Chapter 1
The political economy of crime

"*Esse ipsum factum verum*;
Truth itself is made." (Giambattista Vico)
"*Wo Es war, soll Ich werden*;
Where it was, I shall come into being." (Sigmund Freud)[1]
"*Le crime se chante*;
Crime is sung." (Michel Foucault)[2]

The civic foundations of the new post-Ottoman legal order

What struck me upon my first visit in summer 1993 to the *Qaṣr al-ʿadl* (Palace of Justice) in Aleppo was the sight of people standing at the large stepped entrance. Already, from the parking lot, those commoners—mostly males—with their backs leaning at the open windows of the east wing of the Palace, some reclining on the edges of the stairs, was perplexing. As I passed through the large iron gate and had my bag checked (policemen check for guns which

1. Jacques Lacan gave several interpretations of Freud's differentiation between the *Es*—the libidinal "it"—and the *Ich*—the subject as "I"—one of which claimed "That the subject [*Ich*] is already at home at the level of the *Es*." (*My Teaching,* London: Verso, 2008, 83)

2. Michel Foucault, ed., *Moi, Pierre Rivière, ayant égorgé ma mère, ma sœur et mon frère… Un cas de parricide au XIXe siècle,* Paris: Gallimard, 1973, 328–9. On an other occasion, apropos the infamous writings of the Marquis de Sade, (Michel Foucault, *La grande étrangère. À propos de la littérature,* Paris: Éditions de l'École des hautes études en sciences sociales, 2013, 169), Foucault remarked that *"L'écriture est donc le principe qui instaure et à partir duquel, en tout cas, va s'instaurer le criminel comme criminel,"* "Writing is therefore a principle that establishes and through which the process of the criminal as criminal would constitute itself." Writing, on par with crime, acts like a transgressive act; but the crime has to go through the experience of writing in order for the writer-criminal to consciously admit himself as criminal. Writing for Sade is to tell the truth, which means to establish his desire, phantasm, erotic imagination, so that there is no "reality principle" that would suppress his desires with a "there are things that you will not achieve," "everything is the product of your imagination, hence has no reality attached to it."

Figure 1–1. The Aleppo Jināyāt courtroom in the mid-1990s. At the center of the bench, the three-panel judges; on the left, the representative of the public prosecution office, the *niyāba ʿāmma*; on the far right, the court's scribe who registers only what the chief judge dictates to him. Suspects and defendants are brought from prison directly to the courtroom and are kept behind bars on the right, even when interrogated, under a policeman's watch. Lawyers sit facing the bench on a long wooden barred desk. The counsel representing the defendant is standing at the far left, while the witness is at the microphone facing the chief judge (the only one to directly interrogate). Since there is no direct "cross-examination" per se by counsels to witnesses, counsels only propose questions to the chief judge, who in turn may address them to witnesses, suspects or defendants. The audience of roughly 50 men and women, who are gender segregated, sits in the back, with a complete view of the courtroom. Witnesses wait their turn with the audience, and are called by name by the court's clerk. The Palace of Justice was completely destroyed in March 2014 with a seventeen-ton blast which was planted by the Free Syrian Army, which at the time was in control of the old Ottoman downtown area in the vicinity of the citadel. The FSA, which advertised the full destruction of the Palace on YouTube, alleged that the "Asad forces" and their irregular bands, the notorious *shabbiḥa*, were using the location for military purposes. The construction of a new Palace, located in the troubled northwest area of Billayramūn, not far from the directorate of "air intelligence," was almost complete when the civil war started in March 2011. The fate of the archives of the old Palace remains uncertain.

they demand to be deposited in their lockers), the gaze of those who were there, and who seem to have been there for ever, was at anyone's mercy[3].

There is no better way to contemplate the contrast between "old" and "new" than the *Qaṣr al-ʿadl* itself.[4] The Palace of Justice was designed by a Swedish architect and open to the public in the 1960s, once the old nearby Ottoman Palace was portrayed as defunct.[5] Sporting a modernist minimalist look of rigid symmetrical lines, with a large entrance hall that connects the mezzanine to the ceiling on the top, the windows are so massive that they cover the entire wall opposite to the entrance. All those people seem to have been waiting there endlessly—but for what purpose exactly? Waiting for a judge, a lawyer, for a *muʿāmala* (transaction), for a trial to begin, for a hearing to proceed, to give a testimony, to act as witness, simply to pick up a piece of paper, or for some other reason? Is it this unbearable atmosphere of waiting and gazing which lends the place its particular ethos, as time seems to have stopped somewhere in the 1960s? Since most rooms and halls are not numbered, finding a location and detecting the "right way" could be a daunting experience. You are always provided approximate directions: second floor, on your right, you see a broken window, then go to your left, and so on, until you find your way.

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3. This book is based on regular visits from 1993 to 2007 to the *Qaṣr al-ʿadl* of Aleppo whose location faces the main northern entrance of the mighty citadel; both the *madrasa sulṭāniyya* and the *sarāy* are located west of the L-shaped Palace of Justice. Additional material has been collected from the Palace of Justice of Idlib, which partitions all criminal case-histories in this book between Aleppo and Idlib, albeit in different proportions, from the 1980s to the present. My first disappointment was the realization that archival material of civil and criminal cases was improperly stored—to say the least. Basically, as there is no coherent archival policy in Syria for the massive paperwork produced by the civil and military bureaucracies, and for the various "Palaces of Justice" around the country, cases and files are stored in warehouses for fifteen years on average for civil cases (*madanī*) and twenty years for the penal (*jazāʾī*), then tossed for the sake of storage constraints. After the fifteen–twenty-year period, the official authorities do not claim any responsibility for the status of their "old" files.

4. There is not much literature devoted to the textuality of buildings and the social relations they imply; or to the relations between image, space, and words; one could turn, however, for inspiration to films and the way they portray the use of space as a fundamental asset to understanding social relations; see, for example, Lars von Trier's "The Kingdom" (Denmark, 1994) for one of the most stunning portraits of a modern hospital (see Howard Hampton, "Wetlands: The Kingdom of Lars von Trier," *Film Comment,* 13/6, November–December 1995, 40–47); Sue Vice, *Shoah*, London: BFI Film Classics, 2011.

5. The "new" Palace has been completely destroyed in early 2014 in the battles that have been raging since 2012 around the citadel. A new one which has been under construction for the last decade in the northwestern neighborhood of Billayramūn is nearly complete, and does not seem to have suffered much damage. The status of the archives of the destroyed Palace is at present unknown; I've heard unconfirmed reports that they have been "for the most part" transferred to the "Municipality Tower" in the southwestern part of the city.

Over two-hundred "secular" qāḍis, mostly men but also few women, are serving at the Palace. The small number of judges is *one* factor in delaying every case endlessly for years. The number of sharʿī qāḍis are even fewer—only six—and they used to occupy five courtrooms in the basement, until the 1990s when they were relocated in a separate building in the same neighborhood. Thus while in neighboring Lebanon, Sunnis, Shiʿis, and Druze have their own sharīʿa courts, and while Christians have their own courts of personal status (where inheritance rules do *not* abide by the sharīʿa) which are totally independent from the secular courts of the state, the Syrian sharīʿa courts by contrast are state controlled, and could be located either within the Palace of Justice itself or outside.

The small number of sharʿī judges is a bit puzzling, since the basement, where their five courts used to be located, was the most crowded location and seemed to have had a different clientèle from the rest of the Palace. For one thing, sharʿī judges deal almost exclusively with personal status and inheritance matters, which would imply that a great deal of the Aleppo population (including even non-Muslims) have to benefit from such courts (in person or through representatives) at least once in their lifetime. As judges are busy with matters of divorce and inheritance, marriage contracts (and their unceremonious ceremonies) are left to few employees in the Palace who work in different departments and who have the approval of sharʿī judges to conduct Islamic marriages in their own departments without even moving from their desks. Usually, "marriage contracts" are performed by those employees who at the same time proceed with their own routine work in various civil, commercial, and penal departments, conducting their sharʿī business at the margin of their regular daily business, in the presence of the groom himself and a representative of the bride. (Women in Islam need a *wālī* to get married, a role usually assumed by the father or brother, or if the father is deceased and all the brothers are minors, the judge himself assumes this role of "guardian"; in addition, there must be two witnesses which are at times picked at random; there are also "professional witnesses" who hang around in various departments and get paid for witnessing.)

Once the terms of the contract are disclosed, and upon the agreement of both parties, the *Fātiḥa* is read, complete with signatures, congratulations, hugs and few kisses. But those employees-acting-as-judges are not limited, concerning sharʿī matters, to marriages, as they seem to act too as "the guardians of morality," since people consult them on diverse matters related to the family (e.g., divorce, sexuality, custody of children and alimony). At a time when the family is under pressure from strained economic conditions, and thanks to the cultural openings by the mass media, women in particular are finding traditional forms of marriage restrictive and often complain to sharʿī judges for harsh

treatment from their husbands or for having "new sexual mores" imposed on them.[6]

The two hundred or so other "secular" (non-sharʿī) judges occupy most of the small rooms of the Palace (there are major space shortages which are an outcome of poor planning since the 1960s). The qāḍis's rooms, equipped with overused and austere furniture, are at the center of formal or informal activities. As judges survive from low salaries ranging from S.P.5,000 to 8,000 monthly ($100 to $150 at the time)[7] back in the 1990s (on par with other civil servants like teachers, professors, and administrators), which may have increased up to 50–75 percent under the second Asad presidency (since June 2000), there are always rumors of corruption, of judges going for "illicit deals," even in criminal matters, which, needless to say, are hard to corroborate under a tightly controlled public media, which anyhow pays little attention to what goes on in such circles.

Like many civil-law societies, in particular the French, the Syrian legal system operates in terms of *specialized* courts with clearly delimited boundaries. However, there is no equivalent to an American Supreme Court that would handle selections of *any* type of litigation appealed by a lower court on matters ranging from the safety of roads, abortion, drugs, or the incrimination of the president of the republic.[8] In contrast, the Syrian system has a specific court for different types of adjudication—even at the higher Cassation and Administrative appellate courts, which are an extension of the Ottoman upper niẓāmī "civil" courts. At the bottom of the judicial hierarchy, in both its civil and penal branches, lie the *quḍāt al-ṣulḥ,* the peace judges,[9] who, between nine to eleven in the morning and one to three in the afternoon, rule over their own courts for four hours daily. The *quḍāt al-ṣulḥ* preside over minor misdemeanors in the hope that the case would be dropped once the two parties settle on their own. At this stage, the rulings are light and informal, and violations are punishable by small fines or up to a couple months in jail (akin to the one-judge-no-jury "instant

6. According to one employee-cum-sharʿī-consultant, "anal sex" is forbidden in Islam, but "it could be considered 'consensual' for a short period of five days of anal penetration." A doctor, appointed by the court, should be able, according to my informer, to determine the extent of the "practice of anal sex" (often referred to as "abnormal sex," *jins ghayr ṭabiʿī*).

7. Based on the exchange rate of S.P.50 to the U.S. dollar prior to the internal–external wars that have plagued Syria since 2011.

8. For a broad comparative perspective between the United States, England, France, Germany, and Japan, see, Herbert Jacob, *et al., Courts, Law, and Politics in Comparative Perspective* (New Haven and London: Yale University Press, 1996).

9. The equivalent of the French *juge de paix*.

justice" courts in the American system, or the French *tribunaux d'instance*). Misdemeanors are transferred or go directly to the *bidāya* first-instance courts, or else to the appellate *isti'nāf,* whenever that proves necessary. But for all these courts, punishments (*'uqūbāt*) would not exceed a three-year jail sentence, while other offenses, such as crimes and major thefts, are handled directly by the criminal (*jinā'iyyāt*) courts. A serious misdemeanor is considered in the legal language as *junḥa* (similar to the French *délit* of the appellate tribunals), and such offenses are the domain of the *bidāyat al-jazā'* courts, which are three-judge panels equivalent to the French *tribunaux de grande instance;* these appellate tribunals, whose punishments could vary from two months to ten years, receive on average 20,000 cases a year, half of them are related to *tamwīn* issues, that is, small "economic" offenses (prices, quality control, contraband); the other half are "moral offenses," mostly provoked by "bad behavior" in public arenas or car accidents.[10]

Crimes are the specialty of the *jinā'iyyāt* courts whose highest penalty is capital punishment (Chapter 5). The *jinā'iyyāt* (or *jināyāt*) department receives eight hundred to a thousand cases a year, and the two *jināyāt* courts[11] encounter difficulties in acting in a timely fashion since they always end the year with a backlog of 300 to 500 cases (500 receive on average a verdict). A third court was temporarily established in the summer of 1996 to speed up the process, only to be closed a decade later.

Compared to the United States or Europe, major felonies in Syria are quite rare: in May 1994, when I had just started my study of Syrian criminality, there were twenty robbery cases, seven drug related cases, and three homicides, which were reported to the *dīwān al-jinā'iyyāt* at Aleppo's Palace, and the numbers do not seem to have varied much since then. For a city of three-million, besides the low number of thirty felonies per month (for cases that involve a minimum three-year jail sentence), drug related cases outnumber and are twice as much as homicides (C10–2). Drug felonies are usually subject to specific laws of economic sanctions (*qānūn 'uqūbāt iqtiṣādiyya*) which could carry ten to fifteen years of incarceration. The low number of serious offenses, thanks to a decrease in homicides in the past couple decades, *may* be an outcome of a tightly controlled patrimonial society in which the state keeps an eye on its populations. Syrian society is very much family oriented, with many "honor"-driven crimes, either

10. These figures were communicated to me, on June 1996, by the head of the department of *bidāyat al-jazā'*. Since they were not based on reliable statistics but on pure estimates from "work experience," they ought to be cautiously taken. The figure of 20,000 seems a bit high, see *infra* the section on statistics.

11. For a brief period in the 1990s and later there were three courts, but we're now back to the original two, due to what a central committee perceived as an unnecessary division of labor.

against women (Chapter 6), or else among men (Chapter 7): *sharaf* killings against women constitute a hefty margin among homicides,[12] but the legal punishment, due to "customary" sanctions (such as placing illicit sex and adultery on woman's honor and kin) is minimal—a couple of years at most. *Sharaf* crimes against women are juridically indexed as "killing for an honorable purpose (*qatl bi-dāfiʿ sharīf*)," which explains why one to two years is usually a "safe bet" for the offenders who usually surrender without problems. Homicides are classified either as first-degree premeditated killings (*ʿamd*), with penalties ranging from a minimum of fifteen years of incarceration up to capital punishment; or as manslaughter (*qaṣd*), or else as *qatl bi-dāfiʿ sharīf,* that is, a premeditated killing (usually against a woman). In addition to homicides, robbery, grand larceny and drug-related cases, the *Jināyāt* may handle rape (C6–5), incest (C6–4), or sex with minors (C8–2), which may have been increasing lately. But as I argue at the end of this chapter, official national crime statistics, published as the yearly Statistical Abstracts in Damascus, show so much unexplained variations from one year to another, that they cannot be meaningfully used, in particular with the strong lack of sociological analysis in this domain. However, the modest figures that I have quoted thus far come directly from the bookkeeping of the employees of the Aleppo Jināyāt and their various commentaries on their own work.

Syria, like most Middle Eastern societies, has kept the death penalty active as its capital punishment (Chapter 5). Up to the union with Egypt (1958–1961), inmates on death row were hanged in the prisons where they served their terms, a habit that was dropped in favor of more public spaces, *al-sāḥāt al-ʿāmma;* but in more recent years, hangings have returned to the intimacy of the prison yard. In the office of Judge Tawfiq al-Bābā, who was the chief criminal judge in the mid-1990s, I probed the few judges and lawyers whether the death penalty has been recently publicly debated and whether there were civil movements pushing to drop it completely. Their answer was a unanimous "No," on the basis that there is on average only one to two *iʿdām* cases per year and that the presence of capital punishment serves as a deterrent for criminals: *Allāhu yaghfur ʿamman*

12. One of the Jināyāt judges told me on an informal basis (since no "reliable" figures are yet available), while we were chatting in the office of the chief trial judge prior to their eleven o'clock session of hearings and deliberations, that "honor" crimes in Aleppo represent 50 percent of all crimes and roughly 5 percent of the Jināyāt is responsible for. Figures are much higher in the Jazira region, among others (the chief trial judge had just been transferred, in June 1996, from the Jazira). The appointment of a new chief trial judge delays, sometimes for a year, all trials since he needs to become acquainted with the files from scratch. In the event two out of the three judges have been newly appointed, the old hearings, for cases which are waiting for a final ruling, become invalid, so the court is back to square one with the yet undecided cases.

yashā', only God forgives whom He wishes.[13] One of the retired judges told me that in three decades of service, he personally did request eleven death penalties, out of which seven had been executed thanks to personalized presidential decrees (Chapter 5).

As in many civil-code societies, and in contrast to the adversarial Anglo-Saxon system, Syria has adopted the inquisitorial method for investigating crime, which gives responsibility to state institutions—primarily the police—for conducting all investigations and preparing a strong case for the public prosecution office. The two judges of *qāḍī al-taḥqīq* (investigating judge) and the *qāḍī al-iḥāla* (*juge d'instruction,* examining magistrate or referral judge) would be in charge of the criminal investigation and separately responsible for filing its first complete synthesis. Once the investigation has matured, the *iḥāla* referral judge would draft his final report and transmit it to the *Jināyat* court which henceforth assumes responsibility of the case-file. The *iḥāla* report constitutes the first comprehensive description of the crime scene and its witnesses, the motives of the accused and other suspects. Subsequent court rulings, including the final one, heavily rely on the referral report and borrow a great deal from its content and syntax.

Because the damages offered by the courts to the victims and their families are often grossly inadequate, disputants in the majority of cases settle "privately," that is, on their own. Once the plaintiffs are satisfied with the damages offered by the defendants and their families, they would drop their "personal right" (*ḥaqq shakhṣī*) altogether,[14] which may benefit defendants by reducing punishment. But since a crime is also a "public" state matter (a major difference from the defunct Ottoman system),[15] once a case is dropped, the *niyāba ʿāmma* (the district attorney's office) would play the prosecution's role.

Proceedings of the criminal courts would normally start on each day (Friday and Saturday are off) at eleven in the largest courtroom of the *Qaṣr* in the main lobby. The room has up to ten seat-rows for an audience of a hundred, which, composed mostly of relatives, is gender separated. The accused, if serving a prison sentence, are removed from the audience and kept behind bars. Three judges preside each session wearing the traditional *robe du magistrat* and sit on an elevated bench known as the *qaws* (the "arch" of justice); a representative for the

13. See Chapter 5 on capital punishment and torture.

14. U.S. courts do not handle damage compensation in criminal charges, hence litigants must file a civil lawsuit to receive compensation. By contrast, civil-law systems unite both functions, hence the Jināyāt court in its final verdict would command both punishment and compensation to be paid, if any, to the plaintiffs.

15. See my *Grammars of Adjudication*, Beirut: Presses de l'Ifpo, 2007, Chapter 11.

public prosecution, *al-niyāba al-ʿāmma,* shares the *qaws*-bench with the other judges and the scribe. Lawyers and assistants sit behind a long desk facing the three judges (Figure 1–1). Unlike the Anglo-Saxon and French systems, there are no juries (hence no agonizing jury selection process) for civil or penal cases, and only judges, rather than lawyers, do the direct- and cross-examinations.[16] Lawyers can only "suggest" questions and complain to the chief judge, thus they are denied direct access to defendants, plaintiffs, and witnesses. There are no full transcripts of the court-sessions, but only paraphrased *procès-verbaux* of all utterances as dictated by the chief judge to the scribe ("transcripts" are all handwritten, while verdicts are typed in Aleppo but handwritten in Idlib). Thus the chief judge has an enormous work to perform at every moment of the hearings: a mastery of the complete file, the direct- and cross-examinations, paraphrasing "summaries" of various utterances, listening to the lawyers' objections; by contrast, an American judge would look like a detached observer concentrating on the theater of the courtroom.

Defendants and suspects sit behind bars in a locked iron dock, guarded by security officers, which makes them visible to everyone in the courtroom. Long eschewed as prejudicial by American courts and by the International Criminal Court in The Hague, locked docks, either metal cells or enclosures made of glass or wood, are still common, not only in countries like Syria or Egypt[17] where the judicial systems often face international criticism, but also in many Western democracies, including Britain and France. Critics say that keeping defendants locked up in court presumes guilt, hinders the defense and often has no basis in law, resulting instead from administrative rules. In Syria, it is standard for anyone held without bail, even those who pose little security risk. Pundits are usually protective of such measures on the basis that the courtroom is filled with kin members, which increases safety risks.

In the two–three daily hours, between eleven and one or two, the *Jināʾiyyāt* court handles on average ten to twenty cases. One of the main factors which considerably delays court proceedings are the court convocations which are often alleged to have been received late by the parties in conflict. Their councils would come to court only to inform the chief judge that their clients would not attend either because they received a late convocation or else they did not receive one yet. Because the court would not make a fuss on such delays, the officers who bring these convocations, writs, and subpoenas by hand to the respective parties could

16. As I will argue later "cross-examinations" should be taken more as formal interviews than tough examinations with a thorough line of questioning.

17. Images of ex-president Ḥusnī Mubarak in bed behind bars, with his two sons nearby, in the white outfits of prisoners, at trial in a Cairo courtroom are revealing in this respect, as they already project a sense of guilt and humiliation.

be easily bribed only to return with an empty signature; hence no convocation would be claimed to have been received ("bribing" and "gift-giving" are essential aspects of the Syrian economy and are obviously not limited to the courts only).

Due to the large number of cases handled per session, and the large number of absentees, it is not easy for an observer to follow up these cases closely. The entire court with its audience has to stand up at every oath–shahāda performance, once every 10–15 minutes: *wa bi-llāhi al-ʿaẓīm ashhadu bilā ziyāda walā nuqṣān,* In God the Great, I swear to testify without adding or hiding anything [to my testimony]. The Syrian system, controlled as it is by the qāḍī, leaves little room for maneuvering in the form of "cross-examinations," thus would not fit the give-and-take format of the American courts.

The essence of criminal proceedings may be perceived in the way witnesses, plaintiffs, and defendants are subjected to direct- and cross-examination by the chief judge, though such terms may seem unfit for a civil-law system that does not give much room to counsels in court hearings. The core of the matter consists at understanding *how utterances performed by the witnesses and others are transcribed in the official court's transcripts:*

1. The chief judge, *in colloquial Arabic,* cross-examines the witnesses. He often reads directly from the file *transcribed statements* previously uttered by the witness in different contexts (either to the police or the investigating judge).
2. Witnesses would usually reply in colloquial Arabic.
3. The judge ends up wrapping the exchange by paraphrasing his own utterances and those of the witness *in the official Arabic language of the courts,* dictating his material to the scribe in official Arabic; hence the handwritten *procès-verbaux* by the court's scribe, which would hardly carry any of the original verbatim *oral* utterances.
4. Lawyers from the two sides have the full right to intervene in this (1–3) process. Their utterances, however, performed in official or colloquial Arabic on behalf of their clients and witnesses, are seldom included in the transcripts.

In this complex process, the most important step ends up being the act of transcription from the oral to the written which is also a transcription from colloquial to official Arabic. But the two steps, from the oral to the written and from the colloquial to the official, even though they both occur *simultaneously* and are inseparable, are in reality *two different processes* which need to be separated for analytical purposes since it is the second step which is the most reductive—the utterances would have metamorphosed into something else, quite different from the original intentions of the person who uttered them and who was supposedly "witnessing."

At the upper local level stands the office of the "first judge," the *Avocat général premier, dīwān al-muḥāmi al-ʿāmm al-awwal,* which is confined to the *Qaṣr* itself (towards which it acts as a general supervisor), and directly supervises the public prosecution office (*al-niyāba al-ʿāmma*).

The highest instance national court is the French equivalent of the *Cour de cassation, maḥkamat al-naqḍ,* which handles cases that would have been appealed at lower-level courts; the Damascus Naqḍ, however, is not one court, as the U.S. Supreme Court is, but a multitude of specialized courts that occupy the same outsized courthouse outside Damascus. Typically, a *Naqḍ* ruling is a concise one- or two-page document, but, unlike its French *Cassation* equivalent, which does not even publish most of its judgments,[18] the *Naqḍ* has its judgments routinely published by expert lawyers and publishers in what looks like systematic compilations of previous breakthrough decisions, which are cited in memos and rulings by judges and lawyers, and which take the role of statutes and precedents in common-law justice. The Court of Cassation rules on questions of procedure, not on the merits of a case or the presumption of guilt or innocence.

Considering that there is no large backlog of criminal cases, as is currently the case in some U.S. courts,[19] the reader may be surprised at the amount of time that many of the cases in this book took to resolve; that is, the amount of time the file was finally closed once it reached the Court of Cassation, and was sent back to Aleppo or Idlib for a revised verdict if necessary. If the system is neither overburdened, nor underfinanced, nor understaffed, why the long wait, which could be many years before the verdict? This is a complex issue that needs to be addressed case-by-case. Suffice it to say that we are examining cultures where kin feuds have an overbearing load on peace among parties, and that, as some anthropologists have noted, "The feud is a permanent process, not an event."[20] What this means is that the successful killing or wounding of an opponent from an opposite clan, even if it satisfies rules of honor and violence among clans, would not in itself end the cycle of violence (Chapter 7). That is why, even if justice is done, the need for redress may continue for generations. So what happens when justice is not solely done by the parties themselves, but through

18. Doris Marie Provine, "Courts in the Political Process in France," in *Courts, Law, and Politics in Comparative Perspective, op. cit.,* 195.

19. William Glaberson, "Waiting years for their day in the Bronx courts," *The New York Times,* 14 May 2013: "With criminal cases languishing for years, a plague of delays in the Bronx criminal courts is undermining one of the central ideals of the justice system, the promise of a speedy trial." As everyone seems waiting, "Defense lawyers everywhere use delay to foster doubt. They capitalize on memories that grow murky and the holes that are blown in cases when prosecution witnesses go missing."

20. Talal Asad, *Genealogies of Religion,* Baltimore: The Johns Hopkins University Press, 1993, 92.

state intervention? Would there be a victory of truth to which both parties would admit? Evidence shows that clan violence would not necessarily stop as an outcome of state intervention. More importantly, the truth as truce-to-come needs *time* to unfold, and the state judiciary seems to be bargaining precisely on the time factor, hence the long unexplainable delays in some instances. The delays are probably even more palpable in a small rural community like Idlib than a major city like Aleppo.

Back to court hierarchies. At the top level, Syria has three higher courts whose jurisdiction is outside the *Qaṣr al-ʿadl:* a five-member administrative supreme court, *al-maḥkama al-idāriyya al-ʿulyā,* whose main function is to bring the Syrian President (who himself appoints the Court) to trial whenever necessary; another court, known as *maḥkamat majlis al-dawla,* looks on the legality of all newly promulgated laws and statutes, and operates at two levels: (1) the administrative *qaḍāʾ al-idārī,* and (2) *maḥkamat majlis al-dawla.* Finally, there is the notorious *maḥkamat al-amn al-qawmī,* which supervises crimes related to the security of the state (*amn al-dawla*), and whose proceedings should in principle be open to the general public.

All these courts, which are the equivalent of the French *Conseil d'État* and the *Conseil constitutionel,* supervise litigations related to the state and its institutions, but since they remain state controlled, it is hard to imagine any shake up of administrative procedures emanating from these courts; and, in the absence of detailed empirical studies, it is not clear in what direction the core of the system—that is, the upper and lower civil courts—impacts society.

This is not good enough to stay

When the first Syrian modern penal code was published in the official *Jarīda Rasmiyya* on July 1949, it was meant to replace the archaic Ottoman penal code of 1920, which in turn was based on the 1858 qānūnnāme,[21] and in that respect the promulgation of the new code, in conjunction with a modern civil code, turned out quite successful: not only do the Ottoman penal and civil codes (as embodied in the 1877 Majalla[22]) now look obsolete, they have become a source of inspiration only for historians. The success of the new Syrian 1949 codes is not that hard to decipher: composed of numbered itemized articles of French inspiration, and Arabized via the labor of Egyptian and Lebanese legists, they do fit well within the spirit of modernity, that is, of texts that are perfectly legible

21. Gabriel Baer, "The Transition from Traditional to Western Criminal Law in Turkey and Egypt," *Studia Islamica,* 45(1977), 139–158.

22. Considered as the Ottoman civil code, and which was based on the Ḥanafī law of contracts.

and accessible for the cohorts of students, lawyers and judges. Since then, the 1949 penal code has received a total of 15 amendments, but its spirit remains nonetheless the same in spite of the coming of the Baath to power in 1963: criminality is deeply rooted in the mores of society, hence remains unaffected by political upheavals.

Asʿad Gorānī, the father of the modern civil and penal codes, was then the minister of justice under the brief six-month military interlude of Ḥusnī al-Zaʿīm, a Kurdish officer who ventured in the first coup d'état in Syrian history. In his introduction to the 1949 penal code,[23] Gorānī notes the ineptitudes of the 1858 Ottoman qānūnnāme, which he disparages, as "not good enough to stay," as it would only fit "to protect a monarchic despotic régime." Gorānī contends that the Ottoman code lacked many of the elements related to the protection of the individual and the family, which would enable rooting a nation (*umma*) in a polity, economy, and society, weaknesses which pushed the Ottoman state (and later, the mandate) to append laws to the original texts in order to narrow the gap between old and new. Hence new laws were needed when it came to free associations and cooperatives, corporations, the printing press, intellectual property, and forfeiting, all of which had to be dealt with in conjunction with penal matters. The need to draft new codes from scratch was therefore encountered by all emerging nation-states, which proliferated amid the dismemberment of the Ottoman Empire; Syria was among the last to rely on its obsolete Ottoman laws.

When Gorānī was studying law at the Syrian University (aka the University of Damascus) in the first decade of the French mandate, he jokingly notes in his posthumous *Memoirs* that their professor in penal law, Fāyez al-Khūrī, hardly mentioned in his seminar the 1858 Ottoman qānūnnāme (which he may not have even mastered), relying instead on translations of the French *Code pénal* that he did himself, to the point that had the Ottoman qānūnnāme not been an adaptation form French codes in the first place, "we would all have graduated from the law school with no knowledge of the laws in our country."[24] Such distance from Ottoman law could indeed have been a consequence of the "mixed tribunals," which became the norm in Syria during the mandate. A mixed tribunal would be headed by a French judge, with two Syrian judges sitting on his side; the prosecutor general and investigating judge would also both be French.[25] In his *Memoirs,* published in Beirut, Gorānī devotes a small incisive chapter on "the legislative renaissance (*al-nahḍa al-tashriʿiyya*)," where he portrays his place in history as a major jurist in the brief reign of Ḥusnī al-Zaʿīm (whom he very

23. *Qānūn al-ʿUqūbāt,* 6–12.

24. Asʿad Gorānī, *Dhukriyyāt wa-khawāṭir*, Beirut: Riyad El-Rayyes Books, 2000, 79.

25. Gorānī, *Dhukriyyāt,* 92.

much despised) as well guarded; an honor that would have been unthinkable were it not for the fact that the Ottoman Majalla (known as the Ḥanafī civil code) "was dead on arrival," as it was practically useless after all the codes that the Ottomans did promulgate in the years preceding the Majalla, and which in turn were adaptations from Napoleonic codes.[26] Such rapaciousness indicates that during the mandate jurists, lawyers and judges were already operating in a world where the Ottoman codes had less and less impact, even though the new codes would only become operative in 1949. What was already obsolete in the Ottoman legal codes, however, was an absence of the notion of the individual subject (actor) who was juridically and morally responsible, and who would stand trial on this basis. Thus, for example, the 1858 Ottoman penal law was constructed on the polarity of crime and punishment, while the modern codes, which represent an important evolution in this respect, began to operate with a triangular notion of crime: the crime, the punishment and the criminal:[27] a case of *démence* would make the criminal a person unfit for trial; the causes and rationality of crime, which were attributed to an acting subject with a moral conscience, all became important in construing the rationality of crime prior to an indictment. Moreover, uncertainty, doubt, legitimate self-defense, justification, and mitigating circumstances were not present in the Ottoman code, but only became predominant in the new ones, giving the latter an "element of safety (*mesure de sûreté*)" that the former lacked.

Nor is such view of the law only limited to jurists like Gorānī. When Syria's most prominent politician Akram Ḥourānī was studying law at Damascus University in the mid-1930s, he was struck, from what he revealed in his posthumously-published memoirs, with the degree of "backwardness" (*takhalluf*) of his professors who were still reasoning within the tropes of the Ottoman Majalla (1877), which rivaled the civil code in some of its rules. Thus, even though at the time the "civil code" was not there yet, Ḥourānī seems to be alluding to fragmented Arabic and French texts, common to students and lawyers, which de facto stood as the "civil code." Ḥourānī detected an "obsoleteness" in the very reasoning of the Majalla, as it became "incongruent" with the mores and practices of the time, which were an outcome of the end of the sultanate and the Mandate:

> The history that the Majalla had operated with is gone and passed. That some people still think that its judgments would be operative in the twentieth century is what pushes to amazement and bewilderment. The truth is that social and economic relations are on one side, while the rulings of the Majalla are in an entirely different world.

26. Gorānī, *Dhukriyyāt,* 220; idem, "Marāḥil waḍʿ al-qānūn al-madanī," in *Muḥāḍarāt naqābat al-muḥāmīn fi Ḥalab fi-l-sana al-qaḍāʾiyya 1949–1950,* Aleppo, n.d., 107–28.

27. Elie J. Boustany, ed., *Code pénal*, Beirut: Librairies Antoine, 1983, 25.

> The changing of the social and economic relations would have certainly required a change in legal notions and concepts, in addition to the foundations (*uṣūl*) of law. Only the 'general rules' (*al-qawāʿid al-kulliya*)[28] still stand out. However, Turkish laws, which were developed from French sources at the time of the Sultans, have become by and large obsolete. Thus, it won't help that the French Directorate would from time to time offer modifications and amendments to the Ottoman codes, which invariably come as dispersed incoherent fragments.[29]

Here Ḥourānī seems in complete congruence with his colleague Gorānī, whose memoirs include a facsimile letter addressed to him by only ʿAbdul-Razzāq Sanhūrī, the most influential Arab jurist of his time, dated 11 June 1949, in which he congratulated his Syrian colleague for completing such "great task in few weeks," disingenuously forgetting that such great codes were replicated from the Egyptians in the first place, even though, Sanhūrī hastens to note, the two codes are "like twins." In his concluding note, Sanhūrī wits that "there's still the matter of the Islamic sharīʿa. I think that the new [1949] civil law addresses it. The study of the Islamic fiqh has become mainstream in comparative law, in particular after the promulgation of the new civil law. I'll get back to you to this crucial matter on another occasion."[30] Gorānī was not, however, minister of justice anymore in 1953 when the personal status code was finally published under the third dictatorship of Adīb Shishaklī. Nor was the Islamic sharīʿa central to the code, as each one of the officially recognized seventeen *millet*s had *grosso modo* their personal status ethos legitimized under a broader umbrella of secular articles, albeit the Christians had to abide by the sharīʿa rules of inheritance (a major difference with neighboring Lebanon).

Gorānī points to the fact that the new penal code owes a lot to its Lebanese counterpart, which was a clear source of inspiration. For some reason, Gorānī ignores the Egyptian inspiration and the French roots of most Arab codes, not to mention the preponderant role of the Egyptian legist ʿAbdul-Razzāq Sanhūrī in the transition from a sharīʿa to a civil law system. There is, however, a clear gratitude towards neighboring Lebanon in Gorānī's introduction to the 1949 edition of the penal code, pointing to "the high level of craftsmanship, syntax and organization" in the Lebanese codes, and to the fact that Lebanon and Syria enjoy "common open borders without customs," and common mores between their people, which makes it even more "normal" to share similarities between their penal codes. Looked at with a distance of over six decades, Gorānī's introduction strikes with its optimism, at a time when both Syria and Lebanon owed a lot to

28. On the "general rules" of the Ḥanafīs, see, Ghazzal, *Grammars,* Chapter 1.

29. *Mudhakkarāt Akram al-Ḥourānī,* Cairo: Maktabat Madbūlī, 2000, 1:122.

30. The Syrian personal status code, based on the Ḥanafī sharīʿa, came four years later, in 1953, under the military rule of Adīb Shishaklī, the third coup in Syrian history.

their post-Ottoman élites, and to the pan-"Arabism"-without-borders that the latter fostered. The dissimilarities in deeply rooted mores were probably greater than Gorānī could have anticipated: Lebanon had outlawed honor killings since the 1950s, and made them on a par with homicides, while Syria is still struggling with the issue and has a long way to go (Chapter 6). More importantly, Lebanon keeps a log of all its civil and criminal dossiers, hence the "recycling" to which the Syrians subject their bureaucratic paperwork is practically absent in Lebanon; and the Lebanese free press routinely carries news items on crime, with at times the complete text of the verdict.

The crux of Gorānī's introduction is his digressions on the analytical tools of the new penal code, namely, that legists made the right choice arranging different legal philosophies and schools of thought. To begin with, there is what he labels as the "traditional school," which portrays man as the agent of his free will, hence responsible and punishable for his acts. What the new code has absorbed from this school is the meaning of "moral responsibility (*al-masʾūliyya al-maʿnawiyya*)" in a criminal act, primarily when it comes to "intent (*niyya*)," specifically, articles 187ff on intent; articles 191ff on motive (*dāfiʿ*); and the distinction between ordinary and political crimes, with specific codes devoted to the latter (195ff), all of which address "responsibility." Such a school has also shaped the way a punishment could be mitigated or reinforced (239ff), in relation to the moral responsibility of the criminal. In sum, there is an aspect of criminal law that looks upon the *invisible* elements in the criminal's psyche, even though it would maintain that intent and motive ought to be objectively deciphered; but this is an aspect of the law that has increasingly meant scrutinizing for motives and the intermingling of the medical with the legal (see *infra* the section on the medicalization of the legal, the notion of the judge–doctor, and Chapter 3), probably much more than what Gorānī could have anticipated.

The other school of thought that Gorānī tackles is the "positivist," which frees the doer from any free will, narrowing his actions to so-called physiological and economic conditions, perceiving contractual settlements as a way of protection, while criminal acts are scientifically investigated, with no concern for moral responsibility. Here Gorānī cites articles whose purpose is to "defend society" from "ordinary criminals; or people with mental illnesses; or with unnatural desires,[31] or from those who pose a risk for society." Such articles would play as axioms of *tadābīr iḥtirāziyya,* preemptive measures whose sole purpose would be to protect society from an imminent danger which is rooted in the actions of

31. Implying probably homosexuals, though no article of the code cites them by name. Article 520 only points to "acts against nature," which leaves a broad spectrum between incest, promiscuity, adultery, homosexuality, sex with minors or with animals; article 539 prohibits helping others to commit suicide.

particular individuals, which implies "limiting freedom" in some areas and actions; for example, the prohibition to carry arms or to attend places that serve alcoholic beverages (70ff); or forcing suspicious individuals to be treated or incarcerated, whenever necessary; or prohibiting the right to drop custody or guardianship; or closing down a space or arresting its owner in case of illegal activity; or the protection of minors and orphans, by placing them in special institutions in case they have no families of their own. All such closes are, of course, not carried through across the board, but only under certain circumstances whenever necessary. The positivist track also manifests its influence in the legal assessment of the crime (*al-waṣf al-qānūnī*), which, pursuant to article 179, "would not change even if the punishment is mitigated under extenuating circumstances." More importantly, such legal measures of "limiting freedom for the sake of public order," Gorānī rightly notes, were unknown to the old Ottoman order, hence are part of the techniques of the modern nation-states; what Michel Foucault dubbed as *il faut défendre la société,*[32] society must be defended, a motto that comes to birth in the nineteenth-century Enlightenment, on the eve of the transition from the classical age to modernity (more on that later).[33]

The difference between Ottoman law and the modern codes shows best in this "moral" stance, which comes from the traditionalist school. Thus, the 1949 code looks at participation, instigation, and intervention as criminal for their own sake, even if the criminal act was never committed, while the Ottoman code only incriminates instigators upon the completion of the crime. In sum, notes Gorānī, there is an element of the *consciousness* of the act (which may fail to materialize)—regarding will and volition—that modern codes are sensitive to and which were not present in the old ones.

The most prominent change came in 1979 when a presidential decree, signed by then president Ḥāfiẓ al-Asad, modified a number of articles related to sexual mores. Thus, articles 489–520 were modified with a much tougher stance on promiscuity, pederasty, incest, adultery, physical violence, sex with minors, and all "unnatural sex" (article 520). However, as the following section will detail, the major changes would not become manifest in the codes themselves, as much as in the after-effects of the "socialization" of the economy under the Baath, which de facto led to the criminalization of all kind of mundane economic practices.

32. Michel Foucault, *"Il faut défendre la société." Cours au Collège de France, 1976,* Paris: Hautes Études–Gallimard–Seuil, 1997.

33. Articles 285ff prohibit encouraging others to turn against the nation-state and its symbols, and to mock "the national feeling."

Criminalizing the economy

It is a common assumption to place 1949 as a foundational date for modern Syrian law, since it was during the four and a half months of the Ḥusnī al-Zaʿīm era (April–August 1949) that the core of the civil and penal codes were promulgated. If we accept 1949 as the key foundational date, other junctures in Syrian history, such as the military coups in 1949–53, the union with Egypt in 1958–61, and the Baath Party's seizure of power in 1963, all of which were politically decisive but had little impact on the legal system and the practices of the judiciary per se, would look pretty much insignificant, so little has changed in the structure, form, and content of the laws that were implemented in 1949.

Only in the 1970s and 1980s, however, once president Ḥāfiẓ al-Asad consolidated his power under the so-called "corrective movement" of the second Baath, did few legal transformations that impacted the status of private property come into effect, imposing a de facto threat to the "spirit" of the 1949 codes, as Gorānī proudly portrayed them. But even such changes were more like piecemeal "amendments" to civil law than ones that altered its foundational structures. What is strange, however, is that the major political upheavals that had tremendous political repercussions nonetheless left the legal system almost intact; while deeply-seated alterations would only reveal themselves in "marginal" "economic" codes, parliamentary legislations, and presidential decrees.

Let us begin with a brief survey of the main laws that were passed since the 1970s.[34] These have been dubbed as "economic laws" (*qawānīn iqtiṣādiyya*) which *de facto* or *de jure* would *criminalize* certain economic practices. Prior to 1966, there was only one "economic law" that would serve to regulate the circulation of currencies between Syria and the outside world, which was originally introduced in 1952, and which also organized a bureau for currency exchange. The rest was supposed to be regulated by the 1949 civil code itself. Between 1966 and 1986, however, four new crucial laws were promulgated: the Law of Economic Penalties (*qānūn al-ʿuqūbāt al-iqtiṣādiyya*) (1966), the Law of Contraband Repression (*qānūn qamʿ al-tahrīb*) (1974), the Law Organizing the Tribunals of Economic Safety (*qānūn iḥdāth maḥākim al-amn al-iqtiṣādī*) (1977), and the Law of Penalties against the Contraband of the Syrian Currency and Other Foreign Currencies and Precious Metals (*qānūn ʿuqūbāt tahrīb al-ʿumla al-sūriyya wal-ʿumūlāt al-ajnabiyya wal-maʿādin al-thamīna*) (1986).

How can we explain the proliferation of such laws, and what is their legal significance? Did such laws, which left the civil code for the most part unaltered

34. Syrian Arab Republic, *Majmūʿat al-qawānīn al-iqtiṣādiyya,* Damascus: Muʾassasat al-Nuri, 2003.

since the 1958 abrogation of articles related to the freedom to associate, indirectly mitigate the "civil"—or "private"—aspect of the law by relegating private transactions to the authority of the state? As Alan Watson argued in his pioneering studies on civil law systems, the institutional civil law tradition can be described as unnatural, considering that natural law codes stress the importance of the state for human society, hence portray the state as regulating human affairs.[35] Modern Syrian law, therefore, even though fully rooted in the civil (unnatural) tradition, has nonetheless shifted into guaranteeing the state a natural presence in the management of human affairs, reducing the importance of voluntary associations and private contracts, while giving priority to state projects that would ultimately benefit the "public good." The state is therefore the primary agency that brings forth "social cohesion" through control of the movement of privately triggered contractual settlements.

Reading the Syrian codes in conjunction with actual court settlements would soon turn into a macabre exercise of documenting individuals accused of favoring their own interests over those of the collectivity. Such case histories would present traps for those same users, who simply thought that they were following procedures and doing the right thing. To elaborate, once the state posits itself as a natural agency for the protection of society, users are trapped into a judicial system that in principle favors private civil settlements, on the one hand, while a poorly formulated political collectivism predominates, as it remains more ideological than legal, while also being inconsistent with the private spirit that the civil law upholds on the other.

35. Alan Watson, *The Making of the Civil Law,* Cambridge, Mass. 1981, 115: "The basic structure of the *Code civil* is that of the institutional tradition; and it can even be described as unnatural. Thus, unlike the *Code civil,* natural law codes stress the importance of the state for human society and emphasize the legal relationship between the individual and the state. Other emissions from the *Code* are inexplicable on any notion of a law of reason. The most striking of these omissions is commercial law, which became the object of its own code, the *Code de commerce,* which came into effect on January 1, 1808. On any normal understanding, commercial law is a part of private law, the law between citizens. And the incorporation of commercial law into the *Code civil* would have been particularly easy, given the existence of what was in effect a code of commercial law in Colbert's ordinance for mercantile law. Moreover, the hostility of the revolutionaries to the commercial class ought logically to have brought about the disappearance of any separate commercial law and the incorporation of rules appropriate to all transactions and classes of the people in the *Code civil*. The explanation for the omission of commercial law from the code is simply that commercial law was not thought of as "civil law," and the explanation for that is that commercial law formed its own distinct legal tradition, had no obvious forerunners to which it could be attached in Roman law, and above all was not to be found in Justinian's *Institutes* and hence not in the institutes of French law. The same explanation applies to the same omission from the Austrian *ABGB* [civil code] and the German *BGB*."

Such collectivism is clearly visible in the texts of the economic laws promulgated in the two decades after 1966. These texts, which are quite short—ten pages on average—show how "economic rules" were crafted in parallel to the civil code. But whereas the civil, commercial, and penal codes follow long-standing Roman and French traditions, the collectivist "economic norms" are an amalgam of political and ideological constructions without the concomitant legal procedures. Users are therefore incessantly trapped between the "privacy" of their own transactions and the ideological collectivism of the Baathist state.

Since collectivism is a populist ideological construction with no clearly defined legal norms, the economic laws of the 1966–86 period tend to "criminalize" private transactions which allegedly "resist the socialist order." Thus, instead of a tort law, to which civil transactions would be subjugated, the patchwork of economic laws either openly or de facto criminalizes transactions whose intention is to resist the socialist "economic" order. For example, the first article of the 1966 Law of Economic Penalties defines a new notion of "public goods" (*al-amwāl al-ʿāmma*), which, besides movable and immovable state properties, includes ones belonging both to the "cooperative associations" (*al-jamʿiyyāt al-taʿāwuniyya*) and to syndicates and "popular organizations" (*al-munaẓẓamāt al-shaʿbiyya*). The second article specifies that even the institutions of the Baath Party are part of the "public good," even though an authorization from the secretary general is required to proceed with an investigation. The second chapter of the same code identifies "major crimes" and their respective penalties, which vary from five- to fifteen-year prison terms with hard labor, with a particular attention on robberies, illegal transactions involving state-owned properties, or illegal contracts to promote individual interests. Article 9 goes even further by taking aim against those who have "voluntarily" contributed in "lowering production" (*takhfīḍ al-intāj*), for instance, by providing crucial information to a third party. Article 15 provides penalties extending from one to three years of incarceration against all those who have "resisted the socialist order" (*muqāwamat al-niẓām al-ishtirākī*).

From 1966 to 1977, criminal courts (*jināyāt*) in the provinces were responsible for adjudicating "economic crimes," while the regular criminal courts proceeded with business as usual—burglaries, embezzlement, larceny, incest and rape, assaults on individuals and property, homicides, and so on. However, in 1977 a new statute instituted "tribunals of economic safety" (*maḥākim al-amn al-iqtiṣādī*) in Damascus, Aleppo, and Ḥimṣ, which were presided over by their own judges, and principally adjudicated on the basis of the 1966 law, and which were only abolished by a presidential decree in 2004. Still, the 1966 law remains by and large valid, and continues under the jurisdiction of the regular penal and criminal courts.

This novel culture of "economic crimes" reaches its full impetus once users are caught up in the labyrinth of the legal system between their civil rights (as

formulated by the civil code) and collectivist, statist *dirigiste* demands that come in rudimentary "economic" formulas. An examination of three concrete cases is helpful at this stage. The intention is not to illustrate how the codes work—since code writing is a practice on its own, *for its own sake,* hence stands autonomously vis-à-vis the practices of the courts—but rather to understand the language of users, and how they document their own cases.

[C1–1][36] Consider the case of the merchant Muḥammad Khayr, a member of the Damascus chamber of commerce, whose commercial work required transferring capital between Syria and Egypt.[37] Since he was conducting business in Alexandria, the transfer of goods had to follow the regulations of both countries, which in essence implied following a "parity" rule in terms of imports and exports. Moreover, every authorization for import or export had to be conducted within a short, pre-approved time frame. In this instance, his request to export food products to Egypt received approval from the Syrian central bank with the proviso that it be completed within six months, between July 1972 and January 1973.

At the time, both Syria and Egypt were following strict regulations on the export and import of commodities and the flow of hard currencies. Moreover, as the protection of the local currency comes in conjunction with limitations on the goods that can be exported or imported, merchants typically find themselves operating under regulations that severely limit their ability to compete, in particular with traders who are well-connected to the political establishment. In some instances, such controlled transactions turn into a legal imbroglio.

In the case of Muḥammad Khayr, the inferno began when by martial order (*amr ʿurfī*) on October 1972, three months prior to the export deadline, all of his private and public banking capital was confiscated, which prevented him from completing his obligation to export within the original framework set by the central bank. But it was only in March 1974, fourteen months after the export deadline had expired, that the bureau of hard currencies (*maktab al-quṭaʿ*) issued a seizure (*dabṭ*) order, accusing him of carrying out illegal transactions in hard currencies, trafficking in foreign currencies, and harming the national currency by receiving transmittances (*qabḍ ḥawwālāt*) that originated in Egypt at prices equivalent to those of the central bank. In short, our merchant was accused of transferring money between two countries without fulfilling his promise to export the commodities in the first place, as well as failing to "dump those

36. All cases are numbered by Chapter; see *supra* the Table of Cases.

37. This case and the following one (C1–2) are summarized and commented in Muḥammad Fahr Shuqfeh*, Qaḍāyā wa-abḥāth qānūniyya,* Damascus, 1997; all quotations are from this source.

commodities in the consumerist Egyptian market," while damaging the Syrian economy by an estimated 3,457,580 Syrian pounds ($70,000). Moreover, he was accused of sending the funds that he had received from Egypt to Lebanon, thereby using Lebanon as "neutral territory" for "money laundering."

As the case dragged on, not much evidence was furnished that would have identified our merchant as an abuser of Syrian and Egyptian bureaucratic procedures in order to exchange commodities (including currencies) at better prices than the officially imposed ones. The defense construed its case on two main weaknesses in the public prosecution's argument: first, the accused was not able to complete his transaction within the time frame set by the central bank, considering that the martial order only came three months before the deadline; second, the very legality of the martial order was questioned on the grounds that the defendant did not represent a "national danger" per se.

The seizure request from the currency bureau was expedited by the attorney general in Damascus, who in turn passed it to the investigating judge. In the meantime, a second martial order came through in January 1980, transferring the dossier back to its point of departure, the investigating judge in Damascus. But even though the judge argued that there was a lack of evidence against the defendant, the prosecutor nonetheless appealed the case to the tribunal of economic security in Damascus, which in November 1982 rejected the appeal regarding the charge of trafficking in public currencies. Since the tribunal's decision was irrevocable, the dossier was transmitted to the court of first instance in Damascus, which concluded in March 1988 that the defendant was not guilty on all counts. The tribunal even noted the illogical nature of the court martial order. The case then went through an array of further appeals, but it was only in March 1991 that an upper administrative tribunal finally acknowledged that "the martial order went beyond its initial legislative intention, considering that evidence was not furnished on the real dangers that the alleged illegal trafficking of hard currencies by the defendant would have caused to national security." In December 1991, the same tribunal made the crucial point that the supervision of civil cases that touch upon "the security of the state" should fall within its own jurisdiction, since only administrative law can determine whether the procedures are correctly followed by the various martial administrations. The case was permanently sealed in December 1992, twenty years after the court martial order was initially issued, in conjunction with a final ruling which acknowledged that the martial order judgment was null and void.

The issue here is not whether a country has the right to impose strict rules and regulations on the flow of currencies and commodities across its borders, even though in the Syrian case the rules have been so tight and opaque as to bring commercial exchange to a crawl. What is significant is how a banal case of currency exchange, which at first involved the export of food commodities

on small scale to Egypt, a country with which Damascus enjoyed friendly relations, crystallized into a state security matter and took two decades for a final verdict to unfold. Moreover, as various economic laws proliferated in the 1970s and 1980s, even more tribunals were created specifically to handle such laws, creating confusion among texts and jurisdictions. The outcome is that the spirit of the 1949 civil code, which, as Gorānī argued, protected individual freedoms of exchange and association, has been totally marginalized in favor of a blunt statism which is more ideological than legal.

From the security of the state to the well-being of the collective, the judiciary finds itself enmeshed in disputes whose legal aspects remain poorly defined. In other words, there is always a vague territory, situated at the margins of civil law, in which users find themselves suddenly entangled. Thus a small fraud can turn into an accusation of "harming socialist production," or a minor currency exchange into a state security concern. More important, property confiscations are caught between the rules of civil law, which in principle protect private property, and those connected to the public good, based on statutes and regulations promulgated during the massive expansion of the state since the 1970s.

If the target of state intervention is movable and immovable properties, it is because the state presents itself as the natural guarantor of civil rights, placing political priorities over civil ones for the survival of collectivity. Although the 1949 civil code places strong emphasis on the personal side (*ḥaqq shakhṣī*) of transactions conducted by autonomous individuals, such rights have become marginalized as a result of ever increasing statist natural rights, as if private transactions have become a threat to the existence of the state.

The biggest obstacle to private property rights came in 1958, in the first year of the Union with Egypt, when the authorities permitted municipalities to expropriate (*istimlāk*) as much landed property as they needed, whether private or religiously endowed (*waqf*), in order to promote public housing. Since then, each city has adopted an "organizational plan" (*mukhaṭṭaṭ tanẓīmī*) which delineates a perimeter around the city, outside of which construction is forbidden. As rural zones are integrated into the plan, municipalities have confiscated newly incorporated properties for the purpose of transforming them into public projects. This politics of expropriation was generalized in Law 60 of 1979 (which is often wrongly described as the Law of Confiscation), Decree Number 20 of 1983, and Law 26 of 2000 (which is a revision of Law 60 of 1979), all of which produce a complex mix of procedures for expropriations, appeals, and refunds. In a nutshell, such laws and regulations induce in the property system a parallel set of constraints to the ones present in commodity transactions, with the state acting as the natural protector of eminent domain. Furthermore, as private property became the victim of the

consolidation of state control over movable and immovable property, users had to find ways around normal channels of property transfer, whether within the family or with outsiders. Hence it has become common for people to be caught in judicial imbroglios whenever they transfer properties. Add to this the situation of millions of properties in poor neighborhoods which for the most part lack proper registration, but are nevertheless routinely transferred through legally devised procedures formulated by the concerned users themselves.[38]

In the 1970s, the heyday of Ḥāfiẓ al-Asad's "corrective movement," limitations were imposed on the transfer of property, in particular Law 3 of 1976 which formally prohibits the so-called "double sale" of non-built urban properties from one proprietor to another. In other words, one buyer cannot in principle sell to another buyer, unless there is a commitment to use the property for some sort of residential or manufacturing project. The purpose of the law was, in a period when the price of urban properties was skyrocketing and there was a lack of genuine investment possibilities in both the financial and manufacturing sectors, to reduce speculative investment that would have pushed prices even higher. Moreover, the law appeared in parallel with other restrictive statutes and decrees, such as various zoning regulations, confiscation procedures, and restrictions imposed on dividing large family properties (including the common-ownership *shuyūʿ* landholdings) among individual users.

[C1–2] Let us consider the case of a certain Nadhīr, who in February 1982 filed a lawsuit against the mayor of Damascus. The mayor had allegedly authorized Nadhir to proceed with construction on his own land, with the proviso that Nadhir would cede (*tanāzala*) a portion of his property for the sake of safeguarding the "collective properties" (*al-amlāk al-ʿāmma*). The plaintiff claimed that the transfer (*farāgh*) of a portion of his property did in effect take place, but did so against his will; he therefore proceeded with a contract with the mayor only after appending his reservations on the contract sheet itself. In the suit, Nadhir recapitulated such reservations and demanded a refund for the lost part of the property. The mayor claimed that Article 773 of the civil code warns proprietors that, notwithstanding their right to privacy and the safety of their properties, they should nevertheless take into consideration the laws and decrees that would protect the common good (*al-maṣlaḥa al-ʿāmma*). And the mayor referred in his own defense to Article 12 of Decision 350 of 1978 regarding the regulation of the Damascus habitat, which states that "whenever

38. Zouhair Ghazzal, "Shared Social and Juridical Meanings as Observed in an Aleppo 'Marginal' Neighborhood," in Myriam Ababsa, Baudouin Dupret, Eric Denis, eds., *Public Housing and Urban Land Tenure in the Middle East,* Cairo: American University of Cairo Press, 2012, 169–202.

the ongoing plan, at the moment of the construction application, demands that part of the property be annexed to another private or public properties, then the permit will only be granted once the part to be annexed has been properly assessed and received full payment." In sum, a gratuitous concession (*tanāzul majjānī*) over a portion of a property, made in order to receive a construction permit over the non-conceded part, does not authorize the owner to recoup later the price of the property which had already been conceded for the public good.

In February 1983, the tribunal of first instance revoked (*radd*) the suit: "The Cassation Naqḍ Court had already reasoned [upon the examination of a precedent dossier] that once the plaintiff had conceded part of his property for the public good in order to obtain a construction permit, such a practice is acceptable and legal, and would not be looked upon as acting under duress (*ikrāh*), considering that the plaintiff would have received in exchange his construction permit. In other words, as long as there is a shared 'common interest,' it would make no difference whether the plaintiff stated any reservations or not [when drafting the contract], since the concession took place legally."

In a decade-long succession of replies and counter-replies, what stands out is indeed the notion of constraint (*ikrāh*), for the simple reason that the court differentiated between a violation against a personal right, on one hand, and the willful act of exchange within an administrative procedure for the sake of receiving a construction permit, on the other. Thus, even the reservations that were appended to the original contract were an indication that the plaintiff was aware of the concessions that had been proposed to him. In the final analysis, it was the notion of constraint that predominated, and the plaintiff received a positive verdict in February 1991 from an appellate tribunal in Damascus, which compensated him 1,215,000 pounds ($24,000 at the time) for the illegally exchanged property.

One thing seems clear: the original spirit of the 1949 legal code has been irreversibly betrayed, even though the text itself stands intact. Syrian citizens have lost a great deal of their civil liberties not simply in the political arena, but also with regard to the right to exchange and associate freely, as originally devised by the civil code.

Bailouts of so-called credit collectors

It is not that easy to start a big business in Syria. To begin with, whenever capital is available it could be marred with problems of legality or transfer from one place to another: moving it, for instance, from an undeclared (hence illegal) savings account in Lebanon or Europe to one in Syria. The legal and bureaucratic

hurdles for starting new businesses are so complex and slow that one would easily give up. More importantly, however, are questions related to the *circulation* of capital itself as capital: for example, capital invested in property in order to circulate must first be exchanged with something else—from capital that lies dormant to one that would be invested in a project and expected to generate profit. In short, with lots of capital invested mainly in real estate, its immediate "availability" for manufacturing and financial projects would prove impractical in most instances. Moreover, as Syria is handicapped with governmental failed policies and obscure property rights, not to mention an "appropriation" by the state of private property, such insecurities would typically push average investors at maintaining their properties rather than selling them and investing in some risky project. The problem, however, is the lack of proper conduits for investment. In the absence of a stock market, public holdings, safe financial institutions, and thriving manufacturing industries, where would capital go in order to grow at an acceptable pace? If the majority of Syrians find it safe to invest in property, it is because property is a safe bet, one that minimizes risk-taking, and that would not involve working with partners or conducting a serious business. Moreover, such investments are sluggish in the sense that even when prices pick up, they do so very slowly, generating profit only over long durations when compared to the brisk nature of manufacturing investments.

For such reasons, the state has added in the last couple decades close to 20 laws and regulations to promote local, Arab, and foreign investments, without, however, addressing the real concrete issues that have marred entrepreneurism in the first place. For the period that concerns us here—the 1990s and later—it was undeniably Investment Law 10 in 1991 that would usher a new era, providing a conduit for private transportation and manufacturing to prosper. Coming right after the collapse of the former Soviet Union and its Eastern Bloc, Syria saw itself all of a sudden cut off from its traditional benefactors, with both state and society hungry for capital. But while Investment Law 10 "encouraged" venture capital, it left in the dark the means for attaining it, in particular the availability of safe credit and viable banking institutions,[39] not to mention the free exchange of hard currencies, considering that exchange at street price outside the official rates is still illegal. As it is illegal to open bank accounts outside Syria, whether declared or undeclared, one is left with whatever home banking provides, with all kinds of illegal means that would sustain ambitious (and secure) operations.

Moreover, the collapse of the Eastern Bloc rejuvenated—at least for a brief period—some of the small to medium textile industries in Syria, as many such industries in the ex-Communist Bloc collapsed as soon as the state pulled its subsidies. People in Eastern Europe and in the ex-Soviet republics, now free

39. Private banking was only legalized in 2004–05.

to trade, were looking for new and cheap commodities, in particular styles and tastes that were unavailable under communism. A region like Aleppo, with its strong contingent of Armenians, Christians, and Kurds, and its closeness to the Turkish border, served as a conduit for eastern Europeans hungry for fresh tastes at low prices.

During the 1990s, the *dirigiste* Syrian state witnessed the collapse of its "socialist" (which is "democracy" in the Baathist jargon) ideology as a universal utopia that would bring fairness and equality to the nation. Instead of projects of collective emancipation, based in part on the agrarian reforms, policies of expropriation, education for all, and projects in the "marginal" areas of the country with higher poverty rates, what succeeded most were a combination of plutocratic and criminal insurgents who did well at benefiting from the failures of the state and its inability to address mounting economic problems. Such plutocrats, whose numbers have soared since the second Asad came to power in 2000, want the state to remain intact except insofar as it impinges on them. Indeed, as the socialist state has failed to realize its promises, it relied on the services of plutocrats which managed to survive through a kaleidoscopic array of *de facto* and even *de jure* micro-sovereignties.[40]

[C1–3] It was in this context that the rise of the infamous Muḥammad Kallās, his tragic fall, and alleged bankruptcy dominated Aleppo's economic (and criminal) landscape in the 1990s. With a local economy that had temporarily rejuvenated thanks to the collapse of the former Soviet economies, small to medium manufacturers had some cash flowing in. Manufacturing spaces were created, as they were not subject to state control: in residential areas, as well as in manufacturing zones, but it did not matter much, since neither health nor labor criteria (employment of children and minors) mattered much. Manufacturers and merchants working in textiles soon realized that there was an opportunity not to be missed. But as the cash flowed in, the problem was *where* to invest it: neither the banking nor saving facilities were adequate for that purpose; nor was there an internal bond and stock market that would have absorbed some of the surplus capital.[41] Moreover, even though Lebanon provided a safe haven for Syrian investors, they would have had to be content with deposits with regular interests rates, even though higher than the international ones (in the 1990s, the various Rafiq Ḥarīrī cabinets had set rates in the 30 percent range, hoping to attract foreign capital to curb the mounting national debt aimed at reconstruction under the Pax Syriana).

40. Nils Gilman, "The Twin Insurgency," *American Interest,* IX(6), July–August 2014, 7–15.

41. According to recent reports, the deposits in 14 private and 4 public Syrian banks amounted to no more than $29 billion, losing one-third of their value amid the 2011–12 uprisings: *al-Ḥayāt,* Beirut, 3 August 2012, p. 4.

It was within such claustrophobic atmosphere with poor investment potentials and low capital circulation that someone like Muḥammad Kallās, an investor and resident of Aleppo, would make his fame—only briefly, however.[42] Kallās realized that there was capital available in the city, but for the most part it remained underexplored and unexploited. First of all, there is capital in the form of property—lots of it, in fact—but it remains frozen as dead capital, for the simple reason that proprietors often withhold their properties for long periods of time—sometimes for decades—with the illusion that prices keep going up. Moreover, properties tend to be handicapped by the widespread phenomenon of joint ownership, an offshoot of the Islamic rules of inheritance and the importance accorded to agnatic links, which renders them even more difficult to circulate competitively on the market; not to mention various state laws that place strong regulation on the sale of landed properties to limit unwanted speculation. Second, capital is kept in banks or in the safety of homes (a habit that is presumably an outcome of the general distrust in state banks), and, like property, does not circulate as fluidly as it should. Third, investment possibilities remain very limited in the absence of an open market economy, stocks and bonds, and an aggressive banking system outside the statist institutions.[43]

In the absence of proper deposit institutions, therefore, long-term mortgages, and deposits with viable long-term interest rates, are indeed rare. By the late 1980s Kallās got the idea of playing the unofficial banker. The timing was probably not accidental, as it coincided with the biggest devaluation that the Syrian Pound had witnessed since the coming of the Baath to power in the mid-1960s. In effect, even though the Syrian government has always been adamant at pegging the Pound to the dollar no matter what, avoiding floating its currency in the competitive regional and international markets, it could not avoid the deregulation of its currency in the mid-1980s amid the change in the Soviet leadership. In effect, Gorbachev and Perestroika brought to a halt Soviet funding to countries like Syria: as armaments that were shipped to Syria were not paid for directly, buttressing Soviet interests in the region, they were like long-term mortgages that the Syrians eventually reimbursed through a mixture of cash payments, exports of goods and prime materials (e.g. oil and cotton), and by granting the Soviets military and economic privileges. Pace Perestroika, the Soviet mortgage system, all of a sudden collapsed, leaving Syria with no alternative but to pay cash for its imports, whether military or otherwise. That led to a rapid decline of the Syrian pound, from 11 pounds to the dollar in

42. This account of Kallās is based on *al-Thawra,* Damascus, 22 September 2003, in addition to interviews with anonymous sources.

43. The role of private banking since 2005 has remained marginal in both deposits and loans. Deposits have marginalized even further amid the popular uprising since March 2011 which crippled the Syrian economy and weakened the lira.

the early 1980s to 50 pounds by 1990.[44] What this meant for the average user was that the old trick of leaving one's money in a bank or safely at home was an unsafe bet, amid currency fluctuations which in turn could lead to high inflation, considering the heavy reliance on imports for consumer goods (food, chemicals, textiles and electronics). To elaborate, by 1990, due to a stagnating economy at home, coupled with freezes on salaries and abrupt changes in the old communist régimes, middle class Syrians realized that most of their savings had all of a sudden been devalued. That new reality was painful in particular for those who had to transfer money abroad, either for commercial and financial purposes, or else because a son or daughter was studying abroad.

Kallās bet on such insecurities. He came to realize that, in spite of the sudden losses in the savings of individual users, and in spite of an uncompetitive and low-performing economy, there was still a lot of available capital, mainly in the form of property, if only the mechanisms for recycling it could be properly realized. Kallās already owned some successful manufacturing plants (mostly in textiles) in Aleppo's industrial zone, immovable properties, and capital in foreign banks. His problem was how to expand his already prosperous business through the incorporation of available capital from other people's contributions which were unknown to him. In other words, how do you act as a capital depositor when you're neither a bank nor a financial institution? What do you do to receive the attention of common middle class users and let them trust you?

Kallās had an ingenious idea. As lots of capital was buried in properties (lands and homes) which by and large were not circulating and were hence left as dead capital, he would "buy" such properties at prices that their owners would have a hard time refusing—but he would refrain, however, from paying the totality in cash. Instead, he would propose for the lucky owners, to whom he would propose a price far beyond expectation, to "invest" in "Kallās enterprises," a compendium of manufacturing units in conjunction with financial facilities, in return for high interest rates reaching at times the 30 to 35 percent range. For example, if Kallās buys an apartment for 2 million, he would pay a million in cash, while the rest would be invested in his enterprises for a return of 30 percent or more. An "investor" would thus feel safe receiving 30 percent or so in yearly installments for the million pounds that Kallās owes him. That way, the so-called investor (*mustathmir*) would have gotten a price for the apartment far beyond its real value and a 30 percent interest until the full price has been returned. In other words, Kallās was acting like a long-term mortgage company in a society that lacked such services: the 30 percent in this case would be in principle paid *on top* of the one million that was due in cash. Kallās would in turn sell the apartment whenever necessary to get the liquidity he badly needed for his

44. And to above 170 pounds during the uprisings in 2012 and later.

manufacturing and financial enterprises, which were the hub of his activities, and to which the exchanged properties only served as a dormant capital. But Kallās, with his reputation ever growing, soon went beyond the exchange of properties, proposing direct cash investments in his enterprises for high monthly returns, a practice which seems to have represented the bulk of his available capital. Both saved capital and property capital were now hooked into an investment cycle. In sum, capital was finally circulating in a city not used to that kind of speed—turbo-capitalism as an economic albatross.

As Syrian law poorly regulates such financial (and possibly criminal) practices, lacking the proper expertise to even proceed in case of a lawsuit, the likes of Kallās were broadly defined as "credit collectors" (*jāmiʿī amwāl*), while the ordinary users who had "invested" in such enterprises were to be identified as "depositors" (*mūdiʿīn*), or as "the depositors of the credit collectors" (*al-mūdiʿīn lida jāmiʿī al-amwāl*). The term "credit collector," however, even though not incorrect, clumsily defines what the likes of Kallās were doing, serving more as a euphemism for a complex web of manufacturing and financial activities than as a legal tool for properly defining such relationships. As Syrian law lacked proper regulations in such matters, it would have been no easy matter to even formulate whether the Kallās web of activities had anything "illegal" in them, if not criminal per se. Users—the "depositors"—would deposit a combination of cash savings and properties auctioned at prices far beyond their street value (which led to a property bubble in the early 1990s) in return for high interest rates ranging from 30 to 100 percent, or higher. Those depositors were henceforth direct investors in enterprises for which they lacked any form of control even in terms of basic decision making. Moreover, the absence of a bond and stock market made it impossible to transform such "investments" into private or public stock options, which would have presented the "investors" with opportunities to buy and sell stocks as they wished, which indirectly would have presented them with options to "participate" or exert pressure on the management board. In the final analysis, investors had little leverage on what was going on, and if a "collector" defaulted, the law would not have provided his investors with much protection, as their entire status remained uncertain whilst the nature of their investments hinged on a legal ambiguity, if not on illegal contracts.

The depositors thus managed good investments for some time, in particular between 1990 and 1994, thanks to the unusual interest rates. What spoiled the whole inflationary credit bubble, however, were the second thoughts that began to emerge by 1994: is this whole thing for real? Is it possible to generate that much profit even from manufacturing and financial enterprises that seem to be doing well?

Soon the second thoughts were to lead for bankruptcy rumors, namely that Kallās was running empty, that the cash was not there, and that once the bubble

would burst, the depositors would soon find themselves totally bankrupt. In short, Kallās was now more acting like a bank than an individual with a reputation, and, like any financial institution, whose sound financing rests more on "virtual" than "real" capital, Kallās had to prove that it was all for "real," while knowing that it all finally rested on that basic human element—trust—that is, the fact that only trust would prohibit the majority of his depositors ("shareholders") from requesting their cash back. Like any bank that lost its reputation, Kallās would have probably been unable to deliver *all* cash had the majority of his contributors asked him to do so.

When in summer 1994 long lines of depositors began forming near Kallās' offices in the vicinity of Bāb al-Faraj in downtown Aleppo, amid rumors that his enterprises lacked the necessary cash, he managed to quiet them down by refunding all the depositors that wished so. The state, realizing that the law was far behind when it came to unusual circumstances like this one, decided to intervene, and Law 8 was passed in 1994, which renders illegal to accept money from "strangers" not from one's family as "investments." The law was supposed to address that abnormal credit situation within a year of its implementation, that is, its ultimate targets were the 1995–96 years. More specifically, it was supposed to address the status of the depositors: were they investors? Shareholders? Which begged for another line of questions, namely, what was the status of the Kallās enterprises: was it an investment company? A general partnership? A private or an anonymous company?

By July 1995 it became clear, however, that there was a willingness, at least from governmental circles in Aleppo itself, to incriminate Kallās in one way or another. What remains uncertain, however, was whether such willingness had political innuendos or was meant to ease the anger of many investors in the city.[45] What became word-of-mouth knowledge was that by 1994 Kallās had amassed close to 9 billion pounds ($180 million)[46] from his thousands of depositors (possibly as many as 60,000). Even though evidence seemed in his favor, in the sense that there was no clear evidence that he did break the law, and that when Law 8 was passed in 1994 he did all what was asked of him, Kallās was nevertheless sent to prison in September 1995 and had the bulk of his properties seized and transformed into public holdings with state-appointed boards.[47]

45. There are indications that the line of investors reached far beyond Aleppo, and included Syrian expatriates in Lebanon or even middle class Lebanese.

46. Calculated at the old rate of SP50 to the dollar, the official rate prior to the 2011–13 popular uprising.

47. Thierry Boissière and Paul Anderson, "L'argent et les affaires à Alep: Succès et faillite d'un « ramasseur d'argent » dans les années 1980–2009," in Jean-Claude David and Thierry Boissière, eds., *Alep et ses territoires,* Beirut: Presses de l'Ifpo, 2014, 351–68.

What is of interest is the confusion that reigned in 1994–95, beginning with Kallās' bankruptcy rumors, to the promulgation of Law 8, and his eventual arrest the following year. What marked this period was a total confusion in terms of legal codes and procedures, unclear political motives from local governmental authorities, and pressures exerted by rumors and the "public opinion," in particular Kallās' "clients" and competitors among the "credit collectors." In effect, as Kallās' clientèle was fairly large—in the tens of thousands—he brought together small to medium investors side-by-side with larger ones in one big "investment" enterprise of a magnitude and ambition unknown to the city. Such clientèle, however, some of whom had deposited their entire savings with Kallās, must have felt restless at the bankruptcy rumors, not to mention the uncertainties that the newly passed Law 8 opened for them, and at the sight of losing their entire life savings. A great deal of harm was caused by the very nature of the closed Syrian economy, its lack of expertise in banking and finance, and a state protectionism that many Syrians have cherished but learned to distrust. The Kallās episode therefore points to a hunger for investment, the need to circulate capital, and the desire to come up with manufacturing and financial projects beyond the limits imposed by a statist economy.

We have noted that the 1970s and 1980s had witnessed a large number of laws and regulations, which even though did not directly touch on the 1949 civil code, did nevertheless contribute at aggrandizing the role of the state in the economy. More importantly, such laws and regulations only placed the state as a "natural" entity around which everything gravitated, giving precedence to the relations between individuals and the state, above the contractual relations among private individuals that the civil code dearly protects. Such a priority of the state as a natural entity, which is supposed to protect anything from social cohesion to the privacy of contracts, is what characterizes the period of 1970–1980 and later, namely, the fact that civil law does not per se give such precedence to statist relations, and that such a preference imposes itself here and there in contractual relations that are supposed to be "private" in the first place. Hence for the common users a nightmarish judicial imbroglio could easily unfold where they would suspect it the least. Where does "privacy" end, and when does the state have the right to intervene? Considering that it is the state's duty to "protect" private contractual settlements, what happens when that protection unfolds into requirements that the state imposes on its citizens for the sake of the common good? In other words, when the common good cannot be properly formulated, in terms of laws and procedures, and hangs over as a natural law with obvious political connotations, what can then the legal system do? What are judges supposed to do in such situations?

One of the accusations held against Kallās was that of "obstructing the enactment of the socialist legislations (*tuhmat ʿarqalat tanfīdh al-tashrīʿāt*

al-ishtirākiyya)." Thus, as some have been guilty, as in the preceding cases, of "obstructing the socialist economy and production," in this vein Kallās was accused of obstructing socialist legislations. Besides the vagueness of such formulations, they do not "translate" well into juridical regulations and procedures. Indeed, they play that uncanny role of master-signifier, without, however, knowing for sure what is it that they are supposed to mean. Such formulas, while providing an opportunity for the state to intervene in the privacy of contracts, are meant to buttress social cohesiveness and common belonging. From there the common user is supposed to regulate conflicting situations that may emanate from his or her own private interests and those of the state, or the common good. What remains unsettled is how the state de facto overlaps with the common good, as if the state interest is *also* that of the common good, while the bulk of properties would remain in private hands.

Even though Aleppo's criminal court convicted Kallās for 20 years in 1997 for his alleged "economic crimes," primarily for keeping undeclared offshore banking accounts and for "weakening the confidence in the national economy," he was nonetheless released in January 2006 after a Naqḍ ruling in his favor, having served less than ten years in prison.[48] The Damascus Naqḍ noted in its September 2005 ruling that considering that an anonymous corporation by the name of Anas Enterprises, composed of all the depositors that granted capital to Muḥammad Kallās in the 1990s, has been established in the wake of the 1997 ruling, and whose shareholders have all been allotted shares in the corporation equal or superior to the original value, it is against the law and unfair to require that the defendant Kallās be summoned to reimburse his shareholders in cash.[49] In the initial ruling of the Aleppo Jināyāt, the court had listed 58,000 "investors" (*mūdiʿīn*), which had deposited various sums, or "exchanged" properties, with Kallās. The original assessment amounted to 4 billion liras of deposits, in cash and properties, while the value of the properties of Anas Enterprises were estimated at 635 million above the value of the deposits, which provided Kallās with an ample maneuvering margin. But in spite of such margin, Kallās was nonetheless sent to jail until the Naqḍ ruling pointed out a decade later that it was illogical to demand Kallās to refund his "investors" *in toto,* since they already *were* "shareholders" in the company that was founded *post hoc* on his behalf. Rumors had circulated at the time that "the big heads" of Aleppo's high society, that is, the crony officials of the half-century old Baathism, which happened to have been among Kallās' largest "investors," had become restless once Kallās' shaky investment scheme had been "unofficially" exposed to the masses. They

48. *Al-Thawra,* Damascus, 5 January 2006.

49. A facsimile of the ruling is available at <syriacourt.com>.

therefore opted to unjustly drag him into court action, throw him in prison, and transform his enterprises into a corporate structure of shareholders, rather than give him time to solve his problems on his own, for instance, as manager of Anas Enterprises. The aforementioned rumors were even more explicit: between Aleppo's mayor and various intelligence officers, who were among Kallās' top investors, a deal was struck to make him disappear out of the public eye, with no better way but to send him to jail through the court system. Thus, even the late Naqḍ ruling, which liberated Kallās from his jail sentence, failed to concretely restitute him as general manager of his own enterprises.

The Kallās scandal and its aftermath was the first "big one" to have hit Aleppo in the aftermath of Investment Law 10 of 1991. In effect, even while Kallās was on trial and serving his prison sentence, other "manufacturing" families were expanding their enterprises through credit and debit systems similar to the one initiated by Kallās. Thus, for example, in the aftermath of the assassination of former Lebanese prime minister Rafiq Ḥarīrī in Beirut in February 2005, amid the nervousness that followed the Syrian withdrawal from Lebanon that same year, a textile manufacturing company known as Dayrī Enterprises proclaimed its bankruptcy. The Dayrī brothers, who had migrated from the eastern city of Dayr al-Zor and settled in Aleppo, benefited from Investment Law 10 and opened a modern textile factory in 1992 on the western entrance of the Aleppo–Damascus highway with 1,800 workers. In its high time the factory was set to produce 75 tons of fibers daily, and by the time of its declared bankruptcy in 2005–06, its total investments were estimated at 9 billion liras. What likens Kallās to the Dayrī brothers were the type of investments common to both enterprises. Such investments were rooted in two different and unrelated sources. At the upper level, the bulk of investments allegedly originated from either sitting or former public officials who had accumulated enormous capital from their years of tenure, whether they were still holding office or had retired by the time the likes of Kallās and Dayrī had opened their enterprises. Such individuals originated for the most part from outside the city and had influential public positions, which they had allegedly used for embezzlement, misappropriation of public money and properties, money laundering, receiving kickbacks from individuals who had sought their services, or by selling for cash public waqfs.[50] Among such individuals were Shaykh Doctor Muḥammad Ṣuhayb al-Shāmī (his doctorate goes back to a 3ème-cycle dissertation submitted at the Sorbonne in Paris), the

50. The selling in cash of public waqfs, in principle for the sole purpose of "exchange" (*istibdāl*), became common practice since 1960 during the ill-fated Union with Egypt, thanks to a presidential decree by president Nasser to permit such cash transactions. Needless to say, many waqf properties were illegally sold for cash without having been exchanged for anything of value.

then-director of the Aleppo waqfs; Muḥammad Muṣṭafa Miro, who was Aleppo's mayor, prior to becoming prime minister; Iyyād Ghazzāl, the then-director of Aleppo's presidential palace and head of the Syrian railway company; and Colonel Muḥammad Bakkūr, the then-director of Aleppo's air intelligence. At another level, the "credit collectors" received credit from thousands of middle class families and professionals, which were unrelated to the upper tight circle of officials.

There were other similar scenarios mixing investment with extortion which we need not get into at length, such as the textile enterprises of the Jarbūʿ brothers in Aleppo or the Bāshiyāns in Damascus. Notwithstanding differences, what nonetheless seems common to all is that urge, in societies of mismanaged dormant capitals, to "invest" in "enterprises" with risky interest rate margins far above any reasonable profitable rates. Such investments were generally set at two incompatible levels, akin in some ways to the U.S. taxation system whereby the top 5 percent of residents with the highest household incomes pay half of all federal income taxes, not because the Internal Revenue Service taxes them unfairly, but simply due the sheer volume of their incomes vis-à-vis the remaining 95 percent of producing households (50 percent pay no federal income taxes).[51] In Syria, Baathism, as exemplified in the four decades of the Asad clan rule, has not much succeeded at producing a class of millionaires whose wealth would have primarily originated from "legalized" manufacturing and financial services. Indeed, such individuals, whenever they exist, tend to come from deeply rooted Sunni or Christian families with an expertise in landowning, manufacturing, or finance and industry. They are for the most part non-political actors, even if they occasionally stand for parliament. Baathism has, on the other hand, produced a class of state kleptocrats whose high powered relations enabled them, in some instances, to mismanage and extort public funds (including state owned properties) to their own benefit, located as they were in the civil bureaucracy, the presidential palace or Republican Guard, the military or intelligence units. With the large "surpluses" that they had accumulated either during their tenure as state employees or upon retirement, by embezzling state funds and properties, such kleptocrats have favored risky investment projects of the likes of Kallās and Dayrī brothers. Thus, even though numerically they represent a tiny minority among investors, the large sums that they had deposited, which were essential for those projects to get started, have created a marginal bubble economy in a society where investments tend to be tightly controlled. The unusually high interest rates, which created a *specific* property bubble, points to major flaws in non-legalized risk-taking schemes. In such instances, high-powered crony

51. Eduardo Porter, "The Great American Tax Debate," *The New York Times,* 19 September 2012.

investors get mixed with ordinary middle class professionals whose life savings are the result of hard work, which are way below what the high-powered group has accumulated. Thus, in the case of Kallās, even though the committees that were set in the wake of the Jināyāt ruling had detected as many as 58,000 investors, most of the capital came from no more than a dozen individuals which for the most part were either state bureaucrats or former employees. Even though Kallās had stated in court that "all my patrons' investments were a liability in my neck," it was the small group of high-powered investors that gave him his start, and probably in their nervousness contributed at bringing him down, opting for a takeover of his enterprises through court action. The others were only there to diversify Kallās' portfolio of immovable properties, which led to a price bubble in particular in Aleppo's residential areas.

From this section on predatory economic crimes, what do we learn apropos the complex relationship between markets and courts? The high-powered segments of the markets were very much politicized, as they primarily relied not so much on political decision making, either the centralized one in Damascus or the local one in Aleppo, but on the "aura" of key politicized (mostly) local actors whose investments tended to be secretive, an outcome of years of extortive and fraudulent practices in public service, all, of course, in the name of the public good.[52] The fragility of a highly volatile market, based on large "illegal" investments with unusually high interest rates, turns such "economic" actors against one another whenever the rumored possibilities of bankruptcies would become public (today web-blogs play a major role). In such context, "bankruptcy" usually means an inability on the part of "credit collectors" (the likes of Kallās and the Dayrī brothers) to deliver *all* the claimed investments *at once* and in cash to each one of their so-called creditors. Thus, it is as if the whole system rests on the economic fallacy of an immediate cash recovery of the patrons' investments whenever the trust placed in the "credit collectors" would fall into disarray. Banks and other financial enterprises, however, function precisely on trust and not solely on the ability to deliver in a moment of crisis: banks and financial institutions can properly function only through their stellar reputation for sound investment, and not on the impossible claim that they can fulfill their patrons all at once whenever they decide to withdraw their credits. In the Syrian context, however, the "credit collectors," which the state never openly recognizes as such, would not receive an endorsement from the state's financial institutions whenever they

52. Over 300,000 jobs were lost in the agricultural sector in 2003–07, creating a surplus labor force which migrated to the urban areas; widespread state corruption, however, may have hampered the absorption of such surplus labor in both cities and countryside; see, Fabrice Balanche, "Le retournement de l'espace syrien," *Moyen–Orient,* 12, October–December 2011, 24–30; Samir Aïta, *Labour Market Policy and Institutions in Syria,* Report for the European Union, 2009.

are set for a serious crisis; the state would not bother to write off their debts either. In short, there are neither bailout plans nor insured policies that would accommodate creditors in case of bankruptcies. In most instances, an assumed or proclaimed bankruptcy would lead to secretive political machinations at the *local* level, without much action from Damascus, which in turn would lead to informal "bailout" schemes whereby "depositors" would become de facto "shareholders" in corporations created through court action for that very purpose. Such takeover of "shareholders" over a recently created enterprise is only nominal, as it would not translate in any positive role in the decision-making process on their part. Indeed, it is generally the 5 percent or so of the big investors that sit on the top that would make the difference. The courts would therefore only intervene once the pretrial arrangements have been thoroughly worked out and to clean up the legal mess such informal bailouts would create. Once court action takes over, the big investors, which may have triggered the crisis in the first place, may still *not* have the last word to say. Indeed, as the Naqḍ ruling favoring Kallās shows, the court openly indicated that it would be illogical to demand from Kallās to deliver at once to all his "shareholders": here the legal logic primes over that of the political maneuvers of sorts, even if court decisions may not be fully implemented.

What happened to the personality?

The Syrian code that regulates criminal procedures came into being in 1950, less than a year amid the 1949 penal code.[53] Like its predecessor, it manifests a strong influence from its original sources, namely, the French penal code through its Arabic adaptations by Egyptian and then Lebanese jurists. What strikes most is that, even though in practice all early investigations and interviews are conducted by the police, and although the police report, the first one to provide a full synthesis of the crime scene, would serve as template for future reports, the text of the qānūn of criminal procedures puts the responsibility of each crime, from simple felonies and misdemeanors to homicides, on the attorney general (*al-nāʾib al-ʿāmm*). Article 6 places the responsibility for investigating crimes and bringing criminals to justice on the judicial police (*ḍābiṭa ʿadliyya*), which it defines as composed primarily of the attorney general and the investigating judge, or the district judge (justice of peace) in case the locality in question does not carry an attorney general. In the code, however, it is the attorney general that emerges as the main persona that would conduct the *framing* of the crime scene from beginning to end. In practice, however, as revealed in this study, the labor

53. Syrian Arab Republic, *Qānūn uṣūl al-muḥākamāt al-jazāʾiyya,* March 13, 1950.

is divided between the investigating judge and prosecutor, on the one hand, and the police and lawyers on the other, with the police doing the bulk of the investigation in the early hours and days amid the crime's discovery. Hence this is essentially an inquisitorial system whereby investigations, interviews, forensic evidence, and expertise are invariably attended by state agencies, leaving little room for private expertise as witnessed in adversarial common law jurisdictions. Which implies that, first, investigations, as conducted by police, investigating judge, and prosecution, and as *transcribed in writing* in what would become the dossier of the crime scene, would constitute the very essence of the case-file upon which all future reports and memos up to the final verdict would be based; second, the core of the system is based on the *written* dossier, containing all investigations and expertise reports, which becomes like an objective artifact that is disseminated over the time period that it would take to conclude a case, which in some instances could amount to 10 or 20 years of labor (C5–5). The emphasis on writing, which would have been unthinkable without the material support of the dossier, stands in stark contrast to common law jurisdictions where courtroom performance by both prosecution and defense proves paramount in inculpation or acquittal. In other words, the Syrian system, devoid of genuine "cross-examination," an aggressive performance of private counsels in the court hearings, or third-party investigations, would stand as perfectly predictable: once the preliminary investigations and interviews have been conducted by police, investigating judge and prosecution, it would be very hard for either party to furnish contrary evidence, even if the case would drag on for very long.[54]

The Syrian system of detention of a suspect comes in parallel to the French controversial *garde à vue.*[55] In the French *Code de procédure pénale,* the police have the right to keep a suspect in custody for 24 to 48 hours without the presence of a lawyer. The Syrian procedural code for its part is not that dissimilar. Once a crime has occurred, and a suspect is in view, the suspect could be held in detention and interviewed at a police station for at least 24 hours without the presence of a lawyer. It is only in article 69 of the code of criminal procedures that the presence of lawyer is regarded as an option: once the "defendant"[56] (which is the term used for someone who has been "warned" and in police

54. The question of time is less important procedurally than it constitutes a tool for private parties to digress the crime and heal on their own.

55. On the French penal procedures, see Bron McKillop, "Anatomy of a French Murder Case," *The American Journal of Comparative Law* 45, no. 3 (1997): 527–83.

56. The *mudda'ī ʿalayhi,* which more accurately should have been the "suspect," since at this stage of the investigation people are only "suspects" not "defendants"; the French use either the term *gardé à vue,* someone that is withheld by police authorities, or the *prévenu,* someone who has been "warned" of his status as "defendant."

custody for no more than 24 to 48 hours) is to be interviewed in the privacy of the office of an investigating judge (normally at the Palace of Justice), the latter should make it clear to the suspect that he or she reserves the right not to be interviewed unless a lawyer is present. If for some reason the "defendant" is unable to provide a lawyer, the judge would request that one be appointed on his or her behalf. Still, the third item of the same article reserves the right for the judge to interview the defendant without the presence of a lawyer in case he feels that crucial information could be lost in the waiting process. Notwithstanding the problematic nature of appointing a lawyer (or the failure to do so), what characterizes that shift from the police to the investigating judge is what seems like a routinized tendency among defendants and witnesses to deny in toto what they had stated earlier to the police. Since we will be discussing such issue case-by-case, suffice it to note that allegations of police brutality are never investigated (except on rare occasions when the accused died under torture, C5–4), which makes it even easier for defendants and witnesses to press claims of torture. The strategy that is commonly used consists first in rejecting part or all of the statements that were referred to on behalf of the interviewee during the police investigation. In the interview days later by the investigating judge the same events are normally described with a different bent: the purpose is to rework out a strategy that would reduce the inculpation of the defendant as much as possible. In reality, however, it is as if such duality—between the statements allegedly delivered to the police and those to the judge—represents two sides of the same coin: the first set of statements are "un-prohibited," not outmaneuvered by the coaching of counsels, or else are delivered under the shock of the event and fear of police brutality; they are, as a chief judge once told me, "the plain truth," which may have been delivered under awkward, if not inhumane conditions, but it is still "the truth"; by contrast statements delivered to the judge are like the polished version of what had been stated earlier to the police; the defendant would have in all likelihood met his lawyer, and the latter would have warned him that a single word could mean a lot—like the difference between premeditation and manslaughter, or between the death penalty (for premeditated murders) and permanent or temporary incarceration. Judges thus typically perceive police interviews, as recorded in their memos, as the "dirty truth," which, lo and behold, came out of a defendant's mouth "between desire and fear (*targħīb wa-tarhīb*)"; while statements delivered to the investigating judge are more up to "judicial standards," which is precisely what renders them suspicious. Confronted as usual with allegations of police torture, judges tend, however, not to request an investigation, but solve the problem textually: compare documents in the dossier and see which statements make more sense than the others. Under common law jurisdiction a policeman who conducted an interview would have been grilled under cross-examination from the defense; but in a civil law jurisdiction like the Syrian, where the *written* dossier is all that

matters, an issue like torture is solved from *within* the dossier, not by appealing to additional expertise to further investigate the matter.[57]

Police torture notwithstanding, the main difference between the French and Syrian procedures primarily manifests itself in the report of the investigating judge which inaugurates the case—a difference that in fact is in *all* reports, up to the verdict: the absence of what the French call *personnalité,* that is, the personal history of the defendant or his or her curriculum vitae. This section, which inaugurates a French judge's report, precedes that of "facts" (*les faits*), which the Syrians have as *al-waqāʾiʿ*. What is therefore missing in Syrian reports is the very notion of "personality" or *shakhṣiyya,* something that would construct motive and rationalization of the act around the personality of the culprit. But that is precisely what some have argued is a major weakness of civil law systems, whose first fault is the locking of investigation and expertise solely in the hands of state judges and experts, while its other failing is a rationalization of the crime scene through the personality of the criminal rather than the facts themselves. The personality tends therefore to be reconstructed retroactively, from the present of the crime scene to the defendant's childhood and sexuality; the horrors of the present must have therefore some precedent in the past, as they could not have emanated out of nowhere, hence the defendant's criminal behavior must be detected in past events which went unheeded. Looked at historically, and in conjunction with what Michel Foucault elaborated on normalization régimes that think in terms of deep understanding of causes, reasons, and the logic of the act, the persona of the criminal becomes a prime target: his life is read in retrospect, as something that emanates from the present, so that the criminal act is explicated in relation to its past.[58] It is therefore this "desire to understand," rather than simply to accuse and convict, that punctures an epistemological shift between the classical age and the nineteenth century. As Foucault has pointed out, such an epistemological stance, which is also political, because it establishes new régimes of power and knowledge, doubles the role of the judge into a judge–doctor: the judge is no more *solely* a judge, but a judge that seeks medical expertise; the persona of the defendant has become too important to be left solely to juridical hermeneutics. This is why in the current French penal procedures the *démence* or "insanity" of the defendant is tested as soon as the *garde à vue* is over, usually by the investigating judge who would request that a medical test be conducted regarding the sanity of the defendant.[59] The defendant's vitae is

57. Obviously, in other civil law jurisdictions, like the French, police brutality cannot always pass unnoticed—or it cannot simply be textualized—hence it is, at times, open to investigation.

58. See *infra* the section on Foucault's contribution to an understanding of nineteenth-century European "Enlightenment" criminality.

59. The requirement for sanity was stated in article 64 of the old Napoleonic code, which stated

reconstructed out of a ragtag of behavior, morals, associates, family background, means of existence, and domestic life. The whole purpose is to determine that, notwithstanding the defendant's passional, impulsive, aggressive, or possibly paranoiac act, psychologically there is no indication of insanity or delirium. The doubling of the juridical into a medical expertise places the law into foreign territory, as the pre-trial detention would often stand in the hands of medical experts.

A major premise behind the shift from the classical age of punishment to modernity is that punishment would be public and deployed within a visible framework. There is therefore no secrecy in punishment, and its function would be didactic, with no arbitrariness or ambiguity. With that sudden focus on the persona of the delinquent (or criminal), the new delinquency régime of nineteenth-century Enlightenment Europe proceeded with a *construction* of delinquency, which in effect was a construction of what the *person* of delinquent or criminal implied. There was therefore that primacy of the person, more so than the act itself, and the person had to be understood in terms of his or her personality, past and present. A lingering question therefore traverses every criminal investigation: Why did that person commit her delinquent or criminal act? For what reasons? How did she become a delinquent? Would it be possible to rationalize the reasons behind the delinquency? Is there anything in that person's past that would enable us to understand, appreciate, and evaluate?[60]

But if a delinquent act remains opaque and incomprehensible, if not morally repellent, why go in the direction of the person who committed the act, rather than concentrate on the act itself? What is it that connects the act to the actor? Why would an understanding of the actor lead towards a better understanding of the act and not vice versa?

What is relevant in this French chapter on the *personnalité* for our purposes is the following: considering that Syrian reports do not devote a chapter on the defendant's vitae, with or without medical expertise, does this seem like a major sidetrack in penal law? As our cases will show, even though the vitae issue is not addressed frontally in a specific chapter of each report, it is indeed all over the place (Chapter 3). Medical experts are routinely required to write reports and testify, albeit not in the period immediately following the *garde à vue;* claims of insanity would come from both sides, and medical panels are fairly standard and summoned to assess insanity or other medical matters;

that there could be no conviction in case of insanity (*démence*); the same principle is restated in the new penal code under article 122–1 apropos the effects of specified type of mental disorder on criminal responsibility.

60. François Boullant, *Michel Foucault et les prisons,* Paris: Presses Universitaires de France, 2003.

defendants could be deemed unable to stand trial for cause of insanity. The question then becomes, why not devote a specific chapter to vitae and insanity as the French do? Why do the Syrian reports invariably begin with the "facts," skipping the *personnalité* chapter altogether, only to gloss over personality in the facts themselves? In other words, the Syrians avoid *personnalité* only as a *separate* chapter (or as a topoi to be separately handled), while in reality embracing it in practically every homicidal case under various headings. We see here how the totality of culture affects how rules are both adapted from their host source and locally implemented. Like the rest of the eastern Mediterranean, Syrian culture is very much kin oriented, with a preponderance given to family, clan, honor and status. The idea of constructing a "personality" from an individualized vitae, even for the sake of criminal investigation, would not lend credibility to the culture itself, which would perceive such a move as an aberration. But the personality issue is, however, unavoidable, and therefore spills all over rather than being contained under one heading. This is particularly true of honor killings (Chapter 6) where the female victim is invariably subject to character assassination by her killer, her family, and even the victim's family and friends. In honor killings, therefore, the *personnalité* becomes the invisible element of the dossier, while the "facts" are based on what the assailant has to offer, in such a way that the hastily sketched personality at the hands of the assailant would take an abusive turn against the memory of the absent victim. The abuse that the personality-cum-vitae portrait would endure, as evidenced in honor killings, is what probably held back the drafters of the 1949 and 1950 codes, assuming that such issue was openly raised among the various task forces that were in charge of the codes in the 1940s.[61] Another element in the avoidance of personality is the lack of resources. In French procedures, a judge would instructs a *commission rogatoire* to draw a portrait of the defendant as soon as the period of *garde à vue* is over, and the decision is made to keep the suspect for a longer detention. Such a commission would obviously rely on the expertise of doctors, psychiatrists, and psychoanalysts, practices deeply rooted in France and Europe at large, to assess the degree of sanity or insanity of the defendant. By contrast Syrian society lacks such medical expertise, and more importantly, consulting a psychiatrist or psychoanalyst, even in big urban centers, is usually fraught with dangers and discretely handled between doctor and patient.[62] This

61. There are no well-known archives that have been conserved in the Palace of Justice in Damascus or elsewhere on the work of committees, which apparently received help from Egyptian delegates, working on the codes, which could leave this chapter in Syrian history, like many others, permanently in the dark.

62. I've discussed the problems of psychoanalytic practice at length during my stay in Aleppo in 2003–05 with Dr. Umar Altunji, a psychoanalyst trained in Russia and then professor at Aleppo University. He argued that the notion of "privacy" is very much at stake in a

was even more the case in the 1940s when the codes were drafted, so that a request for a special commission to assess a defendant's "personality" in the early stages of the investigation would have been unthinkable. Since then the medical profession has evolved to accommodate psychiatrists and psychoanalysts among its ranks, and doctors, set in odd-numbered committees of 3, 5, 7 or 9 members, are occasionally asked to testify whenever necessary (Chapter 3); but this would not happen, however, across the board, only when an impulsive homicidal killing raises a red flag apropos the defendant's personality; the committees tend to be set past the preliminary stage of the investigation, when the prospect of "insanity" is raised by one or both parties. Again, here, as in witnessing in general,[63] it is the preponderant culture in a society that would bend "scientific" expertise in a particular direction. Notice, for instance, how for crimes considered as abhorrent by any standard, such as incestuous rape (C6–4), the killing of a minor for sexual purposes (C8–2), or the killing of one's husband (C5–5), the court would opt for harsh treatments (up to the death penalty), without, however, demanding any medical expertise. Medical expertise would not be summoned for "reasonable" homicides, which are not considered perversely repulsive per se.

A major pitfall of the French system, as seen by its detractors, is that the *personnalité* adduces judges and juries to bring the person to trial, rather than the facts themselves: *on juge l'homme, pas les faits*. Which implies a critique that could be leveled against the Syrian penal system as well, even though in this instance there are no procedural requirements for a separate "personality" chapter in reports and verdicts. But when it comes to honor killings, which represent the most blatant example of victimizing the (mostly female) victim through character assassination with a total irreverence for the facts, it is the woman that is judged, not the facts. What is remarkable here is that in a society led by kin, honor, and status as normative values of conduct, the woman is individualized once becoming a victim, that is, once she is separated from the organic whole of kin as an outcast (her killing would bring her back to society). Such perverse victimization could be detected, however, more broadly in homicidal cases through the construction of an after-the-fact personality of the accused: the latter would be *retroactively* perceived as having behaved all along as pariah in society, an outcast of his own choice, a womanizer, a pedophile who loved the company of children.

This brings us back to the facts. Civil law systems are critiqued for the fact that the investigation is primary and the hearings are secondary; hence the centrality of the dossier, of the process of writing and drafting reports, where recorded interviews are not verbatim transcripts but procès-verbaux which are official

kin-oriented society like Syria; patients therefore request full anonymity in their treatment, to the point that appointments may be requested in full secrecy.

63. See Chapter 2 on *shahāda* witnessing.

paraphrases and summaries of the "original." It is that *official* character of transcripts which renders the act of full transcription utterly unnecessary: with no possibility of an independent examination of all "facts," including statements furnished by defendants and witnesses, verbatim transcripts, whose cost is prohibitive, would be redundant. But this does not square well with the supposed veracity of "facts." Again, here, as previously noted for the perplexing issue of *personnalité,* which should not be reduced to a philosophical and epistemological problem, but one related to resources as well, the gap manifests itself between French and Syrian practices, beginning with an abhorrent sloppiness in Syrian forensic evidence. What the French call, in the "on the facts" chapter of the dossier, the *pièces de fond,* which divide the dossier into individual folders of various proportions comprising the photographic archive, ballistic tests, interviews, a re-enactment of the crime scene, and additional forensic evidence, does not exist as such in Syrian forensics, due primarily to a lack in resources and expertise, to the point that even basic fingerprinting and DNA sampling do not exist; blood and hair testing is not systematic either. To wit, the crux of the dossier would not amount to the sum of its individuated parts, which tend to be inexistent, but to police investigations, which constitute the bulk of the work upon which both dossier and verdict are based. The fact that experts are invariably official rather than adversarial agents, that the police would do much of the work (while taxed with brutality), that the dossier is the centerpiece of the case, that forensic evidence is scarce and unreliable, all transform the Syrian system into one manipulated by trust rather than evidence. The point here is that there is little outside the dossier[64] that would challenge and pose a risk to the authority of the prosecution. Even though some verdicts do come as a surprise, whilst defendants may still win their cases, it remains undeniable that prosecutors enjoy their position as official interlocutors without real competition. This translates itself, however, differently between the French and Syrian systems, not simply because in one instance the society is liberal and capitalist, while in the other it is an authoritarian controlled economy, but also due to the sheer inequality of resources, expertise, and cultures that favor the individual in one stance, and kin in another. The French system would have proffered decisions that the Syrians—even after a pilgrimage to the Damascus Naqḍ—would have had no problem fully endorsing. A lot of evidence would have been inadmissible by French or international standards; verdicts would be viewed as based on thin evidence; and the logic of reasoning would have been deemed as limited in particular when it comes to serious crimes. Yet, it is precisely such misgivings that make the system work as it does, that is to say, to serve a particular community the way it does, and the way it always did.

64. Which brings to mind Jacques Derrida's assertion that *"il n'y a pas de hors-texte."*

The old sultanic order and the new civic virtues

When in his introduction to the newly promulgated 1949 penal code, Asʿad Gorānī, the minister of justice at the time, bemoaned the now defunct 1858 Ottoman penal code, while underscoring all the virtues of the new code, he was precisely thinking about "civil virtues." Among them is the fact that the new code cares about "public order," on the one hand, while, on the other, attaching particular importance to all kind of "dangerous individuals," such as beggars, homeless, gypsies (*nawar*), drug and alcohol addicts, dealers and gamblers, which the new code describes as "dangerous individuals, due to their lifestyles," and which are subject to articles 506–620 of the penal code. Upon closer inspection, however, it turns out that the category of "dangerous individuals" is much broader than that, mapping individuals with mental and psychic problems, insanity, or abnormal behavior, all of which may lead to legal incapacity. There is, therefore, a *coupure épistémologique* between the old Ottoman system and the new one, but on which grounds exactly? The problem from an historical perspective is that the practices that sanction modern civil and penal codes, which are not to be limited to the legal, and are in their essence civic virtues, were initially tailored to societies and civilizations different from the ones to which the code has been universally transplanted. Yet, when we think of modern notions like "public order," "dangerous individuals," and "security" (all of which imply taking care of populations within a territory), they assume a process of modernization and subjectivization of integrated citizens, which large parts of Europe went through in the nineteenth century; the drafting of the Napoleonic *Code civil* in 1804 and the *Code pénal* in 1810 took place when such processes of individualization and control through normalization were under way. When such codes are transplanted to societies and civilizations with different historic and epistemological (and theological and ontological) foundations, what are the implications of such a move? First, we need to revisit the context into which such codes came into existence—nineteenth-century Europe—then see what is at stake when similar (duplicates) are transplanted elsewhere. Alan Watson has long argued for the ubiquity of "legal transplants," the theory that, historically, legal codes do not necessarily have that luxury to develop from scratch, from the ground of customary norms up to the epicenters of the legal order, but for sheer convenience and practicability which are often transplanted via other societies and civilizations.[65] Moreover, such an observation would not stand valid only

65. Alan Watson, *The Making of the Civil Law*, Cambridge, Mass.: Harvard University Press, 1981, 181–182: "The law of each territory is only in relatively small part a native growth. At the same time, partly as a result of the acceptance of foreign law because of its authority irrespective of its quality, partly because of inertia, and partly because of other factors, legal rules to a considerable extent are out of step with the needs and desires of the society in

for modernity per se, since according to Watson, this has been the norm at least since the coming of Roman law and its maturation with the Justinian *Digest*. The concept of "legal transplants," however, is based on two main assumptions that need to be questioned: first, the assumption that "law," understood as a set of rules and regulations emanating from a statist authority which legitimately monopolizes violence, could be transplanted, and approved as such, from one society to another, without an equivalent transplant of the social, economic and political underpinnings of the society of origin. Thus, if a duplicate redraft of the French *Code civil* (L1) is implanted in Egypt and becomes L2, it would work just as fine in its new environment even though those may differ substantially from the country of origin. That is to say, the transplanted "law" would act like a "universal" being, similar to the hard sciences of nature that migrate across borders without much fuss. Second of all, because "integration" in the new environment often proves "successful," Watson is not that adamant about the social conditions that "made" the law of origin (in the host country) possible; nor is he concerned with the societal conditions of the recipient country. He would even argue that the new modern civil laws—in their post-Napoleonic incarnations—are so "successful" in their transplant in the recipient countries that their old customary norms or whatever written codes they may have had are all too easily "forgotten": that's precisely why only civil codes can travel the world with great fanfare and success, while the common law (or mixed laws) cannot—precisely because developing countries need complete systematic codes that could be immediately "customized" to their own needs and implemented through the state's agencies.[66] Speaking of the Arab world as a prime example, Egypt was the first to liberate itself from the Ottoman yoke, reforming its legal system under Mehmed Ali, which meant "adapting" Napoleonic codes to local

which they operate, and also with the needs of that society's ruling élite. Knowledge of the divergence of law from society and of the role of transplants in legal development makes it possible to draw up an abstract scheme of the factors that cause or inhibit changes in the law. The scheme, which applies equally to substantive rules and structures, enables one, at least with regard to civil law systems, to attempt to evaluate the force of these factors."

66. Nathan J. Brown, *The Rule of Law in the Arab World,* Cambridge: University Press, 1997, 236–7, argues that it is precisely in its relation to the political that state law becomes possible: "The modern Egyptian legal system was born and continues to survive not because it was imposed or because it regulates relations between state and civil society. Instead, the primary purpose of the system—in the eyes of the political leaders who have built and sustained it—is to provide support for the officially sanctioned order. The Egyptian legal and judicial system was constructed as an integral part of an effort to built a stronger, more effective, more centralized, and more intrusive state." From the standpoint of an anthropology and sociology of law, the problem is to delimit *how* such an "officially sanctioned order" forms in practice, which is precisely the subject matter of this book, see *infra* the section on the textuality of court documents and their underpinning power relations.

needs, primarily to a harsh system of conscription that was at the root of a modernized Egyptian army;[67] the old laws soon became obsolete, and the success of the new codes was a narrative that was replicated in other Arab countries once achieving independence.

The question that I want to raise here is, what if we look closely at the societal conditions of the *host* country, that is, the country that made all those civil laws possible? What can we possibly learn in relation to the *recipient* country? For his part, Alan Watson has a lot to say on this. Among the nine factors he attributes to "legal change"—source of law, pressure force, opposition force, transplant bias, law-shaping lawyers, discretion factor, generality factor, inertia, and felt needs—the "pressure force" is of particular interest for our purposes, namely the big move envisioned by someone like Gorānī between the old Ottoman authoritarian system and the modern liberal civil code (out of which the penal and commercial codes derive):

> The term 'pressure force' indicates the organized person or persons, recognizable group or groups, who believe that a benefit results from a practicable change in the law. The power to change the law that a particular pressure force has varies in accordance with the political, social, and economic position of its members and its capacity to work on an existing source of law. The various sources of law are responsive to pressure forces in differing degrees; thus legislation is particularly open to pressure, development by precedent is much less so, and juristic doctrine is largely immune.[68]

When it comes to the big transformation that Gorānī addresses in his introductory remarks to the penal code, the "pressure force" consists in this instance of élite groups, well versed in law, like Gorānī himself, who persuaded fellow lawmakers and politicians of the usefulness of bypassing the obsolete Ottoman system in toto in favor of Napoleonic civil laws, which meant borrowing heavily from the French via the Egyptians and Lebanese. Watson adds:

> Law develops mainly by borrowing, which may well be the best way for a particular system to grow in terms of both economizing resources and getting the best rules. The transplant bias, however, is not the extent of borrowing but the receptivity of a system to a particular outside law, which is distinct from an acceptance based on a thorough examination of alternatives. Thus, it denotes a system's readiness to accept Roman law rules because they are Roman law rules, or French rules because they are French rules. The transplant bias varies from system to system and depends on such factors as a linguistic tradition shared with a possible donor, the general prestige of a donor system, and its accessibility through writings.[69]

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67. Khaled Fahmy, *All the Pasha's Men: Mehmed Ali, His Army, and the Making of Modern Egypt,* Cambridge: Cambridge University Press, 1997.
68. Alan Watson, *The Making,* 182–183.
69. Alan Watson, *The Making,* 183.

What is therefore at stake is the prestige of the donor–host system, which is French law via the countries that Arabized its codes, adapting them to local purposes, namely Egyptian and Lebanese law. Is it simply a question of French "prestige," as Alan Watson puts it, or does it go much deeper? For instance, how much of the societal or cultural norms of the donor–host system matter to the recipient system? Egyptians, Lebanese, Syrians, and the rest of the Arabs, find themselves caught within a similar cultural gap vis-à-vis their donor–host French system. What is to be learned from this? Does it matter that between donor–host and recipient the values are radically different? At a certain level, that of legal abstraction, it does not, as long as the recipient system accepts the donor system. What matters are the interests in the recipient country that would act in favor or against the transplanted code. In the case of Syria, Gorānī was among those who seized the opportunity in the brief interlude of Ḥusnī al-Zaʿīm to promulgate the new codes and bracket off opposition from defenders of the Ḥanafī fiqh which looked at the insidiousness of the new codes as proceeding in a gradual, subtle way, but with harmful effects for what an Arab–Islamic society would stand for.[70]

Shaykh Muṣṭafa Zarqāʾ, a leading Ḥanafī jurist, was one of the main opponents to the promulgation of the new Syrian civil code in its Western (French, Egyptian and Lebanese) incarnations. His hostile stance is worth noting, due to his mastery of the Ḥanafī fiqh, for which he stood as a quintessential expert:

> While we were on our way to draft a new civil code rooted in the Islamic fiqh,[71] which would have been congruent with the new times,[72] the promulgation of the Syrian civil code amid the first military coup of 30 March 1949 took us by surprise; that was under the auspices of Asʿad Gorānī whom the coup leader [Zaʿīm] had appointed as minister of justice. Gorānī had weak-mindedly taken advantage of that coup era and its terrorist rule (*ḥukm irhābī*),

70. Muṣṭafa Aḥmad az-Zarqāʾ, *al-Madkhal al-fiqhī al-ʿāmm,* 3 vols., Damascus: Dār al-Fikr, 1967–8, 1:4–5, was a major defender of old Ḥanafī practices, which, according to him, ought to have been revamped in their post-Majalla incarnation to adapt to modern times, rather than opt for the fateful mistake of importing a civil code from the French and other western sources. The other major Syrian jurist to have defended the Islamic traditions is Wehbeh az-Zuḥaylī, *al-Fiqh al-Islāmī wa adillatuhu,* 8 vols., Damascus: Dār al-Fikr, 1984; Muṣṭafa al-Sibāʿī (1915–64), the founder of the Syrian Muslim Brothers in 1944 (or 1938?), argued for the importance of the Sunna in modern legislation, *al-Sunna wa-makānatuhā fi al-tashrīʿ al-islāmī,* Damascus, 1966.

71. The suggestion here was for a "promise" by the official authorities, prior to the military coup, of "a new civil code rooted in the Islamic fiqh." The unexpected coup seems to have precipitated a Westernized version of the civil code which denied any influence to the fiqh, at least in its latest reincarnation in the Ottoman Majalla.

72. That is, modernity and its secularist worldview.

> persuading the coup leader, who took hold of both the legislative and executive branches of government, that the promulgation of a foreign civil code[73] in lieu of the Islamic fiqh would serve [Zaʿīm's] image in the West for eternity, as it would make him another Napoleon, whose *Code civil* was more enduring than his military conquests.[74]

When Gorānī prematurely retired as minister of justice amid Zaʿīm's assassination in the aftermath of the second coup led by Sāmī al-Ḥinnāwi, he did in his Aleppo lectures to the Society of Lawyers bring anecdotal evidence to his suggesting to Zaʿīm his analogy to Napoleon. For Zarqāʾ, however, the liquidation of centuries of fiqh labor meant the loss of the *aṣāla,* that authentic "self" which demonstrates the traits of an Islamic civilization. Rather than operating with a full transplant of western codes, understood as a work of *iqtibās,* Zarqāʾ proposes a transplant limited to *methods* only, in which western legal methods would be applied to the fiqh so that it would become congruent with modernity. Zarqāʾ already saw that kind of work in progress in the Ottoman Majalla of 1877, whose "general rules" he admired, and to which he proposed additional ones.

The problem with the legal transplant theory is that it limits itself to the juridical, in spite of some attention to "pressure forces" and to societal conditions that may or may not facilitate any transplant. Speaking of the penal code, for example, the 1949 code has since its promulgation been well "integrated" into the work of lawyers and society at large, to the point that any return to the Ottoman code (which was based on the Ḥanafī fiqh), or to the sharīʿa for that matter, is utterly unthinkable. But there is another aspect that remains invisible, which could be traced back to the donor–host society, and to the logic that led to certain formulations in the code. For instance, the penal code underscores all kinds of values regarding "moral responsibility," "intention," and "intimate conviction," not to mention a relation of "trust" between the judiciary and the medical and psychiatric; which bring us to the core of the matter: how ultimately the judiciary had to acknowledge its own limitations and seek the help of doctors and psychiatrists in the assessment of accused and inmates.

Why the demonstrability of crime has become that important

Foucault was anxious about delineating the nineteenth century—the age of the panopticon—from its predecessor—the classical age, where the figure of the

73. Here "foreign" does not simply stand for French, but also for the Egyptian and Lebanese codes, which proved a direct influence on the Syrian civil and penal codes, and which in turn took the French codes as their template.

74. Zarqāʾ, *al-Madkhal,* 1:4.

sovereign very much mattered, and where the state's domination over its territory was more symbolic than real, in the sense that it had to hold to all kinds of symbols of power, beginning with that of the sovereign, his commending of public executions of lawbreakers, all set within a network of political representations across the national territory. Foucault would argue that by the nineteenth century a system based on effective control, which involved disciplining the body and setting new grounds for normality, was unevenly institutionalized between old Europe and North America. Although the "epistemological break" between the eighteenth-century classical age and the disciplinary nineteenth century implied an epistemological break with ontological consequences, Foucault traces the "origins" of the techniques of normalization that affected the body to the Christian middle ages; this is at least the picture that emerges more so in his *Cours au Collège de France* (primarily a lecture-text like *Les anormaux,* which is our prime source[75]) than in the more standard and overpraised account of *Discipline and Punish*. It is as if the "techniques of the self," which Foucault in his later work on the *History of Sexuality* tracks down to non-linear archeological and genealogical programs back to the Greeks, Romans and medieval Christians ("the confessions of the flesh," *les aveux de la chaire*), took a turn in the nineteenth century towards an institutionalized control of individuals. Thus, all kinds of *dispositifs* ("apparatuses") force themselves as "external" to the individuality of the subject, in the educational, legal, medical, and military spheres of life (*lebenswelt*), whose common matrix are overlapping techniques of normalization.

The anxiety of the break translates an absence of a single-handed moral code in any modern system of normalization, an absence that would soon reverberate across cultures that would adopt variants of the Napoleonic codes. Thus, for example, when Zarqāʾ laments a lack of *aṣāla* in the Syrian civil codes, he is unwittingly mourning the gaze of the Ḥanafī fiqh and its reliable hermeneutics of opinions. The new codes by contrast are nihilistic in that they would work under the assumption of an unsettled and multi-centered moral gaze.

Consider what happened, in this respect, to juridical practices. First, judges would handle an indictment only if they were "intimately convinced" of the culpability of the accused—as suspicions are not enough. Second, it is not the legality of proof, its adherence to law, that would make a proof valid, but rather its demonstrability: it is, indeed, the very act of demonstrability that would ultimately turn a proof into something more receivable. Third, with the principle of intimate conviction, Europe has moved from an "arithmetic–scholastic" régime of truth, which Foucault hastens to add, "was so ridiculous," to one that was common and honorable; in short, "an anonymous régime of truth" for a subject

75. Michel Foucault, *Les anormaux. Cours au Collège de France (1974–1975)*, Paris: Hautes Études–Gallimard–Le Seuil, 1999.

that was supposedly universal.[76] The change therefore consists in a régime of truth, that goes back to the Middle Ages, which was based on symbolisms rather than demonstrability, and one where conviction had to be rationally demonstrated. As we will see, "demonstration" is a complex process that involves approving of medical practices taking hold of traditional juridical reasoning—a *dérapage,* where the judiciary loses faith in itself, cannot reason autonomously on its own, and has to sell itself to the devil—doctors and psychiatrists.

Because decision making now involves greater "certainty" through the process of demonstrability, judges have become more skeptical and uncertain about their own legacy, which pushes them to translate uncertainty into mitigated punishments: the less certain I am of my reasoning and judgment, the more the likelihood of a judicial error, which may be limited through a verdict that recognizes such limitation, granting suspects some kind of a reprieve, primarily by reducing their punishments. Herein lies the significance of a key amendment to the 1810 Napoleonic *Code pénal,* which was appended in 1832, and which grants, at the discretion of the judge, "extenuating circumstances," *circonstances atténuantes,* to accused suspects. In itself, the extenuation constitutes recognition of the uncertainty of the indictment, that the demonstration would never satisfactorily legitimate itself.

From the perspective of an observer situated on the eastern Mediterranean, the European Enlightenment parallels a similar evolution. Thus, for example, the clause in the 1832 revision of the *Code pénal,* which henceforth has carried the *circonstances atténuantes* as a core provision in its code, is there, almost verbatim, in the 1949 Syrian penal code: articles 243–246 are threaded under the trope of "extenuating causes (*al-asbāb al-mukhaffifa*)," a term that is widely used in the majority of the indictments[77] analyzed in this book, and which mirrors in content and form the *circonstances atténuantes* of the French penal code.[78] What is of interest here is that the *entire logic* of reasoning—at least formally, as the precondition to practice—has been transplanted into the Syrian system, beginning with the notion of "intimate conviction (*l'intime conviction*)," to the demonstrability of the proof, and the attenuating clauses. What is therefore

76. Foucault, *Les anormaux,* 8.

77. When using the expression *al-asbāb al-mukhaffifa al-taqdīriyya,* or "the attenuating discretionary circumstances"; the emphasis should be placed here on the "discretionary" role of judges in assessing the situation at hand, which amounts in avoiding harsh punishments, that is, ones that would be solely based on what the code prescribes, precisely because, notwithstanding limitations in forensic evidence, judges have to admit the uncertainty of their own judgments. Thus, describing "attenuating circumstances" as *taqdīriyya* implies that they are in their essence discretionary, estimative, and suppositional.

78. Which could also translate as "attenuating circumstances."

transplanted from the host–donor system is not simply a set of codified articles which are based on legal principles, but more importantly, the *underlying principles* of reasoning, some of which transcend the juridical into political and theological reasoning. The latter's survival in the recipient system remains problematic, however, since they are unrelated to legal reasoning. Foucault links the emergence of notions like "intimate conviction" and "attenuating circumstances" to deeply situated structural transformations in the European space, which in their essence transform "state control" into a much more thorough and dedicated *social* operation via a myriad of *dispositifs,* which in turn are based on "techniques of normalization" and a systematic *quadrillage* (immersing into a grid) of social space. Although Foucault would not indulge into the causes behind such shifts (from the French Revolution, to the Napoleonic wars and the industrial revolution), suffice it to say that for the societies and economies of the eastern Mediterranean no such structural transformations took place. What are therefore the implications of such legal transplants? In the account of Alan Watson the recipient systems would "accommodate" all kinds of legal concepts even though their socio-economic and political underpinnings from the host–donor could be radically different. Here lies the success of civil law in the modern world, in spite of all differences among societal systems, namely, that similar codes (of Roman and French origin) could be transplanted across a vast array of differentiations. The Foucauldian enterprise, however, raises all stakes on legal transplants: for example, notions like "the moral implications" of a criminal act, intimate conviction, and attenuating circumstances, are all well-established into the Syrian system since 1949, if not before, but how deep do they run into the *mentalités* of culture? What values can be attributed to transplanted techniques of normalization, *quadrillage* and *dispositifs,* on the east Mediterranean?

Nor are modern criminal codes reduced to their juridical underpinnings, and that is another side of Foucault's problematic: nineteenth-century justice, driven by the desire of intimate conviction and demonstrability, had to seek medical expertise to deliver judgment on the "sanity" of the suspect, hence on his or her legal capacity. The judge therefore doubles as a doctor–judge, while in turn "the psychiatric expertise permits the doubling of the crime."[79] Moreover, psychiatric expertise would permit the transfer of the space of punishment, of the crime as defined by law, from the publicity of the courtroom to one that is assessed by doctors and psychiatrists, that is, by the medical establishment. Why then does the apparatus of justice accept such "delegation" of powers to the medical apparatus? Why does it seek medical expertise? Foucault argues that this is precisely an outcome of both intimate conviction and demonstrability: before I can publicly announce my judgment, summon for a punishment,

79. Foucault, *Les anormaux,* 15.

and send someone to jail, I need to know if that person is perfectly normal and sane. That is to say, what is questioned by the judicial authorities is the "state of dementia" of the suspect at the moment he committed his act, an operation that Foucault describes as one of *"dédoublement,"* because the judge is doubling himself as a doctor–judge.[80] Such an operation of doubling, which in the language of law implies questioning the "legal capacity" of the actor, is well articulated in article 64 of the *Code pénal:* "there is neither a crime nor an offence if the individual was in a state of dementia at the moment of the act."[81] The Syrian penal code reverberates such concerns under the heading of "madness (*al-junūn*)" in articles 230–231, which are sequenced right after the sections on "moral responsibility," "purpose," and the "subject" of the crime: "a person will not be punished if proven in a state of madness"; additional articles expand on madness to persons afflicted with a "mental problem which is either inherited or acquired," all of which, if carried by the culprit, are subject to attenuating circumstances. As underlined in cases in this book (Chapter 3), the expertise of doctors is at stake whenever claims of insanity or dementia are echoed by the plaintiff or defense. For the recipient society, however, such techniques are a new development, which had no existence in late Ottoman times, introducing new modes of subjectivization and normalization: What is their significance in the recipient society beyond the confines of law?

Here Foucault's problematic takes an unusual twist, which for readers familiar with his *History of Insanity* (*Histoire de la folie à l'âge classique*)[82] may be recognizable territory, namely, the practices of inclusion–exclusion: once the pathological enters the scene, illness or criminality, as identified by law, withdraw into a juridically administered terrain. In other words, there is a primacy of law whenever the pathological is associated with a legally protected subject, and the latter, which in this instance is not to be reduced to a legal subject, metamorphoses into a medical subject: from culprit under the law, he is now a patient under the auspices of the medical gaze. What is at stake here is the power of normalization, which is neither medical nor juridical, since, in the face of the pathological, the medical and juridical are still instances of control, but not of crime; not of sickness, but that of the abnormal, of the abnormal subject. It is as if both the legal and medical dissociate themselves from their respective normal practices, only to come to terms with an unchartered territory—that of the abnormal—which is situated "beyond" their own modes of knowledge into

80. Foucault, *Les anormaux,* 21.

81. Foucault, *Les anormaux,* 21: *"il n'y a ni crime ni délit, si l'individu était en état de démence au moment de son acte."*

82. Published in Paris, Gallimard, 1961 and 1964 for the revised edition of the original *Folie et déraison.*

the unknowable. Foucault argues that the power of normalization is crafted into political territory: instead of the practices of exclusion that Europe had witnessed in the middle ages and later, whereby the lepers were excluded from society and placed into spaces of their own, by the nineteenth century it became important to *include* all the abnormals into operations of *quadrillage,* namely, rather than excluding the abnormals, the new spaces of control and normalization are under an uncanny surveillance–disciplinary grid. What is original in such approach is that the power of the state, which in historical accounts is vacuously left to the power of kingship, a dominating class, or of status groups, or of symbolic hegemony, is here perceived in new light: class hegemony and symbolic domination are not enough for the state to maintain its control over a territory, since what is at stake in contemporary nation-states are the operations of *quadrillage* to which the populations at large are subject. What is important to realize is that the control of populations only takes place through the principle of inclusion–exclusion: first we exclude the abnormals from the established legal and medical frameworks, only to reintegrate them into spaces of normalization. By then normalization becomes the norm, hence the abnormals are only the tip of the iceberg, since the purpose is a total *quadrillage* of the population at large.

From this point on we are into familiar Foucauldian territory, namely, "the intervention of positive technologies of power," or techniques of normalization which became all too common since the late eighteenth century.[83] Foucault's bold thesis amounts to this: that up to the eighteenth century—the classical age—children, madmen, the poor and the workers—all the "excluded" from society were under a régime of truth known as the "art of government." Symbolisms of power, such as trials by ordeal, public executions, the court nobility, and the personal representatives of the king in the provinces, were all within a symbolic system of government for the population at large. In the classical age, "sexuality" was not subject to any medical or statist power, nor was dementia or poverty. Even though it is possible to draw parallelisms between strategies of power on the two sides of the Mediterranean, for instance, between Ottomans, Hapsburgs or Bourbons, such *anciens régimes* differ significantly in their symbolisms and the structural organization of their societies. Suffice it to say that the new normative values would not operate with exclusion as their *modus operandi* anymore, as the new normative project consists of *integrating all those excluded in the ancien régime mode of normative power through new techniques of normalization:* hence the view, propounded by Foucault, of a *positive* value to power; that power does not necessarily alienate, nor does it first posit itself as "external" to the subject which then struggles against it. That is to say, Europe moves from a form of power that was symbolic, where the king would connect to his subjects or individuals as

83. Foucault, *Les anormaux,* 44–45.

representative of their groups, to one where the entire *social body as body politic* is subject to techniques of normalization. In other words, the "social body" has to be recognized as such: composed as it is of subjects whose control materialized through institutionalized frameworks where the logic is not one of exclusion but of normalization of the abnormal (the madmen, the poor, the deviant, the hysterics, the lower classes). Thus, if the ancien régime behaved as if the "social body" was nonexistent, but where only individuals and status groups to which the king would individually connect, this confusing social body would henceforth become the prime target of the techniques of normalization engendered by state institutions.

It was therefore in this respect—the techniques of normalization—that the juridical would assume an unexpected role, as "the notion of monster is essentially a juridical one."[84] What this means is that the exclusion of the "abnormal" from the core of judicial proceedings, hence declaring him unfit to stand trial, begins with the law. With the fall of the ancien régime and the new technologies of power, which from now on would target the "social body" at large, "a pathology of criminal conduct" takes hold of the crime as an objectified act open for investigation. Thus, in lieu of the political rituals whose aim was to declare someone prima facie a criminal, in the new economy of power, the crime must have a reason: a culprit could be insane, hence he would be unfit to stand trial, which must be demonstrated within the bounds of reason. From now on the judicial process would find itself in a cohort of difficulties—how to understand intent, responsibility, the rationality of crime, and the interest of the offender in committing his act—which would bring it closer to medical practices, and the doubling of the judge as a doctor–judge. "Psychiatric criminality" would have to indulge itself into the uncanny qualities of a criminal act: how to explain, for instance, the absence of motive in crimes that look totally unintelligible, where motive and criminal act seem indefinable; how to punish an act that seems unintelligible by legal standards? One way to go would be to make the act itself intelligible by medical standards, but such a step would require a frank declaration of the legal incapacity of the culprit, hence the withdrawal of the case from the judiciary.[85] Another way out for those "acts without reason" is to *impute* them to their subject, that is, to think of a resemblance of the subject to his act: the subject resembles his act so much, that the act belongs to him, hence the right to punish that criminal subject.[86] For the defense, however, the absence of clear

84. Foucault, *Les anormaux,* 51. The first monster is no one else but the king himself, and all the human monsters are descendants of Louis XVI (87).

85. Foucault speaks of the embarrassment of judges for crimes without reason, motive or interest: *"l'embarras des crimes sans raison"* (109).

86. Foucault, *Les anormaux,* 115.

motives is in itself a manifestation of a mental sickness. Moreover, the defense would argue, that the moral consciousness of the offender remains intact, so the act would not possibly be imputed to him.

The 1810 code, by rationalizing crime and transforming it into a demonstrable object of investigation, has toughened punishment, a punishment that was now in the hands of courts and juries rather than the divine will of kings. Consequently, "demonstrability" implied that the causality of the crime had to be constructed, that it was beyond reasonable doubt, and that punishment ought to be measured accordingly. Needless to say, jurors found it increasingly hard to go for the upper punishments (death penalty or life sentence), and quite often preferred straight acquittals over extreme punishments, in particular when evidence was not always on the side of the prosecution, or when the *personnalité* of the defendant was troubling. The problem was therefore that "in-between" situated between the acquittal and an excessive punishment that could signal the death penalty. With the attenuating circumstances, juries would finally opt for reduced penalties without much troubled consciousness on their part.

At a deeper level the extenuating circumstances signaled a rift between the repressive juridical culture of the state of experts, on the one hand, and the norms and customs of popular culture on the other. Such a parallactic gap would prove crucial because, even though the code and its various amendments were originally French and an outcome of the revolution, their transplant into many societies and civilizations outside Europe point to similar problems in the countries of transplant. Thus, for example, the Syrian penal code came from day one with the clause of attenuating circumstances, and as attested in many cases in this book, they do play a crucial role at avoiding the maximum penalty (Syria still supports the death penalty, see Chapter 5). The attenuating circumstances are not simply the bargaining chip through which an excessive penalty would be avoided, but also a space of commitment to local norms, which for Syria amounts at recognizing the importance of kin, honor, the domination of women, and property as a symbol of family survival and prestige. To elaborate, the attenuating circumstances would adapt the law (perceived as alien and repressive) to public opinion, but only in conjunction with practices that would approach the culprit as a citizen, independent of race and ethnicity, which is a necessity for the very survival of the nation-state.

As Blandine Barret-Kriegel superbly put it, the extenuating circumstances make it possible to "rectify," thanks to the "attenuating circumstances of consciousness, a more general appreciation of law." At a prime level, therefore, they individualize punishment, and by giving everyone that hope for a lesser punishment, would temper suspicions against an omnipotent law; more importantly, however, through systematic use, they help in modernizing the law by adapting it to local circumstances. They therefore reduce the spectrum of

inconsistencies between the law and its (in)applicability, bringing the law closer to public opinion, in that they would be accorded by juries (or what stands for them[87]) rather than by professional judges cut off from the nation at large.[88]

A parallel conflict comes in relation to what is going on inside the repressive apparatus, that is, between the executive and legislative: who possesses that exclusive monopoly over repressive power? The Revolution has abolished the arbitrary power of the king, linking all punishment to the law. Thus, even though the broad politics of the Revolution were unrelated to extenuating circumstances, there was still that haunting concern in relation to political power in general and to the juridical powers of post-revolutionary France in particular. The 1832 clause for extenuating circumstances could therefore be looked upon as a return of the arbitrary will of the sovereign, through the arbitrary will of judges and juries. The 1832 provision kept a tension in the law in its relation to political power and the executive that will remain unmodified in subsequent revisions of the law. In the case of Syria, where the extenuating circumstances are a fundamental clause of the penal law, the tension is between the state and regional power relations, as many cases in this book would aptly attest: how to adapt the law to the fact, to regional customs and mores?

It is at this level that we reach our third level of applicability between the law and its extenuating circumstances, namely, the accrued power of the latter. Herein lies the power of psychiatry. Already article 64 in the 1810 code exonerates all defendants with dementia and insanity, signaling a conflict of powers between the judiciary and the medical. It also points to an inability, in post-revolutionary France, where crimes had to be rationally accounted for, to come up with an indictment independently of other modes of knowledge. Psychiatry therefore injects itself within the powers of the judiciary through facts, and facts alone: it has to prove how the *personnalité* of a delinquent would make more sense through psychiatric expertise.[89]

The blueprint of undecipherable statistics

Data published in the government's yearly Statistical Abstract do not lend themselves to a realistic analysis of Syria's crime problems. The total number of

87. In a civil-law country like Syria, where juries are non-existent, judges act like juries, in that they have to behave professionally *and* set themselves in the consciousness of common mortals.

88. Blandine Barret-Kriegel, "Régicide–Parricide," in *Moi, Pierre Rivière, ayant égorgé ma mère, ma sœur et mon frère… Un cas de parricide au XIX^e siècle*, edited by Michel Foucault, Paris: Gallimard, 1973, 343–53.

89. Blandine Barret-Kriegel, "Régicide–Parricide," 338.

persons reported to have been convicted rose steadily from about 56,000 in 1952 to nearly 275,000 in 1969, and then dropped dramatically to about 165,000 in 1971, at which level it remained through 1975 and later, apparently reflecting the loosening of pre-1970 police controls during the first Asad presidency (1970–2000).

The 1985 statistics, for example, cited a total of 187,944 convictions of Syrian nationals in penal cases. Nearly three-fourth of these convictions were for crimes and contraventions neither mentioned in the penal code nor further identified. Of the other convictions, the largest category was for "crimes against religion and family" (articles 462–488 of the penal code, which primarily cover "what touches on religious feeling," the violation of the sanctity of the dead; crimes related to marriage; misdemeanors related to the sanctity of the family, crimes against children, minors, and ignoring family duties). Other frequent crimes were acts endangering or causing loss of life, robbery, insolence, and crimes against public security.

A rapid increase in crimes against religion and family was the only trend discernible in the data for the 1970–85 period. The figures for the number of convictions in nineteen other classifications of crime remained stable. Accounts of crimes committed in Syria published in Western publications were limited to crimes against state security, such as assassinations and bombings, and to bribery and embezzlement as exposed by the Committee for the Investigation of Illegal Profits. The committee was set up by the government in September 1977 to investigate a reported growth in corruption by government officials and business leaders.

One of the latest available statistical sets is for 2006, published by the Bureau in 2008 (the two-year delay is the norm).[90] The number of persons convicted in penal cases in 2006 in the 12 provinces (out of 13 muḥāfaẓāt, but the occupied Qunayṭira on the Golan Heights is statistically included with Damascus) totaled 40,846, out of which, nearly a third (14,310), stood for crimes and contraventions not included in the penal code, which represents a significant drop from previous decades, bringing crime rates to its low 1950s levels. Between 2003 and 2007 the total number of crimes and misdemeanors kept steadily rising from 53,208 in 2003 to 92,121 in 2007 (Table 1–1 *infra*). Obviously, misdemeanors account for a hefty 80 to 90 percent for those years, but where the "other" category in misdemeanors is by far the largest and most confusing: in 2007, the "other misdemeanors" numbered 63,796 out of a 92,121 grand total (nearly 70 percent). In the crimes category, robberies come unsurprisingly at the top, followed in distant second by beating, theft, money falsification, and homicides.

90. Syrian Arab Republic, Central Bureau of Statistics, Damascus, http://www.cbssyr.org/.

Another category that regularly comes through in official statistics is that of "crimes and contraventions not covered in the penal code." In 2006, for example, those numbered 14,310 out of a total of 40,846, close to a fourth of all crimes and misdemeanors: but which ones exactly? And, considering their size, why is it that they do not receive any further elaboration? Why is it that the penal code is not prepared to cover such a large variety of crimes and misdemeanors that remain statistically unaccounted for? (Table 1–2 *infra*)

But before we delve further into such mysteries, let us first look within a broader time framework. Here the mystery deepens in the large disparities between years. Consider the following figures for settled penal cases (which include both accused and convicted) for the years 1986–2005 (Table 1–3 *infra*): the total of convictions dropped to a third from 152,165 in 1987 to 50,136 the following year, maintaining roughly the same rate until 1991, when it surged back to 103,050, only to drop to its lowest level of 37,972 the following year. The highest figure was that of 311,522 convictions in 1995, which suddenly dropped to a fourth the following year to 72,410. Part of the mystery is solved once we realize that the "peace *ṣulḥ* courts" a majority of conflicts: in 1995, the highest year with 311,522 convictions, the share of the peace courts was 298,186; the following year the same courts handled 59,406 cases out of 72,410; and for 2005, the last year statistics were available, the peace courts took 33,397 cases out of 56,493 convictions. What this shows is that, whether the numbers are high or low, it is indeed the peace courts that would take hold of the majority of cases (sometimes with a 90 percent margin), which means that we are into the dubious territory of "felonies" and "misdemeanors" rather than "serious crimes." Moreover, regarding the category of "crimes and misdemeanors not covered in the penal code," there must be an overlap between the latter and the work of the peace courts: that is, all those crimes and misdemeanors that remain unaccounted for in the penal code must be of the "light" category, hence are unrelated for the most part to either "state security," "public order," or manslaughter and homicide for that matter.

However, the real difficulty, in addition to all crimes and misdemeanors not formally in the penal code, is in accounting for the big shifts across the years. How can we explain the large figure of 311,522 convictions in 1995? Or the steady drop on a yearly basis from 1998 (142,703) to 2005 (56,493)? In the absence of detailed sociological studies on crime and society,[91] we can

91. Consider, for example, how the steady drop in crime rates in major American cities in the 1990s and later has triggered a large literature attempting to explain the decline; see, Jack Katz, "Metropolitan Crime Myths," David Halle, ed., *New York and Los Angeles: Politics, Society, and Culture—A Comparative View,* Chicago: University of Chicago Press, 2003,

only attempt to link such figures to broader political and economic conditions. The 1980s were marked with political uncertainty (1979–1982 were epitomized by the bloody episode between the Muslim Brothers and the paramilitaries of the Asad clan;[92] while 1983–84 was that of the inside confrontation between the Asad brothers, Ḥāfiẓ and Rifʿat), which ultimately led to the consolidation of the rule of the Asad clan, and to the stabilization of the occupation of Lebanon; the 1990s by contrast, in the aftermath of the fall of the Berlin Wall, was an era of relative economic "liberalism" (hence an end to scarcity) thanks to more open "investment laws"[93] and to exports towards the ex-communist bloc. But that came to a halt by the mid-1990s once those newly established businesses (in particular small manufacturing, trade, and transportation) ran out of steam. With the sudden economic boom in the early 1990s, and the extra cash that some families got out of it in a society not known for reliable banking services, hastily packaged financial institutions, combining manufacturing with real estate and proposing high interest for investment deposits, such as the notorious Muḥammad Kallās enterprises in Aleppo, soon went into bankruptcy, provoking consternation for a short-lived economic recovery. Finally, since 2000, amid the Asad-son presidency, there was still more of an economic opening, the stabilization of the relations with Turkey, and the integration of new technologies (cellphones, fiber optics, the internet and broadband telecommunications) into the infrastructure, but with a high degree of favoritism and cronyism on behalf of the ruling clan.[94] The government stimulated free trade and foreign investment, liberalized its currency, reformed its financial sector and removed subsidies on everything from cooking oil to farm equipment. Largely as a result, the country's gross domestic product rose steadily; between 2005 and 2010 it achieved an annualized growth rate of about 5 percent, among the highest for developing countries at the time. However, by the end of the decade, on par with aggressively deregulated economies such as Egypt, Tunisia, Jordan and Saudi Arabia, the impressive growth not only helped the upper middle class, but also produced high inflation, stubborn unemployment and excessive rates of income disparity. In promoting service sectors like hotel construction and management over labor-intensive ones like manufacturing, the government neglected a fertile source of jobs. It also exposed its industries to high quality, affordable imported goods when it signed

195–224; Steven D. Levitt and Stephen J. Dubner, *Freakonomics,* New York: HarperCollins, 2005, in particular, "Where Have All the Criminals Gone?," 117–146.

92. Olivier Carré and Gerard Michaud (Michel Seurat), *Les Frères musulmans (1928–1982),* Paris: Gallimard, 1983.

93. Investment Law no. 10 in 1991.

94. See Samir Aïta, "L'économie de la Syrie peut-elle devenir sociale?," in *La Syrie au présent,* Baudouin Dupret and Zouhair Ghazzal, eds., 541–579.

its free trade deal with Turkey. The government withdrew price supports on farm equipment and produce too quickly, sparking an exodus of laborers from an agriculture sector that once accounted for a quarter of total employment. Many farmers ended up moving into urban slums, and that led to a lot of stress and resentment in the cities. In sum, there was no overreaching economic program that took seriously agriculture and manufacturing in conjunction with free trade, and no judicial and democratic reforms.[95]

Finally, a phenomenon that is rarely accounted for, in spite of its importance, because it is poorly understood, is that of "slum neighborhoods," in particular in Syria's two largest cities, Aleppo and Damascus, which may represent up to 30 to 40 percent of the constructed areas in both cities (each with a population of 3 million in 2011).[96] Construction in such neighborhoods (known as the "random, *ʿashwāʾī*" in official and popular jargon) is for the most part "illegal," as it involves "building on the lands of others" or at best on one's property but without official permission. But then the "illegality" here proves, upon further inspection, a confusing matter, as "illegal contracts," drafted by no one else but the users themselves, while bypassing all officially recognized contracts, succeed, following certain fictitious procedures, to be "recognized" by a civil judge in the very sanctity of the Palace of Justice. Suffice to say for our purposes here that such massive illegal-quasi-legal building activity would trigger all kinds of conflicts within families and communities, some of which are "moral" in scope (people moving from rural and tribal areas whose mores are different from those of a large urban agglomeration), hence unrelated with the legality or illegality of the whole enterprise.

Looking back at our crime rates in light of this broad political and economic spectrum of the last couple decades reveals that the highest numbers coincide mostly with the fall of the ex-communist bloc and the short-lived *infitāḥ* economic policies of the 1990s: 1987, 1994, 1995, 1997, 1998, while 2000, which coincides with Asad's death and the passing of the presidency to his son Bashshār, was also the last in high crime rates. The above-average figures, which also tend to overlap with that dubious category of "crimes and misdemeanors not covered in the penal code," should not, however, be solely attributed to periods of political instability. For one thing, political crimes and crimes against the "public order," not to mention "public morality," are *in principle* well covered in the penal code, even though we know that very serious political crimes, if they do receive any

95. *International Herald Tribune,* New York, December 20, 2012.

96. Zouhair Ghazzal, "Shared Social and Juridical Meanings as Observed in an Aleppo 'Marginal' Neighborhood," in Myriam Ababsa, Baudouin Dupret, Eric Denis, eds., *Public Housing and Urban Land Tenure in the Middle East,* Cairo: American University of Cairo Press, 2012, 169–202.

trial at all, would be in the well protected "state security court." Our statistics point to the fact that whenever crime numbers swell, the excesses are absorbed by the labor of the peace courts, hence consist mostly of misdemeanors rather than serious crimes. Consider, for example, 1995, the year with the highest number of crimes: out of the 311,522 defendants convicted, a hefty 298,186 majority were convicted in peace courts; 2,374 in first instance penal tribunals; 4,162 in appellate courts; 5,760 in juvenile courts; and only 1,040 in the criminal Jināyāt courts, which are the subject of this study; the other years point to very similar trends. What we can provisionally conclude is that whenever numbers go up, the sudden rise, as in previous years, is absorbed in the lower peace courts, hence pointing to minor "social" conflicts and grievances among individuals and families, but, which for some obscure reason, are not yet covered in the penal code. What could they possibly stand for?

Even though the penal code is well versed on matters of religion (art. 462–468), the family (art. 469–488), sexuality and public morals (art. 489–522), abortion (art. 523–532), and liberty and honor (art. 555–572),[97] massive internal migration towards the city must have created all kinds of "moral" problems which should in principle have fallen within the jurisdiction of the "moral" articles of the code.[98] But with the lack of sociological work on the peace courts, one can only speculate that many of those so-called "moral" problems render the 1949 code a bit obsolete on matters of family and sexuality. In the criminal cases in this study, some of which touch upon family and sexuality, and which are of a higher caliber than the "misdemeanors" of the peace courts, judges would find the right article for the right crime, hence there is no such thing as "crimes outside the scope of the penal code." By contrast, in the misdemeanors felonies, which by far outnumber the criminal ones, the variations must be of another nature, possibly far greater than what the penal code would normally handle.

97. All such articles have been considerably revised and amended, and are subject to more revisions than other articles in the penal code.

98. Even though divorce is on the rise—from 12,627 divorces approved by the sharīʿa courts across the nation in 2002 to 15,916 in 2007—the figures are still moderate compared to other countries, even neighboring ones. One should therefore look for unsettled family problems, which end up as "misdemeanors," thus in principle fall within the jurisdiction of the peace courts.

Table 1–1. Types of crimes and misdemeanors in Syria, 2003–2007[99]

Type of offences	2007	2006	2005	2004	2003
A–crimes					
Killing and attempted murder	533	446	430	426	405
Beating till death	88	49	28	14	76
Beating that caused permanent defect	653	182	157	104	9
Kidnapping	70	120	121	135	85
Viciousness and ravishment	125	112	135	97	131
Robberies and attempted ones	5,261	4,799	5,011	4,492	4,654
Setting a fire on purpose	95	135	162	101	88
Bribery	33	27	27	31	16
Defalcation	14	15	9	15	18
Document falsification	286	235	244	236	166
Currency falsification	637	678	514	526	333
Other felonies	13	14	9	27	15
Total	**7,808**	**6,812**	**6,847**	**6,204**	**5,996**
B–misdemeanors					
Robberies and attempted ones	7,764	7,695	6,865	7,052	7,695
Unintentional killing	3,520	2,794	2,667	2,467	1,837
Unintentional injury	8,516	8,832	8,841	5,653	4,201
Setting fire due to carelessness	717	780	757	706	701
Other[100]	63,796	57,420	51,531	40,890	32,778
Total	**84,313**	**77,521**	**70,661**	**56,768**	**47,212**
Grand total	**92,121**	**84,333**	**77,508**	**62,972**	**53,208**

99. Central Bureau of Statistics, Damascus, http://www.cbssyr.org/.
100. Not to be confused with another category in Table 1–2 regarding "crimes and contraventions not covered in the penal code."

Table 1–2. Persons convicted on penal charges in 2006.

Offences[101]	**Number**
1. Crimes against the external security of the state	0
2. Crimes against the internal security of the state	4
3. Crimes against public security: arms and ammunitions (art. 312–318) civil rights and duties (art. 319–324)	488
4. Illegal (and secret) associations (art. 325–326 & 327–329)	4
5. Crimes of extortion and encroachment on labor rights	0
6. Rioting and troublemaking	1[102]
7. Crimes against public administration	274
8. Crimes against public authority	127
9. Crimes against judicial procedure	134
10. Crimes against the execution of judicial decisions	111
11. Crimes against public confidence	904
12. Crimes against religion and family	393
13. Crimes against public morality	2,344
14. Crimes and misdemeanors endangering or causing loss of life	3,132
15. Crimes against individual human rights and honor	714
16. Crimes constituting danger to public safety	156
17. Habitual crimes	737
18. Crimes of robbery	12,688
19. Crimes of insolence	4,325
20. Crimes and contraventions not covered in the penal code	14,310
Total	**40,846**

101. The thematic order, as released by the Bureau of Statistics, closely follows the 1949 penal code; whenever necessary, reference to specific articles is added between brackets.
102. This was among all places in the southern town of Darʿā, with an estimated population of 100,000.

Table 1–3. Number of convicts, 1986–2005.

	cases			courts				
years	settled cases	accused	**convicted**	peace courts	first instance penal	appellate	criminal	juvenile
1986	57,339	170,960	**144,919**	133,362	1,976	3,409	857	5,316
1987	58,320	164,494	**152,165**	139,054	2,088	5,014	861	5,148
1988	45,834	79,460	**50,136**	42,835	1,990	1,763	962	2,586
1989	28,899	71,135	**55,005**	44,668	1,815	2,030	1,081	5,411
1990	48,438	75,016	**64,609**	55,416	1,684	3,119	845	3,545
1991	49,872	113,182	**103,050**	93,140	1,391	3,858	976	3,685
1992	43,017	62,421	**37,972**	31,774	1,029	1,923	847	2,399
1993	54,201	84,196	**68,570**	61,082	1,313	1,613	733	3,829
1994	70,177	158,865	**142,586**	129,424	2,199	2,784	806	7,373
1995	78,129	332,660	**311,522**	298,186	2,374	4,162	1,040	5,760
1996	84,445	114,064	**72,410**	59,406	2,867	2,820	1,396	5,921
1997	107,490	151,456	**119,738**	97,059	4,368	6,007	1,801	10,503
1998	122,418	167,781	**142,703**	103,839	5,937	8,738	1,894	16,295
1999	120,891	140,798	**97,141**	69,706	4,983	7,248	1,872	13,332
2000	126,996	152,837	**105,939**	72,375	6,126	7,651	1,775	18,012
2001	112,904	132,295	**80,456**	50,921	6,408	5,946	2,042	15,139
2002	111,780	127,894	**96,293**	63,752	5,789	8,590	2,052	16,110
2003	106,732	123,061	**75,560**	47,573	5,724	8,528	1,658	12,077
2004	60,662	72,002	**40,772**	22,990	5,531	6,024	1,875	4,352
2005	67,197	80,764	**56,493**	33,397	7,587	8,418	2,304	4,787

Comments:
Other published tables for the same period (not reproduced here) show that men outnumber women in crime by a wide margin of 16:1. Similarly, those above 18 outnumber juveniles by a margin of 15:1 on average.
When the numbers in the columns on the right of "convicted" (in bold) are added they should provide with the number of convictions in a given year. Those, however, are not necessarily "settled cases," as they may be appealed to the higher courts, including the Damascus Naqḍ. A defendant could be convicted by any of the courts: peace, first instance, appellate, criminal, or juvenile courts.
"Settled cases" are ones which received a final ruling to which the parties have abided, whether they were appealed or not. Thus, for example, in 1986, 170,960 were accused of misdemeanors, felonies, or crimes, out of which 144,919 were convicted by the various courts. Considering that only 57,339 were fully settled, 113,621 were left unsettled, which means that "settlements" could follow a conviction, or prior to it, for instance, by having one of the parties withdrawing their claims in favor of a peaceful settlement.
Sudden drops and rises in the number of convictions, in particular in 1988, 1991, 1994, 1995, are hard to explain in the absence of sociological analyses that would correlate various social and economic data with crime.