

## Introduction

This book investigates the link between colonialism, neo-colonialism, and counter-terrorism, particularly in the Arab world. The book focuses on the colonial rationale for crime control in the arena of national security, and the development of this logic within Egypt and Tunisia during and after colonialism. The unique contribution of this book is its attention to the connections between colonialism, neo-colonialism, and counter-terrorism. These connections have implications for global security in general, because they reveal the colonial roots of the use of coercion and extra-legal measures to protect the ruling order, which are currently justified in both the West and the Arab world in the name of counter-terrorism. Using case studies of Egypt and Tunisia, the book argues that colonialism has had a crucial impact on shaping postcolonial legal and penal systems, which include counter-terrorism laws and policy. In addition, colonialism affected the neo-colonial distribution of power, in which the West as well as Russia dominates the global war on terror, in particular through the United Nations Security Council. States have responded to the United Nations' (UN) promotion of anti-terror laws by broadening their laws regardless of their usefulness in crime control. As a result, global anti-terrorism approaches focus primarily on security at the expense of the progress of democracy or human rights, especially within the postcolonial world.

The subject of counter-terrorism and its relationship to unequal systems of power, such as colonialism and neo-colonialism, is timely. The counter-terrorism measures enforced following the 9/11 attacks on the United States are still in place; in fact, they have been developed further by the UN Security Council and by countries individually and collectively in order to combat the threat of Islamic State. This has led to concerns about the actual utility of contemporary counter-terrorism laws, and whether they serve crime control or deepen unequal systems of power. Although national and international efforts are required in this field, in practice, such efforts have often revealed misuse of power in the name of counter-terrorism. For instance, Egypt has long had a poor human rights record that the West has occasionally

criticized. However, post-9/11, the UN Counter-Terrorism Committee (CTC) has turned a blind eye to Egypt's arbitrary anti-terrorism measures. Even worse, since 1998, the United States has transferred terrorist suspects into Egypt to be interrogated, taking advantage of the fact that Egypt is infamous for its willingness to use torture and other extra-legal measures.<sup>1</sup> The recent executive orders by the President of the United States, Donald Trump, which ban people of particular nationalities from entering the United States, reveal that the use of arbitrary measures is not exclusive to authoritarian countries like those in the Arab world. The global tendency to normalize this kind of exceptionalism in anti-terrorism practices suggests a meeting point between the West and the Arab world in terms of using counter-terrorism legislation to cement power. This book studies the roots of these practices in colonialism, and the way colonialism continues to play out in counter-terrorism legislation in the Arab world, with lessons for the West as well.

This book argues that current anti-terrorism approaches, in addition to being arbitrary, are inherited from colonial practices of crime and social control. Such practices are rooted in disregard for the rights and freedoms of the people they are imposed upon. It is the hope of this book that understanding the colonial roots of current patterns of political and social control will contribute to a move toward more balanced approaches to counter-terrorism in the Arab world and also the West.

The global nature of terrorism and its roots in oppression mean that understanding this phenomenon, and designing effective counter-terrorism measures, requires investigation of the power relations that have shaped it. This book examines the relationship between Western influence, whether under colonialism or neo-colonialism, and counter-terrorism law. The focus of this investigation is the Arab world, which is, on the one hand, a hostile producer of terrorist organizations, and on the other, a leader in countering "terrorism." The book tracks the roots and development of counter-terrorism by analyzing anti-terrorism and national security legislation and measures in two cases, Egypt and Tunisia, from colonial times to the present. The dynamic changes in the Arab world, particularly the so-called Arab Spring and the emergence of new and more radical terrorist organizations, suggest the failure of Arab policies of enduring strict anti-terror measures and national security, which have roots in colonial practices. This has important lessons for counter-terrorism not just in these countries but elsewhere in the world, including the West.

This book tracks historical evidence of colonial and neo-colonial influence on the development of counter-terrorism in the Arab world, which has received little scrutiny.<sup>2</sup> Some studies have covered the complexity of the connections between

<sup>1</sup> Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (New York: Cambridge University Press, 2011) at 80.

<sup>2</sup> See, however, Roach, *The 9/11 Effect*; Lynn Welchman, "Rocks, Hard Places and Human Rights: Anti-Terrorism Law and Policy in Arab States" in Victor Ramraj, Michael Hor & Kent

Arab legislation and colonial history.<sup>3</sup> However, there exists little work on the influence of colonial history specifically on Arab anti-terror legislation or on the continued influence of neo-colonialism. The book thus fills a gap between the study of Western and Arab approaches to counter-terrorism. While in colonial times, legislation was imposed on colonized countries involuntarily by colonizers, since the end of colonialism, migration of laws between countries is voluntary, at least on the surface. It does occur, including as a result of the increasing global obligations of states.<sup>4</sup> Counter-terrorism in the West thus has an impact on the Arab world and vice versa. The study of similarities and connections between Arab and Western counter-terrorism measures, in the context of the relationship between the West and the Arab world in colonialism and neo-colonialism, reveals the roots of current oppressive global counter-terrorism measures, exacerbated since 9/11, in colonial oppression. Therefore, such study is important because of the oppression that goes on in the name of counter-terrorism, exacerbated by the worrying developments in counter-terrorism post-9/11.

The problem with applying the colonial approach to counter-terrorism is that it is not limited to countering violent acts, but is also used to suppress other forms of nonviolent political activities and opposition. Today, methods similar to military ones that are supposed to be used against the enemy during wartime are used against opponents in domestic cases and during peacetime. The problem, then, is not colonialism or neo-colonialism per se, but the reappearance or continuance of aspects of colonialism in modern postcolonial states.

#### A NOTE ON TERMINOLOGY

##### *Colonialism, Neo-Colonialism, and Imperialism*

This book studies the effects of colonialism and neo-colonialism on anti-terror legislation. The term “imperialism” is used to denote a system of domination that functions through political and economic control; such a system is found in both colonialism and neo-colonialism. The book focuses on “new imperialism,” which refers to the peak of Anglo-European imperialism during the eighteenth century onward, as opposed to sixteenth- and seventeenth-century imperialism that primarily sought raw materials and economic growth. New imperialism is often associated

Roach, eds, *Global Anti-Terrorism Law and Policy* (New York: Cambridge University Press, 2012).

<sup>3</sup> Nathan Brown, *The Rule of Law in the Arab World* (New York: Cambridge University Press, 1997); Sadiq Reza, “Endless Emergency: The Case of Egypt” (2007) 10:4 *New Criminal Law Review* 532.

<sup>4</sup> Kent Roach, “Comparative Counter-Terrorism Law Comes of Age” in Kent Roach, ed, *Comparative Counter-Terrorism Law* (New York: Cambridge University Press, 2015) at 18.

with the Western “civilizing mission” that was carried abroad through colonialism.<sup>5</sup> Nonetheless, as will be examined in Chapter 1, the influence of imperialism existed well before direct colonialism. According to Julian Go and Michael Mann, such influence, known as “informal empire,” also dominates through forms of political and economic control.<sup>6</sup> After the fall of colonialism, informal empire has (re-)emerged in the form of neo-colonialism.

The book uses the term “colonialism” to refer to the European political occupation and expansion in the rest of the world that spread widely during the nineteenth and early twentieth centuries. Even though similar occupations have been carried out for thousands of years, I limit the scope of this investigation to British and French colonialism. Other empires, including the Russian (1721–1917), Austrian-Hungarian (1867–1918), and Ottoman (1844–1922) Empires, all vanished during the first two decades of the twentieth century. Also, the significance of Western imperialism is in its present impact over the globe. The colonial experience of Britain and France is complex and vast: together they once controlled over 31 percent of world land. One of the most important features of Western colonialism is that it successfully spread capitalism as the dominant economic system worldwide. Western influence is significant in its universality,<sup>7</sup> insofar as it established the basis of contemporary international investment and political relations.

The fading of colonialism paved the way for neo-colonialism to emerge as another form of Western hegemony. In the aftermath of colonialism, neo-colonialism arose as the use of economic and cultural domination to influence or control other countries. Neo-colonialism does not rely on permanent military occupation and expanding of territory; instead, its methods of control include globalization, capitalism, and cultural influence.<sup>8</sup> This means that neo-colonialism appears to be less coercive than colonialism; however, neo-colonialism continues to exert control and promotes the interest of the major powers.

This book identifies Western powers, above all the United Kingdom, the United States, and France, as the major neo-colonial players in the Arab world. These powers operate through direct relationships with inferior allies or client states. Their domination of these allies and clients takes several forms, including political pressure, migration of law, arms trade, the establishment of military bases, and economic

<sup>5</sup> Julian Go, *Postcolonial Thought and Social Theory* (New York: Oxford University Press, 2016) at 3; Michael Mann, *The Sources of Social Power, Volume 3: Global Empire and Revolution, 1890–1945* (New York: Cambridge University Press, 2012) at 34–5.

<sup>6</sup> Julian Go, *Patterns of Empire: The British and American Empires, 1688 to the Present* (New York: Cambridge University Press, 2011) at 3; Mann, *The Sources of Social Power, Volume 3*, at 18–20.

<sup>7</sup> V. G. Kiernan, *Imperialism and Its Contradictions* (New York: Routledge, 1995) at 56–70; Mary Evelyn Townsend, *European Colonial Expansion since 1871* (Chicago: J. B. Lippincott, 1941) at 4.

<sup>8</sup> Edward W. Said, *Culture and Imperialism* (New York: Knopf, 1993) at 7.

expansion. These relationships of influence also operate at a supra-national level. This is accomplished through, among other bodies, the UN Security Council, the North Atlantic Treaty Organization (NATO), and the Financial Action Task Force (FATF). These supra-national bodies are not by themselves neo-colonial powers, but they embody neo-colonial policies as imposed by their major member states.

Neo-colonialism is not limited to Western powers; Soviet Russia and contemporary Russia represent another neo-colonial power that dominates other parts of the world. Russia also controls through economic expansion, arms race, and developing nuclear programs for its allies and clients. Nonetheless, historically, Russia has shown little interest in the Arab world. Its bold domination has only emerged in recent years during the Syrian Civil War (2011–present). Its direct military interference in this conflict as well as its destructive role within the UN Security Council represent a shift in the neo-colonial distribution of power. This topic is examined in Chapter 3.

Many scholars do not use the term “neo-colonialism”; instead they refer to this form of control as “informal empire.” This book prefers the term “neo-colonialism” for several reasons. “Neo-colonialism” reflects an era that followed colonialism, which represents a continuity with, or a reemergence of, the colonial rationale combined with “new” forms of control that suit contemporary times. These include cyber crimes and counter-terrorism financing – acts that can be practiced within a global electronic world. Another reason for using the term “neo-colonialism” is that the case studies of the book are former colonies, and their legal and political systems are highly influenced by their colonists, as will be shown in Chapters 4 and 6. This book uses the term “informal empire” for forms of control that are similar but occurred before or during colonialism, such as the Anglo-French Dual Control over Egypt’s budget between 1879 and 1882.

### *Terrorism*

We cannot talk about counter-terrorism without talking about the notion of terrorism. Attempts to define terrorism tend to be highly politicized. It is difficult to distinguish a terrorist from a revolutionary, or to distinguish violent acts from peaceful opposition, which could all be considered “terrorism.” In other words, terrorism cannot be defined in neutral objective language. The problem of the definition of terrorism is also shared with other politicized terms such as “subversion” and “insurgency,” which were used during colonialism.

This book does not suggest a direct colonial influence on the current definition of terrorism. Rather, it argues that the use of vague terms and broad definitions in current definitions of terrorism is derived from a colonial rationale in customizing criminal terms to opposing political movements and potential threats. The colonial rationale in criminology dealt with suspects based on a “catch-all” logic. This logic required identifying the enemy well before wrongdoing was carried out. Similarly,

the war on terror justifies this logic under a “preemptive” approach.<sup>9</sup> The colonial rationale involved a highly politicized and militarized doctrine of counter-insurgency; this doctrine has reemerged in counter-terrorism thinking where it is undermining the role of the criminal law, and consequently, in the long run, security and justice.

Colonialism is not the only influence in counter-terrorism; neo-colonialism also plays a role in this respect. Jude McCulloch and Sharon Pickering argue that, like colonialism, neo-colonialism has established a set of terrorism-related crimes that aim to preempt terrorism.<sup>10</sup> Kent Roach observes that this kind of criminalization is problematic not only because of the unfair consequences that can result from preemptive practices like indefinite detention, but also because it is built on an assumed crime labeled “terrorism” rather than a clearly defined crime.<sup>11</sup> The counter-terrorism laws and measures established within this rationale have less to do with ensuring national and international security than with preserving the status quo of economic power that serves Western interests.

Part of the fundamental problem of counter-terrorism today is that it is carried out according to a set of stereotypical standards.<sup>12</sup> For instance, the fight against radical Islamist terrorism has led to targeting the large and diverse community of Muslims in general.<sup>13</sup> As is happening today, similar biased standards were used by the colonial powers in a form of racial segregation policy.<sup>14</sup> For example, the British colonial power dealt with protesters as insurgents using measures that included mass arrests and deportations.<sup>15</sup> Daily arrest, interrogation, and searching were part of counter-insurgency strategies that targeted specific groups that had not participated in violent activities.<sup>16</sup>

Today, in both the West and in Arab countries, in order to identify a terrorist, focus is given to the person’s ethnicity and religion. While Arabs and Muslims are the target of counter-terrorism in the West, Islamists and/or ethnic minorities are

<sup>9</sup> Jude McCulloch & Sharon Pickering, “Counter-Terrorism: The Law and Policing of Pre-emption” in Andrew Lynch, Nicola McGarrrity & George Williams, eds, *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11* (New York: Routledge, 2010).

<sup>10</sup> Jude McCulloch & Sharon Pickering, “Suppressing the Financing of Terrorism” (2005) 45 *British Journal of Criminology* 470 at 473–6.

<sup>11</sup> Kent Roach, “The Criminal Law and Terrorism” in Victor Ramraj, Michael Hor & Kent Roach, eds, *Global Anti-Terrorism Law and Policy* (Cambridge: Cambridge University Press, 2005) at 138.

<sup>12</sup> Russell Hardin, “Civil Liberties in the Era of Mass Terrorism” (2004) 8:1 *The Journal of Ethics* 77 at 79–81.

<sup>13</sup> “Preempting Justice: Counterterrorism Laws and Procedures in France” (July 1, 2008) *Human Rights Watch*, online: [www.hrw.org](http://www.hrw.org).

<sup>14</sup> Ambe Njoh, “Colonial Philosophies, Urban Space, and Racial Segregation in British and French Colonial Africa” (2008) 38:4 *Journal of Black Studies* 579 at 579.

<sup>15</sup> Barbara Watson Andaya, *A History of Malaysia* (Honolulu: University of Hawai’i Press, 2001) at 271.

<sup>16</sup> *Ibid.*

the targets in the Arab world. Selectivity in applying the law has less to do with crime control than with ensuring discipline that strengthens the state's sense of dominance.<sup>17</sup>

In today's world, the cross-boundary nature of the crimes of terrorism requires state cooperation at the international level in order to counter these crimes. However, these efforts are unlikely to succeed in the absence of a unified international definition of terrorism. This problem, and how it affects the war on terror, is examined in detail in Chapter 2 of this book.

#### COLONIALISM, NEO-COLONIALISM, AND COUNTER-TERRORISM

This book focuses on the colonial heritage found in modern anti-terrorism laws in the Arab world. These laws have been used as strategies of oppression and entrenchment of power rather than of protection and serving the public good. A key question in this respect is whether the government rationale for the use of power in crime control is in fact new. Does it represent a development of the modern state or a return to colonial state strategies and conceptions? I argue that law and crime control in Arab countries and in the West are closely related, both because the colonists left the roots of these strategies in the countries they had colonized, which have developed them further, and because colonists also continue to use them in a similar way in their homelands.

Many studies address the impact of colonialism on law in general, particularly in colonized India<sup>18</sup> and Africa,<sup>19</sup> but only a few address this relationship in the Arab world.<sup>20</sup> And while counter-terrorism has become a growing area for Western scholars, fewer writings are dedicated to this subject in the Arab world. Studies of terrorism in the Arab world focus on terrorist organizations and terrorism rather than addressing anti-terrorism laws.<sup>21</sup> Scholars have linked colonial counter-insurgency to

<sup>17</sup> Welchman, "Rocks, Hard Places and Human Rights," at 621–2.

<sup>18</sup> See e.g., Anil Kalhan, "Constitution and 'Extraconstitution': Colonial Emergency Regimes in Postcolonial India and Pakistan" in Victor V. Ramraj & Arun K. Thiruvengadam, eds, *Emergency Powers in Asia: Exploring the Limits of Legality* (Cambridge: Cambridge University Press, 2010); Kevin Tan, "From Myanmar to Manila" in Victor V. Ramraj & Arun K. Thiruvengadam, eds, *Emergency Powers in Asia: Exploring the Limits of Legality* (Cambridge: Cambridge University Press, 2010).

<sup>19</sup> See e.g., Jan Záhorký & Linda Piknerová, eds, *Colonialism on the Margins of Africa* (London: Routledge, 2018); Don Nardo, *The European Colonization of Africa* (Greensboro, NC: Morgan Reynolds Pub., 2010).

<sup>20</sup> Nathan Brown, "Retrospective: Law and Imperialism: Egypt in Comparative Perspective" (1995) 29:1 *Law & Society Review* 103; Brown, *The Rule of Law in the Arab World*; Roger Owen, *State, Power and Politics in the Making of the Modern Middle East* (London: Routledge, 2004).

<sup>21</sup> This tendency can be found in Nachman Tal, *Radical Islam in Egypt and Jordan* (Brighton: Sussex Academic Press/Jaffee Center for Strategic Studies, 2005); George Joffé, ed, *Islamist Radicalisation in Europe and the Middle East: Reassessing the Causes of Terrorism* (London: I. B. Tauris, 2013). For sources in Arabic, see Aḥmad M. Ṣubḥī & Zāmilīa Wālī, *Judhīr al-irḥāb*

the theory and practice of counter-terrorism.<sup>22</sup> This book traces this connection specifically in Arab countries.

Colonial powers sought to secure their political and economic interests through the imposition of discipline against nationalists and political opponents who were viewed as insurgents, aiming to create a submissive society. According to David French, an “insurgency was more than simply an armed rebellion. Insurgents commonly employed not only different kinds of force, ranging from guerrilla warfare to urban terrorism, but also different kinds of political tools to subvert the colonial state.”<sup>23</sup> In parallel, counter-insurgency was not limited to the use of force, but also included political, social, and economic measures. Nonetheless, coercion was a defining figure of the overall policy of colonial powers toward opposition groups.<sup>24</sup> Colonialism justified the use of coercion to prevent opponents’ disobedience, which could lead to potential revolutions against the colonial rule.

Colonialism justified its oppressive practices to protect the imperial order, viewing it as the only legitimate order. Anti-colonialism was therefore seen as an evil that the colonial power countered through a wide range of politicized and militarized methods of control. Measures included the use of martial law, emergency legislation and special courts, which were inherited from colonial rule.<sup>25</sup> Scholars have found a connection between these military and exceptional strategies, which were carried over from the colonial power to current national security laws in postcolonial states.<sup>26</sup>

Many practices that were used to suppress insurgents in colonies were also used at some level in the colonists’ homeland. From the eighteenth to the first half of the twentieth century, the European powers, particularly the British and French empires, produced national security laws and measures to respond to revolutions, anarchist, and communist movements, and the two World Wars. These events were considered a threat to the established Western values, and this identification of threat justified the use of militant principles and exceptional powers. The concept of “enemy aliens” was widely used during World War II to justify arbitrary detention

*fi al-‘aqīdah al-Wahhābiyah* [The Roots of Terrorism in Wahhabism] (Beirut: Dār al-Mizān, 2008); Aḥmad Abī al-Rīs, *al-Irḥāb wa-al-taṭarruf wa-al-‘unf fi al-duwal al-‘Arabīyah* [Terrorism and Extremism in Arab States] (Alexandria: al-Maktab al-Jāmi‘ī al-Ḥadīth, 2001).

<sup>22</sup> Jenny Hocking, *Beyond Terrorism: The Development of the Australian Security State* (St Leonards, NSW: Allen & Unwin, 1993); Jude McCulloch & Sharon Pickering, “Pre-Crime and Counter-Terrorism: Imagining Future Crime in the ‘War on Terror’” (2009) 49:5 *British Journal of Criminology* 628.

<sup>23</sup> David French, *The British Way in Counter-Insurgency: 1945–1967* (Oxford: Oxford University Press, 2011) at 9.

<sup>24</sup> *Ibid.*

<sup>25</sup> Brown, *The Rule of Law in the Arab World*; Owen, *State, Power and Politics*; Reza, “Endless Emergency: The Case of Egypt.”

<sup>26</sup> Tan, “From Myanmar to Manila”; Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor, MI: University of Michigan Press, 2003).



of civilians.<sup>27</sup> That legacy can also be linked to the contemporary concept of “enemy combatant” that justifies the Guantanamo Bay detention camp operated by the United States. These measures, which were developed in the homelands of Western countries, still exist at some level in the West. The book argues that the United Kingdom and France have also transferred such measures to the Security Council anti-terrorism resolutions. Thus, there is an implicit unity between the Western and global anti-terrorism agendas.

Accordingly, this book argues that the Western culture of control has not ended with the fading of colonialism, but still dominates the global war on terror through neo-colonial forms of control. However, while the major players of colonialism were the United Kingdom and France, the neo-colonial powers include these two countries as well as the United States and, to a lesser degree, Russia. These countries continue to control global security measures, including counter-terrorism obligations, through their influence on the UN Security Council and other supra-national bodies like the FATF. Through these bodies, the neo-colonial powers impose global obligations on states regarding terrorism-related crimes. These include, among other acts, terrorism financing and speech associated with terrorism.

Highlighting the importance of the link between counter-terrorism and Western colonial and neo-colonial culture is not to deny the responsibility of Arab states for their continual use of harsh counter-terrorism measures. Rather, it is to show that counter-insurgency and counter-terrorism depend largely on colonial exceptional and wartime strategies to deal with mostly domestic peacetime crimes. These strategies are borrowed from the colonial past of each country and encouraged by international pressure from former colonial powers in the current era of neo-colonialism. This shows that the neo-colonial anti-terrorism policy does not necessarily serve to control crime and promote international security, but rather to maintain the status quo of an unequal position of powers. It also serves the authoritarian ambition of Arab rulers and dominant groups within the Arab world. The current wide and exceptional anti-terrorism powers that are being imposed in the Arab world and the West are applied to many forms of civil and political activities that are criminalized as terrorism alongside extreme violent acts.<sup>28</sup>

#### CASE STUDIES: EGYPT AND TUNISIA

Egypt and Tunisia have been selected for this study for several reasons. Both are republics, witnessed recent uprisings that led to regime changes, and are former colonies. Furthermore, in both countries, while several legal amendments are taking

<sup>27</sup> A. W. Brian Simpson, “Detention without Trial in the Second World War: Comparing the British and American Experience” (1988) 16:2 *Florida State University Law Review* 225.

<sup>28</sup> Jenny Hocking, “Orthodox Theories of ‘Terrorism’: The Power of Politicised Terminology” (1984) 19:2 *Australian Journal of Political Science* 103; Hocking, *Beyond Terrorism*.

place, the colonial heritage seems deeply rooted. However, Egypt was primarily under British administration (1882–1952) and earlier under the French (1798–1801), while Tunisia was only a French colony (1881–1956). Both countries are politically unstable owing to crimes like assassinations and “terrorism,” and both combine legal and extra-legal measures to counter this instability. These similarities make the comparative approach useful for studying these countries, especially in light of the colonial heritage, which represents a common foundation for their national security laws.

In 2014, both Egypt and Tunisia adopted new constitutions. These amendments could reshape the policy of criminal law, in particular in relation to counter-terrorism.<sup>29</sup> The problem is that in Arab countries constitutions can be mere façade documents or hollow promises that reflect people’s aspirations but ultimately leave them unfulfilled.<sup>30</sup> In both the old and the new constitutions of Egypt and Tunisia, rights are guaranteed, yet can be limited by law for public safety or during emergencies. This is an example of how constitutions are designed in “flexible” language that allows the authorities to limit constitutionalism and the rule of law by adopting arbitrary and subjective laws.<sup>31</sup> Authoritarian constitutions are designed to maximize state power and minimize state accountability, while minimizing the freedoms of the populace. For instance, all the common civil and political rights and freedoms, such as freedom of expression and association, are granted in the 2014 Tunisian constitution; however, Article 49 undermines the value of these rights by stating that:

The law shall determine the limitations related to the rights and freedoms that are guaranteed by this Constitution and their exercise, on the condition that it does not compromise their essence. These limitations can only be put in place where necessary in a civil democratic state, with the aim of protecting the rights of others or based on the requirements of public order, national defense, public health or public morals.<sup>32</sup>

The constitution has become a tool of governing that expresses the state’s authority without limiting it. It ensures the security of the state without protecting people from

<sup>29</sup> For instance, in March 2011 Egypt abolished Article 179 of the constitution, which is related to combating terrorism. The article states that: “The State shall seek to safeguard public security to counter dangers of terror. The law shall, under the supervision of the judiciary, regulate special provisions related to evidence and investigation procedures required to counter those dangers. The procedure stipulated in paragraph 1 of Articles 41 and 44 and paragraph 2 of Article 45 of the constitution shall in no way preclude such counter-terror action.”

<sup>30</sup> Nathan Brown, *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (New York: State University of New York Press, 2002) at 7–11.

<sup>31</sup> Jothie Rajah explains that the “rule of law” signifies ‘law’ which, in content and in institutional arrangements, prevents ‘arbitrary power and excludes wide discretionary authority[.]’ Jothie Rajah, *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* (New York: Cambridge University Press, 2012) at 4.

<sup>32</sup> Article 49 of the 2014 Tunisian Constitution. The 2014 Egyptian Constitution included similar restrictions in Articles 56, 85, 62, 64, and 73.