field and were thus saved.

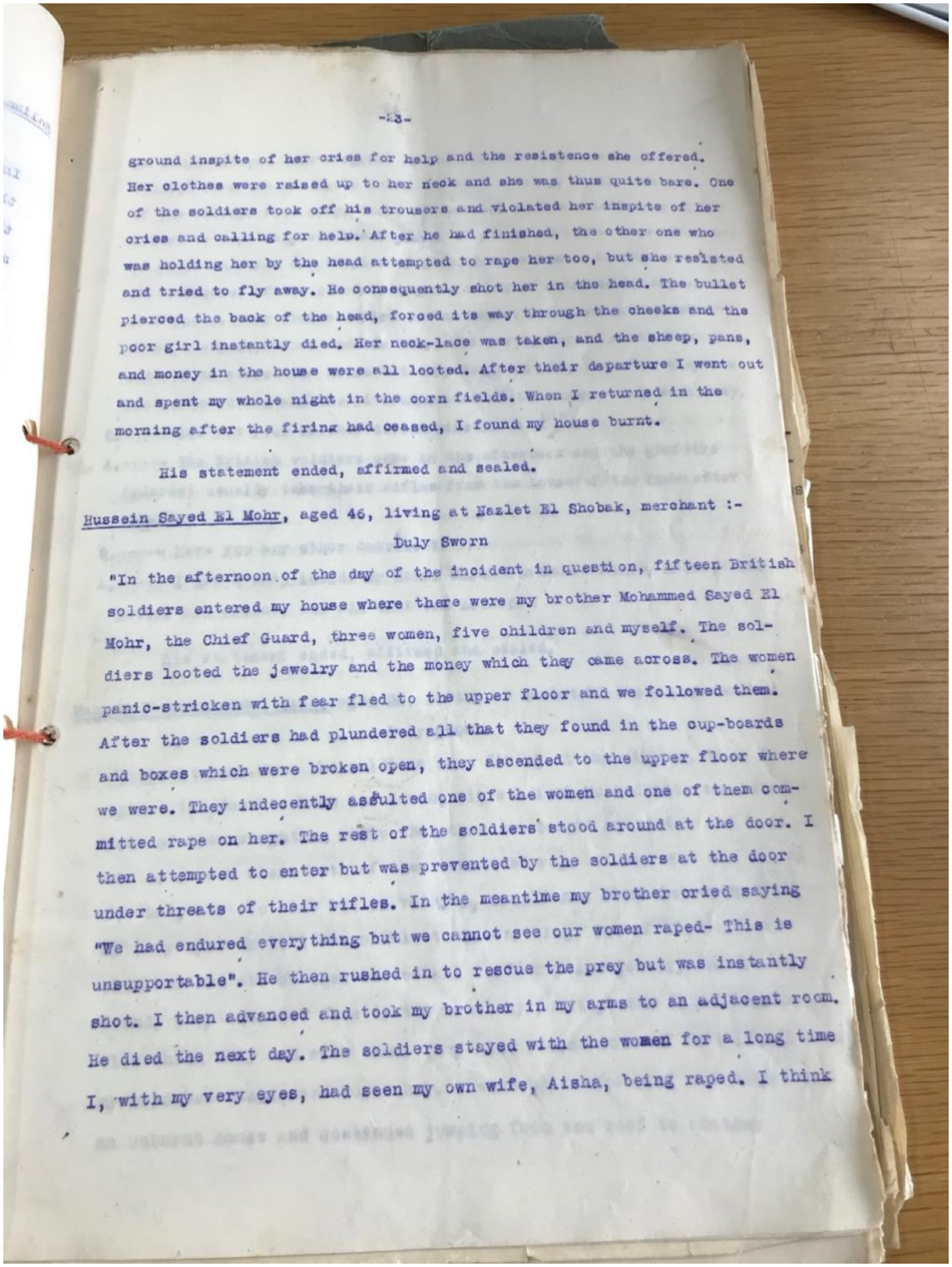
His statement ended, affirmed and sealed.

Mohammed El Kordi, aged 20, living at Nazlet El Shobak, stated as follows:-

Duly Sworn

"In the afternoon, the time when the British soldiers entered the village, I saw great numbers of them filling the lane in which I live. I, then, entered my house and closed the door. There was nobody in the house except my sister Nazima, a virgin, 17 years of age. The door of my house was then shattered in and eight British soldiers entered. Two soldiers held me and two others held my sister, and the rest searched the house and looted all the jewelry and money they could find. I, though guarded was able to witness what had been done to my sister by the two soldiers holding her. They first threw her prostrate on the

Figure 15: Procès-verbal from the Shobak Affair 1919, The National Archives.



-13-

ground inspite of her cries for help and the resistence she offered. Her clothes were raised up to her neck and she was thus quite bare. One of the soldiers took off his trousers and violated her inspite of her cries and calling for help. After he had finished, the other one who was holding her by the head attempted to rape her too, but she resisted and tried to fly away. He consequently shot her in the head. The bullet pierced the back of the head, forced its way through the cheeks and the poor girl instantly died. Her neck-lace was taken, and the sheep, pans, and money in the house were all looted. After their departure I went out and spent my whole night in the corn fields. When I returned in the morning after the firing had ceased, I found my house burnt.

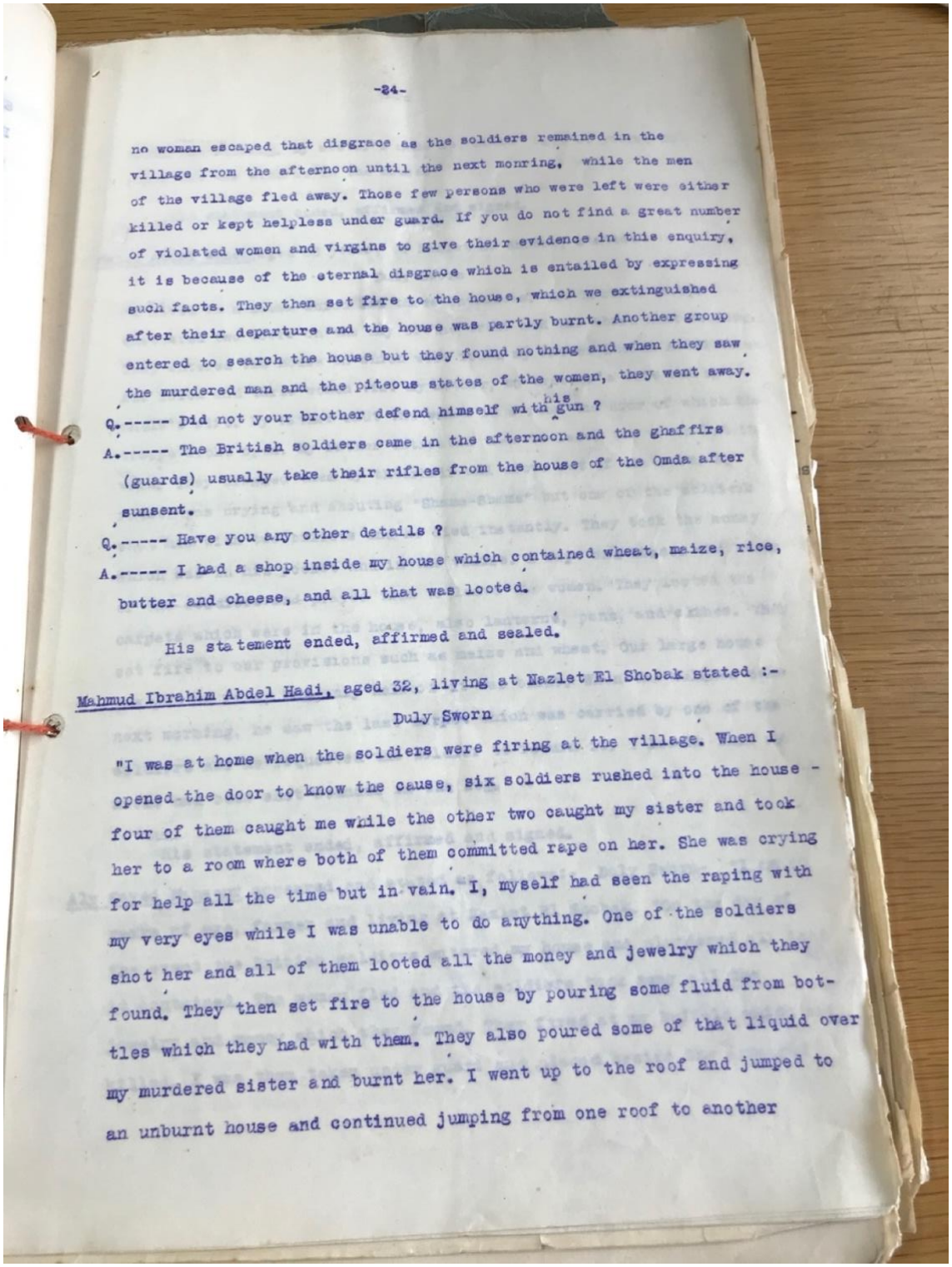
His statement ended, affirmed and sealed.

Hussein Sayed El Mohr, aged 46, living at Nazlet El Shobak, merchant :-

Duly Sworn

"In the afternoon of the day of the incident in question, fifteen British soldiers entered my house where there were my brother Mohammed Sayed El Mohr, the Chief Guard, three women, five children and myself. The soldiers looted the jewelry and the money which they came across. The women panic-stricken with fear fled to the upper floor and we followed them. After the soldiers had plundered all that they found in the cup-boards and boxes which were broken open, they ascended to the upper floor where we were. They indecently assulted one of the women and one of them committed rape on her. The rest of the soldiers stood around at the door. I then attempted to enter but was prevented by the soldiers at the door under threats of their rifles. In the meantime my brother cried saying "We had endured everything but we cannot see our women raped- This is unsupportable". He then rushed in to rescue the prey but was instantly shot. I then advanced and took my brother in my arms to an adjacent room. He died the next day. The soldiers stayed with the women for a long time I, with my very eyes, had seen my own wife, Aisha, being raped. I think

Figure 16: Procès-verbal from the Shobak Affair 1919, The National Archives.



-24-

no woman escaped that disgrace as the soldiers remained in the village from the afternoon until the next morning, while the men of the village fled away. Those few persons who were left were either killed or kept helpless under guard. If you do not find a great number of violated women and virgins to give their evidence in this enquiry, it is because of the eternal disgrace which is entailed by expressing such facts. They then set fire to the house, which we extinguished after their departure and the house was partly burnt. Another group entered to search the house but they found nothing and when they saw the murdered man and the piteous states of the women, they went away.

Q.----- Did not your brother defend himself with his gun ?

A.----- The British soldiers came in the afternoon and the ghaffirs (guards) usually take their rifles from the house of the Omda after sunsent.

Q.----- Have you any other details ?

A.----- I had a shop inside my house which contained wheat, maize, rice, butter and cheese, and all that was looted.

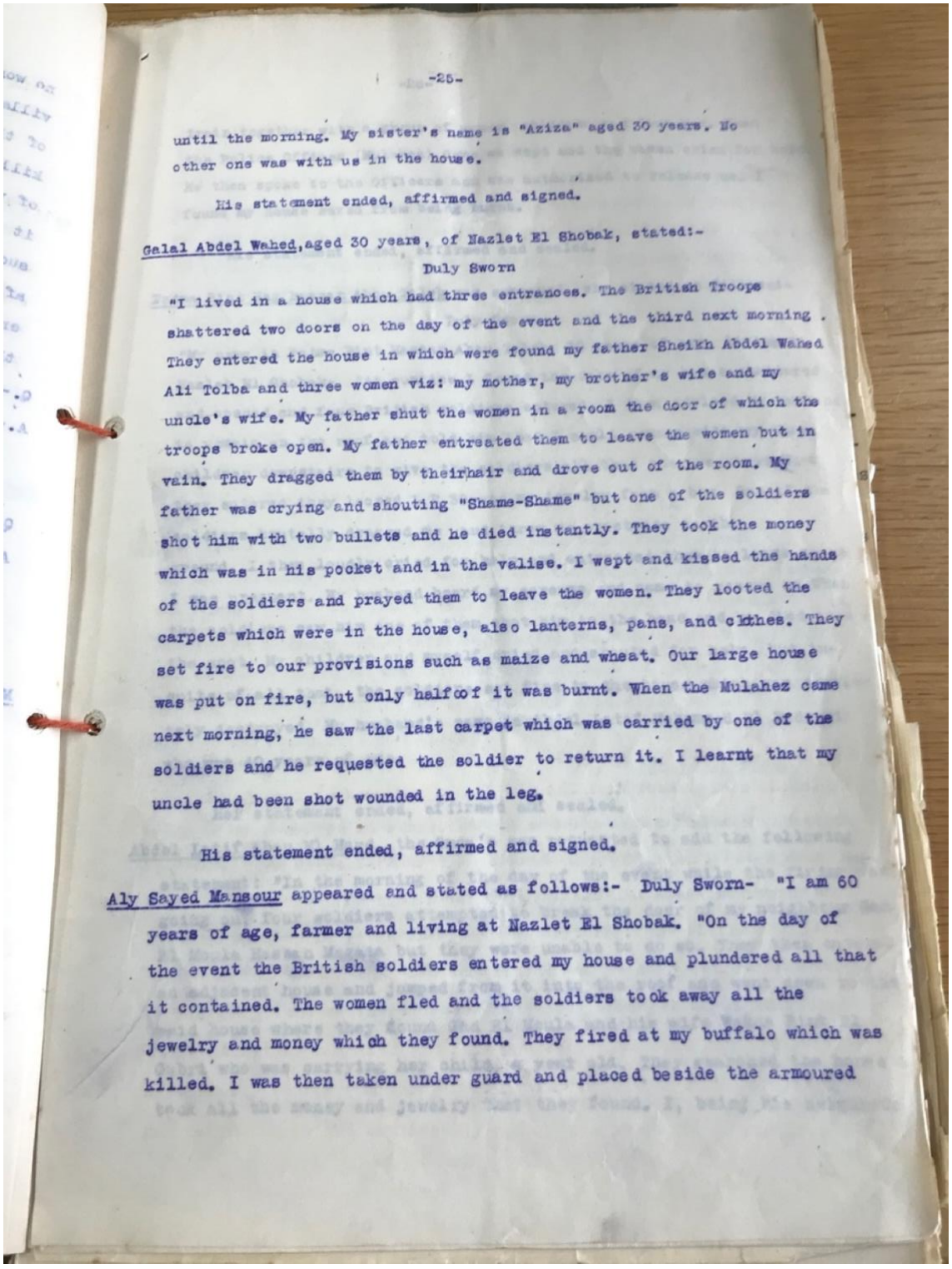
His statement ended, affirmed and sealed.

Mahmud Ibrahim Abdel Hadi, aged 32, living at Nazlet El Shobak stated :-

Duly Sworn

"I was at home when the soldiers were firing at the village. When I opened the door to know the cause, six soldiers rushed into the house - four of them caught me while the other two caught my sister and took her to a room where both of them committed rape on her. She was crying for help all the time but in vain. I, myself had seen the raping with my very eyes while I was unable to do anything. One of the soldiers shot her and all of them looted all the money and jewelry which they found. They then set fire to the house by pouring some fluid from bottles which they had with them. They also poured some of that liquid over my murdered sister and burnt her. I went up to the roof and jumped to an unburnt house and continued jumping from one roof to another

Figure 17: Procès-verbal from the Shobak Affair 1919, The National Archives.



-25-

until the morning. My sister's name is "Aziza" aged 30 years. No other one was with us in the house.

His statement ended, affirmed and signed.

Galal Abdel Wahed, aged 30 years, of Nazlet El Shobak, stated:-

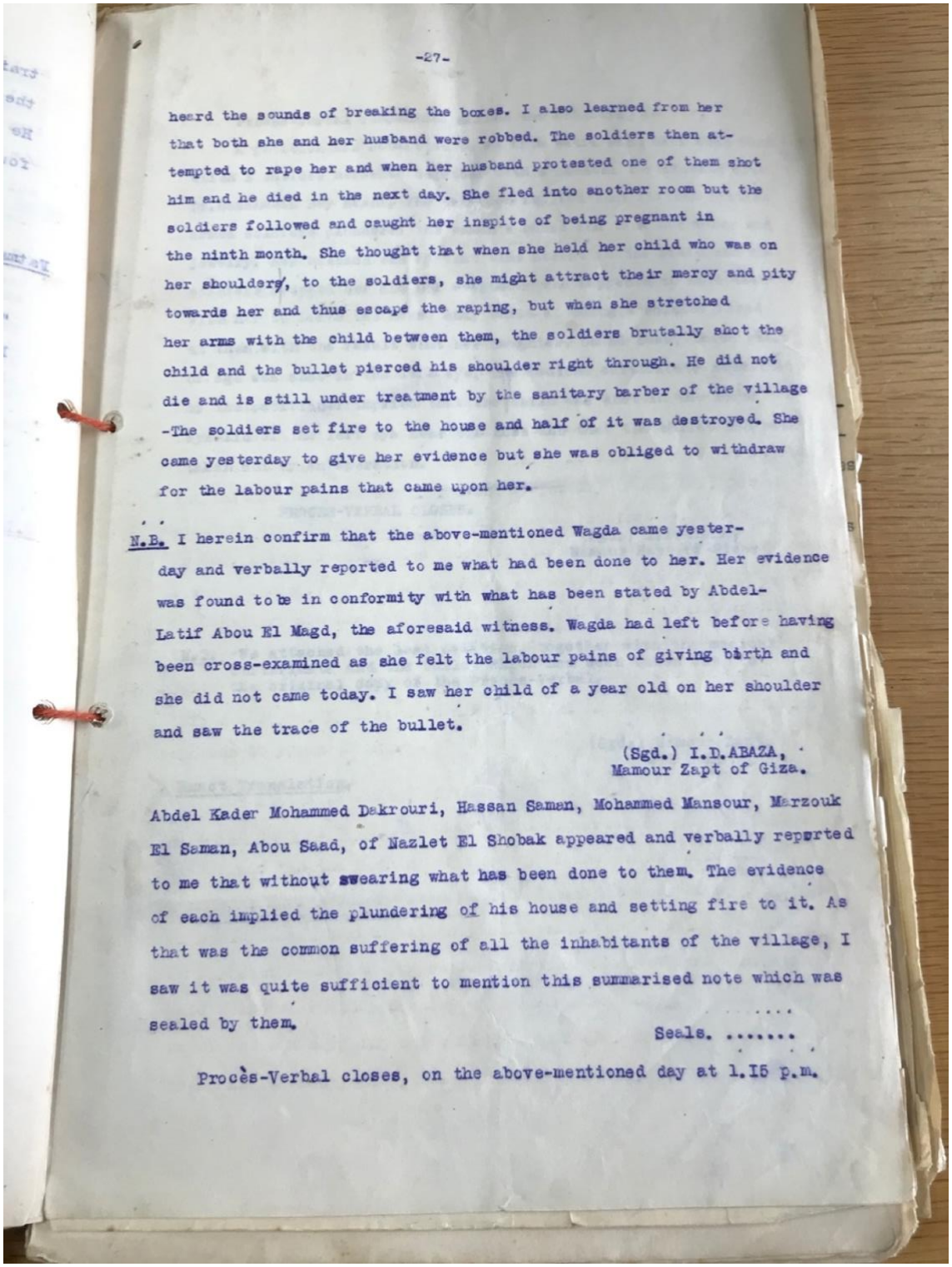
Duly Sworn

"I lived in a house which had three entrances. The British Troops shattered two doors on the day of the event and the third next morning. They entered the house in which were found my father Sheikh Abdel Wahed Ali Tolba and three women viz: my mother, my brother's wife and my uncle's wife. My father shut the women in a room the door of which the troops broke open. My father entreated them to leave the women but in vain. They dragged them by their hair and drove out of the room. My father was crying and shouting "Shame-Shame" but one of the soldiers shot him with two bullets and he died instantly. They took the money which was in his pocket and in the valise. I wept and kissed the hands of the soldiers and prayed them to leave the women. They looted the carpets which were in the house, also lanterns, pans, and clothes. They set fire to our provisions such as maize and wheat. Our large house was put on fire, but only half of it was burnt. When the Mulahez came next morning, he saw the last carpet which was carried by one of the soldiers and he requested the soldier to return it. I learnt that my uncle had been shot wounded in the leg.

His statement ended, affirmed and signed.

Aly Sayed Mansour appeared and stated as follows:- Duly Sworn- "I am 60 years of age, farmer and living at Nazlet El Shobak. "On the day of the event the British soldiers entered my house and plundered all that it contained. The women fled and the soldiers took away all the jewelry and money which they found. They fired at my buffalo which was killed. I was then taken under guard and placed beside the armoured

Figure 18: Procès-verbal from the Shobak Affair 1919, The National Archives.



-27-

heard the sounds of breaking the boxes. I also learned from her that both she and her husband were robbed. The soldiers then attempted to rape her and when her husband protested one of them shot him and he died in the next day. She fled into another room but the soldiers followed and caught her inspite of being pregnant in the ninth month. She thought that when she held her child who was on her shoulders, to the soldiers, she might attract their mercy and pity towards her and thus escape the raping, but when she stretched her arms with the child between them, the soldiers brutally shot the child and the bullet pierced his shoulder right through. He did not die and is still under treatment by the sanitary barber of the village -The soldiers set fire to the house and half of it was destroyed. She came yesterday to give her evidence but she was obliged to withdraw for the labour pains that came upon her.

N.B. I herein confirm that the above-mentioned Wagda came yesterday and verbally reported to me what had been done to her. Her evidence was found to be in conformity with what has been stated by Abdel-Latif Abou El Magd, the aforesaid witness. Wagda had left before having been cross-examined as she felt the labour pains of giving birth and she did not came today. I saw her child of a year old on her shoulder and saw the trace of the bullet.

(Sgd.) I.D.ABAZA,
Mamour Zapt of Giza.

Abdel Kader Mohammed Dakrouri, Hassan Saman, Mohammed Mansour, Marzouk El Saman, Abou Saad, of Nazlet El Shobak appeared and verbally reported to me that without swearing what has been done to them. The evidence of each implied the plundering of his house and setting fire to it. As that was the common suffering of all the inhabitants of the village, I saw it was quite sufficient to mention this summarised note which was sealed by them.

Seals. .....

Procès-Verbal closes, on the above-mentioned day at 1.15 p.m.

Figure 19: Procès-verbal from the Shobak Affair 1919, The National Archives.

Appendix D – Maps and annotations

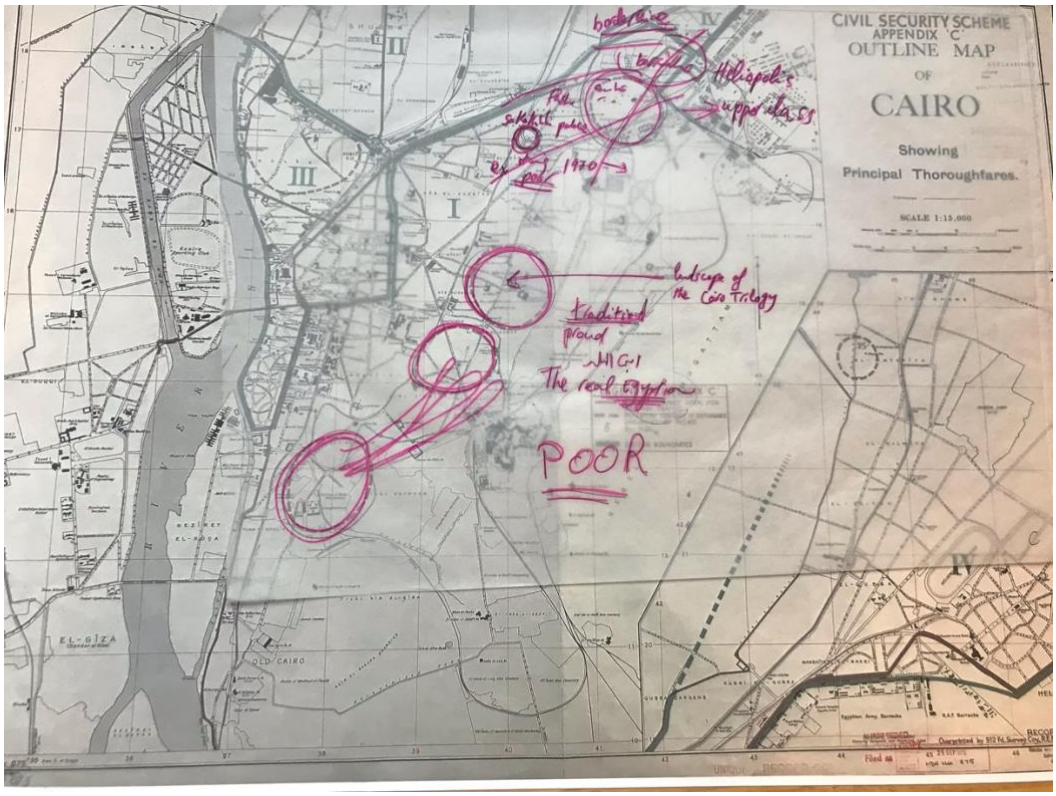


Figure 20: Annotated map of Cairo by Youssef.

Figure 21: Two maps of London together with Nour's annotations, 'surveillance'.

Figure 22: Map of London, 1926, (part 1) National Archives.[6]

[6] The County of London, G.S.G.S. no. 3786A, 1926 in *Cartographic Items Map* (The British Library, London) *C.C.5a.170.* and *216.e.33* <http://explore.bl.uk/primo_library/libweb/action/dlDisplay.do?vid=BLVU1&afterPDS=true&institution=BL&

Figure 23: Map of London, 1926, (part 2) National Archives.

docId=BLL01005010728&_ga=2.217216086.1771357446.1568294493-137159136.1567340069> accessed 25 September 2021.