The Crime of Writing
Shared Meanings and Criminal Narratives in Baathist Syria

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1–2	Damascus, 1982	Lawsuit against the mayor of Damascus for the recuperation of a confiscated property.
1–3	Aleppo, September 1995	Muhammad Kallas, one of the big "credit collectors" of Aleppo, in the aftermath of law of investment n° 10 (1991), was accused of fraud and imprisoned, and had his properties transformed into "public shared holdings."
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2–1	Aleppo, October 1993	Husband who allegedly burned his wife to death.
		3. insanity and responsibility
3–1	Idlib province, 12 March 1994	Shepherd shot to death three other shepherds, one of them a woman, for trespassing over his land; on April 2000 the Idlib Jinayat sentenced the accused for 20 years with hard labor, after a plea for insanity failed.
3–2	Hama, August 1979	Old man stabbed to death in a mosque; the accused's counsel pleas for insanity; even though the accused was convicted on October 1984 of premeditated murder, his sentence was reduced to three years with hard labor.
		4. auto-biography
4–1	Aleppo, 28 August 1987	Wife accused of murdering her husband to conceal an affair she was having with an another man; wife accused of manslaughter in 1994.
4–2	Aleppo, December 1996	Father arrested for having for a couple of years locked his teenage daughter into the bathroom. Father addressed the judge in a personal letter from his prison cell.
		5. death penalty
5–1	Aleppo, 25 October 2007	Public executions of 5 young men in Bab al-Faraj who were allegedly "gang" related and who had committed a string of murders and thefts in the summer.
5–2	Aleppo province, 29 March 1994	Man accused of escorting a girl on his motorbike to a barren terrain outside town, committing an indecent sexual act, prior to killing her. He was executed in Aleppo's prison yard on July 2002, following a Jinayat conviction that recommended the death penalty on

		August 1995.
5–3	Minbij, Aleppo province, 13 January 1998	A young man murders an old man to steal his motorbike, gets arrested a week later on charges of premeditated murder.
5–4	Aleppo, August 2, 1991	Three policemen accused of torturing an alleged drug addict to death, leading to an unprecedented trial in the annals of Syrian law.
5–5	Idlib province, April 1983	Woman accused of conspiring to murder her husband, with the brother doing the killing; verdict in 1994 recommended the death penalty, which was dutifully approved by a presidential decree in 2003.
		6. honor
6–1	Aleppo, 13 June 1995	Brother murders his sister in an honor crime, gives himself up to the police; imprisoned for one year.
6–2	Aleppo, 20 April 1994	Husband murders wife in an honor killing; verdict on March 1995 sets the accused free on April 1995 amid one-year imprisonment.
6–3	Idlib province, July 1988	Defendant arrested on September 1988; alleged that victim seduced his wife, hence claiming an honor crime, which was rebuffed by court, opting instead for the death penalty on June 1998; Naqd ruling on April 1999 revoked Jinayat sentencing.
6–4	Aleppo province, June 1995	Mother alleges she was raped by her own son. The Jinayat ruling in June 1996, based on that of the referral judge, sentenced the defendant to ten years with forced labor according to article 489 of the penal law.
6–5	Idlib province, 3 November 1997	Farmer alleged that a group of three men knocked at his door late at night, stole some belongings, prior to raping his daughter. Final ruling on December 1999 cleared all three defendants from any wrongdoing for lack of evidence.
		7. kin wars of castrated egos
7–1	Idlib 2000	When ruling over a case that involved multiple killings from the same clan in the 1990s, the Jinayat manifested its appreciation of the logic behind the honor killings in such environments.
7–2	Dana, Idlib, February 1995	An 18-year old boy shot to death a cousin of his in retaliation for the shooting of his own brother a couple of years earlier.
7–3	Jisr al-Shughur, Idlib, June 1989	A shooting incident in which the defendant claimed to have acted in self-defense against the grotesque intrusions of his rival, both of which belong to families with ongoing feuds.
7–4	Saraqib, Idlib, December 2001	An innocent van driver was targeted by a rival clan in retaliation for a death of theirs by the driver's elders.

7–5	Idlib province, 1995	A married law student at Aleppo University in his early twenties was shot to death in 1995 by cousins of his in retaliation for another killing; Idlib Jinayat convicted the killer in 2000 for manslaughter and 15 years with hard labor.
7–6	Mu‘arra, Idlib, 1999	Insaf, the youngest of Ahmad Ziyadi’s three wives, was from day one the main suspect for killing her elderly *ḍarra* in Mu‘arra (province of Idlib) in 1999.
		8. parricides
8–1	Aleppo, August 1995	Daughter murders her mother after she burned down her own home. Letter to cousin from prison.
8–2	Aleppo, July 1994	Young man seduces a six-year boy, sodomizes him, leading to the boy’s death. Manslaughter verdict appealed.
8–3	Idlib province, July 1998	Man kills his ex-wife and other family members in a revenge rampage for the ex-wife’s new engagement.
8–4	Khan Shaykhun, Idlib, 2 April 1993	Wife and her lover plot to kill husband in order to satisfy an ongoing sexual lust between the two. Court rules for both the death penalty.
		9. land
9–1	Aleppo province, 24 May 1995	A big landowner and lawyer was murdered by one of his tenant-farmers; court punished the offender with a manslaughter verdict.
9–2	Armanaz, Idlib province, 6 May 1988	A university student on a visit to his parents on a weekend “unintentionally” kills a man for trespassing on his family’s properties; the Idlib Jinayat vindicated the defendant of any wrongdoing on December 1990, a year and a half after the killing.
9–3	Aleppo province, 18 March 1990	An inter-family feud where a young man shoots on his uncle for trespassing over his father’s land; the court on April 1996 punished the offender with three years of incarceration.
9–4	Aleppo, 9 July 1990	Attempted murder of a Kurdish lawyer when he was on his way to his work at the Palace of Justice; three of the accused were sentenced in 1998 for 15 years and a million liras in compensation.
		10. photoshopping: men at work
10–1	Aleppo, November 1996	Man arrested for forging official documents and selling them to individuals; Jinayat ruling on January 1998 convicting the defendant of forgery.
10–2	Aleppo, May 1989	A group of 10 unrelated alleged drug addicts caught for theft and trafficking.

Prologue & Acknowledgments

When I accidentally stumbled in the mid-1990s upon civil and criminal cases from Aleppo and Idlib, both in the troubled Syrian north, at a time when I was working on Ottoman modes of discursive reasoning for my book *The Grammars of Adjudication* (Beirut: Institut Français du Proche–Orient, 2007), I was not aware of the difficulties ahead. Judges at Aleppo's Palace of Justice were helping me decipher the hidden meanings of the Ottoman sharia court texts, in particular the "procedural fictions" (*ḥiyal*) that were all too common in the Hanafi fiqh, but to which few scholars have paid much attention.[1] One of those judges mockingly told me, "I hope you're not taking those documents literally, as if they're telling the truth. What appears at face value as a genuine litigation (*khuṣūma*) is only a faked one (*ḥīla*). It enables the system to survive with its changing times without, however, modifying its core premises. If we're unable to discern a genuine litigation from a faked one, we're doing a disservice not only for Ottoman studies but modern Syria as well." So I've asked him the obvious question, "How do we know?" And his remedy was surprisingly straightforward: "Because we've got similar procedural fictions in our civil system today." That's how, in a nutshell, I became interested in modern law, its social underpinnings, and the logic of narrative, realizing all too suddenly that I had to straddle between two worlds: the defunct Ottoman *ancien régime,* and the modern nation-state, both an outcome of modernizing efforts, beginning with the forgotten Egyptian expedition in 1832–40, the Ottoman Tanzimat, the French mandate, up to Syria's independence and the promulgation of its modern civil and penal codes in 1949. More importantly, I realized that what law pretends to be is neither its reality nor an illusion, but is rather inscribed within a social and symbolic order which becomes real only when it cannot sustain itself through its fiction.

It was that same judge who offered me by way of initiation, hoping that I would soon turn to the modern court system, an unforgettable gift: a hefty criminal case which his assistant had lying over his cramped desk and to which he was paying no attention; a packed 500-page or so dossier of a woman, resident of a middle-class Aleppo neighborhood, who was accused of killing her much older husband in order to protect herself from an alleged affair with another man (C4–1, which would serve us as template for analyzing "biographical narratives" in Chapter 4).[2] Strange as it may seem, considering Syria's stellar reputation as a "hard" and "rogue" country, collecting criminal cases turned out a more manageable task than securing the badly needed facsimiles of the Ottoman sharia courts, the Tanzimat majālis, or the sultanic orders for Beirut and Damascus.[3] But because the Ottomans archives were properly conserved and indexed,

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[1] With the notable exception of Gabriel Baer, "The Dismemberment of Awqāf in Early 19th-Century Jerusalem," *Asian and African Studies,* 1979, 220–241.

[2] All cases are numbered by Chapter, see, *supra,* Table of Cases.

[3] Civil cases present the researcher with a different difficulty for access and handling than criminal cases. Thus, because in criminal cases the accused would become a persona non grata, hence a de facto public presence, there is not much to conceal from the vintage viewpoint of the Jinayat Department. Moreover, criminals, at least when it comes to serious crimes, tend for the most part to commit only one crime in their lifetime, hence their dossier could be viewed in isolation and need not be related to other cases: it is always the person and the case at hand that matter. Criminal files could therefore be made available to researchers, pending an idiosyncratic approval by the Department. By contrast civil cases point

their custodians wanted researchers to consult them on location in Damascus and Beirut (which lacks a proper archival center), hence photocopying, at least before the digital age, had to go through various legal and illegal hurdles. By contrast Syria's modern court archives are stored in warehouses at the basement of each Palace of Justice, whereby beyond the 20–25-year grace period legally required for conservation (for a possible retrial of criminal and civil cases, which is very rare), the file would in all probability be on its way for "recycling," unless it has been forgotten, or else unless the space at the warehouse is generous enough to accommodate few more years.[4] Obviously duplicates of final rulings are stored in various departments, hence verdicts tend to survive the onslaught of time. But what can one do with a verdict on its own?

Since the mid-1990s, therefore, I was caught in a double dilemma. On the one hand, the majority of criminal files prior to the 1980s have not survived; while those which have been conserved in the last three or four decades are not properly indexed, hence are not meant for consultation by researchers; which makes a systematic study of cases, even for modest purposes, nearly impossible. On the other hand, case-files are all over the place at the Palace of Justice, and requests for photocopying could be generous, at least much more so than for the Ottoman archives. Moreover, with the Xerox revolution in the 1980s, when normal paper has replaced the aging thermal rolls, photocopying became a lucrative business in developing countries like Syria, whereby modest Xerox shops with top of the art machines around bureaucratic centers would do marvels. It was indeed in the 1980s that lawyers and judges took the good habit of Xeroxing their case-files for a quiet consultation at home or in their office. I therefore received "gifts" from the employees of the Palace, lawyers and judges; hence if I suffered from anything it was from an abundance of cases rather than from any shortages.[5] By 2007, the year I became *persona non grata* in Syria for reasons I still ignore, I had accumulated close to 100 criminal files from Aleppo, Idlib, and their provinces. The size of a file would vary from a modicum of 25–50 pages for honor killings (Chapter 6), to 500 pages for homicides whose mystery took over a decade to unlock. A rule which I had adopted in my *Grammars of Adjudication* became even more timely here: no case would be included in my research unless I had possession of the Xeroxed file *in its entirety.* Thus, out of the 34 cases in this study,[6] which were selected from my original database of the hundred or so

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to family wealth and property possession, which no one bears any interest in revealing to public view, in particular the contending parties. Moreover, as each case would usually share many links to other cases for the same family, civil cases would only make sense if bundled together in portfolios that may span over decades.

[4] Lebanon keeps a much better archival record for its modern cases than Syria, hence civil and criminal cases tend to survive much longer, providing better clues for historical analysis.

[5] The downside to the lack of an archival center, however, is that not all of my cases are "complete," as some of them lacked either the final or Naqḍ rulings; once the case goes to the warehouse, tracing it down becomes an arduous task. Cases offered to me by lawyers or judges may have contained documents that were private, hence may have not have been included in the official dossier upon which the ruling was based, see, for example, C3–1.

[6] See, *supra* Table of Cases: all cases are numbered by Chapter. This book was constructed from thousands of pages of criminal court records from Aleppo and Idlib, police reports, interviews with law enforcement officials, attorneys for some of the plaintiffs and defendants, judges, court employees and experts. Although files are numbered in reference to the year of the crime, their numbers would change as the case would drag on from year to year. Reference to file numbers may therefore not reflect their final

cases, only four (C1–1, 1–2, 1–3, 3–2) relied exclusively on printed sources, while the 30 others are based on the original materials of the case-files. This enabled me to repeatedly come back to my cases at my own leisure when working on this book between Aleppo, Beirut, Chicago and Princeton, with fresh perspectives which varied from an attention to the logic of narratives, or the sociological "editing" of narratives and interviews, up to psychoanalytic analysis. My choice of cases is therefore arbitrary, not only due to a lack of properly indexed archives, or because I've benefited from generous gifts from lawyers and judges, or because we're in the dark beyond the 1980s, but mainly because my prime motive is a book that looks seriously at the logic of narrative; hence the need to choose cases, organized in themes, that would fit together well enough in the context of a thematic book. The purpose here is not solely to analyze how a case was won or lost, or how judges make their decisions, but for an in-depth look at the logic of narrative and discourse, whatever the source of enunciation.

In contrast to studies of "Islamic law" and society which have thus far been the norm, and which tend to focus on broad historical trends (what sharia, civil and penal law represent in Islamic societies; the repressive nature of the Syrian state; the relations between law, society and the economy), this study aims at detail, narrative, discourse, circumstance, explication, event, and the perspectives of actors on the events unfolding before their eyes. The purpose is indeed to modify the scale of analysis that we've been accustomed to. Thus, instead of broad assessments of Syrian (or Arab) politics, economy, society, law and crime, we're operating at a much smaller scale, *en détail* rather than *en masse,* where primacy is accorded to individual actors narrating a crime scene; how the latter is *interpreted* by lawyers and judges; how concerns of law and order, as perceived through the eyes of popular culture, manifest themselves in the case-file at hand. We are therefore aiming at a change of scale—from the macro to the micro—in order to magnify all proportion, to provide relevance to events that have been neglected, deemed as irrelevant for the conduct of history, or else for the lives of individuals. Once we base our perspective on what the actors are doing and saying, we realize that what primarily concerns them is the narration of the crime scene; to advocate for a family member or close friend; to argue that a homicide was not premeditated, but "only" manslaughter. In changing the scale of analysis, we want to get at what the social actors themselves think and speak of a criminal event: how they narrate it, how their narratives are constrained by the norms of the judicial authorities, and how at times, they reorganize the crime scene by *writing* their *own* narratives (Chapter 4). What is at stake is that fine grain of history, the opening of narrative to the quotidian, the imperceptible. It is, indeed, that access to the narrative that marks our *en détail* démarche to documents, texts, crimes and facts. To do so, we need to acknowledge the importance of the infinitesimal, the quotidian, the taken for granted, names, gestures, dreams, dialogues, biographies, images, dates, gestures, pleas, all of which would not stand the dignity of history unless we take narrative and discourse seriously.[7] The reader would therefore have to bear all that monotony, detail, repetition, agony, of events that may or may not be of interest—but what for? Is it for the sake of a "marginal" and "rogue" country like Syria, to reach out for what is extraordinary and unique but nevertheless neglected, either because the documents were

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numbering, as most of them were received prior to the case's conclusion.

[7] I address in Chapter 2 the distinction between narrative and discourse.

of little interest, or else they would not command the attention of the reader (be it Syrian, Arab, or universal)? We're into a situation where every detail *may* matter, precisely because it has been devalued by historians, criminologists, and legal analysts alike. We want to revalue that aspect of the quotidian to which experts of sorts and legal analysts have only shown intermittent respect.

In the Ottoman *ancien régime* of the sharia courts judges and their scribes were so concise that they did not leave much room for participants to expose their mindsets. A courtroom operated under the authority of a judge, who in turn represented the will of the sultan. The legitimacy of the system rested on trust rather than on the validity of proof: what was valid was not admitted as such because of its congruence with an empirical reality of facts, accounts of witnesses and expertise reports, but because of its validity within a chain of reasoning, and the authority of transmission and transmitters, as endorsed in a particular school of law, the *madhhab*.[8]

But even though by the second half of the nineteenth century, the Ottomans had introduced many modernizing features within their legal system, beginning with the French-based model of the *niẓāmī* civil-law courts,[9] by the First World War, however, the entire mode of reasoning of the Hanafi fiqh, with its sharia courts, traditions of transmission and authority, had become by and large inoperative. Indeed, the sharia courts had been marginalized and relegated to operations of personal status,[10] and even within such reach, the "sharia" had replaced what used to be carefully thought opinions within each *madhhab:* in other words, the "sharia" becomes that global empty signifier towards which various practices are relegated, without any need to index opinions to chains of transmitters or prestigious jurists for that matter. All of a sudden, between two devastating world wars, the old system had fallen behind the logic of modernity, and even though the modern codes were not there yet, lawyers and judges, now trained in the law schools of Damascus, Beirut, Paris and Lausanne, were eager to promulgate codes that would match novel practices. To be modern meant to reject the past, to accept the validity of reason and its limitations, rather than divine ordinances and the arbitrariness of the will of the sultan, and his representative the judge. A case, whether civil or criminal, would obey to a rationality: motives were a constituent part of each subject, hence a criminal's motive was an essential aspect of the crime, which needs to be comprehended, rationalized, put forth in writing, and argued in public in the space of the courtroom. Not only would forensic evidence emerge as the prime tool for analysis of the crime scene, but by opening each case to its facts and motives, the judiciary found itself unable to limit itself to juridical reasoning alone, as the expertise of doctors and psychiatrists became paramount in the decision-making process of criminal courts, and at times, even civil courts. Thus, by opening Pandora's box to the factuality of each case, within the bounds of reason, outside the norms of religion and the political authority of the sovereign, there was that unease in making decisions: *how* to decide in a secular world, and what would

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[8] See my *Grammars of Adjudication: the economics of judicial decision-making in fin-de-siècle Ottoman Beirut and Damascus,* Beirut: Institut Français du Proche–Orient, 2007.

[9] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity,* London: Palgrave Macmillan, 2011.

[10] Or the *aḥwāl shakhṣiyya,* a modern term that replaces the old *farā'iḍ* in the Hanafi fiqh; Syria's first personal status code goes back to 1953 when the country was under the military rule of Adib Shishakli.

be enough evidence prior to vindicating a defendant, or detaining him or her for life, or arguing for the death penalty. Indeed, the severity of the original Napoleonic codes (to which the late Ottomans and modern Syrians belong) was such that juries and judges would opt for acquittal rather than life incarceration or the death penalty; hence the leverage accorded by the "attenuating circumstances," the originally Napoleonic *circonstances atténuantes,* which meant that juries and judges would now act more modestly at assessing the validity of facts while opting for reduced sentences.[11]

Such newly revamped juridical discursive space, which pell-mell accommodates accounts of witnesses, interviews, expertise reports, medical and psychiatric reports; letters of inmates addressed to friends, family, counsels and judges; memos by counsels and judges; newspapers clips that mirror public opinion; and, of course, the verdict itself which seals the case, all of which *formulated in writing,* metamorphoses as an objective "externalized" artifact which is the dossier, that bizarre object that circulates around, between lawyers, experts and judges, and which turns crucial for the indictment. But it is as if such forensic writing were not enough, that there is no solid ground of legitimacy for judges to decide, as if no decision could on its own stand firmly without those uncanny *circonstances atténuantes,* which in the final analysis would only help at mitigating punishments simply because of uncertainties regarding evidence, motive, and the *personnalité* of the defendant. To elaborate, the dossier, which exposes so many voices in such limited *writing* space, surpasses juridical reasoning per se, as no criminal case could be self-contained within the sole reasoning of the juridical, which not only *must* seek for outside expertise, primarily medical expertise, but also *must* contend with what ordinary people have to say, what they have to tell their lawyers and judges, and what they have to tell the world at large. Let people "speak for themselves" is therefore the prime motto of judiciary procedures, but which only operates within the huge constraints of the *writing* process—which in itself constitutes a major difference with Anglo-American common law, where courtroom experience is central[12]—as if the enterprise of judging has become more sociological, delving into the subconscious of society, than juridical, in conformity with the formalisms of codes and statutes.

In sum, the controlled expansion of the dossier signals a couple of transformations in relation to the Ottoman (or French) *ancien régime:* first of all, the absence of divine and personal ordinances in the name of the sovereign implies assembling a case around a multitude of anonymous voices, whose validity claims are governed by the methodology deployed by the judicial apparatus.

Second, such proliferation of voices, all of which, pima facie, share the same *unequal*

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[11] See the discussion in Chapter 1 on "attenuating circumstances" and presidential pardons.

[12] The irony is that in the U.S. millions of dollars of taxpayers money are spent on *full* verbatim transcripts of the hearings in federal and state courts, which, in the final analysis, would not be allowed to juries in their closed-door deliberations. By contrast, civil law legislations are based on procès-verbaux, beginning with the police report, which perfectly makes sense, considering the textual orientation of such civil systems: everything must be clear and concise from day one, whereby confusing first-person narratives are grudgingly reedited in an authoritative third-person voice, that of a policeman, attorney, court expert or judge.

space of the dossier, have into them that indeterminate claim for truth, which only the method of the judiciary would bring to determinacy (that is, the ability to locate, in the context of the written dossier, what is a valid claim). Third, those anonymous voices are uneven in their relation to the crime scene, mixing the testimonies of witnesses with expertise reports and reports by attorneys and judges. What is unique here, in particular in civil law jurisdictions, is that all such voices are textualized in the space of the dossier, which in turn, by virtue of such textualization, transforms the dossier into an objectified artifact, transmissible as such among various authorities, until the final verdict seals the case. Fourth, the multiplicity of lay and expert voices, in conjunction with the nature of evidence, robs the judiciary from its legal reasoning, as the proliferation of statements from all sides cannot be solely contained through juridical reasoning: the dossier overtly metamorphoses into a combination of literary and anthropological enterprises, while its juridical side loses momentum. In sum, once we move from the arbitrariness of the sovereign, it becomes more problematic to issue verdicts that would make sense for legal experts and laymen alike. As modern systems are centered on the rationality of crime, the ability to explain, persuade and convince public opinion, send someone to jail, impose life sentence, or subject a defendant to the death penalty, open a host of insurmountable problems, which would only lead, as a consensual measure, towards mitigated rulings, special pardons, and judges who must manifest that personal human side in them. As I argue in Chapter 1, the purpose of the "attenuating circumstances" is precisely to bridge that gap between the austerity of the law, on the one hand, and public opinion and its regional and customary practices on the other.

Each homicide unfolds into a double crime. First of all, the "real" crime itself, where the victim unjustly lost her life at the hands of a brutal assailant, assuming, of course, that the crime was not in self-defense. Second, the crime itself is recounted from a multitude of perspectives, using diverse voices, from lay to expert. Lay witnessing is here prime, as it denotes popular culture and opinion, and also because it stands at the core of the dossier.[13] What is often overlooked, however, is that all such narratives are textualized in the limited, though indefinite, space of the dossier. That is to say, textualization comes through the symbolic power of language: the crime is narrated through language, hence the textuality of crime belongs to the domain of the symbolic. Once the crime is recounted, transformed into language, it eclipses the real crime into the symbolic. Hence writing itself is a criminal act, because it substitutes the "real" crime for its textualization, and once the crime is into the domain of the symbolic, the victim is dead (or victimized) for a second time. The dossier unfolds in a fictitious time, one which is not real, but an outcome of the symbolic power of language. If people feel such dread at writing, it is because language kills that real carnal bodily pleasure, transforming it into a symbolic artifact of sorts.

Jacques Lacan, in resonance with Hegel's *Phenomenology of Spirit,* famously stated that *"le concept, c'est le temps."*[14] What this means is that the concept articulates itself through the symbolisms of language; and once the reality of the concept is not there

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[13] See, Chapter 2.

[14] Jacques Lacan, *Des Noms-du-Père*, Paris: Seuil, 2005, 41: "The concept *is* time itself."

anymore, it incarnates itself through its duration, that is, time, as an object that is narrated and which replaces the real one unfolding in real time. In other words, the power of language is such that its real undisclosed location relies precisely on representation, that is to say, as a structure that stands apart from the (Kantian) things-in-themselves, as a separate realm of order and meaning. Thus, a criminal dossier constitutes a *symbolic representation* of the crime scene, one that manifests itself through the power of language, which is detached from and sits in a different realm from the thing-in-itself, the crime scene. For the judicial process, it is indeed such symbolic representation that enables the constitution of the dossier as an objectified artifact, which *disseminates* hand-to-hand. One has therefore to murder the real object to be able to represent it in time: the representation is here Hegel's concept, which replaces the real object in time. It consists at claiming that the symbol of the object is this object. When the object is not there anymore, this object is incarnated in its duration (time), separated from itself, but which through the sheer act of representation could still be present to itself—and at your disposition. A process of decompensation, therefore, where the inability to recompense for the original real object, which is not there anymore, is instead compensated by representing the object in its duration (time).

The 34 crimes under scrutiny in this book,[15] spanning from the 1980s to the 1990s and beyond, happened at a time when Syria was already weary of Hafiz al-Asad's "rectification movement." Even though, upon its inception in 1970, the "movement" *(al-ḥaraka al-taṣḥīḥiyya)* promised to reintegrate the old commercial and manufacturing bourgeoisie into its ranks, it did so only reluctantly, that is to say, by revitalizing the professional middle class while reducing its ability to freely maneuver outside the statist regulations. By 1986, when Mikhail Gorbachev was general secretary of the Communist Party of the Soviet Union in 1985–91, and president in 1988–91, the financial system had already collapsed, leading to a drastic reevaluation of the Syrian Pound vis-à-vis the dollar and other hard currencies. In a nutshell, the Soviets under Gorbachev's leadership have dared to ask the Syrians, which thus far had been surviving under long-term mortgage plans, to pay for all their transactions, including the much venerated military equipment, in full cash. By 1991, under an overpraised Investment Law 10, the Asad régime had grudgingly acknowledged a reform that did not dare speak its name, namely, that its very survival was pending on what the old Sunni and Christian manufacturing and commercial bourgeoisie would be able to deliver in goods, services and hard currencies. In effect, a major loophole of the Law was that it kept obscure the mechanisms under which the exchange between local and hard currencies would be pursued. Notwithstanding the debacle of the deadly episode of the Muslim Brotherhood in 1979–82, Aleppo seems to have benefited the most from both the fall of the former Soviet Union and the weary *infitāḥ* of the Asad régime; it may even have capitalized as much as 25 percent of the totality of private investments in the 1990s, coming directly in second position to the capital Damascus in total investments. When Bashshār al-Asad inherited power in June 2000, he did at the same time provide more impetus to Law 10 while

[15] Which have been randomly selected out of 100 closely studied case-files. As I will elaborate below, the Syrian system neither keeps its files long enough (beyond the 20–30 year legal period) nor does it handily index them for consultation, hence the choice of files is always random and arbitrary. The cases have been numbered by Chapter, see, Table of Cases.

restricting major projects in telecommunication, finance and manufacturing to his loyal circle of family clan, sitting or retired crony bureaucrats, and the upper middle class bourgeoisie.[16]

More significant perhaps is that the two Asad régimes—*père et fils*—share a reputation for cruelty. As is common knowledge, "suspects" of sorts are seized, arrested, interrogated, humiliated, sent to jail, tortured, for their political beliefs, party or religious–ethnic affiliations, or sheer hostility for the Baath or the régime itself: where would then *private* "ordinary" crimes, like the ones analyzed in this book, stand? Should we separate, like in a lab experiment, between what stands as private as opposed to the political? Is it possible to separate the two domains of the private versus the political? Or is such separation an illusion of academic research? Strange as it may seem, this was not that hard an issue to deliberate upon. As the reader will come to realize, a great deal depends, in both civil and criminal cases, on routinized procedures, whatever the political régime in place. It is, indeed, as if the Syrian penal system (not to mention the civil), deliberates autonomously on its own, not much disturbed by what goes on in the political arena. Crimes happen in all societies, whether totalitarian, authoritarian, or liberal, and in this respect, the judiciary apparatus is more concerned in processing crime than politicizing it (or its consequences). Hence the focus in this book is on process, representation, the construction of the dossier as an objectified artifact, than on anything political per se.

But then the sociological claim of routinization, of social actors immersed in their daily routines, not giving a damn as to what goes on in the public sphere, is shortsighted. As Renata Salecl has convincingly argued regarding the "absence" of publicity to "ordinary" crimes in the defunct socialist Eastern Bloc,

> Official indifference to the 'ordinary' crimes against the socialist order arose because the law did not function as a presumably neutral point of authority. The law was always in the service of the communist cause. Thus the most serious offence against the law was opposition to the system and not ordinary criminal activity…The socialist system itself transgresses the law in order to become a law unto itself.[17]

Salecl is raising the obvious question as to *why* in the then-socialist régimes "ordinary" (private) crimes did not make it to the forefront of the media (mostly state-run) outlets, as is routinely the case in liberal democracies: that is to say, why are ordinary crimes not acknowledged as such? Such remark certainly applies to observed differences between Syria and neighboring Lebanon. With very few exceptions, when one of the official Damascus-based newspapers obliquely reports a crime, in very short barely noticeable synopses (C4–1, 8–2), only to condemn it for its incivility, crimes are not publicized in

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[16] This is best elaborated, with a particular focus on the geographic and economic development of the eastern coastal Alawi region, namely the Tartus–Banyas–Jableh–Latakia axis, in Fabrice Balanche, *La région alaouite et le pouvoir syrien,* Paris: Karthala, 2006.

[17] Renata Salecl, *The Spoils of Freedom: Psychoanalysis and Feminism After the Fall of Socialism*, London: Routledge, 1994, 105.

Syria, as if all what matters are *only* crimes against the state; in neighboring Lebanon by contrast there is that frenzied enthusiasm for crimes that go out of the ordinary.[18] In the liberal media in general, serial and mass killings or obscene murders with sexual undertones are eye-catching because they portray murderers whose superego "bypasses" all the conventional norms of the big Other; as if the public-at-large is perturbed by its own repression once it surrendered its own egos—the source of desire—to the socio-symbolic order.[19] The fantasy of an ego "free-to-kill," preponderant in the media and Hollywood-inspired movies, fascinates precisely because it sets all action in a futuristic linear time: the freedom-to-kill *now* would only come as a retributive hubris *in the future,* once justice (not necessarily that of the state, but of private individuals as well) reappears as justified retaliation (notice here the logic of capitalistic equal exchange). In other words, fantasy, structured in linear time, comes at the rescue of desires impossible to meet, simply because we have surrendered our traumatized egos to the socio-symbolic order; trauma, in contrast to fantasy, works in a repetitive thematic nonlinear structure.[20]

Salecl is therefore justified when she claims that the serial killer in the then-socialist countries "reveals the ultimate lawlessness of socialism," hence his public "absence" in favor of political crimes—those committed against the state.[21] As "the socialist system itself transgresses the law in order to become a law unto itself," the killer emerges not as someone whose superego reveals that obscene "freedom" of liberal societies, but rather where the superego evinces the dark side of the law of socialism. In a chapter on "crime as a mode of subjectivization,"[22] Salecl portrays crime as revealing "the blind spot in our identification with the law, which is how we relate to the law in a very specific way."[23] It

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[18] It remains an open question as to why Arab crime TV serials, which these days are produced for the most part between Beirut, Damascus, and Cairo, are practically inexistent. If, as we have argued here, crime assumes taking the criminal as subject by the judicial authorities, where the most intimate is highlighted, then do representations of crime, for instance on television, pose the problem of too much intimacy? What is at stake here is not simply the personality of the criminal but of the detective that pieces together the elements of crime, which from Sherlock Holmes to Hercule Poirot and Dashiell Hammett, share more notoriety than the criminals that they detect. What is at stake is the individual subject in relation to a theory of knowledge that would relate the self to the other. Open (postmodernist) endings, where the solved mystery would be kept away from the frustrated viewer, have become more preponderant in an age where the certainty of knowledge has eroded us. It is therefore the individualism of the subject—or "crime as a mode of subjectivization"—that would pose the most serious challenge to kin-based societies within modern nation-states but nevertheless ruled by patrimonial bureaucracies that are remnants of the old Ottoman imperial order. Which is an additional factor as to why ordinary crimes tend not to be publicized by the state or other media: the state not simply constantly transgresses the law to protect its own interests, in the name of the socialist order, the people, or the disfavored classes; but also because it protects a patrimonial order to which it belongs, an order that would not want to publicize—at the level of the nation-state—inner conflicts within groups or clan formations.

[19] I'm using here psychoanalytic Freudian and Lacanian concepts that will be elaborated upon further in Chapter 2 and more specifically in some cases in this book.

[20] Psychoanalysis in its (undeclared and unchartered) relation to crime is explored more thoroughly in the end section of Chapter 2, and in individual cases as well. I am inspired in the analysis of fantasy and desire by Todd McGowan's breakthrough investigation of contemporary cinema and time, see, his *Out of Time: Desire in Atemporal Cinema,* Minneapolis: University of Minnesota Press, 2011.

[21] Salecl, *The Spoils of Freedom,* 105.

[22] Salecl, *The Spoils of Freedom,* Chapter 7.

[23] Salecl, *The Spoils of Freedom,* 99.

is, indeed, the paternal metaphor of the Father (the Name-of-the-Father, which is not to be confused with the "real father") that institutes the social and symbolic order of the Law, while the Law only operates by recognizing us as *subjects* responsible of our own actions. We therefore come to the world through a double loss, that of surrendering to the socio-symbolic order, which is the order of narrative and discourse, on the one hand, and to the language of the Law on the other. Since the Father is the one who subordinates the child to the principle of the Law as symbolic order, the loss of the child operates through a double bind. First, the Father breaks apart the imaginary relationship between mother and child (the imagined sexual bond), which leads to the child's castration and repressed sexual desires (C6–4); second, the symbolic force of Law bespeaks the symbolic power of the Father. Hence the double loss of the child, that of sexual satisfaction, which in Lacanian psychoanalysis *cannot* be formulated through the symbolisms of language,[24] hence remains at the mercy of the real; and that of submission to the socio-symbolic order.

The psychotic criminal too operates on such double loss, that of the lost object of desire, and that of the loss of subjectivity. The criminal outmaneuvers his fantasy on the (im)possibility of recovering his loss in linear futuristic time, that of the past and present, and the future when the loss is recovered. Because the recovery of the loss is impossible, due to the unbridgeable gap between subjectivity and the socio-symbolic order, the criminal identifies his loss with a victim that cannot meet his fantasy of recuperation. The psychotic metamorphoses into a criminal once he targets his victim as an objectified recuperation for his loss. The psychotic lives through that uncanny trauma that he is on the verge of losing his victim, as she would be unable to reciprocate his desire. By eliminating his victim—by projecting death into the future—the psychotic thinks of controlling his traumatic experience in linear time, instead of thinking trauma as unexplainable in time. Crime is therefore an attempt to anticipate the traumatic event of separation.

We can now reconsider the interrelations between individual (criminal) development and the path of a nation like Syria which denies recognition to ordinary crimes in their relation to narrative and time. When in *Imagined Communities* Benedict Anderson contends that the "imagined" time of "nationalism" moves through "homogeneous, empty time," the implication here is that the "imaginary" plays on the fantasy of linear time for the sake of a coherent narrative that would bring the nation together into a nation-state: "The idea of a sociological organism moving calendrically through homogeneous, empty time is a precise analogue of the idea of the nation, which also is conceived as a solid community moving steadily down (or up) history."[25] Of relevance in

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[24] Hence the notion of sexual difference, which should not be confused with gender difference, which could be formulated through the symbolisms of language, hence falls within the socio-historical; by contrast, sexual difference cannot be reduced to language and history.

[25] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism,* rev. ed., New York: Verso, 1991, 26; Brinkley Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society,* Berkeley: University of California Press, 1993, 2: "I have drawn on [Benedict] Anderson's path-breaking analysis of the print foundations of that relatively recent type of 'imagined community,' the nation-state. My efforts to depict the calligraphic state are, in part, a response to his call to understand nationalism in relation to the 'cultural systems that preceded it, out of

the construction of "imagined nationalism" is that the chronology could go down, from a foundational present to *selected* episodes of the past, which is how habitually national official history tends to be constructed.[26] Even though individual identity usually moves forward in time, from birth to present, hence in the opposite direction of an "imagined nationalism," the traumatized psychotic, however, to which the criminal constitutes a variant, organizes memory around the reoccurrence of a failure.[27]

It would therefore be unbearable to forget that all those "ordinary" crimes, which have been unraveling underneath the cruelty of the two Asad régimes—accounts which were delivered without a reference to masters, leaders, or politics—do manifest the anguished individual development in the shadow of a forced collective identity, hence their denial in the official media. They do indeed look like those anonymous voices that could have emanated from anywhere, voices of criminals, the oppressed, the insane, with no masters, and which stand on their own, outside politics, as the voices of unreason. As Michel Foucault foresaw in his analysis of the 1835 parricide of Pierre Rivière, "all such accounts recount a history without masters, populated by frenetic and autonomous events, a history beneath power and which stands against the law."[28] But how did parricide and regicide make sense, if at all, in the mind of a Pierre Rivière: did he think of his crime individualistically apart from a post-revolutionary (and post-Napoleonic) France where regicides were the specter that haunted politics? Would it be unreasonable not to think of the *extraordinary* in relation to the ordinary, all those habitual crimes which have nothing political in them and which cement the vicissitudes of daily life? It would make more sense to rethink such "parallaxes" more as impossible antinomies than as shortcomings in a methodology that focuses on the individual over the political. Such an impossibility for a totality, however, while favoring one level of analysis over another, would not reflect a naïve idiosyncratic choice: historiography, for one, is plagued by "parallaxes" between the macro and the micro, the socio-economic and the political, or the individual versus the collective; which level of analysis is more truthful, which one renders reality more correctly; in other words, we are faced with what Jacques Revel, *pace* the *Annales* crisis in the 1980s, has dubbed as *jeux d'échelles,* the change of perspective as an outcome of the scale of the analytic enterprise.[29]

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which—as well as against which—it came into being.'" In this instance, Yemen, in its transition from Ottoman and British rule, to the Zaydi imamate, up to the formation of the two Republics and unification, represents a case-study of heterogeneous textualities, whereby sharia and fiqh texts would matter as much as republican slogans and civil codes.

[26] For example, in the case of Turkey, in the Kemalist secularist discourse, not only is the episode of the formation of the Republic in 1923–27 privileged over anything else in the past, but it is portrayed as cut off from its Ottoman heritage, to which it bears no visible relation. When in the 1990s the Islamist Refah and Fazilet parties gained the upper hand in politics under the leadership of Necmettin Erbakan, it was the takeover of Constantinople in 1453 by the Ottomans which becomes the landmark event, bringing "Islam" (which by definition is pan-national) and "Turkish nationalism" together in a problematic entente; see, Alev Çınar, *Modernity, Islam, and Secularism in Turkey: Bodies, Places, and Time*, Minneapolis: University of Minnesota Press, 2005, Chapter 1.

[27] Todd McGowan, *Out of Time,* 183–5.

[28] Michel Foucault, *Moi, Pierre Rivière…,* Paris: Gallimard, 1973, 327.

[29] Jacques Revel, ed., *Jeux d'échelles: La micro-analyse à l'expérience*, Paris: Seuil–Gallimard, 1996.

But even in neighboring Lebanon, a fairly liberal society by Mediterranean standards, the mass political killings in the 1975–1990 civil war would dwarf all "ordinary" nonpolitical killings. As a rule, therefore, whether a society is liberal, authoritarian or totalitarian, ordinary killings have their own logic and mystery, even if in times of upheavals the borderline between what separates the political from the nonpolitical tends to be obscured. Students of the law in some of the most notable authoritarian or totalitarian systems—Maoist China,[30] Nazi Germany,[31] or North Korea—would generally hasten to contend that such countries had all the resources to substantially modify their civil law legislation in order to render them more congruent with their populist ideologies (communism, national socialism, Nazism). Syria by contrast owes a lot to its Arab neighbors, primarily Egypt and Lebanon, for the rapid promulgation of its civil legislation in 1949–53; hence its jurists have limited experience drafting complete modern codes from scratch. And, to add insult to injury, when attempts were made in 2009–10 to promulgate a comprehensive new personal status code, as a replacement to the aging 1953 code, on the basis that family and social relations have modified in over half a century, alleged prime drafts (all of which had their authenticity denied by the Syrian ministry of justice) were published on the web, now designating Jews and Christians under the old *dhimmi* label; but the revamping was aborted, with only few addendums appended to the old 1953 code. The sheer incompetence and inexperience in drafting codes is precisely why the 1949 penal code still operates in pretty much the same way as it always did. As to the 1949 civil code, it should have had received a major revamp by the 1970s, when it became pretty clear that the economic philosophy of state "socialism" was there to stay, and that basic freedoms regarding property and the right to associate (the latter were already invalidated during the union with Egypt in 1958–61, never to be reinstated) were fading in favor of state-owned collective property. Which should have in all logic pushed the first Asad régime in the 1970s and 1980s, prior to the limited economic liberalization of the 1990s, to redraft the civil code in toto, as if to declare once and for all the existence of "a new (socialist) republic." But Asad and his entourage refrained from going this way, and in its stead, his presidency saw the proliferation of laws and decrees that made the possession and transmission of property problematic, to say the least.[32]

If we need to be constantly reminded of the broad relationship that the state maintains with its legal system, it is primarily to realize how much resources were scarce, and that there was, in the final analysis, no commitment to formulate a cohesive discourse either for politics, law, society, and the economy. It is, indeed, that kind of patchwork, and to put it bluntly, the sheer weakness of the state in terms of its resources, that makes the private stand as private. Thus, there was never that predilection to create a "socialist family," or to impose sexual norms, or even to limit population growth, as the likes of India and China once did: everything that falls within the domain of the family remains

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[30] Stanley B. Lubman, *Bird in a Cage. Legal Reform in China After Mao*, Stanford: Stanford University Press, 1999.

[31] Benjamin Carter Hett, *Death in the Tiergarten: Murder and Criminal Justice in the Kaiser's Berlin,* Boston, Mass.: Harvard University Press, 2004.

[32] See Chapter 1, the section on "Criminalizing the law."

regulated more by kin and religion than by what the state has to offer, including socialist education. Such a centrality to family, kin, and religion—to everything that is private and nonpolitical—should come as no surprise in the criminal cases in this book. Herein lies the unpolitical nature of such cases, even in a society known for the brutality of its state apparatuses: the judicial apparatus, in conformity with statist policies, looks upon family, kin, and religion, as quasi-autonomous spheres of the lifeworld, not to be transformed by what the law has to offer. The law, therefore, only intrudes because it has to, only to place the social actors on the bargaining table all over again. Which all amounts to routinized procedures of a certain kind, as described in this book, rather than a blunt or subtle political program intended to subjugate the private to the public.

If the crimes in this book do connect anywhere, it is, indeed, in relation to popular culture and its sacrificial rites. But the reader must be alerted that no attempt was made here for such a connection: the resources are simply not there to bridge such a gap in our knowledge. Suffice to say, however, that some of our protagonists have volunteered on their own, in the deep loneliness of their prison cell, to inscribe on paper their *own* narrative of the murder (*récit–meurtre*) that they had allegedly committed, even if they did confess or kept denying any involvement to the very end (Chapter 4). It is probably in such personal accounts that the individual meets the historical, or where the individual meets popular representations of crime and sacrifice. It is, indeed, in such accounts that defendants do account of their alleged responsibility in the first-person singular, promoting this "I" which police reports and interviews by prosecution and judges kindly bypass; it is in such writing practices that "grievances" are plainly voiced, even if there was no one to listen.

If the Ottoman Tanzimat of the 1840s to the 1870s constituted the first breakthrough from the old sultanic legal order, the 1950s, amid the plethora of legal codes that were promulgated on short notice in 1949, routinized codes and procedures through practices that by and large are still efficient today. Our approach to the legal system is specifically through its *court practices,* that is, its case-files. There is a longstanding tradition in legal studies that looks at the formation and evolution of law primarily in terms of the system's codes, de facto assuming that the code's norms are "applied" through the courts. Stated differently, legislators and jurists are the ones who "formulate" the law through various codes and statutes, doing their best to maintain a sense of coherence, while lawyers and judges normally "apply" the law by "interpreting" the codes through court practices. Such a view comes with several shortcomings, which for our purposes I'll limit to two only. First, by giving priority to the process of drafting codes, it leaves other levels—a fortiori the courts—at bay in a reduced passive role, robbing them any effective agency of their own. Second, the depiction of the law as in its very essence a process of drafting codes and statutes portrays this prime noble level as the "theory" of law, while the rest is "practice," that is, subjugated to the legal norm as enunciated by codes or statutes. Such a démarche, however, fails to document how much work is done in court to delineate the thin borderline between the legal and illegal, which in turn constitutes the zone of demarcation between facticity and validity in any legal system. Finally, needless to say, the drafting of codes and statutes, and subjecting them to parliamentary approval, even though an abstract and theoretical enterprise, is itself a *practice* in the same way that

working through case-files is the quintessential practice of the courts. To wit, the whole notion of a "theory" versus "practice" in the legal sphere, where the latter is "guided" by the former is simply superfluous by all accounts.

Figure 1: Jinayat criminal dossiers at the warehouse of the Idlib Palace of Justice in summer 2007. The files would survive for 20–25 years on average, the legally required period of conservation after the final verdict and appeals, after which they would be dispensed with for recycling.

Our entry point to the legal system is therefore through its court practices, more specifically the case-file system. A case-file is comprised of various documents—texts and images—which were assembled in the process of an examination of a case by judges and courts for the sole purpose of coming up with a verdict. In the Syrian system, the police report, which examines all available suspects and witnesses within the first 48 hours of the occurrence of a crime, constitutes the prime document for a case, while the verdict from a local court, with a possible ruling from the supreme court in Damascus (*Naqḍ*), constitute the case's closure. What happens in between is the subject of our analysis here: all documents that have been drafted by policemen, judges, lawyers, doctors, suspects and witnesses, psychiatrists, forensic experts, and other professionals, are of prime interest. The "case" materializes therefore as an *artifact*—that is, as an objectified thing that is referred to by a number, which circulates around, and debated—once it is *materially* associated with a "file." It is indeed this combination of case *and* file that matters in its *textuality,* in particular in a civil-law system with no juries to

deliberate. First of all, our choice of the case-file stems from the fact that it assembles the *totality* of *available* documents, the same ones that the court would consider for its verdict, which means that there is no need to "expand" the case beyond its material file, for instance, in the form of investigations that the researcher may be inclined to conduct. Useful as they may be, interviews and other information are not *stricto sensu* part of a case-file, hence they're outside its *textuality* per se. Second, this restriction to the case-file, omitting all "outside" elements, reduces the case to its *textuality.* From our perspective the analysis of documents-as-texts should be limited to their inner logic and construction as texts. Third, the textuality of the case-file would enable us to diagnose the case from the vintage viewpoint of its protagonists, that is, the judges, lawyers, plaintiffs, defendants, witnesses, doctors, and court experts who made the case possible. Needless to say, such a three-pronged approach to law—the case-file, its textuality, and the actors' experience—would not see light without the patient detailed labor on each case individually.

My main argument is that by closely looking at "how a case-file works" we are researching how the legal system constitutes itself as a system through its self-referentiality. As law is one institution in society among many others (politics, the economy, education, the sciences and media communications), which can only survive as an autonomous institution through the creation of its own internal boundaries, what is at stake is what precisely differentiates law from other parts of society. What the detailed analysis of case-files would do is precisely that "internal" view at the law: observing how systems use self-produced observations. The textuality of a case-file implies that we respect the user's experience as represented in the document-as-text.

In Ottoman times, the sharia courts would seldom handle criminal cases, while "evidence" was limited to what the two parties had to offer, in the sole presence of the judge and his scribe, with no professional lawyers (even though the system did admit "representatives").[33] With the implementation of the secular nizami courts in the 1870s and later,[34] once modern penal codes took "evidence" as "facts" that would be validated by third parties, evidence would change from a system of formal proofs to assessments of internal states: intentions, motives, rationality or irrationality of action, sanity or insanity of the actor, or more broadly, the *motif du crime.* In this modern process of producing evidence, assessing it, and drafting it into reports, procès-verbaux and testimonies, the court would take all action in its hands, while being at the mercy of outside expertise.

Plan of the book

In Chapter 1 we begin exploring our first three "criminal" cases, which are essentially "economic" in their core. Based on secondhand accounts, they place the vulnerable position of our protagonists in the context of the so-called "socialist economy" of the second Baath, that of the "rectification movement" of then-president Hafiz al-Asad. Once

[33] See my *Grammars of Adjudication,* Beirut: Institut Français du Proche–Orient, 2007, Chapter 11.

[34] As far as Greater Syria was concerned; in independent Egypt, and other parts of the Empire, the modern courts may have come into existence decades earlier.

the Baath moved in the 1970s to an ideology of defending "socialism" as an economic policy in support of the working classes and the popular and liberal professions (peasants, state employees, teachers, shopkeepers),[35] a parallel policy of incriminating the "liberal" transgressions against the "socialist state" set foot in the annals of criminal law. Our protagonists were *inter alia* accused of transgressing the "socialist economic norms" of the state for simply indulging into "liberal" economic practices like trading in hard currencies below the official rate, or else for "hoarding capital" outside the circuits of state-owned banks and financial institutions. Under such circumstances, the motto "property is theft" works well for the rejuvenated Baathist state of Hafiz al-Asad. But in such instances who is transgressing the law, the state or the alleged criminal who bypassed the "socialist economic policies"? Slavoj Žižek's notion of "the law is criminal" plays both ways: the state is criminal by imposing its own "socialist" policies, and the individual transgressors are criminal in transgressing the state's overt criminality.[36]

Besides discovering our first cases, Chapter 1 elaborates on themes, as it explores loosely connected topoi that would serve for the rest of the book, and which will be explored individually in relation to the cases in each chapter. Chief among them is the validity of the statistical data on crime published yearly by the Bureau of Statistics in Damascus. The problem with such figures, besides their uncertain accuracy, is that they have not been scrutinized to the test of sociological and economic analysis in order to draw some meaningful conclusions. Thus, a problem that surfaces from the plethora of statistical data is the unexplainable variations that would all too suddenly emerge from year to year.

Other themes that we have explored in Chapter 1 question the French influences over the Syrian civil-law system. Such matters would only have been a matter of historical curiosity were it not for their philosophical and practical connotations to what the courts do in their daily transactions. Chief among them is the practice of *circonstances atténuantes,* which was originally appended to the French *Code pénal* in 1832, which mitigates for causes of uncertainty what may have been a harsh ruling, and which the Syrians have incorporated in their penal code since its inception in 1949 as *al-asbāb al-mukhaffifa al-taqdīriyya.* Another amendment, which also became operative in 1832, touches on *démence*-as-insanity, is incorporated as *junūn* in Syrian penal law, and which would render a defendant ineligible to stand trial. Michel Foucault and his team at the Collège de France in the 1970s have traced the philosophical (and theological) origins of such practices, delving into the uncertainties of judicial decision making since the end of the eighteenth-century classical age, to which we have given ample consideration.

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[35] The tribal and clan-oriented *ʿashāyir* never stood in the Baath lexicon as a class on their own, to be integrated within, and benefit from, the socialist policies of the state, in line with the other popular classes, beginning with the peasantry which did benefit from the agrarian reforms in 1963–65 via land redistribution of the big property conglomeration of the notable families of the Ottoman era. It is as if the social core of Syrian society, namely its *ahl* component, to which all class structure ultimately belongs, had to be obfuscated in favor of a more progressive leftist ideology as inherited from the communist Eastern Bloc under the Cold War.

[36] Slavoj Žižek, "The Fear of Four Words: A Modest Plea for the Hegelian Reading of Christianity," in *The Monstrosity of Christ: Paradox or Dialectic?,* Cambridge, Massachusetts: MIT Press, 2009, 24–109, p. 44 for the citation.

Chapter 2 pursues the thematic elaborations with some thoughts as to what evidence and eye-witnessing imply: in the absence of hard forensic evidence, eye-witnessing and the confessions of witnesses become paramount in Syrian procedures. We conclude this chapter with the concept of the split subject common to Lacanian psychoanalysis, which would serve as the main conduit among cases in this book: namely, that the subject cannot be conceived as a coherent whole, divided between a subject of knowledge and an object to be known. In its stead, we argue that the subject is already split between a socio-symbolic order which it acknowledges, and an imaginary desire which cannot be apprehended by symbolic knowledge, remaining elusive and outside the confines of speech and language.

Even though Chapter 3 is on insanity, reason, and the law, its real purpose is to fully expose a single case from beginning to end, from the moment the police receive notice of the crime; up to interviews and investigations; reports, memos, medical investigations; court hearings and verdict. We benefit from what we have learned in Chapter 1 regarding *démence,* namely that once a defendant has been declared mentally incapacitated by a medical committee (or more than one), he would not fit anymore for trial, a concept that goes back to an amendment to the 1832 Napoleonic *Code pénal,* and which has been transplanted to many civil-law countries. Notwithstanding such legal transplants, the validity of which we've articulated in Chapter 1, societies document insanity differently, and in this instance, the validity of the counsels' arguments and counter-arguments on their defendants' insanity takes a macabre turn. I argue that the Syrian system, which eschews the chapter on *personnalité* common to French criminal procedures, as exposed in Chapter 1, has to face it sooner rather than later.

Chapter 3 therefore brings together the themes of reason and insanity in conjunction with the systematic unfolding of a criminal case, beginning with the police investigation that inaugurates the case-file with its suspects and witnesses of the crime scene; the follow-up of the prosecution and investigating judge; the preliminary synthesis and recommendations of the referral judge; the reports of lawyers and forensic and medical experts; up to the verdict, and, when applicable, the Damascus upper-court Naqḍ ruling. Chapter 4 follows suit with two cases were the "auto-biographical" element, in the form of letters drafted by the two defendants-inmates to their families, lawyers or judges. Considering that such biographical statements, delivered in writing in the intimacy of a prison cell, would *not* be accounted for in the verdict, yet included in the dossier, what purpose do they serve? Why should they be of prime importance for the researcher?

Chapter 5 raises the crucial issue of the death penalty which is still active in many parts of the world today. When it comes to Syria, the death penalty could be recommended by a military tribunal and executions may take place in public, as was the case in Aleppo in October 2007, when a youth-"gang" terrified the city all summer in assaults, robberies, and killings, and whose members were executed at the city center in public viewing, in wake of a verdict issued by a military tribunal in Damascus. The other cases are less sanguine and more private, as executions, amid a presidential decree that would endorse the Jinayat verdict for the death penalty, secretly took place at the main prison yard in the early morning hours, as if the "privacy" of the inmate should be sheltered from public

view; or else to shelter the public from ordinary crimes.

In Chapter 6 we come to "honorable killings," as they're inaptly labeled by the Jinayat. Even though such crimes do come in sorts, what predominates is a type of killing where the woman is victimized by a male offender from her family charging her with allegations of "promiscuous sex." The case-files of such killings are—literally—the thinnest among all those analyzed in this book: as the assailant immediately acknowledges his crime at a police station in the hours after the crime was committed, a one-year ordeal is all what it takes; a presidential decree in 2010 raised the ordeal to two years, which already includes early detention and court hearings.

We pursue the honor theme in Chapter 7 where the killers and their victims are in this instance all males. Rivalries within and among families and clans create an atmosphere of permanent intergenerational warfare within the community. Victims are thus simply targeted for no other reason but for belonging to the opposing family or clan, while their killing is meant for no other purpose but to perpetrate inter-clan violence, which, in the final analysis, constitutes an internal mechanism for a politics without the state. But the state must intervene, as it does in all other crimes, whatever their nature: What happens then under such circumstances, when longstanding feuds do receive the procedural juridical attention of state authorities? In such cases, the state would typically opt for manslaughter over first-degree murder, even though, such killings are a quintessential blueprint for premeditation, at least more so that any of the premeditated killings in this book.

We inaugurate Chapter 8 with a parricidal case where a daughter kills her mother, prior to burning down the home where she had lived with her husband and teenage son. Like the two cases analyzed in Chapter 4, the daughter drafts in her prison cell a letter where she explicates her motivations. I propose to look at such killings in terms of suffering and healing, in light of a third-party imaginary audience where the assailant is projecting herself as acting for the common good.

Chapter 9 brings us back to the logic of honor and inter-clan warfare, but this time in relation to land, its possession, and transfer among generational agnatic lines. I argue that once clans are not anymore those homogeneous entities of harmony, subject as they are to class divisions in a capitalist market economy, relationships between landowners and their tenant farmers take a new turn. Finally, Chapter 10 brings to light other aspects of the market economy, namely, the services which are at stake in a middle-class urban environment, amid the state's routinized corruption. Crime becomes an efficient tool to circumvent such routinized services by offering more lucrative deals. In sum, crime creates a new order whereby the difference between criminal and non-criminal activities is contained in a gray impenetrable zone.

Acknowledgments

This book would not have been possible had I not benefited in 2003–05 from a Fulbright grant that enabled to work for two years as visiting professor at Aleppo University with

weekly visits to the Palace of Justice; and a fellowship from the Institute for Advanced Study, School of Social Science, at Princeton in 2008–09, where I completed my first draft sitting for hours at the very comfortable Marquand Art Library at Princeton University, going over their rich collection of photographic portfolios whenever I was stuck with my criminal cases.

In Aleppo it was retired judge Sa'd Kawakibi, who has inherited all that knowledge in the Hanafi fiqh from his learned family ('Abdulrahman Kawakibi was known as Aleppo's first expert *muḥāmi,* "lawyer"), who had initiated me to modern civil and criminal law. Once I received his many encouragements, I had to find my own way in the bureaucratic routines of the Palace of Justice. I was soon to realize that rather that seek official permission from the higher echelons of the Palace, or the ministry of justice in Damascus for that matter, it would be more practical to seek help from the employees of the department of crime, the Jinayat, at Aleppo's Palace. From the 1990s to my last visit in 2007 the department had two scribes working for the two criminal courts; a third court was added for a brief period under heavy workload. Most of my work was completed under the guidance of Faruq Khattab, the then-scribe of the first court, and Muhammad Qutaybah Tadifi, the then-scribe of the second court and later the head of the Jinayat department. Faruq used to receive me at his home for long talks, and to deliver the "merchandise," in his popular Sukkari neighborhood, which in summer 2012, being in the vicinity of the infamous Salah-al-Din has suffered extensive damage from the armed conflict that opposed the Free Syrian Army (FSA) to the national army. Mahmud Masri and 'Ali Malahifji who respectively headed the department of crime in the 1990s introduced me to the bureaucratic work and procedures of the Jinayat.

Hasan 'Abd, who was a sociology student of mine at Aleppo University, invited me on many occasions to his "slum"–*ᶜashwāᵓī* neighborhood of Karm al-Muyassar (east of Aleppo) and to the "procedural fictions" at work in such neighborhoods to come to terms with the "illegality" of transactions.[37] I owe him the knowledge and generosity for the article that I published on his neighborhood, which in 2012 was extensively damaged.[38]

I've interviewed many lawyers and judges, too many to remember by name; among them 'Abdul-Rahman 'Allaf, a genuine connoisseur of "hard" administrative lawsuits and of the history of the Muslim Brotherhood since its inception in the 1940s (his father had co-authored the movement in its formative years with Mustafa Siba'i); judge Shakib Muyassar familiarized me with the juvenile courts (interviewed on 6/14/2004); judge Hanna Abdel-Nour who was a member of the mighty Damascus Naqḍ, after serving as chief judge of the Jinayat, provided me with that rare firsthand look of the routines between the upper and lower courts (interviewed on 6/17/2004); Jalal al-Din 'Abdul-Karim (interviewed on 2/9/2005); 'Abdul-Hayy al-Sayyid who presides a law office in

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[37] On the political significance of the slum neighborhoods in Damascus in the current civil war, see, Jihād al-Zayn, *al-Nahār,* Beirut, 5 January 2013. It is estimated that over 115 residential zones in Damascus, Ḥimṣ, and Aleppo are *ᶜashwāᵓī,* comprising 30–40 percent of the populations.

[38] "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.

Damascus is an extremely attentive reader and connoisseur of Syrian and international law; he offered a subtle critique to an early draft on my analysis of contemporary Syrian law.[39] Now that Syria is going through its bloody civil war, I owe them more than what they could have possibly given me: I did not realize back then, when we were in peaceful time, how much their testimonies meant to me.

When making the shift from Aleppo to Idlib, a city of 150,000, the big surprise was that the Idlib Jinayat were much more comprehensive in their investigations, as if more work needs to be done when communities are small and everyone knows everyone else, which gives the Idlib files a more polished look, even though forensic evidence remains all the same extremely poor. The late Michel Ghannum and his assistant Yahya "Abu 'Awad" Hamud introduced to the complexities of Idlib's life, its inner-family feuds, economy, and court system. When Michel, an experienced lawyer in civil and criminal law, offered me as a "gift" his "best" case prior to his premature death in 2001, I was shocked when I realized that for a schoolteacher who was accused of killing her husband in 1983, the death-penalty verdict came no sooner than 1994, while her execution took place at Idlib's courtyard in the early hours of January 1st 2004, as if to celebrate the cruelty of the New Year (C5–5). Sure time can wait—but why all that wait? Maybe in small communities *time* is an *additional* factor for healing fractured families and relations, while in Aleppo, Syria's largest and prime industrial city (over 3 million) there is that uncanny feeling of anonymity in spite of the importance of kin and family: the investigating process up to the verdict tends to be a bit more informal and mechanical, which implies *less bargaining over time,* even though a case may unexpectedly drag on for no reason.

When working on the book-manuscript I've gained from many formal and informal comments, invitations to read a chapter in public at a seminar, conference, or workshop. In Beirut Waddah Sharara and Muhammad Abi Samra kept me busy with their prolific output, their renewal of modern Arabic, which is hard to keep up with in my forced exile.[40] In our long discussions on Syria, Muhammad thought of my teaching experience at Aleppo University in 2003–05 worth narrating, hence the series of personal "testimonies" that were anonymously published in *an-Nahār* in January 2008, which have been recently revised in a book format.[41]

Michael Gilsenan and Khaled Fahmy invited me to their seminar at New York University in February 2009 and extensively commented on one of the chapters in this book. In one of the cases (C5–5), the woman was accused of killing her husband in 1983, received a death-penalty sentence in 1994, whose execution in Idlib's prison was postponed until New Year's eve in 2003, amid a presidential decree. Michael brought to my attention the fact that time in this instance is not meant to work on evidence, but probably serves as a

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[39] "Droit et société," in Baudouin Dupret and Zouhair Ghazzal, eds., *La Syrie au présent,* Paris: Actes Sud, 2007, 625–660.

[40] Of particular significance is Sharāra's study of "political crime," *Ayyām al-qatl al-ᶜādī,* Beirut: Dār al-Nahār, 2007.

[41] "Jāmiᶜat al-khawāᵓ al-Baᶜthī," in *Mawt al-abad al-sūrī. Shahādāt jīl al-ṣamt wa-l-thawra [The Death of Syria's Eternity. Testimonies of the Silence and Revolution Generation],* edited by Muhammad Abi Samra, Beirut: Riad El-Rayyes Books, 2012, 23–60.

"healing" factor.[42] To understand time better, I had to integrate psychoanalytic research involving trauma, loss, and repetition, in conjunction with criminal narratives.

When teaching at Aleppo University in 2003–05 Baudouin Dupret approached me to collaborate on a collective book on contemporary Syria,[43] and another project on narratives in Islamic law.[44] Having introduced me to his beloved ethnomethodology,[45] we've been debating since then the obscure interrelations between sociology and history.

The first draft of this book was completed at the Institute of Advanced Study in Princeton in 2008–09, thanks to an invitation by Michael Walzer and Danielle Allen. As member of the Institute I've benefited from comments on various chapters by Charles MacDonald, Rick Shweder, Diego von Vacano, Yoval Jobani and Aurelian Craiutu. Additional chapters were presented at the University of Washington in Seattle, thanks to an invitation by Clark Lombardi and Reşat Kasaba; and at l'École des hautes études en sciences sociales in Paris, where I benefited from the bigheartedness of judge Antoine Garapon, an acute observer of court practices;[46] last but not least, I presented Chapter 1 at the Zentrum Moderner Orient in Berlin in November 2012, thanks to an invitation from Nora Lafi and Feras Krimsti.

Brinkley Messick, with his indefatigable prominence on textuality, narration and discourse, has been an inspiration ever since his publication of *The Calligraphic State* (1993). Wael Hallaq with his prolific output helped me shape my understanding of Hanafi practice, which constitutes the missing and forgotten time framework for contemporary Syrian law. Martha Mundy brought anthropology to history like no one else did. Max Weiss came to know my work from my interest on anger and emotions in Islamic literature,[47] and since then our common enthusiasm in Bilād al-Shām and legal practices brought us closer. Lisa Wedeen inaugurated the long overdue analysis of the ambiguities of political domination in Arab societies.[48] Timur Kuran's *The Long Divergence,* which I've recently reviewed,[49] with great courage connected the dots between law and economics in Islamic history that I've been striving for since my inaugural work on *The Political Economy of Damascus.*[50]

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[42] Michael Gilsenan, *Lords of the Lebanese Marches: Violence and Narrative in an Arab Society*, Berkeley–Los Angeles: University of California Press, 1996.

[43] *La Syrie au présent: reflets d'une société,* Paris: Actes Sud, 2007.

[44] "The insane shepherd-who-writes: Is he competent to stand trial?" in Baudouin Dupret, ed., *Narratives of Truth in Islamic Law,* London: I.B. Tauris, 2008, 199–240.

[45] Baudouin Dupret, *Le jugement en action,* Geneva: Droz, 2006.

[46] Antoine Garapon, *Bien juger. Essai sur le rituel judiciaire*, Paris: Éditions Odile Jacob, 1997.

[47] "From Anger on Behalf of God to 'Forbearance' in Medieval Islamic Literature," in *Anger's Past: The Social Uses of Anger in the Middle Ages,* Barbara Rosenwein, ed. (Ithaca & London: Cornell University Press, 1998), 203–30.

[48] Lisa Wedeen, *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary Syria,* Chicago: University of Chicago Press, 1999; *Peripheral Visions: Publics, Power, and Performance in Yemen,* Chicago: University of Chicago Press, 2008.

[49] Review of Timur Kuran, "The Long Divergence: How Islamic Law Held Back the Middle East," *Journal of World History,* 2012, 23, no. 2: 422–426.

[50] *L'économie politique de Damas au XIXe siècle. Structures traditionnelles et capitalisme,*

In Chicago Larry Fox and Hugh Miller have kept me alive in the long snowy winters of the Windy City in our discussions on film and philosophy.

To paraphrase Jacques Lacan (and Hegel), they all helped me formulate my desire by giving me what I do not have—and which they do not have—and still lack.

Figure 2: Paperwork at the Aleppo Jinayat in the mid-1990s.

Damascus: Institut Français de Damas, 1993.

"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)

"Le crime se chante;
Crime is sung." (Michel Foucault)[1]

[Chapter 1] The economics of crime

Figure 1–1: The Aleppo Jinayat 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 ᶜāmma;* 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 desk. The counsel representing the standing witness facing the chief judge (the only one to directly interrogate) is standing on the left; since there is no direct cross-examination by counsels to witnesses, counsels only propose questions to the chief judge, which in turn may address them to witnesses, suspects or defendants. The audience of roughly 50 men and women, which tend to sit separately, is 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.

[1] 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.

The civic foundations of the new post-Ottoman legal order

What struck me upon my first visit in summer 1993[2] to the *Qaṣr al-'adl* (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 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 everyone's mercy.

There is no better way to contemplate the contrast between "old" and "new" than the *Qaṣr al-'adl* itself.[3] 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. Sporting a modernist minimalist look of rigid symmetric lines, with a large entrance hall that connects the mezzanine to the ceiling on the top, the windows are so large and massive that they cover all the 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 *mu'āmala* (transaction), for a trial to begin, for a hearing to proceed, to give a testimony, to act as witness, or simply to pick up a piece of paper, and what else? Is it this unbearable atmosphere of waiting and gazing which feeds 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.

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 shar'i qāḍis are much less numerous—only six—which used to occupy until

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[2] This book is based on regular visits from 1993 to 2007 to the *Qaṣr al-'adl* 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, since 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 (*jazā'ī*), 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.

[3] 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.

the 1990s five courtrooms in the basement (they have since then been relocated in a separate building in the same neighborhood). Thus, while in neighboring Lebanon, Sunnis, Shi'is, and Druze have their own sharia courts, while Christians too have their own courts of personal status (where inheritance rules do *not* abide by the sharia), which are totally independent from the secular courts of the state, the Syrian sharia courts are by contrast state controlled and some are located, in major cities, within the Palace of Justice itself.

The small number of shar'i 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, shar'i judges deal almost exclusively with personal status and inheritance matters, statistically implying that a great deal of the Aleppo population (even non-Muslims) have to benefit from such courts (in person or through representatives) once in their lifetime. Judges are busy with matters of divorce and inheritance, while 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 shar'i 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 shar'i 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 in case the father died and all the brothers are minors, the judge himself assumes this role of "guardian," in addition to two witnesses which are at times picked at random; there are also "professional witnesses" who keep hanging 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, and few kisses. But those employees-acting-as-judges are not limited, concerning shar'i matters, to marriages; they seem to act too as "the guardians of morality," since people consult them on diverse matters related to the family (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 constrictive and often complain to the shar'i judges for a harsh treatment by their husbands or for having "new sexual mores" imposed on them.[4]

The two-hundred or so other "secular" (non-shar'i) 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 ($100 to $150)[5] back in the 1990s (in par with

[4] According to one of those employee-cum-shar'i-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 ṭabi'i*).

[5] Based on the exchange rate of S.P.50 to the U.S. dollar prior to the Syrian Revolt in 2011–13.

other civil servants like university 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. That is to say, there is no equivalent to an American Supreme Court that would handle *any* type of litigation appealed by a lower court on matters ranging from the safety of roads, abortion, or the incrimination of the president of the republic.[6] 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 nizami courts. At the bottom of the judicial hierarchy, in both its civil and penal branches, lie the *quḍāt al-ṣulḥ,* the peace judges,[7] which, between nine and eleven in the morning and one to three in the afternoon, rule over their own courts for four hours daily. The *quḍāt al-ṣulḥ* take in charge 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, while violations are punishable by small fines up to a couple months in jail (akin to the one-judge-no-jury "instant justice" courts in the American system, or the French *tribunaux d'instance*). More serious offenses 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 more serious 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* in 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 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.[8]

Crimes are understandably the specialty of the *jinā'iyyāt* courts whose highest penalty could be capital punishment (Chapter 5). The *jinā'iyyāt* (or *jināyāt*) department receives 800 to a thousand crime cases a year, and the two *jināyāt* courts[9] encounter difficulties in acting in a timely fashion since they always end the year with a backlog of 300 to 500

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[6] 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).

[7] The equivalent of the French *juge de paix.*

[8] 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.

[9] 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.

cases (500 receive on average a verdict). A third court was therefore 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 only 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. The striking phenomenon here is that, 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 imply ten to fifteen years of incarceration for major felonies. 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; but were it not for the family as the guardian knot of moral values, crime rates could have been much higher. Syrian society is still very much family oriented, with many "honor"-driven crimes, either against women (Chapter 6), or else among men (Chapter 7): *sharaf* killings constitute indeed a hefty margin among homicides,[10] but the legal punishment, due to religious sanctions (such as the ban on illicit sex and adultery in Islam), in particular if the victim is a woman, is minimal—a couple of years at most. *Sharaf* crimes against women are juridically indexed as "killing for an honorable purpose (*qatl bi-dāfi' sharīf*)," which explains why one to two years is usually more than enough. Homicides are classified either as first-degree premeditated killings (*'amd*), with penalties ranging from a minimum of fifteen years of incarceration up to capital punishment; or as manslaughter (*qaṣd*), or else as *qatl bi-dāfi' sharīf,* that is, as deliberate but "for an honorable purpose," receiving a special treatment. In addition to homicides, robbery, grand larceny and drug-related cases, the *Jināyāt* handles many rape, incest, or sex with minors cases; the latter may have been lately increasing—a sign that the *mentalités* are in a period of change. But as I shall 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. By contrast the modest figures that I've quoted thus far come directly from the bookkeeping of the employees of the Aleppo Jinayat 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 the death

[10] One of the Jinayat 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 represent in Aleppo 50 percent of all crimes and roughly 5 percent of all cases the Jinayat is responsible of. 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 case two 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.

row used to be hanged in the prison itself where they served their terms, a habit that was dropped later in favor of more public spaces, *al-sāḥāt al-'āmma;* then back to the intimacy of the prison yard in recent years. In the office of judge Tawfiq al-Bābā who on a daily basis, from eleven to one, 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 *i'dām* cases per year and that the presence of capital punishment serves as a deterrent for criminals: *Allāhu yaghfur 'amman yashā',* only God forgives whom He wishes.[11] 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 leaves it for state institutions—primarily the police—for conducting all investigations and preparing a strong case for the courts. 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* 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, and once the plaintiffs are satisfied with the damages offered by the defendants and their families, they would drop their "personal right" (*ḥaqq shakhṣī*) altogether,[12] 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),[13] once a case is dropped, the *niyāba 'āmma,* the district attorney's DA office, would play the prosecution solo on its own.

Proceedings of the criminal courts would normally start on a daily basis (Friday and Saturday are off) at eleven in the largest courtroom in 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

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[11] See Chapter 5 on capital punishment and torture.

[12] It is known that 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 in one, hence the Jinayat court in its final verdict would command both punishment and compensation to be paid, if any, to the plaintiffs.

[13] See my *Grammars of Adjudication*, Beirut: IFPO, 2007, Chapter 11.

traditional *robe du magistrat* and sit on an elevated bench known as the *qaws* (the "arch" of justice); a representative for the public prosecution, *al-niyāba al-'āmma,* shares the *qaws*-bench with the other judges and the scribe. Lawyers and their assistants sit behind a long desk facing the three judges (Figure 1–1). Unlike the Anglo-Saxon systems, and also, unlike the French, 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.[14] Lawyers can only "suggest" questions and complain to the chief judge, thus 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.

In the two–three daily hours, between eleven and one or two, the *Jinā'iyyāt* 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 specially to court to inform the chief judge that their clients would not attend either because they received a late convocation or because they didn't receive one yet. Because the court doesn't make a fuss on such delays, the officers who bring these convocations, writs, and subpoenas by hand to the respective parties could 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-'aẓīm 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 mighty qāḍī, leaves little room for maneuvering in the form of cross-examinations, thus does not fit the give-and-take format of the American courts.

The essence of the Syrian judiciary could be perceived in the way witnesses, plaintiffs, and defendants, are subjected to direct- and cross-examination by the chief judge. The core of the matter consists in 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.

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

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 of course 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 *Avocat général premier, dīwān al-muḥāmi al-'amm al-awwal,* a function that primes the hierarchy, but confined to the *Qaṣr* itself (towards which it acts as a general supervisor), which directly supervises the public prosecution office (*al-niyāba al-'āmma*); at a lower level comes the *avocat général, al-muḥāmi al-awwal;* and finally, the *chef de parquet, al-niyāba al-'āmma.*

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 which occupy the same outsized courthouse outside Damascus. Typically, a *Naqḍ* ruling is a concise one-two-page document, but, unlike its French *Cassation* equivalent, which does not even publish most of its judgments,[15] 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.

At the top level, Syria has three higher courts whose jurisdiction is outside the *Qaṣr al-'adl:* a five-member administrative supreme court, *al-maḥkama al-idāriyya al-'ulyā,* 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 *qaḍā' al-idāri,* and (2) *maḥkamat majlis al-dawla.* Finally, there is the notorious *maḥkamat al-amn al-qawmi,* 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.

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

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* in July 1949, it was meant to replace the archaic Ottoman penal code of 1920, which in turn was based on the 1858 qānūnnāme,[16] 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[17]) now look obsolete, they've 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 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.

As'ad Gorani, the father of the modern civil and penal codes, was then the minister of justice under the brief six-month military interlude of Husni al-Za'im, a Kurdish officer who ventured in the first coup d'état in Syrian history. In his introduction to the 1949 penal code,[18] Gorani notes the ineptitudes of the 1858 Ottoman qānūnnāme, which he disrespectfully disparages, as "not good enough to stay," as it would only fit "to protect a monarchic despotic régime." Gorani 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 regrettably among the last to rely on its obsolete Ottoman laws.

When Gorani 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, Fayez al-Khuri, hardly mentioned in his

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

[17] Considered as the Ottoman civil code, and which was based on the Hanafi law of contracts.

[18] *Qānūn al-'Uqūbāt,* 6–12.

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 the French one in the first place, "we would all have graduated from the law school with no knowledge of the laws in our country."[19] Such a 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.[20] In his *Memoirs,* published posthumously in Beirut, Gorani devotes a small incisive chapter on "the legislative renaissance (*al-nahḍa al-tashri'iyya*)," where he portrays his place in history as a major jurist in the brief reign of Husni al-Za'im (whom he very 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 Hanafi 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.[21] Such rapaciousness undeniably 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 already was 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:[22] 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 attenuating 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.

In what seems like a self-congratulatory note, Gorani's posthumous memoirs include a facsimile letter addressed to Gorani by no one else but Abdul-Razzaq Sanhuri, the most influential Arab jurist of his time, dated 11 June 1949, in which he congratulates 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, Sanhuri hastens to note, the two codes are "like twins." In his concluding note, Sanhuri wits that "there's still the matter of the Islamic sharia. 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

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[19] As'ad Gorani, *Dhukriyyāt wa-khawāṭir*, Beirut: Riyad El-Rayyes Books, 2000, 79.

[20] Gorani, *Dhukriyyāt,* 92.

[21] Gorani, *Dhukriyyāt,* 220; idem, "Marāḥil waḍ' al-qānūn al-madanī" in *Muḥāḍarāt naqābat al-muḥāmīn fi Ḥalab fi-l-sana al-qaḍā'iyya 1949–1950,* Aleppo, n.d., 107–28.

[22] Elie J. Boustany, ed., *Code pénal*, Beirut: Librairies Antoine, 1983, 25.

you to this crucial matter on another occasion."[23] Gorani was not, however, minister of justice anymore in 1953 when the personal status code was finally published under the third dictatorship of Adib Shishakli. Nor was the Islamic sharia central to the code, as each one of the officially recognized 17 *millets* had *grosso modo* their personal status ethos legitimized under a broader umbrella of secular articles, albeit the Christians had to abide by the sharia rules of inheritance (a major difference with neighboring Lebanon).

Gorani 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, Gorani ignores the Egyptian inspiration and the French roots of most Arab codes, not to mention the preponderant role of the Egyptian legist ʻAbdul-Razzaq Sanhuri in the transition from a sharia to a civil law system. There is, however, a clear emphasis on Lebanon in Gorani'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," 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, Gorani's introduction strikes with its optimism, at a time when both Syria and Lebanon owed a lot to their post-Ottoman élites, and to the "Arabism"-without-borders that the latter fostered. The dissimilarities in deeply rooted mores were probably greater than Gorani could have anticipated: Lebanon had outlawed since the 1950s honor killings, and made them in 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 Gorani's introduction boils down to his digressions on the analytical framework of the new penal code, namely, that the legists made the right choice from 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 learned from this school is the meaning of "moral responsibility (*al-mas'ūliyya al-maʻnawiyya*)" in a criminal act, primarily when it comes to "intent (*niyya*)," specifically, articles 187ff on intent; articles 191ff on motive (*dāfiʻ*); 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 all intent and motive ought to be objectively deciphered; but this is an aspect of the law that has increasingly meant scrutinizing for deep 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 Gorani could have anticipated.

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[23] The Syrian personal status code, based on the Hanafi sharia, came four years later, in 1953, under the military rule of Adib Shishakli, the third coup in Syrian history.

The other school of thought that Gorani 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 Gorani cites articles whose purpose is to "defend society" from "ordinary criminals; or people with mental illnesses; or with unnatural desires,[24] 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 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 attenuating circumstances." More importantly, such legal measures of "limiting freedom for the sake of public order," Gorani 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,*[25] 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).[26]

The difference between Ottoman law and the modern codes shows best in this "moral" stance, which comes right from the traditionalist school. Thus, the 1949 code looks at participation, instigation, 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 Gorani, there is an element of the *consciousness* of the act (which may never 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 Hafez al-Asad, modified a number of articles related to sexual mores, an indication that sexual debauchery becomes rampant with rural migration, urbanization, the sudden growth of slums, and the ubiquity of the mass-media, which open individuals to new practices. Thus, articles 489–520 were modified with a much tougher stance on

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[24] Implying probably homosexuals, which 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.

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

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

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.

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 Husni al-Za'im 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, hence look pretty much insignificant, as 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 Hafiz 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 Gorani had 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, then, is that the major political upheavals that had tremendous political repercussions nonetheless left the legal system almost intact; however, deeply-seated alterations would only show up 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.[27] These have been mostly 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 external world, which was originally introduced in 1952, and which also organized the functioning of 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-'uqūbāt al-iqtiṣādiyya*) (1966), the Law of Contraband Repression (*qānūn qam' 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 'uqūbāt tahrīb al-'umla al-sūriyya wal-'umūlāt al-ajnabiyya wal-ma'ādin 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 since the 1958 abrogation of articles related to the freedom to associate, indirectly mitigate the "civil"—

[27] Syrian Arab Republic, *Majmū'at al-qawānīn al-iqtiṣādiyya,* Damascus: Mu'assasat al-Nuri, 2003.

or "private"—aspect of the law by subsuming 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. That is to say, natural law codes stress the importance of the state for human society, hence portray the state as regulating human affairs.[28] Modern Syrian law, therefore, even though fully rooted in the civil (unnatural) tradition, has nonetheless gradually shifted into guaranteeing the state a natural precedence 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 files 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 positions 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, whilst a vague political collectivism which remains poorly formulated, is more ideological than legal, and is inconsistent with the private spirit of civil law upholds itself on the other.

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 nothing but 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.

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[28] 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*."

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-'āmma*), which, besides movable and immovable state properties, includes ones belonging both to the venerable "cooperative associations" (*al-jam'iyyāt al-ta'āwuniyya*) and to syndicates and "popular organizations" (*al-munaẓẓamāt al-sha'biyya*). The second article specifies that even the institutions of the Baath Party are part of the "public goods," even though an authorization from the general secretary 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—thefts and 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 Hims, 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 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][29] Consider the case of the merchant Muhammad Khayr, a member of the Damascus chamber of commerce, whose commercial work required transferring capital between Syria and Egypt.[30] Since he was conducting business in Alexandria, the transfer of goods had to follow the regulations of both countries, which in essence implied

[29] All cases are numbered by Chapter; see *supra* the Table of Cases.

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

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 freely, 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 Muhammad Khayr, the inferno began when by martial order (*amr 'urfī*) 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 time 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-quṭa'*) 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 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 positively 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 even 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 general prosecutor 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 latter argued that there was lack of serious evidence against the defendant, the general prosecutor appealed the case to the tribunal of economic security in Damascus. The latter 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, which we do not need to go through here. Suffice it to say that 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 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 a confusion among texts and jurisdictions. The outcome is that the spirit of the 1949 civil code, which, as Gorani has vividly 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 all sorts of 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 very

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 confiscate (*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 confiscation 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 confiscations, 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.[31]

In the 1970s, the heyday of Hafiz al-Asad's corrective movement, all kinds of 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 *shuyū'* landholdings) among individual users.

[C1–2] Let us consider the case of a certain Nadhir, 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-'āmma*). 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

[31] 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.

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-ʿamma*). 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 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 rebuked (*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) 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. Or the legal and bureaucratic modalities of forming 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 dead capital that lies dormant to one that would be invested in a project and expected to generate profit. In other words, with lots of capital invested, among others, in immovable property, its "availability" would prove impractical in most instances. Moreover, as Syria is handicapped with all kinds of 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 kind of risky project. The real 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? To be sure, such problems are not only political and techno-bureaucratic in nature, as they decipher mindsets on the markets, at work, and in risk-taking. If the majority of Syrians find it safe to invest in property, it's because property is a safe bet, one that minimizes risk-taking, and that would not involve working with partners or conducting a serious business for that matter. Moreover, such investments are sluggish in their very nature, in the sense that even when prices pick up, they do so very slowly, generating profit only over long durations, compared to the briskly nature of manufacturing investments.

For such reasons, the state has patched 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 investment 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 ex-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,[32] 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 off its plug of subsidies. People in eastern Europe and in the ex-Soviet republics, now free 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.

[C1–3] It was in this context that the rise of the infamous Muhammad Kallas, his fall, and alleged bankruptcy dominated Aleppo's economic (and criminal) landscape in the 1990s.

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[32] Private banking was only legalized in 2004–05.

With a local economy that had rejuvenated for a while thanks to the collapse of the ex-Soviet economies, small to medium manufacturers had some cash flowing in. Manufacturing spaces were created all over the place, as they were not much subject to state control: in residential areas, as well as in manufacturing zones, but, in the final analysis, 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.[33] 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 Hariri 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).

It was within such claustrophobic atmosphere with poor investment potentials and low capital circulation that someone like Muhammad Kallas, an investor and resident of Aleppo, would make his fame—only briefly, however.[34] Kallas realized that there was some 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. 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 indeed very limited, in the absence of an open market economy, stocks and bonds, and a aggressive banking system outside the statist institutions.[35]

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 Kallas 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

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[33] 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 revolts: *al-Ḥayāt,* Beirut, 3 August 2012, p. 4.

[34] This account of Kallas is based on *al-Thawra,* Damascus, 22 September 2003.

[35] 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.

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 all kinds of military and economic privileges. Pace Perestroika the Soviet mortgage system all of sudden collapsed, leaving Syria with no other alternative but to pay cash for its imports, whether military or otherwise. That led to a rapid drop of the Syrian Pound, from 11 Pounds to the dollar in the early 1980s to 50 Pounds by 1990.[36] 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 mostly 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 all too 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.

Kallas did therefore 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. Kallas 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 well-to-do 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?

Kallas had an ingenious idea in mind. 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 to refuse—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 "Kallas 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 Kallas 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 pound that Kallas 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, Kallas was

[36] And to above 70 Pounds during the uprising in 2012 and later.

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. Kallas would in turn sell the apartment whenever necessary to get the liquidity he badly needed for his manufacturing and financial enterprises, which were the hub of his activities, and to which the exchanged properties only served as a dormant capital. But Kallas, 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 Kallas were broadly defined as "credit collectors" (*jāmi'ī amwāl*), while the ordinary users who had "invested" in such enterprises were to be identified as "depositors" (*mūdi'īn*), or as "the depositors of the credit collectors" (*al-mūdi'īn lida jāmi'ī al-amwāl*). The term "credit collector," however, even though not incorrect, clumsily defines what the likes of Kallas 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 Kallas web of activities had anything "illegal" into 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 be a way to "participate" or exert pressure on the board of trustees. In the final analysis, investors had little leverage on what was going on, and in case of 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, to say the least.

The depositors thus managed good investments for a while, in particular between 1990 and 1994, thanks for 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 Kallas was running empty, that the cash was not there, and that once the bubble would die, the depositors would soon find themselves totally bankrupt. In short, Kallas 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" capital than "real" one, Kallas had to prove that it's 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, Kallas would have probably been unable to deliver *all* cash in toto had the majority of his contributors asked him to do so.

When in summer 1994 long lines of depositors began forming near Kallas' 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. In the meantime 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. The law was supposed to address that abnormal credit situation within a year of its implementation, that is, its ultimate target 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: what was the status of the Kallas 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 Kallas 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.[37] What became common knowledge was that by 1994 Kallas had amassed close to 9 billion pounds ($180 million)[38] from his thousands of depositors, but 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, he 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.

What is of interest is the confusion that reigned in 1994–95, beginning with Kallas' bankruptcy rumors, to the promulgation of Law 8, and his eventual arrest the following year. What in effect this period marks 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 Kallas' "clients" and competitors among the "credit collectors." In effect, as Kallas' 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 which had deposited their entire savings with Kallas, 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 nature of the closed Syrian

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

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

economy, its lack of expertise in banking and finance, and a state protectionism that many Syrians have cherished but learned to distrust. The Kallas 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've noted that the 1970s and 1980s have 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's 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 there as a natural law with obvious political connotations, what can then the law do? What are judges supposed to do in such situations?

One of the accusations leveled against Kallas was that of "obstructing the enactment of the socialist legislations (*tuhmat 'arqalat tanfīdh al-tashrī'āt al-ishtirākiyya*)." Thus, in the same vein that some have been guilty of "obstructing the socialist economy and production," Kallas 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 that unifies, without, however, knowing for sure what's they're supposed to mean. Such formulations, while providing an opportunity for the state at intervening in the privacy of contracts, are meant to buttress social cohesiveness and common belonging. From there the common user is supposed on his own to regulate conflicting situations that may emanate from his 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 common state interest is *also* that of the common good, while the bulk of properties would remain in private hands.

Even though Kallas was convicted for 20 years in 1997 by Aleppo's criminal court 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, amid a Naqḍ ruling in his favor, having served less

than ten years in prison.[39] 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 Muhammad Kallas 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 Kallas be summoned to reimburse his shareholders in cash.[40] In the initial ruling of the Aleppo Jinayat, the court had listed 58,000 "investors" (*muwaddi'īn*), which had deposited various sums, or "exchanged" properties, with Kallas. The original assessment amounted to 4 billion liras of deposits, whether cashed capital or properties, while the value of the properties of Anas Enterprises were estimated at 635 million above the value of the deposits, which provided Kallas with an ample margin of maneuvering. But in spite of such ample margin, Kallas was nonetheless sent to jail, until the Naqḍ ruling pointed out a decade later that it was illogical to demand Kallas to refund his "investors" *in toto,* since they already *are* "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 Kallas' largest "investors" (see below), have become nervously restless once Kallas' shaky investment scheme had been publicly exposed to the masses. They've therefore opted to unjustly drag him into court action, throw him in prison, 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 Kallas' top investors, a deal was struck to make him disappear out of the public eye, as there was no better way but to send him to jail through the court system. Thus, even the late Naqḍ ruling, which liberated Kallas from his jail sentence, failed to concretely restitute him as general manager of his own enterprises.

The Kallas 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 Kallas 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 Kallas. Thus, for example, in the aftermath of the assassination of the ex-Lebanese prime minister Rafiq Hariri in Beirut in February 2005, amid the nervousness that followed the Syrian withdrawal from Lebanon that same year, a textile manufacturing company known as Dayri Enterprises, proclaimed its bankruptcy. The Dayri 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 with 1,800 workers on the western entrance of the Aleppo–Damascus highway. In its high time the factory was 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 brings Kallas to the Dayri brothers are the type of investments common to both enterprises. The latter were rooted in two different and unrelated sources. At the upper level, the bulk of investments allegedly originated from

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[39] *Al-Thawra,* Damascus, 5 January 2006.

[40] A facsimile of the ruling is available at <syriacourt.com>.

either sitting or ex-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 Kallas and Dayri had opened their respective enterprises. Such individuals originated for the most part from outside the city, 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.[41] Among such individuals were Shaykh Doctor Muhammad Suhayb al-Shami (his Doctor title goes back to a 3ème-cycle doctoral dissertation submitted at the Sorbonne in Paris), the then-director of the Aleppo waqfs; Muhammad Mustafa Miro, who was Aleppo's mayor, prior to becoming Syria's prime minister; Iyyad Ghazzal, the then-director of Aleppo's presidential palace and head of the Syrian railway company; Colonel Muhammad Bakkur, 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 first tight circle of officials.

There are other similar scenarios of so-called investment and extortion, which we need not get into at length, such as the textile enterprises of the Jarbu' brothers in Aleppo, or the Bashiyans in Damascus. Notwithstanding all kinds of differences, what nonetheless seems common to all of them is that urge, in societies of mismanaged dormant capitals, to "invest" in "enterprises" with risky interest rate margins, far above any reasonable profit rates. Such investments are 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 IRS taxes them unfairly, but simply for the sheer volume of their incomes vis-à-vis the remaining 95 percent of producing households (50 percent pay no federal income taxes).[42] 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, and/or manufacturing, and/or finance and industry. They are for the most part non-political actors, even if they occasionally manage to stand for parliament. Baathism has, on the other hand, produced a class of state employees whose high powered positions enabled them, in some instances, to mismanage and extort public funds (including state owned properties) to their own benefits. Such individuals could be located in the civil bureaucracy, the presidential palace or republican guards, the military or intelligence units. With the large "surpluses" that they had managed to produce either during their tenure as state employees or upon their retirement, through embezzlement schemes in state funds and properties, such individuals have favored risky investment projects of the likes of Kallas and the Dayri brothers. In other words, even though numerically they represent a tiny minority among

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[41] 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.

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

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 property bubble, only points to weaknesses in non-legalized risk-taking schemes. In such instances, high-powered crony investors get mixed with ordinary middle class professionals whose accumulated invested capital is the result of hard work, and is way below what the high-powered group has invested. Thus, in the case of Kallas for example, even though the committees that were set in the wake of the Jinayat 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 then either state bureaucrats or ex-employees. Even though Kallas 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 had him started, 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 Kallas' 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 are very much politicized, as they primarily rely 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 tend 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.[43] The nervousness 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 come to the forefront at the street level (which nowadays also translates into web-blogs). In such context, "bankruptcy" usually means an inability on the part of "credit collectors" (the likes of Kallas and the Dayri 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, manage to function precisely on trust, and not solely on the ability to deliver in a moment of crisis: that is to say, banks and financial institutions in general 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 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

[43] Over 300,000 jobs were lost in the agricultural sector alone 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.

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's 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 that 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 Naqd ruling in favor of Kallas shows, the court openly indicated that it would be illogical to demand from Kallas 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 saw light in 1950, less than a year amid the 1949 penal code.[44] Like its predecessor, it manifests a strong influence from its original sources, namely, the French penal code through its Arabic adaptations first 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 even though 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 squarely the responsibility of each crime, from simple felonies and misdemeanors to homicides, on the attorney general (*al-nā'ib al-'āmm*). Article 6 places the responsibility for investigating crimes and bringing criminals to justice on the judicial police (*ḍābiṭa 'adliyya*), which it defines as composed primarily of the attorney general and the investigating judge, or the district judge (justice of the 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 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

[44] Syrian Arab Republic, *Qānūn uṣūl al-muḥākamāt al-jazā'iyya,* March 13, 1950.

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.[45]

The Syrian system of detention of a suspect comes in parallel to the French controversial *garde à vue.*[46] In the French *Code de procédure pénale,* the police has the right to keep a suspect under investigation 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 interrogated 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[47] (which is strangely the term used for someone who has only been in police 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'll 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 to 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

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[45] 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.

[46] 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.

[47] The *mudda'ī 'alayhi,* 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.

the police and those to the judge—represent 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), or 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 (*targhīb 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 the 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 what matters, a matter like torture is solved from *within* the dossier, not by appealing to additional expertise to further investigate the matter.[48]

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-waqā'i'.* 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's 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 couldn't 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.[49] It is therefore this

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

[49] See *infra* the section on Foucault's contribution to an understanding of nineteenth-century

"desire to understand," rather than simply to accuse and convict, which 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 *only* a judge, but a judge that seeks medical expertise; the persona of the defendant has become all too important so as 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.[50] The defendant's vitae is constructed 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's 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 unable us to understand, appreciate, and evaluate?[51]

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

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European "Enlightenment" criminality.

[50] The requirement for sanity was stated in article 64 of the old Napoleonic code, which stated that there could be no conviction in case of an 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.

[51] François Boullant, *Michel Foucault et les prisons,* Paris: PUF, 2003.

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; defendants could be deemed unable to stand trial for cause of insanity. As to the broader issue of vitae, again, it would *not* appear in a specific section of any report, but is all over. 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.[52] 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.[53] This 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

[52] 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.

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

investigation would have been unthinkable back then. 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, routinely 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,[54] it is the preponderant culture in a society that would bent "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 go 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.

Which 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 paraphrases and summaries of the "original." It is, indeed, 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,*

[54] See Chapter 2 on *shahāda* witnessing.

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[55] 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 mighty Damascus Naqḍ—would have had no problems 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.

The old sultanic order and the new civic virtues

When in his introduction to the newly promulgated 1949 penal code, As‘ad Gorani, 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

[55] Which brings to mind Jacques Derrida’s assertion that *“il n’y a pas de hors-texte.”*

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.[56] Moreover, such an observation would not stand valid only 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) can't—precisely because developing countries need complete systematic codes that could be immediately "customized" to their own needs and implemented through the state's agencies.[57]

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[56] 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 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."

[57] Nathan J. Brown, *The Rule of Law in the Arab World,* Cambridge: University Press, 1997, 236–

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 needs, primarily to a harsh system of conscription that was at the root of a modernized Egyptian army;[58] 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 Gorani 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."[59] When it comes to the big transformation that Gorani addresses in his introductory remarks to the penal code, the "pressure force" consists in this instance of élite groups, well versed in law, like Gorani 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. "Law develops mainly by borrowing," says Watson, "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,

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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.

[58] Khaled Fahmy, *All the Pasha's Men: Mehmed Ali, His Army, and the Making of Modern Egypt,* Cambridge: Cambridge University Press, 1997.

[59] Alan Watson, *The Making,* 182–183.

the general prestige of a donor system, and its accessibility through writings."[60] 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 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, Gorani was among those who seized the opportunity in the brief interlude of Husni al-Za'im to promulgate the new codes and bracket off opposition from defenders of the Hanafi 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.[61]

Shaykh Mustafa Zarqā', a leading Hanafi 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 Hanafi 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,[62] which would have been congruent with the new times,[63] 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 As'ad Gorani whom the coup leader [Za'im] had appointed as minister of justice. Gorani had weak-mindedly taken advantage of that coup era and its terrorist rule (*ḥukm irhābī*), persuading the coup leader, who took hold of both the legislative and executive branches of government, that the promulgation of a foreign civil code[64] in lieu of the Islamic

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[60] Alan Watson, *The Making,* 183.

[61] Muṣtafa Aḥmad az-Zarqā', *al-Madkhal al-fiqhi al-'āmm,* 3 vol., Damascus: Dar al-Fikr, 1967–8, 1:4–5, was a major defender of old Hanafi 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 vol., Damascus: Dār al-Fikr, 1984; Muṣtafa al-Sibā'ī (1915–64), the founder of the Syrian Muslim Brothers in 1945, argued for the importance of the Sunna in modern legislation, *al-Sunna wa-makānatuhā fi al-tashrī' al-islāmī,* Damascus, 1966.

[62] 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.

[63] That is, modernity and its secularist worldview.

[64] 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.

> fiqh would serve [Za‘im’s] image in the West for eternity, as it would make him another Napoleon, whose *Code civil* was more enduring than his military conquests.[65]

When Gorani prematurely retired as minister of justice amid Za‘im’s assassination in the aftermath of the second coup led by Sami al-Ḥinnāwi, he did in his Aleppo lectures to the Society of Lawyers bring anecdotal evidence to his suggesting to Za‘im his analogy to Napoleon. For Zarqā’, 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,* Zarqā’ 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. Zarqā’ 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” in the work of lawyers and society at large, to the point that any return to the Ottoman code (which was based on the Hanafi fiqh), or to the sharia for that matter, are utterly unthinkable. But there’s 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 at delineating the nineteenth century—the age of the panopticon—from its predecessor—the classical age, where the figure of the 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 across the board in old Europe and North America. Even though the “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

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[65] Zarqā’, *al-Madkhal,* 1:4.

lecture-text like *Les anormaux,* which is our prime source[66]) 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* trails down to non-linear genealogical programs back to the Greeks, Romans and Christians ("the confessions of the flesh," *les aveux de la chaire*), took a turn in the nineteenth century towards an institutionalized control of individuals: all kinds of *dispositifs* ("apparatuses"), which 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 Zarqā' laments a lack of *aṣāla* in the Syrian civil codes, he is unwittingly mourning the gaze of the Hanafi 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 that was supposedly universal.[67] 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'll 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 added in 1832, and which grants, at the discretion of the judge, "attenuating circumstances," *circonstances atténuantes,* to suspects once indicted. In itself, this constitutes a

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

[67] Foucault, *Les anormaux,* 8.

recognition of the uncertainty of the indictment, of the fact that the demonstration could never be complete and satisfactory.

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 "attenuating causes (*al-asbāb al-mukhaffifa*)," a term that is widely used in the majority of the indictments[68] analyzed in this book, and which mirrors in content and form the *circonstances atténuantes* of the French penal code. 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 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, however, since they are unrelated to legal reasoning, their survival in the recipient system remains problematic. 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. Even though 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. Herein 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?

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[68] Which use 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.

Nor are modern criminal codes reduced to their juridical underpinnings, and that's 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."[69] 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. How come 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, 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.[70] 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."[71] 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 problematics takes an interesting twist, which for readers familiar with his *History of Insanity* (*Histoire de la folie à l'âge classique*)[72] 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

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[69] Foucault, *Les anormaux,* 15.

[70] Foucault, *Les anormaux,* 21.

[71] 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."*

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

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 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:* 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 to. 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're into familiar Foucauldian territory, namely, "the intervention of positive technologies of power," or techniques of normalization which did become all too common since the late eighteenth century.[73] 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, 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 at *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 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

[73] Foucault, *Les anormaux,* 44–45.

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 inexistent, 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."[74] 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 awry 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.[75] 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 so much to his act, to what he has done, that the act belongs to him, hence the right to punish that criminal subject.[76] For the defense, however, the absence of clear 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

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[74] 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).

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

[76] Foucault, *Les anormaux,* 115.

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 attenuating circumstances signaled a deep 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 in the final analysis not simply the bargaining chip through which an excessive penalty would be duly 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 attenuating circumstances make it possible to "rectify," thanks to the "appreciating 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 further to public opinion, in that they would be accorded by juries (or what stands for them[77]) rather than by professional judges cut off from the nation at large.[78]

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 attenuating 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 attenuating circumstances could therefore be

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[77] 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.

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

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 attenuating 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 attenuating 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.[79]

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 persons reported to have been convicted in penal cases 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-fourths 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

[79] Blandine Barret-Kriegel, "Régicide–Parricide," 338.

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).[80] The number of persons convicted in penal cases in 2006 in the 12 provinces (out of 13 muhafazat, but the occupied Qunaytira 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.

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 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" settle on their own a hefty majority of conflicts: in 1995, the highest year with 311,522 convictions, the share of the peace courts was a whopping 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're 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,"

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

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,[81] we can only attempt to link such figures to broader political and economic conditions. If 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;[82] while 1983–84 was that of the inside confrontation between the Asad brothers, Hafiz and Rif'at), 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"[83] and to exports towards the ex-communist bloc. But that soon came to a halt by the mid-1990s once those newly established businesses (in particular small manufacturing, trade, and transportation) did run 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 Muhammad Kallas 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.[84] 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 yawning 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

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[81] 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, 195–224; Steven D. Levitt and Stephen J. Dubner, *Freakonomics,* New York: HarperCollins, 2005, in particular, "Where Have All the Criminals Gone?," 117–146.

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

[83] Investment Law N° 10 in 1991.

[84] 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.

jobs. It also exposed its industries to high quality, affordable imported goods when it signed 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.[85]

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).[86] Construction in such neighborhoods (known as the "random (*'ashwā'ī*)" 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 "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-than-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 trial at all, would be in the well protected "state security court." Our statistics point to the obvious fact that whenever crime numbers swell, the excesses are absorbed by the labor of the peace courts, hence consist mostly of misdemeanors rather than heavy crimes per se. 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 Jinayat courts, which are the subject of

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[85] *International Herald Tribune,* New York, December 20, 2012.

[86] 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.

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),[87] 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.[88] 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.

Table 1–1: Types of crimes and misdemeanors in Syria, 2003–2007[89]

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
Documents	286	235	244	236	166

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

[88] Even though divorce is on the rise—from 12,627 divorces approved by the sharia 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.

[89] Central Bureau of Statistics, Damascus, http://www.cbssyr.org/.

falsification					
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[90]	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**

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

Offences[91]	**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[92]
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

[90] Not to be confused with another category in Table 1–2 regarding "crimes and contraventions not covered in the penal code."

[91] 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.

[92] This was among all places in the southern town of Dar'a, with an estimated population of 100,000.

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**

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.

[Chapter 2] What would stand as enough evidence

An Idlib judge, prior to drafting an indictment for a homicide (C5–5), in which a young school teacher was accused of killing her husband, problematized "confession" into six broad categories:

1. A judicial confession must be descriptive, personal, frank, and emanating from a free will, while at the same time in accordance with reality.
2. When there is a denial to the original confession, as was the case here with both prime suspects, having denied in the presence of a military prosecutor most of what they had stated earlier, the earlier confession could still stand as valid, in particular *if the denial would create an implausible reality,* that is, a "view contrary to the accepted reality (*khilāf li-l-ḥaqīqa al-rāsikha*)." In our case here, it would have been implausible that the victim would have died either in an act of suicide or targeted by assassins other than the two suspects.
3. A confession must be devoid of confusions, ambiguities, contradictions, and in no need of manipulated interpretations to become intelligible down to its finest particulars (*juz'iyyāt*).
4. A confession could also be implicit (*i'tirāf ḍimnī*) in the sense that the suspect avoided any direct acknowledgment of a truth, but nevertheless her statements, when interpreted in conjunction with other statements, either by the same suspect or by another witness, could bear the light of a hidden acknowledgment.
5. In all the above instances, it would be therefore up to the judge to decipher a genuine confession from a faked one, or perceive an acknowledgment in the process of an interview or a police report, and contrary to what the defense attorney in our case here had repeatedly stated, denying a confession[1] (*rujū' 'an i'tirāf*) is not enough for the judge to drop the confession in question, as the denial itself could be devoid of any truth.
6. Finally, the aim of all this tedious but essential work in sorting out confessions and acknowledgments would be to determine for each homicidal case "the cause of the killing (*al-bā'ith fi-l-qatl*)," considering that "each criminal act is in need of a motive (*dāfi'*)."

In contrast to the Anglo–American systems, labeled as adversarial, an inquisitorial civil-law system like the Syrian is mostly based on a *textual* construction of evidence by lawyers and judges. What is meant by the textuality of the case is that from day one, from the time the police takes hold of the case and interrogates suspects and witnesses, each police memo is drafted with an eye on the court work which is to follow. The original oral utterances, uttered in colloquial Arabic, are de facto transformed into written accounts, or at best into mini-narratives, ready to be disseminated into the paperwork that needs to be completed between the investigating judge, the referral judge, and the upper courts. In other words, there is a process of textualization of the case-file at work from the very beginning, which de facto gives importance not to what was originally uttered at the police station, or in the privacy of a judge's office, or to courtroom performance, but

[1] On the difference between "confession" and "acknowledgment," see below, and Chapter 3.

to *how all such performances have been drafted in writing.* This may seem odd, in particular from the perspective of the exuberant performances in American courtrooms, where *interactionist strategies* between defendants, witnesses, and lawyers, is what jurors and the broader public would remember most, and would serve as the basis for their closed-door deliberations, which are generally devoid of any textual material. In fact, the rules of evidence, developed over hundreds of years of American jurisprudence, are there to ensure that the facts that go before a jury have been subjected to scrutiny and challenge from both sides. All of that would be lost if the jurors were to go out on their own, do their own research at home or in libraries, googling facts and evidence online, or emailing and discussing evidence with people outside the courtroom. In all their work jurors are therefore not required to thoroughly examine any *textual* evidence while deliberating. It is indeed ironic that the American court system, which has the most comprehensive techniques for transcribing verbatim all of what has been uttered in the space of a courtroom, in particular the cross-examination of suspects and witnesses, costing taxpayers hundreds of dollars per hour for courtroom work, leaves all such textual material out of the reach of juries. That's why the sociology of the U.S. courtroom has taken a turn towards interactive situationism, as best evidenced in the work of Gregory Matoesian, which overtly looks at cross-examinations as situated encounters where linguistic and bodily performance are paramount elements of the trial scene.[2]

The Syrian system goes in another direction. In the six rules established above by the referral judge while trimming evidence to the needs of the Jinayat court, what is taken for granted is that in the absence of verbatim statements by all participants in the case-file, what remains are *edited* accounts or min-narratives that lawyers and judges would disseminate while constructing evidence. That is to say, such accounts are already embedded within the scope of an interpretive work which goes unnoticed. When the said judge notes in his first rule of evidence that a "a judicial confession must be descriptive, personal, frank, and emanating from a free will, while at the same time in accordance with reality," he avoids the crucial issue regarding *how* such elements of "frankness" and "honesty" would be "revealed" to the judge. Considering that the chief judge, for the sole purpose of drafting his final verdict, would only have at his disposal the totality of memos and reports, his decision to consider a statement as "frank" or "reliable" must be an exercise of personal hubris. In practice, however, "frankness" and "reliability" become routinized attributes to all kinds of statements which are simply *approved* without much explanation. Moreover, the identification of statements in their totality as having been an outcome of a witness' "willingness to cooperate, and deliver her testimony freely and without constraints," often comes identified as such in an indictment without further vindication. Thus, police reports, among others, are drafted as if every word is reliable, and could be reliably disseminated in other reports and memos, not to mention in verdicts. There is thus a self-referentiality in the assessment of statements delivered by witnesses, usually in the form of self-contained assertions that alert the "reader" (primarily lawyers and judges) that what has been delivered is perfectly safe and reliable, providing the prosecution with the "direct" evidence that it needs. For its own sake, the defense can only play the dubious game of giving prime importance to later denials,

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[2] Gregory M. Matoesian, *Law and the Language of Identity. Discourse in the William Kennedy Smith Rape Trial,* New York: Oxford University Press, 2001.

which at times pushes police and investigators, in a preemptive gesture, to pressure suspects to deliver statements that would openly state that they have not been subjected to any physical or psychological duress. Thus, for example, at the end of a long interview that a certain Ahmad had been subjected to,[3] the judge preemptively asked him, "Did you deliver those statements to us because you've been beaten up or tortured?," to which the defendant replied, "No, I've only stated what happened in reality (*dhakartu al-wāqi'*). The military intelligence folks had beaten me up twice or three times with a khayzaran stick, so I told them, Don't beat me up, I'll tell you everything you need to know. So they gave me time to rest, which helped me recuperate a great deal of my freedom. Even if I were subjected to some beating and torture at the intelligence unit, I nevertheless enjoyed my complete freedom during my investigation." And the final question was also related to torture: "Are there any traces of beating on your body?" "There's a small trace on the bottom of my left foot and the right one too." "The defendant took off his socks, and there were slight traces of bruising on the bottom of his feet." The cruel irony of such statements is that in order to deny that his statements were furnished under torture (or its equivalent), the defendant had to state that, even though he was subject to some torture, he nevertheless managed to deliver his statements in total freedom. As he bluntly said, he had "stated reality," no less no more.

What is it that lawyers and judges openly challenge in police reports and examinations conducted by judges? Certainly not the mode of *transmission* of the content itself, which remains caught in its self-veracity and its inability to see that the questions themselves, the setting, the situated encounter, and the transcription on paper of oral utterances, all of which provide large areas of uncertainties which ought to be carefully examined. Leaving such uncertainties aside, lawyers and judges generally operate through cut-and-paste techniques of the *transcribed* content. Herein lies therefore the importance of *allegations* of torture as a tool to deny the veracity of statements attributed to a suspect: it's a tool of the last resort left in the hands of suspects, witnesses, and their attorneys to deny in toto the validity of statements (*inter alia,* C4–1, C5–5). Since the process of content transmission is generally left in the dark and not challenged, torture becomes the route to escape the scrutiny of the process of accumulating evidence. As no one seems to be bothered in the techniques of transmission and transcription of utterances from the oral to the written text, torture seems the way out to deny the totality of the transmission in question. But as the referral judge has stated in his six rules of thumb above, a statement that was later denied should not be totally dropped because of allegations of torture or similar claims. There is that "reality principle" that lurks behind all confessions, acknowledgments, and denials: What is it that makes more sense, statement X or its denial, non-X? Judges, we are told, have to operate through a reality principle, and such a principle, we should add, from the perspective that we've defended in this study, is more "textual" than "real," in the sense that what judges are looking for are textual consistencies or inconsistencies while sorting out various statements uttered by different actors under various circumstances. The sorting out process remains by and large the most invisible part of adjudication, and for that matter its least challenged and most ambiguous aspect.

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[3] In the Sabiha Dal'un case, C5–5.

The system of collecting evidence, interrogating suspects and witnesses, rests therefore on a big fallacy: the fallacy of misplaced concreteness. In other words, the system operates within that broad presupposition that policemen, prosecutors, judges, doctors and psychiatrists, are all experts whose area of expertise cannot be challenged in terms of its content and practices. For instance, a policeman would *know* how to interrogate a suspect, and therefore cannot be challenged on the practice of interrogation itself, nor on the transcription of oral evidence into a written text, ready for use by lawyers, judges, and other court experts, as if that was a taboo question.

What is enough evidence?

[C2–1] The infernal couple had divorced and remarried twice, amid allegations of spousal abuse and battering. In the aftermath of their second unhappy wedding, the husband had allegedly burned his wife to death on 17 October 1993 in a popular Aleppo neighborhood. The victim woke her husband that morning so that he would buy some bread. The distressed husband, who disliked being disturbed in his sleep, addressed his wife with insulting remarks, which soon metamorphosed into a major fight, until he urged her to drop her dowry rights (a financial bargain that would pave the way for a second divorce), but she refused. While she went out to clean the dooryard, her husband went after her, full of anger, insulting her parents. He then allegedly sprayed her with kerosene and burned her dress. As her body was caught with flames she repeatedly begged him to quench the flames. But he turned away while she kept begging him, and when he left the house, she followed him, but he rejected her plea, until two passersby extinguished the fire that was eating her body. Her brother rushed her to the hospital where she died few days later.

In the referral judge report signed on July 1994, sixteen items of evidence were listed.

1. Initial police report on 17 October 1993 from the neighborhood station.
2. Police memo of the station of Muslimin on 22 October 1993 which reported the victim's death.
3. Autopsy of the victim's body on 22 October 1993 confirming that the death occurred as a result of the burned body.
4. The investigation of the peace judge in the region of Jabal Sam'an regarding the couple's marital life before they moved to the city.
5. Statements of the accused husband on 7 December 1993 to the investigating judge: "I did not burn my wife; the day of the incident I woke up from my sleep at the hearing of screams, and saw that there was a fire in the house. I tried to extinguish the fire but did not succeed, which caused few burns in my body. I rushed out of the house and informed her brother, while in the meantime some persons helped me and my wife to extinguish the fires over our bodies."
6. Statements of the witness Ahmad al-Hasan (victim's brother) to the investigating judge on 23 November 1993 in which he stated that his little daughter came to him and said that she saw her aunt on fire (the two houses were close enough). "When I rushed to my sister's home they had her in a car, while her husband was

in the street. She told me that her husband had burned her, so I went and told the police. She died as the result of that, and I'm aware of conflicts between my sister and her husband on family matters."

7. Statements of the witness Zakariyya to the same judge on 29 November 1993: "I saw a fire inside one of the homes, and with the help of another person we managed to extinguish the fire. I saw a woman who had escaped to the street, and helped her to the hospital. I don't know whether the fire was caused by fate alone or someone's act, but did notice that **she was screaming: 'burn me!**'"
8. Statements of the witness Muhammad to the same judge on 7 December 1993 regarding a visit he had made to the victim at the hospital, when her brother, mother, and aunt were present, and in which she informed him that "**my husband burned me from behind**."
9. Statements of the witness Muhammad Salim to the same judge on 7 December 1993, who had also visited the victim at the Kindi hospital, that he heard her say to a person that came to receive her approval to appoint a lawyer for her lawsuit, that her husband was the one who was responsible for burning her and damaging her body.
10. Statements by the witness Sarah to the same judge on 12 December 1993 that she saw the victim and her husband rushing from their home towards the street and both of them with flames over their bodies. She had learned that the victim had attempted to burn herself before.
11. Statements of the witness Fatima on 9 December 1993: "**I knew the victim and she was a nervous person, as she attempted fourteen years ago to burn herself, and I've also heard that she had attempted to commit suicide in Lebanon, and that in the last incident she attempted to kill herself**."
12. Statements of the victim's mother on 16 January 1994 in which she confirmed that her daughter had informed her of conflicts with her husband, who had demanded that she drops her dowry rights (both the *muqaddam* and *mu'akhkhar*). While cleaning the doorway her daughter had felt that flames were burning her dress from behind, and that her daughter's husband received some burns while his wife was attempting to get hold of him.
13. Statements of the witness Yusuf on 3 February 1994 also confirming the conflict between husband and wife, the nervousness of the victim, who once attempted to burn herself with kerosene. The witness did not eye-witness that event but was reported to him by his wife.
14. Another witness, the *mukhtār* of the neighborhood, confirmed the conflicting nature of the relationship, the divorce and remarriage. When the victim's father and brother came to his office for a death certificate, he asked them whether they were of the opinion that it was the husband who did it. "They heard prior to her death that it was the husband who burned her, but for their part they did not believe that such was the case."
15. The person who visited the victim at the hospital in order to work out a *wakāla* (act of representation) for her confirmed to the judge on 6 February 1994 that she had told him that it was her husband who burned her.
16. Finally, the witness Wardah, who was the victim's neighbor, stated on 16 April 1994 that, contrary to what the defense had claimed, he never talked to the victim

> when he visited her at the hospital, and that she did not inform him that she had attempted to burn herself.

After the above list of depositions and statements from various witnesses, the judge recommended in July 1994 to the higher Jinayat court to condemn the defendant Mustafa Ahmad (b. 1959) for manslaughter (*qaṣd*) pursuant to article 533 of the penal code, avoiding a premeditated indictment (*'amd*) that could have meant permanent incarceration or even the death penalty.

How did the judge proceed with his *qaṣd* opinion? A preliminary analysis of the sixteen items above reveals that the first four—police reports, investigations, and autopsy—remain inconclusive, as they are neither in favor of the plaintiff nor the defendant. The fifth item comes from the defendant himself, in which he denied all allegations of murder. The remaining items (6–16), which are statements by various witnesses, either confirm that the wife was burned to death by her husband, or else deny such wrongdoing and focus instead either on the victim's instability, her previously (unconfirmed) suicidal attempts, or else on accounts of hers in which she had allegedly "confessed" a final suicidal note that eventually placed her at the Kindi hospital for the few days before she died. The problem, however, is that most facts were not based on prime witnessing, but only on statements either from the victim herself or her close family. The victim seems to have confessed to some that her husband threw kerosene at her, while other alleged statements place the responsibility squarely upon her. The lack of any prime evidence places an even harder bargain on the chief judge, as he would need to question those witnesses very thoroughly simply to go beyond their initial declarations and to make sure that their accounts are not imagined or based on hearsay. Thus item 6 goes in favor of the plaintiff since the witness Ahmad stated that the victim had herself told him, while on her way to the hospital suffering from her burns, that it was indeed her husband who had attempted to burn her. Items 8, 9, 12, 15 and 16 all lead to similar conclusions. On the other hand, items 5, 7, 10, 11, 13 and 14 do not provide any conclusive certainty that it was the husband who did it: they rather point to previous suicidal attempts, and to statements allegedly uttered by the victim herself on her deathbed confessing a self-inflicted damage. If such statements are not fully in favor of the plaintiff, they should at least throw some confusion at the prospect that only the husband must have done it. In sum, a preliminary assessment would reveal that there is nothing conclusive, and that the two parties and their witnesses should have ended with a *match nul,* or six items for each.

When in the early phases of the investigation the referral judge, in his preliminary synthesis of the case, recommended for a deliberate but non-premeditated killing, he was into a situation where he could neither declare the husband guilty of premeditation, nor that he was innocent, what would have been a square admittance that the wife did commit suicide, as some of the witnesses alleged. He therefore opted for a commonsensical middle ground, where with the clause of attenuating circumstances the husband would get just what he needs: a 6–7 year sentence. This comes in conjunction with the fact that forensic evidence plays no role at all, as there was no lab test that was conducted that would have tipped the balance in one direction or another: homicide or suicide? In other words, what the judge was saying in his assessment is that "even though I don't have

hard evidence, the deliberate killing seems the most 'reasonable' to me." All this suggests a motif that we'll encounter in the majority of cases in this study, namely, that in the absence of hard forensics, the statements of witnesses tend to become primordial, but only in the way that they are edited, selected, disseminated, and contextualized in various reports—more of a cut-and-paste operation than one of careful hermeneutics. Which places witnessing at the forefront of the court system.

The aura of witnessing

In the same way that Max Weber valued "charisma" as an essential trait to political leadership, *eye*-witnessing would have no value without that "aura" that comes with the persona of the witness and the mystery that surrounds it. It is indeed the eye-witness that *must* tell the truth, because no one else has witnessed the event. Without that witness there would be no "case" per se, as no narrative would be viable enough to sustain it. But witnesses are your ordinary men and women, hence unreliable, as no two witnesses account for the same event in the same way. Moreover, since witnessing, as *an institution constructed on narrative work,* hence on the aura of the eye-witness, a speaker's utterances to police and judicial authorities is obviously of prime importance—but only in conjunction to the hearer's *interpretation*. That aura is even more pronounced when the surviving victim turns out *in person* as the main—if not only—witness, as if having survived manslaughter and its repercussion, the victim metamorphoses into an eye-witness-victim. In this instance, the style of narration—or accounting—receives its urgency from the "being-there-on-my-own." Whenever the victim did not survive the assault, the attention is tuned towards that "only" eye-witness who simply happened to be there at the right moment; or else that "only" witness may not have been that lonely after all, and someone else is ready to furnish evidence. Sometimes, as evidenced in the case of the schoolteacher accused of killing her husband (C5–5), the only witnesses were the perpetrators themselves, which in itself presents an embarrassment to the authorities: constructing a case from the vintage viewpoint of the murderers themselves! In this instance, the external gaze is totally absent, and the court finds itself at the mercy of the killer-witness who will tell the truth—from his or her standpoint. All such witnessing—the eye-witness-victim, the eye-witness-killer, the only-eye-witness, and the other-eye-witness—do obviously overlap within the institution of eye-witnessing, even though the nuances are important to detect—through the language games of the participants. In effect, between what witnesses furnish first to the police, the investigating judge and prosecution in closed interviews, and to the courts in public hearings, in all such instances the modes of investigation and delivery are obviously very different, even though the memos manage to portray the uttered statements (accounts) as if they have no relation to the situated encounter that created them in the first place. We therefore need to proceed in the other direction, that of contextualizing each account relative to its situated encounter.

Whatever significance is accorded to forensic evidence, which is fairly primitive in Syria, the institution of witnessing is what makes a case possible. To begin with, forensic evidence, even if it is an outcome of proficient lab-work, is itself a form of witnessing; the language of science, which translates in the binary code of true/false, is parallel to the binary legal/illegal of law communication. Hence the scientific language of forensic

evidence cannot all by itself account for the factualities of the case, as it must be integrated with other accounts to make sense. In short, forensic evidence is itself a form of witnessing, albeit a very special one, with its own language, which derives its aura from the enterprise of science, and which under specific circumstances could outweigh other forms of witnessing. For that very reason, there is no level of witnessing that on its own is more "truthful" than the others. What lawyers and judges do as second-level observers to the system is proceed through a juxtaposition of testimonies: compare and contrast, check utterances to detect an "acknowledgment" here, a "confession" there, and a "fabrication" of facts at the other end. Thus, even when, as is often the case, suspects, defendants, and witnesses (and at times even plaintiffs!) allege that they have been abused of or tortured by police, whilst officially requesting through their counsels that their original statements to police and/or prosecution be revoked by the higher court, there would nevertheless be no investigations open for that purpose,[4] as if allegations and denials, like acknowledgments, are all weighted and assessed against one another through a careful process of narrative evaluation: *witnessing is all about language games.* One could argue that even had there been investigations to pursue the matter of torture further such investigations would anyhow trigger an additional layer of witnessing, which must be assessed and evaluated against other layers of truth, as nothing stands out on its own as "the" level of "truth."

Memory, time, and forgetting

The eye-witness is rescued by his or her own memory. Since the eye-witness is the only one to have memory of the event, his or her aura comes not only from being a unique witness, but also as a link of the present to the past: in other words, he or she is privileged precisely because of his or her memory of the past.

The eye-witness is therefore the one who—literally—makes the case-file possible, as without him or her there would be nothing to account for. A crime without a witness is even worse than an unsolved crime. Even more problematic is when the suspect turns out to be the only eye-witness available. In the case of the schoolteacher accused of killing her husband (with the possible assistance of a brother and a nephew, C5–5), a homicide for which there was no witness but the perpetrators themselves, the "aura" of witnessing is here shattered by the mere existence of *only* one account of the crime scene from no one else but the culprit herself. It could well be that the "embarrassment" of the court for its sole reliance on "narratives of murderers" was what delayed the case for eleven years until the 1994 verdict, and for an additional ten years until the execution of the death penalty.

Between performance and morality: why direct interrogation is all that matters

Since oral proceedings are generally the norm for presenting and obtaining evidence, the interrogation of witnesses plays a key role in the construction of the totality of the case. In Syria, witnesses in a criminal case are first interrogated by the police within the

[4] Except under exceptional circumstances, for instance, when a suspect dies under torture (C5–4).

shortest delays possible (either a day or two after the crime); an investigating judge at the palace of justice would within one week pick up the interviewing process; the floor would be open, once the case receives its preliminary wrap up by a referral judge, for the courts to pursue their own investigations, in public view of a courtroom. Direct interrogation of witnesses is therefore an aspect of the law of evidence closely connected with oral proceedings. Generally, in most countries under civil code, witnesses are interrogated by judges who decide the verdict. Under both the inquisitorial and the accusatorial (Anglo–American) systems, the principle of direct interrogation is of special importance in the free consideration of evidence. In common-law countries the function performed by the judge in this regard is handled by attorneys on behalf of prosecution or defense, with the judge's role restricted almost entirely to overseeing the questioning. But the notion of *cross-examination* per se, however, is what distinguishes the inquisitorial from the accusatorial system. To wit, if we understand by cross-examination the practice of interviewing a witness simultaneously examined by the opposing side, then such practice hardly exists in inquisitorial proceedings. Moreover, and considering that the public prosecution office already "represents" the victim (while the victim's relatives do so on a private basis), the construction of evidence on both sides is more in tune with a direct examination of facts; but considering the legendary weakness and sloppiness of Syrian forensics, it is indeed upon the examination of the witnesses' utterances that each case hinges. Hence the importance of both performance and morality: if witnesses' utterances prove crucial, they're evaluated both on the actors' performance and their moral stance. Assuming that it is *how* actors say something rather than *what* they say is what determines the *performative* side of utterances, each statement could equally carry a moral stance within it, whose relevance would be assessed in conjunction with the actor's performance. Moral values are in this regard like the rules of law, which do not have an existence for their own sake, and whose value comes into being in the uses that actors make of such normative values. To elaborate, actors *document* what happened at a crime scene, and while doing so, they develop a *method* for narrating and organizing events, while keeping an eye on what binds a community to the rules of law, not to mention their "own" moral stance. Thus, the rules—whether the rules of law or moral norms—would receive their meaning from witnessing rather than from the rules themselves. Whether our view of the norms is close to a Hans Kelsen[5]—a formal approach to law, where one rule leads to and receives its legitimacy from another rule; the degree of (Weberian) rationality of a system would be determined by its systemic character—or to a Carl Schmitt,[6] where the normative rules are in essence indeterminate, in need of the (arbitrary) power of the sovereign (the state of exception) to be enforced—in either stance, however, the norms would become "something else" once a case is documented and indexed on legal and moral values.

One major influence that has shaped the law of evidence has been the jury system, and the law of evidence is sometimes thought of as the child of the jury. Oral proceedings, direct interrogation, and the public trial are much less problematic under the Anglo–American system than under the civil-law system to the extent that evidence is heard

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[5] *Introduction to the Problems of Legal Theory,* Oxford: Clarendon Press, 1992.

[6] *Über die drei Arten des rechtswissenschaftlichen Denkens,* Berlin: Duncker & Humblot; *Les trois types de pensée juridique,* Paris: Presses Universitaires de France, 1995.

before the jury. But this system has spawned a large number of regulations for the admissibility of evidence in order to guarantee the due process and fair procedure and to protect the jury from being misled. The initiative of the parties determines the handling of these regulations, for they must raise objections if, in their opinion, any of the numerous exclusionary rules is being violated. The judge rules then on the objection. By the complex working of this arrangement, the Anglo–American system has become more formalistic in many respects than the continental European system.[7]

This brief comparison between Mediterranean–Continental and Anglo–American systems suggests that, despite all dissimilarities, both emphasize an *oral* examination of witnesses. As the written proceedings favored in the Middle Ages have been abolished, the parties can nevertheless prepare their lawsuits through briefs, while some of the preliminary proceedings can be handled in writing. The interrogation of witnesses, however, stubbornly remains oral. Most civil-law countries would not permit any exceptions, while other countries, such as Germany, permit written statements by witnesses in special cases and with the consent of the parties. In common-law countries an exception is made to the principle of oral proceedings for certain types of affidavits, and, particularly in civil cases, the practice has steadily gained in importance. The narrowing of testimony to its oral aspect in the majority of systems suggests that there is a common consensus that a witness would be more "truthful" when witnessing "live" in the presence of a judge, prosecutor, or court or TV audience, than privately in writing in the form of an affidavit or any written statement. For one thing, the authorship of a document is always at stake, since it may have been "signed" by a witness, while drafted, either partially or totally, by someone else. Documents could be forged, their authorship denied, their time framework problematic, as the inscribed date (in conjunction with the signature) is no proof that the statements were delivered at that specific date. Oral proceedings would therefore solve the authorship and time framework conundrum by having the witness directly interviewed without intermediaries. Oral proceedings, however, share their own sets of problems, which are by and large quite known, in particular when it comes to police brutality and torture, or corrupt investigating judges, who in their *oral* face-to-face encounters with witnesses, would provide incorrect *written* statements, only to be ultimately challenged by counsels. Most systems, however, bypass such difficulties through a proviso that whatever a witness may have stated under oath to the police or investigating judge, such statements would stand null and void unless reiterated at the court that would deliver the final ruling.

Renaud Dulong and Jean-Marie Marandin have proposed to distinguish between avowal and confession.[8] Following their logic, the avowal must always be linked to an offence

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[7] In his majestic study of Iranian director Abbas Kiarostami, the philosopher Jean-Luc Nancy, *L'Évidence du film,* Brussels: Yves Gevaert Éditeur, 2001, reminds us of the Latin origin of "evidence" as "*Evidentia:* it is the character of what is seen from afar (giving a passive turn to the active meaning of *video,* 'I see'). The distance implied by evidence gives both the measure of its spatial removal and the measure of its power. Something is *seen distinctly* from far away because it detaches itself, it separates…Something strikes with distinction: always, a picture is also that which subtracts itself from a context and stands out, clear-cut, against a background. Always, there is a cut, a framing." (42)

[8] Renaud Dulong and Jean-Marie Marandin, "Analyse des dimensions constitutives de l'aveu en réponse à une accusation," in *L'aveu. Histoire, sociologie, philosophie*, edited by Renaud Dulong (Paris:

(*délit*): something was stolen or a body was found, and an investigation was open; at a certain juncture of the investigation, a relationship finds its way between the statements of one or more witnesses (or suspects) and the facts of the crime scene, which would be based on a process of constructing evidence, and the interpretation of statements. If, therefore, an avowal (*iqrār* as acknowledgment) may not be separated from an accusation, it is, according to Dulong and Marandin, a distinct phenomenon from confession (*i'tirāf*): the police would often know the existence of a crime only through the culprit's confession, while the judge would have to *discern* an avowal through the careful reading of an interview transcript. In other words, avowals are harder to discern than direct confessions, being invariably a matter of interpretation. In Syrian criminology, for instance, honor killings perpetrated against women, which are classified by the courts as "killings for honorable purposes (*qatl bi-dāfi' sharīf*)," are as a rule identified as such through the eyes of the assailant's confession to the police: the "early confession," prior to the police's acknowledgment of the crime, indicates in itself that the crime was no ordinary one, whilst the culprit should therefore be accorded special privileges (usually a reduced prison sentence).[9] The avowal, on the other hand, is a different matter: an offence was committed, and an investigation was open; and in the process of verbal exchange between prosecutors, magistrates, suspects and witnesses, a sequence of a colloquy—or a multitude of juxtaposed sequences—are identified as avowals and linked to the crime scene as such. Our two authors sum up their problematics with the following pertinent question: How do we know in a dialogued sequence that someone has avowed something? Which in itself already links avowals to interrogations and dialogues: the avowal is nothing but an "*échange dialogique.*" As the cases in this book show, judges would compile, for the sake of their final rulings, sequences of dialogues, which in turn would be interpreted, *once placed in conjunction with one another in a particular order,* as an indictment against the suspect, which is precisely what the judge did with the alleged arsonist above (C2–1). The dialogic sequences of interrogations must therefore be tackled at two levels: How do interrogations proceed on a one-to-one basis? And how are they used when juxtaposed to one another for the sake of preparing an accusation? Separating the two levels would, in effect, rob us from understanding how accusations are constructed, considering that when judges examine witnesses and suspects individually, they are thinking less in what the examination in question has to offer, and more in terms of the avowals that would be extricated once an interview is placed in conjunction with interrogations by other witnesses: it is as if judges proceed with the notion that an investigative sequence, conducted with a single witness, has nothing to say on its own, and would only mean something once *interpreted* in line with other sequences.

Even though in colloquial Arabic confession and avowal have their own words, *i'tirāf* and *iqrār* respectively, they tend to be used interchangeably, with no subtle distinctions between the two.[10] Thus, *iqrār* as avowal, can also be used for confession, acknowledgment, or admission (*i'tirāf* or *taslīm*); it could equally mean a declaration, statement or testimony (*bayān* or *shahāda*); or a ratification, confirmation, or

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Presses Universitaires de France, 2001), 135–179.

[9] See, Chapter 6.

[10] See, Chapter 4.

endorsement of something (*ibrām, muṣādaqa,* or *muwāfaqa*). If, therefore, *iqrār* often tends to pass as *i'tirāf,* and vice versa, it is presumably because confession in Arab societies would not carry the strong meaning of a confession deep inside, especially when it comes to the disclosure of troubling personal matters. Even in the western secular tradition, which owes a great deal to Christianity, confession often stands for a written or oral statement acknowledging guilt, made by one who has been accused or charged with an offense. By contrast, and within that same tradition, avowal would stand for a frank admission or acknowledgement of something. For our purposes, however, we understand avowal as what the judge would interpret as a "frank admission" or "acknowledgment" of a witness' statement, which in the context of Syrian criminology hinges on the two meanings of *iqrār* and *i'tirāf,* without much of a distinction.

Another factor that will preoccupy us has much to do with the "context" of an oral examination, as the one carried by a magistrate or investigating judge. For those rooted in the Anglo–American or European continental traditions, the Syrian "method" of investigation would surely look unappealing: too rudimentary and brief—where in most instances a witness' examination would seem more like a straightforward deposition, not surpassing the single page, and without much give and take. We will assume, following Émile Durkheim and Erving Goffman,[11] that ordinary interactions would follow certain guidelines known as "rules," which help actors find meanings in their actions; in a legal context, such guidelines would act like transcendent rules, where the sacredness of the rule transforms an ordinary interaction—for instance, an interview between judge and suspect—into a closely knit ritual.[12] If, therefore, in comparison to other systems, interviews carried by Syrian prosecutors and judges do indeed seem too soft, lacking the credibility and decisiveness that would be attributed to such encounters, it is simply because both parties would approve the *limit of an interrogation* by accepting the language game: there are questions not to be asked, matters that are taboo, and above all, an innate "satisfaction" that the witness has just said "enough" and need not be pressed with further questions.

The unspoken honor

In direct interviews, which may unfold in a police station or a judge's office, then later in the space of a courtroom, a narrative might unfold, which is framed as much by the answers as the questions themselves. Not only does each question "direct" the interviewee towards a possible answer, but a question might, in the best of all circumstances, "propose" an answer, if not indirectly impose it. That's particularly true when the examiner is an authority figure—policeman, prosecutor, or judge—and the interviewee is a suspect at a murder trial. While examiners in such circumstances would do their best to "frame" their suspects, the interviewee-suspect would in tandem be

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[11] Émile Durkheim, *Elementary Forms of the Religious Life,* Joseph Ward Swain, trans., New York: The Macmillan Co., 1926; Erving Goffman, *Relations in Public: Microstudies of the Public Order,* Basic Books, 1971.

[12] Dulong and Marandin, "Analyse," 157: "La sacralité de la règle y est objectivée dans la volonté divine, et l'exigence de réparation revêt la forme d'un rituel, par exemple d'un sacrifice, dont l'accomplissement engage autant le groupe social que le coupable ou son clan."

perfectly aware that any statement could be quoted by other authorities, enhancing the risks of making him or her an even more serious suspect. More important, however, is the nature of narrative that unfolds from interviewees, and how its particular structure offers an alternative to traditional narratives. The interviewee in such situations is like a student passing an oral exam, and is therefore fully subjugated to the authority of the examiner. Had the interviewee been given the opportunity to recount the incident on his or her own, a different narrative would have come to light. Such opportunities, however, are seldom provided to suspects and defendants; when, for instance, a suspect is incarcerated, and drafts a memo on his or her own behalf, an opportunity that their counsel might seize by including the memo in the petitions to the court (Chapter 4). To wit, the voices of suspects and defendants, not to mention plaintiffs and witnesses, are only heard via direct interrogations (in civil-law systems, cross-examinations, in the sense of re-examining a witness examined by the opposing side, are practically inexistent). There are three instances where that could happen: during police interrogations, followed by the prosecution's own examinations, and finally, the public hearings of the courts. But since police depositions do generally omit, however, the direct question-and-answer form, hence representing each cross-examination as a direct narrative flow, and reconstructing each session into an official Arabic different from the oral Arabic of the direct examination, different techniques ought to be applied for such depositions. The same applies grosso modo to the courts' hearings: since in a regular 3–4 hour session dozens of cases are heard, with close to 50 witnesses called, the fragmented interrogations of the chief judge would be transcribed into a language and structure different from the one in which they were originally uttered.

The closest direct interrogations worthy of that name, which are recorded as such (hence not as summaries), are undeniably those of the investigating judge. But even those suffer from major handicaps. Foremost among them is the extreme formalism under which they're conducted: questions and answers tend to be formal, and rarely do they go beyond what the police reports have already stated; add to this that the style of prosecutors is seldom aggressive, unable to manifest any desire to question the veracity of police reports. Prosecution and court investigations do have something in common though: namely, that the interviewees cannot be taken seriously for claiming that they were tortured or subject to stressful conditions, while the police is routinely accused by the defendants and their counsels for physical or emotional abuse. When summoned about the low-key approach of investigating judges towards their witnesses, lawyers and judges tend to insist that it's neither a question of strategy nor of adequate following of procedures, but rather an outcome of laziness and the lack of resources (not enough judges). What is therefore not questioned is the strategy of avowal: What if the construction of evidence heavily relies on "avowals" that are only perceived as such by judges? In other words, since as we've argued earlier, criminal systems implicitly operate within a loosely stated distinction between "avowal" and "confession," the "avowal" becomes an indirect "confession" as interpreted by magistrates: put simply, a judge would pick up a witness' statement, place it side-by-side to other statements by other witnesses, and interpret the "whole" as evidence that, say, the suspect was indeed the wrongdoer. Each statement, selected by the judge out of hundred others, becomes all by itself an avowal: the witness in question admits something (e.g. that he saw the suspect

driving his car at a specific moment), and his statement would be interpreted as "valid" by the court—that is, as a factuality. The difference between avowal and confession has therefore two aspects: (i) Avowals are statements uttered by witnesses or suspects, which are, at a later stage, interpreted by a judge as factually true. Left to themselves, those utterances are mere statements rather than acts of admission (or confession, or acknowledgment): only the judge magically transforms them into avowals. Avowals are therefore *in their original form* only ordinary and impersonal statements, which the judge interprets as and gives them the status of *personalized* avowals. (ii) Compared to avowals, confessions go much deeper, as they often imply, besides the revelation of a certain truth directly stated in the "I" form, of an inner feeling of guilt that would be admitted in the presence of a hearer (the interrogator in criminal cases). Confessions are therefore usually limited to suspects, while witnesses would only state factual evidence. Judges often draft their rulings as if *everyone* is confessing, suspects and witnesses alike, which gives statements an even more dramatic weight.

The unveiling of the mute ground of discourse

The death penalty remains in Syria the pristine punishment, a constant fixture that nothing else supersedes, even though the annual national rate would not supersede a dozen executions (neither the yearly Statistical Abstracts nor other official or non-official publications would reveal exact numbers, see, Chapter 5). The death penalty rests on the presumption of a *premeditated* killing committed by the assailant against his or her victim. In the Syrian annals of criminology, premeditation stands for *'amd*-killing, the equivalent of first-degree murder in Anglo-American common-law systems, which must have been executed with "careful planning," "a deliberate will to harm," and a "balanced non-disturbed mind" at the moment of the execution. In other words, premeditation *assumes* that the assailant *knows perfectly well what he or she is doing,* hence is totally "conscious" of his or her act at the *moment* of the execution. Again, based on a crucial amendment that was appended in 1832 to the original French *Code pénal*, the claim of *démence,* which *medically* stands for dementia, insanity, madness, would render the assailant ineligible for the responsibility of his or her act. Put simply, *démence* operates as a force "external" to the will of the assailant in such a way that he or she would be incapable of seeing what they were doing, as if, at the last moment, they were seized by a demonic force outside they own subjective wills; hence they could not be *legally* held responsible. As noted in Chapter 1, Foucault perceives in the 1832 amendment an attitude of "impotence" in the very reasoning of the judiciary, which in contradistinction to the *ancien régime* of the classical age, must now rationalize crime, embrace it as the Other of the subject's ego, whilst seeking help from various agencies, beginning with medical–psychiatric expertise, to no avail.

To unlock the mysteries of the unexpected association of juridical and medical practices, Foucault opted for a discourse analysis that would trace the genealogy of practices within an historical perspective. First of all, Foucault convincingly managed to delineate the juridico–discursive model of power in all its ambiguities. Discourse analysis takes at its aim the very foundations of the socio-symbolic order of society (law, medicine, sexuality, education, the sciences, politics, and so on), subjecting them to an approach to culture

that draws attention to the specific materiality of symbolic practices. In other words, discourse analysis conceptualizes ideological and cultural connotations beyond their symbolic meanings rooted into the power-relations that they would practice at a particular historical juncture. For example, a medical discourse that touches on *démence* is not solely discursive—framing the broad contours of what dementia and madness mean—but is practiced as such in the materiality of power-relations, for instance, in the way judges would declare a person "unfit" for conviction in a court of law. At its best discourse analysis alerts us at an historical *a priori* of ideas, rationalities and knowledge systems which either partially or as a totality would constitute a positive unconscious of knowledge, a level that eludes consciousness and yet is part of discourse, with an implicit stratum of knowledge which materially restricts what it is possible to think in a given domain and period.

In Chapter 1, we delineated what the juridical discourse of the post-Ottoman and post-colonial independent Syrian nation-state implied. By 1949, if not before, the juridical discourse strongly (if not artificially) delineated itself from its Ottoman past, to which it belonged, but rejected as non-modern and unfit for the modern age of the nation-state. Thus, the Ottoman centuries were, according to the nascent discourse of the nation-state, dominated by an ideology of "sultanism," whereby all laws were subject to the sultan's whim, hence obsolete within a modern context that privileges individualism and individual rights of property, or the individualized responsibility of a criminal act. In other words, Syrian legislators thought the Ottoman past as *obsolete* for the modern period, an obsoleteness that pressed them to adopt new codes based on their French predecessors, via Egyptian interpretations of civil and penal law. Such a discourse articulates and makes visible the positive possibility of certain practices. For example, when ruling over a homicidal crime, a modern court of law is faced with premeditation, which concretely implies, using the Anglo–American jargon, deciding between manslaughter and first-degree murder. Moreover, premeditation, as an act which has been fully thought and planned *beforehand*, hence not improvised in a moment of rage, *assumes* a positive unconscious of knowledge, a sort of an historical *a priori* of knowledge that eludes consciousness and yet is part of discourse. In the case of premeditation, for example, the juridical discourse unconsciously assumes a Cartesian agent fully responsible of his or her actions. Such ethical and moral responsibility[13] operates on the wager of an agentive causality which requires that agents are able to narrate what they did and saw from a first-person perspective. What courts typically do is to re-construct such first-person perspective from a myriad of narratives delivered by witnesses, police depositions, lawyers' and medical committees' reports. In other words, a criminal court, in order to fill that unnamable "void" of the assailant's "consciousness,"

[13] The ethical and moral are two different stances: the moral is situated within the socio-symbolic order, as expressed in language, hence reflects the norms of society at large; for example, a prohibition to consume alcohol either in toto or during specific days/hours of the week, or for certain age categories (below 21), may reflect a moral and/or religious stance (that alcoholic beverages are "bad" for the body and mind; one needs to be "mature" enough to consume them without harm). An ethical stance by contrast places moral law at the heart of subjectivity: the decision to consume alcohol or not is solely *mine,* and no one's else; to use a Kantian language, such ethical decision, which may be contrary to the socio-symbolic norms of society as expressed in its moral laws, is situated within the categorical Will of the individual, hence autonomous from the moral norms of society.

re-constructs its master-narrative, upon which the verdict would be based, from a myriad of narratives, all of which based on first-person perspectives: the latter would metamorphose into a meta-first-person narrative for the sake of the verdict. In some instances, the court would even openly acknowledge that the assailant left the murder scene with "no clues" "in his (her) mind" as to *why* he or she did what they *said* they did, or what other witnesses have said that they did (C6–2, 7–3). That is to say, the assailant, having failed to provide the court with an "adequate" and "convincing" narrative as to the *causes* of the crime, would receive help from the court in that regard: the silence of the criminal is supplemented by the talking memos of the court and its verdict.

The cases in this book question the historical *a priori* of agentive causality as unconsciously adopted in the work of the courts: is the first-person perspective, which is what we require as agents, available? Or is it pure fiction situated within the juridical discourse at a specific historical juncture? A problem that clearly emerges from our selection of cases, which judges only obliquely allude to, is the flexible and often elusive boundary between the intentional and non-intentional. Because premeditation and first-degree murder imply intentionality in the strong sense of the term—a deliberate will to harm and kill which has been *pre*-meditated *beforehand*—judges tend to balk at such prospectus of ascribing strong intentionality to a killing. The gray borderline between intentionality and non-intentionality is in particular visible in homicides perpetrated as a combination of righteous moral cause *and* last-moment rage which could only be valued by contextualizing the crime in its *unpredictable* spatiotemporal underpinnings. Often the assailant finds himself or herself in a situation where he or she is there to bluff or intimidate someone with whom a love-hate relationship has been nurtured for some time, but only at the last moment an urge to kill would manifest itself as an excess of righteousness. Even if judges would opt under such circumstances for manslaughter over first-degree murder, they would still reason within the epistemological framework of the first-person perspective, assuming a rational narrator objectifying the crime scene.

The unviability of the first-person perspective becomes salient in the way witnesses testify to the police, judges and courts. Witnesses document the crime scene based on what they had "seen" and "heard." What therefore emerges in every testimony, based on an interview, are the abstract relations among "seeing," "hearing," and the truth. A *preferred reliable* witness is one who only "says what she sees," as the courts typically function within the priority of *seeing* something rather than hearing about it from someone else, which adds to the unreliability of the situation. The other alternative is for a witness to have "seen" and "heard" *firsthand* something at the crime scene, but even in such instances the "eye" primes the "ear." Soon the situation complicates because the witness hasn't just "seen what she heard," or she heard by seeing, or she saw only what she had heard. A witness claims not to have seen her alleged assailant, but by hearing his voice, she was able to identify him—either as a first-name and/or last-name—by "knowing" about him in a previous encounter: I know the offender's first-name by having "heard" it, but I was able to identify the last-name through *prior* knowledge of kin relations in my locality (C7–3). The tragedy would here reach a new climax as the assailant had allegedly raped his witness which only "heard" him but could not "see" him because it was too dark or she was blindfolded (C6–5). The combination of seeing-

hearing matches well with the medieval Latin locution of *voir-dire:* to tell the truth by seeing, or to hear the truth. The "voice" therefore appears as an autonomous partial object which affects our entire perception of the body to which it belongs. Or, to paraphrase the early Wittgenstein of the *Tractatus:* what cannot be said must only be pointed at; which raises the question, Why are there things that cannot be said? Which things (phenomena) cannot be formulated in words? Think, for example, of that obscene Thing called rape or incest. Alleged victims of either one (C6–5) or both (C6–4) would typically shun any formulation of the obscene incident itself, whether real or imaginary, preferring instead to simply repeat the statement "I've been raped!," which as an expression is akin to the (second) Wittgenstein of "I'm in pain"—the kind of statement that neither describes pain as such (a virtual impossibility) nor communicates pain. What it rather does is simply to trigger a feeling of sympathy and "understanding" between speaker and hearer, as the former's intention is precisely to "reach out" to the latter. Wittgenstein argues that the "I'm in pain" is not a descriptive statement, as it does not describe a situation that could be accurately communicated and validated as such. It could be looked upon as a performative statement, but only in the sense that it is intended as an utterance to provoke a reaction from speaker to hearer, for instance, in provoking the recipient to feel compassion for the speaker who claims to be suffering.[14] At best, the recipient would "understand" what the speaker has just uttered, without "knowing" *what* the pain is really about, and *how* it is felt. It is at the same time an utterance whose expression by me constitutes my acknowledgment of the fact it expresses. To elaborate, my acknowledgment is my presentation or handling of the pain. You are accordingly not at liberty to believe or disbelieve what it says—that is, the one who says it—at your leisure. You are forced to respond, either to acknowledge it in return or to avoid it; the future between us is at stake, and the lack of response to the claim is a silence that perpetrates the violence of pain itself.[15]

It is as if when processing their cases, the criminal courts have learned Wittgenstein's lesson at heart: whenever faced with that unnamable obscene Thing which cannot be formulated but only pointed at, the courts would use their symbolic juridical power by creating linguistic expressions that would "fill" such void. That's why it is important, as we'll do in the cases analyzed in this book, to look at statements uttered by suspects and witnesses *en détail* rather than *en masse.* This concern with *detail* over a massive operation of hermeneutics that would study each aspect of the case-file is necessitated by

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[14] Ludwig Wittgenstein, *Philosophical Investigations,* Oxford: Blackwell, 1958, §246:

"In what sense are my sensations *private*?—Well, only I can know whether I am really in pain; another person can only surmise it.—In one way this is wrong, and in another nonsense. If we are using the word 'to know' as it is normally used (and how else are we to use it?), then other people very often know when I am in pain.—Yes, but all the same not with the certainty with which I know it myself!—It can't be said of me at all (except perhaps as a joke) that I *know* I am in pain. What is it supposed to mean—except perhaps that I *am* in pain?

Other people cannot be said to learn of my sensations *only* from my behavior,—for *I* cannot be said to learn of them. I *have* them.

The truth is: it makes sense to say about other people that they doubt whether I am in pain; but not to say it about myself."

[15] Veena Das, "Language and Body: Transactions in the Construction of Pain," *Daedalus,* 125(1), Winter 1996, 67–91.

a (psychoanalytic) *interpretive* framework: one that would avoid looking at the organic Whole of the dossier, or the criminal as person, but instead to interpret the true meaning of the Whole itself through that *detail that sticks out,* which cannot be symbolized to fit in the socio-symbolic order of language and speech.

To come back to the Foucauldian discursive (and non-discursive) practices: those are at heart socio-symbolic formations formulated in language and speech. Both Wittgenstein and Foucault developed an inquisitive line of thinking that questions the *legitimacy* of the socio-symbolic formations and the way "we"—as subjects of power-relations—*accept them for what they are,* taking them for granted as if our lives are invested into them, and *as if* there is nothing "outside" them. Notice here that the emphasis is placed on the *how* over the *why: How* is it that we take for granted the medical world and its discursive practices which materialize in a hospital, asylum, clinic, laboratory, or a courtroom? *How* is it that we take for granted our educational institutions, the school, the college, the university, the exam system? Both Wittgenstein and Foucault (and the Pierre Bourdieu of the Kabyles of northern Algeria)[16] delineate in their own way the *customary logic of common sense* whereby as subjects of power-relations we mechanically "participate" and reproduce the socio-symbolic world around us without much thought and fanfare. All such authors have successfully tackled, using different routes of research, the historical *a priori* of ideas, rationalities, knowledge systems, and the daily practices to which we stubbornly stick and which make our lives possible, by tackling their mute ground, that is to say, their *unconscious condition of possibility.*

As this book demonstrates, however, such unveiling of the mute ground of discourse and the socio-symbolic order within their historical *a priori* is not enough to understand the rationality of a criminal assailant as an *individual* action. That is to say, once we're into the discursive, which rationalizes the practices of the courts and other professional institutions (juridical and medical), we realize that the individual action of the criminal offender cannot be attributed to discourse alone. An alternative mode of thinking is therefore badly needed.

In his pioneering work on crime, *Seductions of Crime,* which three decades after its publication still stands out as the reference work in American criminology for understanding the *motives* of offenders, Jack Katz formulated the current deadlock in the studies of criminology as follows: "What is at stake in everyday contemporary violence is not a king's divine right but the sacred core of respectability that the assailant is defending and defining through his violence."[17] What Katz is hinting at in the "king's divine right" was the eighteenth-century *public* "barbaric" torture of convicts: for days and nights they had to be tortured and humiliated so that "the punishment would fit the crime." Addressing the Foucault of *Surveiller et punir,* which is the work that made him popular in the U.S. and worldwide,[18] Katz argues that in the "classical age" that preceded

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[16] Pierre Bourdieu, *Le sens commun,* Paris: Éditions de Minuit, 1980.

[17] Jack Katz, *Seductions of Crime: Moral and Sensual Attractions in Doing Evil,* New York: Basic Books, 1988, 35.

[18] At the time, the multi-volumes of the posthumously published "lectures" since the 1990s as *Cours au Collège de France* were not yet available.

modernization, "the object [of public executions] was to construct the truth of the crime."[19] The purpose was to sustain that gaze of the sovereign's will to punish. But, in our modern world of just and calculated punishment, are we done once and for all with ancient traditions of sacrifice? Katz's "sacred core of respectability" pleads that we are not: whenever an assailant unconsciously opts for *at the last moment,* in a moment of fury, to slaughter his victim, he is already locked within the triadic structure of humiliation, rage, and righteous slaughter. Addressing this time Foucault's *Moi, Pierre Rivière…,* Katz, while acknowledging the benefits of the theoretical endeavors of a team working for a *maître à penser*, nevertheless felt uncomfortable in Pierre Rivière's *written* account, which Foucault's team managed to obfuscate: Rivière, having slaughtered his mother, sister and brother (excluding his father, whom he had spared as a posthumous Third Gaze witness-audience), "gave no specific significance to the aim or the force of the blows he struck with an axlike farm implement (he destroyed the vertebrae that had connected the head of his mother from her body, and he separated brain from skull, converting bone and muscle to mush); to the multiplicity of the blows, which extended far beyond what was necessary to accomplish death; to his mother's advanced state of pregnancy; or to details of the violence suffered by his brother and sister. Instead, he focused exclusively on the background of his family biography."[20]

To be sure, we will encounter such dilemmas, between background and foreground, for example, in the case of the daughter who savagely killed her mother with a kitchen hammer and knife when she was in deep sleep (C8–1). The court, in a typical motion which is to remind us of Foucault's team gesture, favored the background information of family biography over foreground (the savagery of the killing and *how* the mother was executed). Allow me to open a parenthesis to episodes of mass slaughter in the "Syrian Revolt" in 2011–13, which as of this writing, when Damascus and Aleppo began their painful decent into chaos at the hands of rebel militias since July–August 2012, Syria had already witnessed dozens of collective massacres, which for the "opposition" were a product of no one else but the venerable and much loathed *shabbiḥa,* the allegedly state-employed "thugs" (the origin of the term is that of *shabaḥ,* a phantom like individual who unexpectedly visits a community for the joy of plundering it).[21] Some of the massacres were not only repelling but showed *excessive* unheeded violence, as if the message, if there was one, was lost in the way it was delivered, such as in the mass killings perpetrated on 25 May 2012 in al-Ḥūla (province of Hims), where 108 were killed in one evening, half of them children, some with their hands tied behind their back, shot point-blank; or barely two weeks later on 5–6 June, in the farm of al-Qubayr in the vicinity of Hama, when 78 were killed, 12 of which had their bodies burned *postmodo, after* the executions. Needless to say, commentators and pundits worldwide commented on such atrocities by underscoring the ruthless nature of the Asad régime and its military machinery of armed "thugs" who would do whatever it takes to keep the state apparatuses effective in their "political" domination over a helpless "civil society." In other words, the "ruthless" nature of such atrocities was only comprehended as a murderous *tool* for

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[19] Katz, *Seductions,* 35.

[20] Katz, *Seductions,* 310.

[21] *An-Nahār,* Beirut, 29 July 2012, p. 13.

perpetrating the political machinery on the top. But whether we are faced with individual acts of killing, as in many cases in this book, or with collective massacres, it is important to be attentive to the *method* of killing, that is to say, *how* the perpetrator(s) committed their acts; *how* it all happened; the tools that were used; the degree of savagery, or the "niceness" and "friendliness" that the perpetrator(s) may have manifested towards their victims in the *seconds* and moments preceding the killings. When assailants in a collective massacre, which *prima facie* seems perpetrated with "political" motivations in mind, opt to tie up kids and women, only to shoot them point-blank, then burn their bodies in an act of blunt desecration to the sanctity of human life, what such perpetrators are doing is sending messages to that outside Third Gaze "audience" regarding the *motives* of their savage acts. More importantly, they de facto unconsciously *legitimize* the acts of killing so that they become bearable *for their own consciousness.* To wit, we must admit that even the most heartless of all killers need that process of *internal legitimization,* which discourse analysis, and various sociological theories,[22] based for the most part on a Marxist class analysis, symbolic interactionism, or ethnomethodology, fail to address, simply because they are all immersed in the production of the socio-symbolic norms, while obfuscating the generative principle of such formations—that elusive zone of a killer's consciousness which eludes the socio-symbolic order.

Jack Katz's *Seductions of Crime* addresses precisely this obscure Thing of "what's going on the mind of an assailant" at the very *moment* he or she is committing the killing. The *time* framework proves of crucial importance; not so much the chronology of the events, as much as its *non*-premeditated ethos; or, more precisely, the *impossibility* to premeditate under such circumstances of rage and humiliation. As "The victim's *death* is neither a *necessary* nor a *sufficient* element of the assailant's animating project,"[23] Katz proposes that homicides generally operate under the triad of humiliation, rage, and righteous slaughter (killing in defense of the Good), which *in combination* would trigger that aura of "seduction" in the act of killing. Drawing from significant criminological data from U.S. cities in the 1950s and 1960s, Katz hypothesizes that "Several patterns in homicide situations indicate that the killers develop a righteous passion against the background of taking a last stand in defense of respectability."[24] The core emotion here is that of humiliation which is slowly nurtured in the assailant's psyche over a long period of time through his family and work relations. A person feels humiliation at home from parents, spouses, friends, or children; or at work, another network of power-relations that deepens the humiliation, triggering feelings of resentment towards bosses and fellow coworkers. There are "intermediary" spaces of leisure, such as parks, pubs, bistros, or cafés where we anonymously drop by to alleviate the humiliation at home or at work; we hope in such spaces of recreation to communicate either anonymously (no one knows who we are) or among buddies, people who accept us as we are, outside the routinized and formalized performances of home or work, in nonpredatory casual encounters. "Humiliation drives you down; in humiliation, you feel suddenly made small, so small that everyone seems to look down on you. Humiliation often moves through the body by

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[22] David Garland, *Punishment and Modern Society,* Chicago: The University of Chicago Press, 1990.

[23] Katz, *Seductions,* 18.

[24] Katz, *Seductions,* 19.

warming the top of the head; then moving to the face, where its acknowledgment may create the blush of shame; and when working itself through the self, ultimately to envelope it from top to bottom. Etymologically, humiliation shares roots with 'humble.' All manner of degrading, debasing, deflating attacks may produce humiliation."[25] The key point here is that humiliation is a deep *internal* emotion, which, if externalized, it's in an attempt to better swallow that uncanny attitude of losing face, of being a loser in front of family, friends, or coworkers. One can add that in today's representations of gender, humiliation is associated with feminine connotations, that of impotent men which perform poorly socially and sexually,[26] while rage is masculine and oriented to the outside: "In some social circles, an erection is an 'angry' penis. Today, impotence is so fundamentally linked that in virtually all modern languages the terms for describing impotence are reliable means of effecting ridicule. If rage is red, hot, and explosive, it is like a penis threatening to ejaculate and it is also like the screaming, red-faced birth of a self. Whichever of these metaphors might be more relevant to a given individual, the language and the symbolic structure of the experience of humiliation is metaphorically the perfect opposite: a return to the womb. The etymology of humiliation points to the centrality of the metaphor of the womb through humus—wet, fertile soil enriched by decayed vegetable matter—that is the most natural source of all terrestrial life: Gaea, 'Mother Earth.'"[27]

Rage by contrast is masculine and oriented to the outside, and unlike humiliation which is internalized and deeply seated in a multi-layered self, rage is *the product of its moment,* as it erupts all of a sudden in an unexpected and unpredictable ways. For that reason, premeditation rarely makes sense when associated with rage. As some cases in this book would attest (*inter alia,* C5–3 and C5–5), premeditation, in the Syrian annals of criminology (which borrows heavily from its Egyptian counterpart), is portrayed as a homicidal act perpetrated with "a calm and determined mind," which is hardly the case. Premeditation is therefore in principle a rare bird, even though the courts would hasten towards premeditation for no other reason but as an unconscious counter-reaction to the atrocity of the perpetrated homicide: it was so gross that it *must* have been premeditated. However, the "must" here is only wishful thinking, hardly based on any factual evidence that would have pointed to a last minute improvisation with no previous planning in sight. Moreover, rage, once it actualizes into a homicidal act, metamorphoses into "transcendent rage," once it becomes associated *in the consciousness of the killer* with humiliation and righteousness. The bedrock of rage is therefore that deeply felt and deeply seated emotion of humiliation, which remains internal until that malicious Thing that turns it into a killing Event.

In a recent work, the French sociologist Luc Boltanski, in his analysis of the genres of crime and spy novels, which became predominant in the European landscape of fiction in the nineteenth and twentieth centuries, differentiates between "world" (*monde*) and

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[25] Katz, *Seductions,* 27.

[26] Hence the all too familiar crimes across cultures of killings originating in a feeling of total loss and impotence: for example, a man failing to erect in a sexual encounter, while being subject to casual humiliation by his partner.

[27] Katz, *Seductions,* 29.

"reality" (*réalité*).[28] World means (paraphrasing Wittgenstein) "everything that happens," which implies an impossible totality, or to use the Lacanian jargon, a non-all Totality. By contrast a reality denotes the pre-established formats of shared meanings, protected by institutions and juridical frameworks, at least in developed European societies. Indeed, it is that kind of reality that we have denoted as the socio-symbolic order, which establishes a certain relational space between causal events, intrigues, and plots, which otherwise would have remained incomprehensibly dispersed: ordinary events would become in the narration of the crime novel unordinary, achieving a meaning that would have been senseless without the causal links of "reality." Here reality achieves a more specific meaning, that of *social reality,* the fact that such narratives are situated within a social configuration composed of social classes, antagonisms, localities (villages, small towns, big cities), among individuals dispersed in space (nobility, small bourgeoisie, popular classes, proletarians).[29]

Even though there is a big difference between a crime novel and a real crime case which has been processed by a court of law (the former has a *single* author, contains a cohesiveness that the latter obviously lacks), the concept of social reality is a notion worth considering for our crime cases. To begin with, each one of our criminal protagonists and witnesses is an individual dispersed in a *social* space, which in turn is located within an antagonistic class and ethnic structure which must be accounted for. For example, in Chapter 9 which relates crime to land conflicts, it is impossible to understand the nature of such conflicts without taking into consideration *at the same time* class-ethnic antagonisms (between landlords and tenant farmers; peasants and tribesmen) *and* kin networks structured on symbolisms of male honor and shame. To elaborate, such crimes must be contextualized within the framework of the social reality that made them possible, even though the killings or attempted killings tend to be—though not always—last minute improvisations of righteous slaughter as elaborated by Katz.

But what is of special importance for our purposes is what Boltanski dubs as "reality and the nation-state." In nineteenth-century France, for example, "the question of the state" has become that of "the state and reality."[30] When it comes to crime the state is faced with the reality of individuals situated within "civil society" but whose social reality is recontextualized in relation to the crime scene; lives are at stake which were unrelated to one another, which all of a sudden find themselves probed in the very intimacy of their private lives, while becoming *suspects.* Such aggressive intrusion in the lives of private individuals for the sake of solving the mystery of a crime scene takes place at the hands of public officials and administrators, probing the very relations between (a Habermasian) "public sphere"[31] and the private. An indistinct zone takes shape that blurs the delicate lines between the private and the public which the criminal novel charmingly

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[28] Luc Boltanski, *Énigmes et complots. Une enquête à propos d'enquêtes,* Paris: Gallimard, 2012, 22.

[29] Boltanski, *Énigmes,* 31–32.

[30] Boltanski, *Énigmes,* 38–39.

[31] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy,* translated by William Rehg, Cambridge, Massachusetts: The MIT Press, 1996.

capitalizes on. The French expression for criminal novel, *roman policier,* significantly places public action on *policing*, a civil executive force of anonymous administrators but whose public function mixes with private lives, those of suspects, and their *own* as well. Thus, in both British and French criminal and spy novels, the private idiosyncrasies of the main protagonist devoted to detective work, are now center stage, forming the essential thread that would reveal the happy ending, that of the unraveling of all mysteries. Hence a double reality unravels: first the reality of fragmented lives which only receives the attention of state administrators once they become crime suspects; and a reality that takes shape in the midst of a totalized reality, one which the nineteenth-century European state has successfully systematized in procedures, rules, laws and regulations, population censuses, and discursive and non-discursive practices that touch on law, medicine, and education.

What is therefore at stake here is the very existence of the nation-state, two terms which in principle are alien to one another (the state preexists the nation), and which by the nineteenth century are united together under "that hyphen which clusters all the significance of the project"—that of a utopian political project aiming at homogenizing the lives of individuals under the rubric of the "nation."[32] A *coupure épistémologique* comes into being in the European political space which institutes a break between the *ancien régime* of the monarchical "sovereign state" and the nation-state which systematizes the integration of private citizens. Boltanski indulges here in a comparative analysis between two alternative modes of integration of the nation-state, the British and the French, regrettably leaving aside more problematic modes of integration, such as the Germanic or Italian (quintessential examples of "late" state formations). In the British model, inherited from the days of the Glorious Revolution, there is a direct incorporation of the dominant economic classes of capitalist landowners, industrialists, financiers and merchants, on the one hand, and the state which is controlled by those same classes through the Parliament on the other. Such vertical integration, structured on a class hegemony in a capitalist economy, leaves civil society at bay between those who are situated within the dominant hegemonic group, on one hand, and those outside it on the other (popular classes, proletarians, but also middle class professionals). Criminal and spy novels à la Agatha Christie, Sherlock Holmes, and Graham Green, capture well that spirit of protagonists who do not fit well within the hegemonic economic and political stratification, but nevertheless feel torn for their loyalty to their nation in spite of their despise of their leadership. On the other side of the Continent, the French model of nation-state follows a different logic. Ever since the Revolution, the French nation-state could not integrate civil society into a vertical economic and political hegemony. Here the state is an administrative unit of middle class professionals of sorts which have been recruited for their professionalism and loyalty to the state. They therefore operate in an atmosphere of class fracture, namely, the impossibility of a class stratification based on the British model of subservience to an hegemonic capitalism. In sum, if the British model is historically based on an alignment of economic and political forces between the Parliament, the dominant economic classes, and a capitalism protected by the state, such an arrangement is absent in the French state. Moreover, whereas British crime novels

[32] Boltanski, *Énigmes,* 39.

tend to portray the "societies" that fall *outside* the hegemonic alignment (popular classes, criminals, bandits, Mafiosi, transgressors), in the French model civil society is portrayed as more heterogeneous, unable to align itself along well defined hegemonic groups, as it remains populated by individuals or groups that would be unable on their own to form a *society* without the intervention of the state.

What is of interest to us is the articulation between the private and the public, civil society and the nation-state, and the way the violence of murder would expose private lives to the external world—that of the arbitrary power of the state—in a country like Syria. Does the Syrian state aim towards practices of integration in the first place? Does the state assume a coherent nation? What about the pretention to control a territory and safeguard its population? How does the state address the issue of kin-based groups that seem to fall outside its control? How does the political fiction of the nation-state work in a country like Syria?

The Syrian state is a byproduct of Ottoman rule and French colonial practices. In Ottoman times landowners were the dominant class, but without the political prerogatives that would have established them as a gentrified aristocracy integrated within a statist configuration. Instead, as a prebendal patrimonial landowning group holding its stipends from state-owned *miri* lands, a situation that would persevere until the dawn of the French mandate, they were kept at bay from the political decision-making process of the centralized Ottoman state; as to their regional role, they were granted limited bureaucratic powers in particular in the aftermath of the Tanzimat reforms. Under the French mandate, the landowning aristocracy, now a class of rentiers whose lands have been legally acknowledged as "private" (*milk*), would fail on their own to launch a hegemonic class configuration under their tutelage. To wit, the integration of the nascent Syrian nation-state and the eastern Mediterranean at large into western capitalism would render such a class of rentiers economically obsolete. Having inherited a limited political experience under the Ottomans, their economic obsoleteness under the mandate—as a class of rentiers—would force them into a *politicized entente* with the urban manufacturing and commercial classes. As Barrington Moore has pointed out, such a configuration of obsolete rentiers with new but weak urban classes of capitalist entrepreneurs should in principle have been a recipe for disaster of an authoritarian state.[33] What prevented such a reactionary state, however, was nothing but the politics of the mandate itself, which permitted such an anomalous alignment between a class of old rentiers with manufacturers and merchants (the nascent middle class professional bourgeoisie) to act as vanguard of Syrian politics until the late 1940s. Such political configuration of the "first republic" was stable enough to persevere until the 1950s in spite of the coup d'états that pushed army officers at the forefront of Syrian politics. It was indeed the anomaly of military rule that would bring Syria to its modern post-Ottoman civil, penal, and personal status codes. As it turned out the political stability of the anomalous combination of landowners and entrepreneurs would only be shaken in the aftermath of the Union with Egypt in 1958, and obviously with the coming of the Baath to power in 1963—the "second republic." The nationalization of the resources of leading entrepreneurial

[33] Barrington Moore, *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, Boston: Beacon Press, 1993 (reprint).

families in conjunction with the agrarian reforms which reduced the size of large properties and redistributed agrarian properties to small and medium farmers, has irreversibly transformed the nature of the Syrian state and society. From now on the Syrian state would cease to protect the traditional alignment of landowners and urban entrepreneurs, which since the 1960s would give way to bureaucrats of various social origins: heirs of small rural landowners, out of which grew the military ruling class, beginning with the ʻAlawi Asad clan; outclassed middle class professionals who were alienated within the dominant old configuration of landowners and capitalist entrepreneurs, and which found a leeway in the "socialist" configuration of the Baath to enhance their status; and popular class unskilled laborers of sorts. An often overlooked accomplishment of the long rule of Hafiz al-Asad in 1970–2000 was the routinization of mundane bureaucratic tasks, so that every small transaction (*muʻāmala*) would receive its due attention in its smallest minute details. To elaborate, an Asad bureaucratic "reality" of sorts emerges in the 1970s, which by and large is still there, and which consists at cataloguing, classifying, categorizing, labeling, in a bold attempt to control the national territory through routinization and the bureaucratic integration of disparate ethnicities and classes across regions. Compared therefore to the class and administrative configurations elaborated by Boltanski, the Syrian case sets an example of a nascent nation-state attempting to bureaucratically control the nation without the British prerogatives of an alignment of the economically influential classes with the state, or the French Administrative model of a bureaucracy mediating among social classes. In Syria the state is no more no less attempting a total reconfiguration of class and ethnic alignments, rooted in the power of kin and clan.

How would the bureaucratic reality "handle" a criminal event? The political fiction of the nation-state produces the myth of a homogenized nation—as an "imagined community"—one in which classes and ethnicities would live harmoniously together and in their relation to the state. But in the Syrian case, however, there are neither specific class nor ethnic alignments with the state, nor a bureaucracy recruited on professionalism and merit. The bureaucracy of the Baathist state, which investigates crime, is a cohort of individuals recruited from all over the place—classes, clans, regions, ethnicities—in a bold attempt to integrate them into a cohesive "society." What investigators of a crime scene uncover, however, are societies, norms, forms of living, which need not the agency of the state to survive. The burning question, therefore, is whether state intervention would shape them into a cohesive society, or whether the clumsy state bureaucracy would exacerbate even further clan and societal divisions of sorts. All the criminal cases in this book raise the fundamental issue of how much the routinized Baathist state could afford leaving outside its reach "societies" which have been poorly integrated into the mythical framework of the reality of the nation-state—that of a nation that must be brought together in all its class and ethnic antagonisms.

Wither Oedipus?

So far we have attempted to bridge together several methodological frameworks which prima facie may seem incompatible: discourse analysis; the triadic internal motivations of an assailant: humiliation, rage, and righteous slaughter; and the "bureaucratic reality" of

the Baathist state. While discourse analysis would help us trace the genealogy of the juridical and medical discourses which serve as an a priori unconscious historical matrix for the practices of the criminal courts, the triad of humiliation, rage, and righteous slaughter by contrast places the burden on what the assailant is doing at the very moment of committing his or her killing, a level of analysis which is anathema to discourse analysis. By the same token, Boltanski's bureaucratic reality is another methodological component in our three-pronged approach that would account for that evasive "*locus* of power" that haunts the political fiction of the nation-state.[34] Foucault (at least the early Foucault of *Discipline and Punish,* prior to his turn to the concept of "governmentality")[35] memorably addressed the issue of the *localization* of power, the dissemination of micro-power-relations across the societal body like an "invisible hand" without a real "center,"[36] hence denying the existence of a "legitimate authority" that would run the show in advanced capitalist societies. For Boltanski such dissemination would not spare us from asking the all too obvious questions: Which individuals, or *a fortiori* collectivities, can be susceptible to provide meaning to a cohort of historical and social events, while subjecting them to a causal interpretation? Who makes contemporary history? The state, the hegemonic factions, the ruling class, the capitalists, the financiers, the military, the 'Alawi Asad clan? What is the role of those who are governed? What about all those who are not within the dominating groups, the popular classes, the marginals and unemployed? In other words, notwithstanding the dissemination of power à la Foucault across social formations, what are the real links between the state, the nation, the people, and the territory of all those who are subjected to the power of the ruling classes? Questions which at the same time are very abstract, yet puzzling by their concreteness and urgency. Indeed, it all seems, from a populist perspective as if it's a one man's show *pulling the strings*.[37] In the same way that such questions probe the popular imagination and sustain another invisible narrative in the crime or spy novels, they do withstand a similar probing in criminal cases in general, which is of interest to us, in particular in the queries raised by counsels acting on behalf of plaintiffs, defendants or suspects. Representations of society invariably come in broad swaps: the haves and have-not; men and women; the powerful and the powerless; the upper middle classes and the popular ones; the Western model of justice versus the Oriental; the state and society. What all such popular representations raise is precisely the issue of the *locus* of power and its effect on justice and the rule-of-law.

Notwithstanding the sophistication of all such approaches, which are of great help to us in understanding criminality, there is still that lingering issue of what Slavoj Žižek has dubbed as "the ticklish subject."[38] What we mean by this is that there is always a "subject" behind and act, be it a simple emotion, gesture, decision, desire, lust, or a criminal act. When a court is, for example, inquiring about the possibility of a first-

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[34] Boltanski, *Énigmes,* "Le *locus* du pouvoir," 197–199.

[35] Michel Foucault, *Le gouvernement de soi et des autres. Cours au Collège de France, 1982–1983,* Paris: Hautes Études–Gallimard–Seuil, 2008.

[36] Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France, 1977–1978,* Paris: Hautes Études–Gallimard–Seuil, 2004.

[37] Boltanski, *Énigmes,* 198.

[38] Slavoj Žižek, *The Ticklish Subject,* London: Verso, 1999.

degree murder, it is overtly addressing the lingering issue of premeditation, which in turn assumes a "subject" "acting freely with his/her own Will." Article 535 of the Syrian penal code addresses premeditation in one word: *'amd,* which is the only civil nonpolitical crime subject to the death penalty. The code therefore does not even bother to "define" premeditation, as if the very notion of *'amd* is indefinable, as if the symbolisms of the word itself are enough to connote its meaning. So how can a court decide if a killing was premeditated or not? As some cases in this book show, *'amd* is *documented* based on the *circumstances* of the case at hand. Not that each case operates with a distinct definition of *'amd,* but rather that it requires a documentation *specific* to the events of the case, which are unique to it, even though they may achieve a generic status, metamorphosing as precedent. Thus, even witnesses, acting on behalf of the plaintiff or defendant, seem to be implicitly aware that the way to describe a crime scene would entail decisive repercussions on the labeling of the crime as premeditated or non-premeditated: for example, describing a suspect at the moment of the killing as acting with a "quiet demeanor," as if totally "conscious" of his action, is already an *indication* of premeditation, at least as *interpreted* by a court of law. In short, the penal code leaves it to the actors to define premeditation from their experience, as they see best within the confines of the law, which willy-nilly implies assuming that indefinable "subject" which acts at will.

When we look more closely at such attempts, however, we soon realize that they largely assume a first-person perspective of the events. At best, such first-person perspectives would metamorphose into multi-person narratives, thanks to the labor of lawyers and judges who must "edit" all statements into a comprehensive whole: what matters under such circumstances is not so much the perspective of one witness, but of all witnesses combined. Still, such comprehensive whole, as witnessed in the verdict, relies at its core on first-person narratives. To wit, it is not enough to understand what goes on in a criminal mind—or any consciousness for that matter—based on first-person perspectives. A subject is more complicated than that. A subject understands itself, its actions, its Being, what he or she is doing only through an external third-party gaze (the "audience"). To understand such a shift in perspective, from the common-sense first-person, to one which conceptualizes the "subject" or "person" or "self" through a consciousness which is structured via an external gaze, I propose a *détour* through the work of Robert Pippin on Kant and Hegel which led him to a reevaluation of American western and *film noir* in a unique perspective;[39] and, along similar lines, of Slavoj Žižek's comprehensive work on Hegel, Freud, and Lacan, not to mention his interest in film, ideology, and popular culture.[40]

Let us begin our demonstration with Kant and his antinomies of pure reason. Kant uproots the Cartesian cogito which *at the same time* poses itself as subject and object of contemplation, a subject that can objectify itself in the act of thinking. Thus, not only

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[39] Robert Pippin, *Hegel on Self-Consciousness: Desire and Death in the Phenomenology of Spirit*, Princeton: Princeton University Press, 2010; *Fatalism in American Film Noir: Some Cinematic Philosophy*, University of Virginia Press, 2012.

[40] Slavoj Žižek, *Less Than Nothing: Hegel and the Shadow of Dialectical Materialism,* London: Verso, 2012.

does the "I" understand the process of thinking by objectifying it, but it does so because it can grasp the reality "outside." In other words, even though the cogito doubts and errs in the path to knowledge, it can still posit itself as a coherent whole, understanding itself and the world outside; even God can be exposed to a proof of existence by the cogito. The core of the Kantian subject by contrast is an undermining of such possibility of knowledge of the self and the other as objects of experience, as they're both limited by what they can understand and do. Such a limitation is due to the fact that as subjects-of-knowledge we are only exposed to the phenomena of nature, not the things-in-themselves, the noumenal entities outside our grasp. In other words, we only know a thing as it is knowable by the senses through phenomenal attributes; the noumenal thing-in-itself remains inaccessible to us. The antinomy—or parallax—consists in admitting the contradiction between two beliefs or conclusions that are in themselves reasonable: that of a subject that knows the phenomena of nature, and that of the same subject limited to those same phenomena; which places the subject in a paradox: that of a transcendental subject which accesses itself and the world at large only through the phenomenal. Antinomies are therefore an indication of the inability of our finite reason to grasp noumenal reality—the ontological incompleteness of reality itself.

In Hegel's reinterpretation of the Kantian analysis of experience, "consciousness of self" is the basis of the consciousness of anything whatsoever. In Hegel's development of self-consciousness—the consciousness of self in relation to nature—what is relevant is when the self is aware of itself in relation to another self.[41] Put simply, self-consciousness *is* the self-consciousness of the Other, which implies that I only understand myself—who I am as a self, as a person—only through the self-consciousness of the Other. Self-consciousness is *desire* itself, as it attains "satisfaction" only in another self-consciousness.[42] It is understandable why such dictum would become the core of Lacanian psychoanalysis in its various tenets of "consciousness," "desire," and the big Other as "gaze."[43] If self-consciousness is the self-consciousness of the Other, then I am only aware of myself through the desire and gaze of the Other. If agency entails some sort of responsibility (as courts of law normally assume), achievement, the ability to desire, lust, feel pain, trust and so on, then achievement relies as much on self-knowledge as it does on the knowledge of others, their motivations, feelings, and *their* knowledge of *us* as persons endowed with agency. With that in mind, the first-person perspective is a myth which cannot possibly stand the complexity of reality. First of all, there is no clear (Cartesian) boundary between Self and Other, or between the intentional and nonintentional, or between my responsibility and the responsibility of the Other. Because my self-consciousness is the self-consciousness of the Other, the Other is always intruding, probing my very existence, hence *shaping* my consciousness, making me aware of my-self-as-person: I cannot know who I am without that consciousness of the Other and its gaze. For Hegel, therefore, consciousness is in-itself and for-another; it is, indeed, that Otherness which posits consciousness-in-itself *qua* object-for-another.[44] As

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[41] G.W.F. Hegel, *The Phenomenology of Mind,* New York: Harper Torchbooks, 1967, Chapter IV: "Self-Consciousness."

[42] Robert Pippin, *Fatalism,* introduction.

[43] Which is not to be confounded with the "eye."

[44] Hegel, *Phenomenology,* 218.

self-consciousness, it is movement, since it receives temporary satisfaction from the *recognition* of the Other.[45] In sum, self-consciousness is the state of Desire in general, where I desire the Other for desiring me as self-consciousness.[46] For Lacan and Žižek, both of which are situated within the Freudian psychoanalytic tradition with a Hegelian twist, the consciousness of the Other takes various intruding formula, broadly designated as the big Other as representative of the social and symbolic order, which could be anything from a parental figure (real or imaginary), a lover, a teacher, Law, an invisible audience, a state apparatus, or a figure of God as a kind of guarantee of global meaning, all of which *interpellate* us in the very intimacy of our own Being.[47] To elaborate, the big Other acts *as if* there is a meaningful order "out there," which interpellates me, intrudes in me, via my self-consciousness of the Other.

Which leads us to the main endeavor of this book, namely, that a criminal enterprise, whether premeditated or not, cannot be solely understood as a dual structure between an assailant who whished harm to his or her victim, and a victim who fell prey to an assailant, which she may or may not have known. Like any individual agency, the agency of a criminal would not stand on its own as an autonomous Will, capable of narrating the crime scene from a first-person perspective. There are too many *outside* intrusions in an individual consciousness for "it" to be fully conscious of what it is doing. The way to go is to assume beforehand that between assailant and victim lies a Third Party, which we will interchangeably designate as "audience," big Other, addressee, or recipient. Such an assumption would make a difference when interpreting a crime scene, and the way it is narrated by witnesses, suspects, experts of sorts, and the judicial authorities. Thus the criminal is not "on his own" when committing his crime, but always in the presence of the big Other; even the Jinayat court, which will issue the verdict, would act as that posthumous third-party audience of sorts, interpreting the crime in its juridical language of the state-law. For our part, we will also act as a third-party audience, forging our own interpretive methods, which, needless to say, may differ from the Jinayat's representation

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[45] In *The End of History and the Last Man,* New York: HarperCollins, 2002 (1992), "The Struggle for Recognition," 143–210, Francis Fukuyama argues that "recognition" is an essential trait for the apprehension of history-as-totality, that is, for what has already been achieved in the past, as a virtual totality, where liberal capitalism came triumphant, making all other political and economic systems (modes of production) "obsolete"; and for what is yet to be done, that is to say, the "assimilation" of non-western societies and civilization into modernity through a universally acknowledged liberal capitalism.

[46] Hegel, *Phenomenology,* 220.

[47] In the Syrian Revolt in 2011–13 it became fashionable in the popular "street" opinion to represent "the Americans," conceived as a generic term of international evil and imperialism, as "pulling the strings" behind the chaotic and uncontrollable events on the ground, hence there would be nothing "final" prior to the November 2012 U.S. presidential election: that is, president Obama would become "decisive" on Syria only once reelected. Those who started the show of violence, in order to ensure a better control of regional politics, are the only ones capable of terminating such anomaly. In the meantime, the Syrians, and the region at large, would have to endure U.S. "indecisiveness" as a fatality. By the same token, the Russian staunch support of the Asad régime is only a puppet-show staged between Americans and Russians until the presidential elections: in the final analysis, only what "the Americans" *want* matters. Needless to say, such political representations manifest the big Other at works, pulling the strings and creating an order out of the uncontrollable, which is precisely the symbolic role of the big Other: to provide meaning where there is none. In short, the big Other undermines the possibility of causal social analysis, one that is based on class antagonisms, ethnicities, religious and ideological symbolisms.

of the crime scene.

For each crime, we are therefore challenged with three narrative levels, which are not reducible to one another, and which are not to be reduced to "discourses." First of all, the narratives of witnesses, suspects, lawyers and judges. As such, even though subjected to "authorial editing" of sorts (by policemen, prosecutors, lawyers and judges), such narratives stand on their own as the raw material of the case-file which is what is accessible to us, as external observers, of the crime scene *in the mode of writing.* Second, such narratives would be incomprehensible without their contextualization as statements delivered under various circumstances and in different situated encounters. For example, there is a big difference between a statement delivered in the aftermath of the crime, within the first 24–48 hours, at a police station, when policemen are acting like "thugs" to get their job done, and a similar statement uttered in the sanctity of a judge's office or a courtroom under different conditions. Witnesses tend to play down such differences by reversing previous alleged statements, attributing them to police brutality or their sheer ignorance of the law: I didn't know what I was doing back then, but I *now* understand the consequences. Finally, a third level imposes itself, that of *interpreting* the first two levels of narratives, which we will designate as *psychoanalytic analysis.* At this level, various psychoanalytic concepts are at stake: the Oedipus complex, the dream-work, the (moral) superego and the big Other, the socio-symbolic order, desire and the death drive, the gaze, and so on, all of which assume a dialectic between desire and the desire of the Other, or between the narcissistic self and its "externalized" construction as the desire/gaze of the Other. In its essence, not only does psychoanalytic analysis not limit itself to the linearity of narratives, but it is fundamentally atemporal, as it assumes that the traumatic experience of the crime masks the repetition of the death drive.

What proves of particular significance for the analysis of crime narratives is Freud's notion of dream-work, understood as that mental labor that insinuates itself between the content of the dream as such and its manifest representation—what the analysand remembers of the dream, which is transferred back to the psychoanalyst. In his discussion of dream interpretation, Freud contends, "There is at least one spot in every dream at which it is unplumbable—a navel, as it were, that is its point of contact with the unknown."[48] The dream's navel is the center around which the logic of the dream turns; it provides the basis for the dream's sense without itself being comprehensible. Every crime possesses a similar navel, I would contend, though different crimes emphasize this to a greater or lesser extent. One can interpret a structure of signification—a dream or a film or a crime or any text—but one cannot interpret every element within that structure.[49]

Which, in the final analysis, conceptualizes the dream-work (or a crime or any text) as a process between *form* and *content,* a distinction that Claude Lévi-Strauss places on hold

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[48] Sigmund Freud, *The Interpretation of Dreams,* trans. James Strachey, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud,* vol. 4, London: Hogarth Press, 1953, 111.

[49] Todd McGowan, *Out of Time. Desire in Atemporal Cinema,* Minneapolis: University of Minnesota Press, 2011, 139.

for his analyses of Amazonian *mythologiques.*[50] The wager here concerns the *impasses* of content—the deadlock in societal (class) antagonisms and sexual difference—which cannot be expressed solely in words, remain in the unconscious un-said, thus "rescued" by the narrative form. For example, when a woman is narrating a rape scene to a male investigator,[51] placed as she was in the stroppy position of the victim, there is a deadlock when it comes at narrating "what happened to me" and "what I saw and experienced," hence the narration would rapidly hinge towards an indescribable impasse, which only the *form* of enunciation, as "edited" by the interviewer, would rescue. The rape scene would then metamorphose into something juridically "comprehensible"—as a criminal event to be processed in a court of law—where the un-said was that in-visible of the edited text (*inter alia,* C6–4 & 6–5). This *first* narrative register, that of witnesses and suspects documenting the crime scene, only exists for the sake of the *second* level of narration, that of the case being constructed *as a file* to be disseminated among members of the judicial authority. In effect, it is the second narrative register which constructs the first, to such a point that it does not exist for its own sake. Such a reality is even reinforced further by the fact that in Syrian criminology the *original* utterances of witnesses, suspects, and convicts, are not recorded verbatim; in their stead, the disseminated case-file would only carry *procès-verbaux,* edited reports based on the original *invisible* utterances. Put simply, the first narrative level does not exist, as we can only *assume* its existence—nothing more. By contrast the second narrative level is alive and kicking, whose logic of construction hovers around several possible narratives, which only the meta-narrative of the verdict, as approved or revoked by the Damascus Naqḍ, arbitrarily seals to an end.

We're using narrative as a linguistic construction different from discourse, as introduced earlier, namely, as a set of statements that would uncover the historical a priori topoi of a given period. For example, a medical discourse on madness and insanity reveals that unconscious (hidden) aspect of practice which is needed to treat *démence* as a pathological illness. The juridical discourse would in turn assume such a medical discourse on *démence* while incorporating it within its own sets of historical a priori (crime as detrimental to society; an insane cannot be attributed legal personality; property theft is criminal). That is to say: discourse is more structured and operates at a more abstract level than narrative structure; it also needs a broader time framework to develop and mature (a medical discourse on *démence* is there to stay). In sum, narratives, like the one contained in the case-file, *may* assume the existence of abstract discursive formations, even though they are not reducible to the latter.

For this very reason, an alternate narrative register is badly needed, one that would explore the first–second registers (which in fact are one and the same, due to the absence of verbatim transcripts or audio–video recordings) within a fresh perspective, which at

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[50] Claude Lévi-Strauss, *Le cru et le cuit,* Paris: Plon, 1964, "Ouverture."

[51] As the great majority of policemen, investigators, and judges in Syria are males, hence the choice here was not deliberate, but even a female investigator would not have faired better with the victim, as the impossibility to express in words what happened was not necessarily caused by a male presence on the other side. It is rather the association of pleasure with its opposite, pain, in a violent sexual act which makes it indescribable.

the same time is distinct, simultaneous, and antagonistic to the first two. I am proposing in this book a psychoanalytic logic for some of the criminal cases; even though, by all means, no case could be reduced to its psychoanalytic structure, hence each case is up for grabs for other potential registers. Analyzing crime from a psychoanalytic perspective implies adding a third-party-audience to the duo of assailant and victim: by simply adding that third component, the whole perspective shifts in another direction, adding a new paradox, simply because the "criminal mind" is no more solely hooked to the presumed relation of assailant and victim: set in Hegelian philosophy, the criminal consciousness is "responding" to a call from the otherness of the other, to which the crime is dedicated. Approaches to law and crime conducted under the banner of "the social construction of law" or "the social construction of gender," useful as they may be, are still, at their very best, operating on the presumption of the first–second narrative registers: that is to say, they are situated within narratives and discourses which cannot account for the contingency of the real criminal subject: How does this "normal" subject all of a sudden erupt into a criminal person?

But is the criminal a person who simply *denies* at face value the values of society, property, or human life? In his "premises for a development of criminology," Jacques Lacan notes that "human reality is not only a matter of social organization": there is always that "subjective relation" which, *pace* Hegel, dialectically opens the particular to the universal, whose ground is a profound alienation of the individual vis-à-vis other humans, opening the possibility for violent action.[52] For Lacan "social organization" is linguistically structured around the socio-symbolic order towards which the ego-subject surrenders from birth while feeling profound alienation. The ego-as-body lives in a state of mutilation–castration when confronted with the demands of the symbolic order; the latter structuring the ego's requirements of speech and language. It is, indeed, at the level of the symbolic that Law inscribes itself both as normativity (the Kantian categorical imperative) and contingency (positive Law). From a Lacanian perspective, *responsibility* is a strong term which implies that an ego-subject is *recognized* as such by fellow ego-subjects; recognition by the Other makes them fully responsible for their own actions, both in the *moral* sense—the symbolic values *collectively* endorsed by society as Law or customs or linguistic norms—and in their *ethical* stance, as value that the ego-subject has consciously chosen from his or her own Will (Kant's categorical imperative). When the moral primes the ethical (for example, when the subject integrates in a work environment simply "to do well," without any further motivation or internal mission), the ego-subject may soon manifest an unconscious *symptomatic* behavior of non-integration (small gestures that would point to colleagues at work that "I'm not at home with you").

Lacan was well aware of the problem faced by psychoanalysis in a capitalist world dominated by science and technology, which in the case of Law, translates into a "scientific" juridical discourse which perceives the ego-subject as a morally *responsible* non-subject; or when it comes to criminological studies, which Lacan associates with the discourse of the University (an additional "scientific" claim), it is the socio-symbolic

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[52] Jacques Lacan, "Prémisses à tout développement possible de la criminologie," in *Autres écrits,* Paris: Seuil, 2001, 121–125; "Introduction théorique aux fonctions de la psychanalyse en criminologie," in *Écrits,* Paris: Seuil, 1966, 125–149.

order which prevails over the vulnerable subjectivity of the criminal. The Law therefore punishes—through incarceration and isolation—an assailant for having committed a hideous act against another human being, without, however, acknowledging his or her subjectivity. From the viewpoint of the Law, therefore, responsibility implies being responsible towards the socio-symbolic order, which means accepting it at face value *as it is*. That is to say, what is precisely denied of the ego-subject is that impossible deadlock to totally identify with the socio-symbolic order. The ego-subject is always caught in a subjectivity which is never fully recognized as such by the Other, hence invariably traumatized by a lack of the Other, and vulnerable in its interactions with others.

To understand the nature of crime we must therefore acknowledge that the criminal is caught in a closed structure of subjectivity of his or her own making; a structure that leaves out the subject outside the authentic recognition of the Other *and* social communication.[53] When the criminal subject is summoned by a court of law to acknowledge the morbidity of his crime, the court is doing so without acknowledging for its part the hiatus that separates the subjectivity of the criminal and the socio-symbolic order under which the Law operates. The culprit is therefore left to his "moral consciousness" which psychoanalysis identifies as the super-ego. When a court of law summons the accused to acknowledge a wrongful act amid the verdict, there is that "logical acknowledgment of the right of the accused to lie, which is named as respect for individual consciousness."[54] It is indeed such a hiatus that constitutes our main preoccupation for the crimes in this book.

Lacan formulates the gap between the socio-symbolic order to which the individual surrenders and desire as the inaccessible *objet petit a:*

> Lacan distinguishes between the actual object of desire and the object-cause of desire, which he calls the *objet petit a.* Unlike objects of desire, which we access all the time, the *objet petit a* remains fundamentally inaccessible. It has no actual existence but nonetheless serves to trigger the desire of the subject. It is the inflection that transforms the everyday object into an object of desire, thereby eroticizing the visual field. The subject doesn't see the *objet petit a,* but its absence from the visual field is what makes the subject desire to look.[55]

The elusive *objet petit a* is best exemplified in honor killings (Chapter 6). The assailant, usually a young male closely knit to the female victim (as father, fiancé, husband or ex-husband, brother or cousin) assails her because she has become an ostracized member of the family amid an alleged promiscuous liaison. The repulsiveness that the female body engenders in the male gaze in no way disqualifies it from playing the role of the *objet petit a* because this object is constitutively absent and cannot become present. What is present, however, is the female body as the actual object of desire, even though the

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[53] Lacan, "Prémisses," 122.

[54] Lacan, "Prémisses," 123: "d'où résulte non moins logiquement cette reconnaissance du droit de l'accusé au mensonge, que l'on dénomme respect de la conscience individuelle."

[55] Todd McGowan, *The Impossible David Lynch,* New York: Columbia University Press, 2007, 51.

object-cause of desire, the *objet petit a,* which triggered the honor killing, remains inaccessible. The intense enjoyment (*jouissance*) that the assailant must have felt in committing his "honorable killing" (in the language of the law) stems from such elusiveness, namely, that female *jouissance* cannot be possibly located, hence the physical elimination of the body in a killing ceremony that would become publicly acknowledged.

Lacan's staunch refusal to reduce the criminal act to the socio-symbolic order of the Law comes in parallel to favoring *sexual difference,* the unbridgeable sexual hiatus between the sexuality of women and men, over the "gendered social construction of reality," which like Law, is inscribed in the socio-symbolic order. Hence both "the social construction of gender/sexuality" and the "social construction of law" fail to account for the ego-subject as a traumatized and mutilated subjectivity "inaccessible" to the socio-symbolic. Looked at in Marxist terms, the law can neither transcend itself in its inner contradictions, nor transcend hegemonic class antagonisms. As such, it is an empty universal signifier[56] which receives its meaningful content from the contingencies of contract and crime. That is to say, since contract is by definition the protection of private property, understood as a domain that is inviolable by others except by the possessor himself (similar in that respect to a sacred object), theft becomes an act of transgression against property *qua* property, in its very sacredness as an inalienable Thing. But is the criminal challenging the very concept of property as an inalienable Thing, or its unjust allocation to certain individuals and groups over others? In his debate with Catholic British theologian John Milbank, Slavoj Žižek pushes that line of Marxist interpretation to its extreme: "universal(ized) crime is no longer a crime—it sublates (negates/overcomes) itself as crime and turns from transgression into a new order."[57] What is the difference between the order of the law and that of the criminal act? If the order of the law is contingent on the existence of a hegemonic class antagonism, then the criminal is transgressing this order by creating a new one, one that would challenge the possession of property to a hegemonic group. In other words, the criminal is saying, "I believe in the moral order of property as much as you do, but I want to reorganize it on my own behalf!" As the moral order of Law is itself criminal, the criminal act would only sublate it to a new order, this time from the viewpoint of the dispossessed, who in turn believe in property as sacrosanct: "the way morality (in the case of theft, property) asserts itself a crime—'property is theft,' as they used to say in the nineteenth century."[58]

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[56] Ernesto Laclau, *On Populist Reason,* London: Verso, 2005.

[57] Slavoj Žižek, "The Fear of Four Words: A Modest Plea for the Hegelian Reading of Christianity," in *The Monstrosity of Christ: Paradox or Dialectic?,* Cambridge, Massachusetts: MIT Press, 2009, 24–109, p. 44 for the citation.

[58] Žižek, "The Fear of Four Words," 44.

[Chapter 3] On the bounds of reason and insanity:
Is he competent to stand trial?

The question "What happened?" in a judicial context looks as if its prime concern is the presumed borderline between fact and fiction. In criminal investigations in particular, where lives are often at stake, there is a concern on the part of the judicial authorities to demarcate fact from fiction. But how is that done? On could argue, in conjunction with psychoanalysis, that truth receives its formulation only through fiction (*la vérité n'est que fiction*),[1] and that in such work of fiction, *form primes content.* Students of law know very well that every penal code claims that its prime concern is to seek the truth, and that there are clearly formulated rules and procedures for that purpose. Most researchers remain, however, trapped like fish in water in the rules of law and their normative underpinnings: they are either studied as logical statements that carry specific meanings, and hence would be textually tied together in some global rationalistic pattern, or else they are simply rules to be followed—in principle by every person in the community—while their rational, moral, or social underpinnings (or lack thereof) should be of no concern to the judiciary. To all those who attempt to contextualize the rules of law within their social, economic, and historical contexts, a line of jurists and scholars stands firm that such contextualizations are hardly relevant for judicial decision making and assessing punishment. For its part, by posing the rules of law as norms, the law-and-norms school has thought to tackle crime, among other things, in terms of the failure of some individuals to abide by the norm.[2] In other words, the law-and-norms school has attempted to bring complexity to the notion of the rule of law by strongly attaching motivation and intent to human behavior, while bringing some of the findings of the social sciences to the attention of jurists and judges. In its concern to be scientific, however, the law-and-norms school, in all its varieties, has brought more reductionism and parsimoniousness to human behavior than anything else: norms were thus reduced to their most common denominator in order to detect presumed effects on the law. As to the law-and-economics school, in the language of one of its most ferocious proponents, if "murder is deliberate unlawful killing,"[3] it follows then that "crimes are in effect torts by insolvent defendants because if all criminals could pay the full social costs of their crimes, the task of deterring antisocial behavior could be left to tort law."[4] Criminals (and actors in general) are therefore either self-deterred through norms, or else through the economics of punishment. The law-and-norms school therefore converges with its law-and-economics sibling in that both look at crime in terms of social cost: norms are there to be followed, and if they aren't then there's a social cost to the damage. There's also a cost for implementing norms, simply because people give up some of their individual freedoms to abide by norms—the alternative being nothing but a Hobbesian state of

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[1] An alternative formulation is *la vérité n'est que mensonge.*

[2] For a thoroughly critical evaluation of the law-and-norms literature, see Robert Weisberg, "Norms and Criminal Law, and the Norms of Criminal Law Scholarship," *The Journal of Criminal Law and Criminology,* 93, nº 2–3, Winter–Spring 2003, 467–591.

[3] Richard Posner, *The Problems of Jurisprudence* (Cambridge, Mass.: Harvard University Press, 1993), 230.

[4] Posner, *Problems,* 361.

nature.

One can see why the notion of norm has so much preoccupied legal theory. By framing law primarily in terms of the rules that it engenders—the rules of law (*règles de droit*)—legal theory argued that the latter are only exceptional and much narrower instances of broader normative values that coexist in society at large. The real rules are those existing in society while the legal rules are only a clichéd version of the latter, and while the former remain implicit and diffuse, the latter are explicit and drafted in codes, as their non-application is subject to punishment (material and/or moral). Broadly speaking, however, by focusing so much on how norms relate or fail to relate with the rules of law, the norms-and-economics schools have missed the opportunity to study how rules of law are used by the social actors (users), and how in so doing economic strategies may be deployed. Norms and rules of law are not simply followed or interiorized, as they are primarily represented in language and practice.[5] When, for instance, a crime takes place, witnesses are expected to narrate what they saw. To the crucial question of What happened?, witnesses come up with alternative accounts, in the same way that police, prosecutors, and judges would propose narratives of their own, which in turn are based on those of witnesses. The whole process can therefore be looked upon as one of representing norms and rules of law through narratives situated along different social spectrums. Norms and rules of law are linguistically expressed in narratives that are supposed to account for the facts of a happening. Once pressed by an investigator or judge, what in effect actors narrate is the normative world that they themselves, their kin, opponents and victims all inhabit: they inform their investigators about rules that ought to be followed, restrictions and prohibitions, or contractual settlements. For the researcher, such a material ought to constitute the prime tool of research, out of which a reconstruction of the "case" in question is made possible in the social actors' own socio-symbolic representations. Rather than begin with constructed notions of what the rules of a particular system are, we shall begin with the narratives themselves and examine *how* they are constructed. Judges often proceed like researchers in that they want, within the

[5] Or, following Claude Lévi-Strauss in his pioneering studies on mythology, the rules of law and those of society are "stored" in the unconscious, which organizes them into meaningful discourse. The norms are thus primarily a linguistic construction, which achieve their meaning for the individual and collectivity only through language and discourse, and which as such are "outside" the subject, acting like the big Other. There is therefore a structure to the unconscious, which itemizes individual and collective norms, which gives shape and meaning to the processed imageries. In other words, norms achieve their symbolic value only once they would integrate within a comprehensive socio-symbolic structure, and in that regard, they act like myths, in which *form* primes *content:* the unconscious is like an empty signifier which processes the images that traverses it by providing structure and meaning to their content. Lévi-Strauss perceives therefore a parallelism between Freud's analysis of dreams, which in effect are nothing but a chain of signifiers that are structured like a meaningful language, and whose meaning is precisely detected (by the subject or analyst) only relative to a totality rather than in their individual components. As is well known, Lévi-Strauss' triadic structure of symbolic, imaginary, and real, has become since the 1950s the groundwork of Lacanian psychoanalysis; see, Claude Lévi-Strauss, *Anthropologie structurale,* Paris: Plon, 1958, 1974, pp. 224–225; Jacques Lacan, *Le mythe individuel du névrosé*, Paris: Seuil, 2007, tacles the "relational function of symbols" in relation to dreams and myths, both of which are structured like a language (as *langage* and *parole*); thus when Lacan bluntly states that "La première chose à remarquer, c'est ce qu'introduit dans le monde la parole dans sa fonction symbolique" (59), the debt to Lévi-Strauss is here fairly obvious, in particular the view that the "elementary forms of kinship," myths, and even rituals and masks, are linguistically formulated *as forms* through symbolic chains of meanings (signifiers).

shortest delays possible, to transform their cases into factual evidence: the whole case miraculously metamorphoses, after all evidence has been carefully weighted, from a matter-of-fact into a verdict. But considering that establishing factual evidence is no easy matter, it would be more rewarding to see what the *concerns* of social actors truly are, how they inhabit their worlds, and how they represent their being-in-their-worlds.

What happened?

How is it possible then to reconstruct a single criminal case from the viewpoints of the actors themselves? Each crime is an event that has been witnessed by at least two persons: the assailant and victim, with a mysterious third-party "audience" lurking as the big Other, and to which the assailant may have addressed his crime in the first place. Each crime begins therefore with the act itself, those who witnessed it, with the sentencing finale posing itself as the big Other of "what society wants." The process that is therefore inaugurated with police and prosecution investigations, with the verdict as its finale, could be summed up in the following: the subjective statements of witnesses—"I saw," "I heard," or "I was told"—are transformed through the judicial process into "externalities," namely, objective entities as factual evidence. The metamorphosis takes hold in the verdict itself, as statements are incorporated into the *text* of the sentencing, which originally have been uttered in distinct settings in the presence of legal authorities. Like the rules of law, the rulings would aim at reconstructing an objective reality outside the grounded limited subjectivities of the actors. In sum, the judiciary aims for an objective reality not unlike that of the social sciences model. For the researcher, the aim is not so much one of destabilizing such objective validities, as much as a *documentation* of the process that inhabits them into their existence, prior to publicly exhibiting them as objective *valid* truths. To use the language of Bruno Latour,[6] we would like to move from the matters of facts, which the judiciary cherishes so much, and upon which final rulings are based, to the matters of concern, namely what constitutes the concerns of actors—beginning with the criminal—in the aftermath of a crime. Once a crime occurs, a web of social relations and practices emerges, upon which the judiciary attempts to reconstruct its case: an object—the "case" per se—emerges out of such entangled objectivities, while the object in question is constructed out of matters of fact which are objectified realities out of the subjectivities of the actors that made them. The judiciary, however, is neither interested in the concerns of actors nor in their entangled narratives and relations. Out of such relations, subjectivities, claims and counter-claims, it aims towards an objectified reality of the disputed event. Whether we think that for a particular instance, the process was "fair" or "unfair" to the disputants is not the heart of the matter. What interests us here is how the aforementioned process of *making law* concretely takes shape.

The purpose of this chapter is to introduce the reader, through the reading of two criminal cases, to the analytical procedure of a case from the moment the police begins to investigate; the investigating judge interviews suspects and witnesses individually in the privacy of his office at the palace of justice; the referral judge report, which constitutes the first synthesis of the case, making it worthy of transfer to the upper Jinayat court; the

[6] Bruno Latour, "Why Has Critique Run Out of Steam? From Matters of Fact to Matters of Concern," *Critical Inquiry,* vol. 30, nº 2, Winter 2004, 225–248.

postmortem report; at trial, suspects and witnesses are subject to another battery of tests, which are not *cross*-examinations per se as in Anglo-American systems, but more of a repetition or denial of previous already stated statements, which take-for-granted what had already been enunciated in previous interviews to police, prosecution and judges; finally, the verdict itself, which seals the case. In the interim, additional memos would surface, for example, those of medical committees summoned by the judge to evaluate the suspect, or letters addressed by inmates to their counsels or beloved ones. While this chapter proposes *how* to read such complex material in its totality, emanating from different authors and authorities, the other chapters are more selective, concentrating only on the most outstanding aspects of a case.

What brings the two cases together in this chapter is the theme of reason and insanity, as both protagonists were labeled "insane" by their counsels to mitigate the verdict and appeal for leniency, that is, to place the death penalty (or at best, permanent incarceration) at bay. Medical committees thus drafted "scientific" reports at the demand of counsels and courts, but whose ridiculous pseudo-professional jargon made sense only once it received its benediction from the Jinayat, hence integrated within the system of justice as authoritarian in their own right. As noted earlier,[7] it was in later amendments to the original 1810 Napoleonic *Code pénal* that the notion of *démence* was forged to come at the rescue of judges who were unable to decide what to do with murderers who were unable to narrate to the court the *reasons* for committing their crimes. Understood invariably as dementia, delirium, insanity or lunacy, *démence* marks the borderline between an *ancien régime* where a culprit was publicly executed at the sovereign's whim, and a new régime where crime and punishment *had* to be properly assessed, calculated, made public in light of the culprit's defense. It is as if the juridical discourse felt emptied when facing criminals who were unable to account for their crimes, hence had to acknowledge medical "scientific" authority to justify such lack. The judge therefore doubles himself as doctor who demands an expertise *outside* his own and at the same time acknowledges its authority. It is, indeed, that kind of interplay between the juridical and medical that is at stake in this chapter. Syria, like all newly formed nation-states on the eastern Mediterranean in the post-First-World-War era, inherited the French civil-law system through the venerable Ottoman Tanzimat.[8] What we therefore witness firsthand is that uncanny symbolic exchange between judges who wanted doctors and psychiatrists serving in committees to deliver their final word, and a judicial system trapped into its own discursive practices.

The insane shepherd-who-writes

[C3–1] The gruesome killings that occurred on 12 March 1994 in one of the villages in the vicinity of Idlib[9] were an outcome of a property conflict,[10] that of a land that was a

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[7] Chapter 1.

[8] Or more precisely, the niẓāmī courts that were a byproduct of the Tanzimat, which in Greater Syria were only implemented in the 1870s and 1880s.

[9] Idlib is a city of roughly 200,000 inhabitants located in the north of Syria, 50 km close to the Turkish border point at Bab al-Hawa. During the Syrian revolts, inaugurated in March 2011, Idlib, a quintessentially rural province with weak urban centers, became at the center of insurrection against the

left over (*matrūk*) near the village school. Hilal (b. 1945) wanted to divide the disputed land with his rivals, while the latter preferred to leave it as an open space for their sheep to graze. The day of the incident Hilal was allegedly at home, which happened to be near the disputed land. When the shepherds came as usual with their sheep, he warned them not to approach his home. A quarrel followed. He went home and picked up his Russian rifle, went back to the land, and when his foe Ibrahim saw him rushing in their direction, he in vain attempted to contain him, but Hilal shot and killed him immediately. He then shot to death Ibrahim's son Muhammad and his daughter Shamsa (he never admitted killing "the woman"), but missed Ibrahim's other son 'Akal because there were no ammunitions left. Hilal and the surviving brother had a fist fight prior to Hilal running away, leaving behind three bodies. Hilal then surrendered to the police, and gave them his rifle. Hilal claimed that his three victims attempted to take his gun and shot them in self-defense.

On April 2000 the Idlib Jinayat court sentenced Hilal for life imprisonment, but reduced the penalty, for what it dubbed as "the attenuating circumstances (*al-asbāb al-mukhaffifa al-taqdīriyya*),"[11] to 20 years with hard labor. In its final ruling the court quoted statements from dozens of witnesses, some of which allegedly witnessed the crime from neighboring lands and homes. It also cited the defendant's first deposition to the police: "The victims Ibrahim and his two sons and daughter have left their sheep graze over my crops. When we were arguing, Muhammad grabbed me from behind while his brother 'Akal hit me with a hammer on the face. I fell on the floor. My son Anwar came with a gun, with which I fired three warning shots in the air. But the victim Ibrahim pushed his sons to attack me. I therefore fired towards Ibrahim, and when his son Muhammad tried to take the rifle from my hand I shot him too, then I shot the other son…"

As each case unfolds with the classic police investigation, our starting point will be the depositions to the police right after the murder. In the Syrian penal system, depositions to the police must be looked upon as second-degree narratives, or as narratives based on prime accounts,[12] simply because the original depositions in their question-and-answer colloquial Arabic form are seldom reported.[13] The police is therefore already constructing its *own* narrative, in the form of a handwritten *procès-verbal,* which omits verbatim utterances, as statements come carefully filtered and polished in official Arabic for the purposes of presenting the case to the prosecution and higher courts. As a result, such depositions take disproportionate importance for the final ruling, even though,

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Baathist state. The Jinayat are the criminal courts in Syria. As Idlib is the capital city of its Muhafaza (province), all criminal cases in neighboring towns, villages and farms, are handled by the Idlib police and Jinayat. Inmates also serve their sentences at the Idlib main prison.

[10] Idlib Jinayat 271/1994; final ruling 11/2000.

[11] Syrian criminal courts have the power to reduce the penalties below the ones proposed by the criminal code for various reasons. The most common being, however, "in appreciation of…," which implies that the amount of punishment was left to the discretion of the court.

[12] I consider an account as a more preliminary form of a narrative, or in other words, a narrative is a more structured version of an account. See Chapter 2 for a discussion of the differences that ought to be made between account, narrative, and discourse, regarding the tendency within the Syrian judiciary not to give accounts their due course, and to transcribe them as if they were complete narratives.

[13] They also do not seem to have been taped in the first place.

according to the mighty Damascus Naqḍ,[14] they shouldn't (more on that later). The contrived nature of the police depositions (or the "seizure form," *waraqat dabṭ,* as they're commonly known) should not discourage us from looking beyond their surface. Let us see how that works.

The "deposition form" (or "seizure sheet") begins with the police being informed on the crime. The form explains how the information was received, the first contacts with the crime scene, witnesses, and preliminary material evidence. It then goes on to question the first witnesses available. In this instance, after interrogating the village informer and following a full description of the crime scene, the first victim–witness was interviewed the night of the murders.

> My name is 'Aql Ibrahim, born 1962, from the village of al-Waridah, the farm of al-'Adliyyah, married and illiterate, do not carry at the moment an identity card,[15] Arab Syrian.
>
> I inform you that we[16] the inhabitants of the farm we own a wall for grazing (*jidār li-l-ra'i*), used by all people of the village. Today we were grazing our sheep in front of the home of the defendant Hilal, which is close to our land and north of the school. In this location where we are now, where my relatives (*ahl*) are, it was there that the defendant Hilal was sitting in front of his home, came to me and said: 'Stop mingling with me.' I don't know why he said that. He tried to hit me, but my brother Muhammad pushed him away. He screamed at us: 'That's fine you sluts!' He went home to pick his Russian rifle and tried to hit us. But when my father attempted to force him back he came to us charging his rifle. At that moment he fired several shots and hit my father who fell on the floor, then headed south towards my brother Muhammad and shot him too. He also killed my sister Shamsa and attempted to shoot me, but there were no bullets left in the rifle. I went after him, but my nerves broke down. I couldn't catch him. I request a full investigation, posing myself as a personal plaintiff (*mudda'i shakhṣī*) against Hilal al-Khalif for having killed my father Ibrahim, my brother Muhammad and my sister Shamsa. That's my deposition.
>
> The deposition was read to him, he accepted and signed it.[17]

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[14] Which acts as the supreme court of the Syrian judiciary, an equivalent of the French *Cour de Cassation.*

[15] Such an expression generally means that the witness did not possess any identity card, not only at the moment he was seized and questioned. That's quite common for several reasons: either the witness did not carry the Syrian citizenship at all (for instance, he was among the estimated 250,000 Kurds that do not carry the citizenship, or a Palestinian resident in Syria), or else, which is probably the most common cause, the witness never bothered to request an identity card (either due to a lack of concern, or because of problems with the authorities: for instance, having been an ex-inmate, or a Muslim Brother militant, etc.), even though he did carry the Syrian citizenship.

[16] The first-person plural is typically used as a counter-balance to the "I" that narrates in an attempt to give more weight to the account.

[17] Punctuation not in the original Arabic.

That was the deposition of one of the victims who, by his own account, managed to survive simply because the assailant had no bullets left. The syntax is here typical of depositions in general. Since the questions posed by the police were not included in the text, only the answers were left, surviving for the most part in the first-person singular form. Instead of the original question-and-answer, the deposition achieves a first-person "narrative": it flows smoothly, describing the events that led to the alleged crime and its aftermath. The tone is a bit formal, unemotional, comes directly to the point, and seems contrived in what it is attempting to convey. Moreover, the transcription, besides precluding the original line of questioning, has reshaped all utterances in official Arabic. Hence the transformation is a double one: no questions and answers and no colloquial Arabic. Some utterances may have also been cut altogether. In sum, the *performative* side of the speech act is considerably muted, narrowing the use of language at best to its *descriptive* level.[18]

Before we go more fully into the deposition as a form of witnessing, I would like to bring forth two additional depositions, one by an "independent" witness, and the second by the defendant himself.

'Aziz 'Umar al-Shaykh was introduced, immediately after the previous deposition by one of the victims, as a "witness to the incident (*shāhid li-l-ḥādith*)":

> My name is 'Aziz b. 'Umar al-Shaykh and 'Aysha, born in 1977, from the farm of 'Adliyyah, I do not carry at the moment a personal identification card, single, literate, worker, and Arab Syrian. I inform you that this evening I was sitting with the victim[19] Muhammad Ibrahim al-Hasan in front of the house of Hilal al-Khalif, located roughly a 100 meters from us. He came to us wishing that the victim Muhammad leave away with his sheep. Muhammad replied that this land is for grazing for all the people of the farm, and we're one of them. As they exchanged harsh words, Hilal went running home, pouring insults over Ibrahim and his kids. Ibrahim the father went after to stop him, as Hilal stood by the door with a Russian rifle. But the killer Hilal shot him to death three times. When 'Umar approached him he shot him to death too, emptying five bullets in his body **without even talking to him**. He then shot and killed Shamsa who was standing east to her brother. But he couldn't shoot 'Akal because the rifle was empty. Hilal got back to the victim shooting at him directly. The causes have to do with grazing. This is what I've seen and know and that's my deposition.
>
> His deposition was read to him, he confirmed and signed it.

We now come to the accused Hilal's statements.

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[18] On the performative side of speech acts, see J.L. Austin, *How to Do Things With Words* (Oxford University Press, 1962). On the benefits of applying speech act theory in historical discourse, see Quentin Skinner, *Visions of Politics, Vol. I: Regarding Method* (Cambridge University Press, 2002).

[19] I am translating *maghdūr* as victim, even though *maghdūr* (from the verb *ghadara* or *ghadira*) carries stronger connotations, as it involves an act of betrayal and treacherousness towards the victim.

> My name is Hilal b. Khalif al-Khalaf, born in 1945, resident in the al-'Adliyyah farm, I carry an identification card number X, issued in 1985, married and literate, my job is a worker, Arab Syrian.
>
> I inform you that this evening I was sitting in front of my house at the 'Adliyyah farm, north of the school, when I saw Ibrahim al-Muhammad, his son 'Aql[20] and daughter Shamsa leaving their sheep graze over my plantations. I went to 'Aql and told him 'Stop mingling with me.' He replied '**You're a sick man** and I don't feel fighting with you.' Then came his father Ibrahim who told them 'Slaughter him,' because I warned you a long time ago to leave the farm. 'Aql then came back to me and beat me up. I told them 'I'm going to complain.' His sister Shamsa separated us. His brother Muhammad showed up and grabbed my mouth, then 'Aql came back and hit me with a hammer. I fell on the floor and managed to escape. I went home and fetched a Russian rifle that I had filled at home. I went out and shot three times up in the air hoping that they would run away. But they've assaulted me while their father Ibrahim was encouraging them to do just that. He told them '**Slaughter the dog**!' Ibrahim and his son Muhammad attempted to take the rifle from me, and I told them for the last time 'For God's sake leave!' But they kept coming at me. That's when I shot Ibrahim several times in **self-defense**. When he fell down his son Muhammad assaulted me, and we were only a meter apart, and while he was trying to take the rifle from me I shot him several times. I then headed east and started **shooting randomly**. I don't know if I shot Shamsa…I ran away north and gave myself up to the police at al-Buwaydir…

The three accounts, even though emanating from three different "witnesses"—a victim, an "outside" witness, and the assailant himself—are remarkably similar, if not in form, style, and syntax. Assuming that the police did not "play" with the content of the depositions, there nonetheless seems to be an unconscious, if not deliberate, attempt to create cohesiveness from accounts differently situated. As we'll come to realize, which is fairly normative in Syrian penal procedures, there will be a heavy reliance in all subsequent memos and reports, including the final verdict, on the original police testimonies, no matter how much new evidence has been collected since then. It is as if forging a cohesiveness is one of those hidden normative rules in the penal system: we need to know from day one what happened! Rather than come up with divergent loose statements, the police is searching for a "narrative" structure from day one. Notice, for instance, how all three "witnesses"—even the two directly implicated—were not pressured to give more: in other words, they were not pressed with a hard line of questioning to detect inconsistencies. The way depositions are constructed is obviously not only related to the line of questioning that police, prosecution, and courts adopt. What witnesses decide to say or not say in the presence of a police officer, prosecutor, or judge, is related to a host of circumstances. People learn what to say and *how* to utter something when they are in private or public. Even though unconscious normative rules guide ordinary talk and discourse as well, and while trespassing such rules is not as remote a

[20] Used interchangeably with 'Akal.

possibility as one might think, actors do normally avoid the cost of such option. If actors are not that free to say what they want to say, or "what is in their best interest," it is because they are part of a socio-symbolic order to which they feel compelled to belong, and which provides them with the security that they need. Consequently, when a crime happens in a community, even though crimes are generally not routine occurrences, describing or narrating such a happening, being mediated by the rules of speech and language, is subject to all the societal pressures that one could imagine. What is therefore unsaid may prove even more relevant than what is said. For the researcher, detecting silences, hesitations, contradictions, and blanks in what actors have uttered when examined, may prove even more important than analyzing the utterances themselves.

As Paul Ricœur has pointed out, the activity of witnessing is crucial for both the judicial process and historiographical writing.[21] In historiographical writing the document stands as proof (evidence) that what the historian claims to have happened effectively took place. In other words, the document is not only what brings forth evidence, but it's what stands in lieu of the act of witnessing per se. The document is therefore the witness. Historians thus typically make use of documents to construct factual evidence. Such factual evidence is then narrated both in its temporal and logical (rational) elements, out of which narration would emerge into more abstract factual constructions.

Judges like historians find themselves in the situation of searching for factual evidence to narrate their final ruling. It is in effect up to judges to *select* from the myriad of utterances, depositions, narrations, discourses, left by witnesses and official authorities, the ones that will ultimately survive the test of factual evidence: which of the "facts" will become factual evidence, and which ones will be relegated to the dubious role of personal testimonies, unreliable data, and tampered with evidence? It is up to judges to sanctify the personal testimonies of witnesses into factual evidence that has been rigorously tested through judicial procedures, and which will be ultimately quoted in the verdict as objectively valid. The researcher must therefore keep an eye on how the individuated personal narratives of social actors—all of which using the "I" form of witnessing—either metamorphose into more "reliable" account approved and endorsed by the judiciary, or else are forgotten and invalidated.

Following once more Paul Ricœur, we can discern three different stages in the making of historiographical and judicial narratives.

1. The factual phase. Facts are valued for their own sake: they are verified and assessed, prior to being approved as factual evidence.
2. The explicative phase. The approved facts are brought together in order to causally explicate the making of an event.
3. The representative phase of historiographical narration and writing. The primacy of representation of an event or happening often subdues steps (1) and (2) to the final operation of narration in a premature shortcut operation.

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[21] Paul Ricœur, *La mémoire, l'histoire, l'oubli* (Paris: Seuil, 2000), 203ff.

For our purposes here, that of the construction of narratives and their inner logic, it is worth mentioning that only judges *assess* the facts, while police and prosecutors are supposed to *present* (not re-present) the facts to the judiciary. Since judges are the ones who have access to the *totality* of the dossier, they develop that ability to compare utterances, statements and depositions, prior to deciding what ought to be included as a matter of fact in the last instance—that of the sentencing. In principle, therefore, the police and prosecutors ought to do their best in presenting as many factual evidence as possible, and from a myriad of viewpoints. They're neither supposed to *interpret* anything, nor even tie up the event/happening in its totality. In other words, police and prosecutors are supposed to *understand* rather than *interpret,* as interpretation is a more complex stage than understanding, which consists in causal links between phenomena. An ideal police officer or prosecutor would push the interviewing process to its limits, and while realizing that actors deploy all kinds of strategies when pressed for more answers, they would also doubt what actors present as self-evident and acceptable. In practice, however, we have noticed[22] that depositions tend to be blatantly *repetitive,* and the cycle of repetition which begins with the police, perseveres with the prosecution up to the higher courts, as if the *representation* of the event has already taken shape from day one, ignoring what Ricœur has labeled as the factual and explicative phases.

This rush towards the final stage of *representation* seems to have alerted many observers. To begin with, lawyers routinely accuse police officers for having maltreated and abused their clients, or for haphazardly assembled facts. Quite often witnesses, once in the presence of a prosecutor (or investigating judge), deny *in toto* their earlier statements to the police, either on the basis that they were brutishly intimidated or tortured, or else that they were not under full control of their mental faculties. Defendants who, say, had, upon their arrest, acknowledged any wrongdoing, might fully deny later when interviewed by an investigating judge. All such instances are fully documented, and the documentation is always available to judges in the dossier that circulates around, but is seldom seriously taken into consideration, and more importantly, no one seems to think that it's worth investigating allegations of torture or rape,[23] and at no point do we witness much willingness to push police and prosecutors to investigate more thoroughly.

All such negligence—assuming, of course, that it's only a question of "negligence," if not pure incompetence and ignorance of the procedures—is further buttressed by the first systematic report of each case, namely what is known as the "*iḥāla* judge report." The *iḥāla* judge ("referral judge") is a kind of *rapporteur,* someone who grants his approval of the facts presented thus far by police, prosecution, and medical authorities, and accordingly would judge whether the case ought to receive the full care of the Jinayat. He therefore drafts a preliminary synthesis, narrates the facts, and concludes with further proposals on how to proceed with the dossier, and the kind of punishment the defendant(s) ought to receive. The problem, however, is that by the time the referral judge drafts his report, the case is almost sealed, meaning that no surprise is to be expected until the very end. What ought to have been *preliminary* reports by police and

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[22] Based on a hundred closely examined cases from the Idlib and Aleppo Jinayat courts in the 1980s and 1990s.

[23] Except when the accused dies under torture, as evidenced in C5–4.

prosecution are now *endorsed* by the referral judge and taken for granted. Once this stage is achieved, it would be difficult to imagine that the case would take an unexpected turn. Crucial in this respect is the *indirect endorsement* of the preliminary police reports. When I reported to retired judge Hanna ʻAbd al-Nur, who was at the head of the Damascus Naqḍ courts in the late 1990s, my concern regarding the way the police investigates, its brutality and rough manners, and how those preliminary investigations metamorphose into validated facts upon the trial hearings, he boasted that "as judges we do heavily rely on the police reports. We generally assume that what comes in those reports has some truth in it…The police usually manages to get the truth from the mouths of the plaintiffs, suspects and witnesses in one way or another…even through intimidation or torture…We find such reports reliable enough for our final rulings…"[24]

That's not the way, however, the Naqḍ courts perceive police investigations. Now that the Naqḍ rulings are regularly compiled and indexed,[25] it is possible to appreciate how much the higher Naqḍ courts in the last couple of decades have been incessantly reminding judges that what witnesses utter in the presence of police officers have no value per se, *unless the witnesses reiterate what they had previously uttered during their interrogations in the public hearings of the Jinayat.*

> Rule 406. The confession (*iʻtirāf*) in the presence of police officers should not be considered as evidence (*dalīl*) unless it has been confirmed by an additional confession in the presence of judicial authorities (*al-qaḍāʼ*), or it has been proven sound (*saḥīḥ*) and in congruence with other evidence of the case.[26]
>
> Rule 421. The defendant's statements in a police deposition, even though such depositions in criminal matters are for the sake of information (*maʻlūmāt*), must be taken into consideration, including the defendant's confession in the police deposition, even if the defendant withdraws his statements later in the presence of an investigating judge or at trial. Inclusion of police statements for the verdict should only occur once the court feels comfortable (*iṭmiʼnān*) with such factual evidence, having already corroborated it with further evidence, which is part of its objective power (*sulṭatu-ha al-mawḍūʻiyya*) which grants its autonomy, as long as it assesses (*tuqayyim*) evidence on solid grounds.[27]
>
> Rule 426. Police depositions in criminal matters are only ordinary information (*maʻlūmāt ʻādiyya*), while an accused's preliminary confession (*iʻtirāf awwali*) should be corroborated through other evidence, in particular if it turned out that it was delivered by the interviewee through violent and harsh means.[28]

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24 Interviewed in Aleppo on 17 June 2004.

25 *Majmūʻat aḥkām al-Naqḍ fi qānūn uṣūl al-muhakamat al-jizāʼiyya min ʻām 1988 ḥatta 2001 A.D.,* ʻAbdul-Qadir Jarallah al-Alusi, ed., 4 vol. (Damascus: al-Maktaba al-Qānūniyya, 2002).

26 *Majmūʻat,* 1:580.

27 *Majmūʻat,* 1:613.

28 *Majmūʻat,* 1:625.

The Naqḍ rulings are abundant with rules of that kind,[29] either framed with slight variations, or else redundant in their substance, even though at times contradictory and confusing. The general tendency, however, is not to give the *early* statements by plaintiffs, defendants, and witnesses, more than what they deserve. They ought to be taken *for what they are* as preliminary information collected by the police in the aftermath of the crime for the sake of paving the way to prosecution and Jinayat. But in light of the three steps proposed by Ricœur to understand the process of historiographical and judicial writing, what characterizes the system is a bypassing of thorough data collection and analysis and a rush towards representation, which is a rush towards judgment. Suffice it to note at this stage that the primacy of representation de facto implies that from the early stages of the investigation "raw facts" are transformed into "factual evidence." To pursue the matter further, I'll follow Ricœur more closely on the crucial issue of witnessing.

1. The basic premise behind witnessing is to discover how an autobiographical account (*récit*) metamorphoses into an objectively accredited narration. The main purpose of the autobiographical récit would be to re-assert the factual reality of the witnessed event: is the author–narrator a trustworthy person? In the penal system, witnesses in criminal matters have their "kin" background routinely checked: what kind of "relationship" do they nurture towards the main disputants? But if kinship is overtly checked prior to an investigation, and explicitly indicated by the investigating judge on each "interrogation form," the biggest drawback remains the "autobiographical" element in witnessing. As we shall see later, the autobiographical side becomes more visible, for instance, in the memos addressed by the defendant to his attorney, while remaining muted in the first police deposition and in later statements addressed to officials. In effect, if many of the witnessing accounts seem like deliberately staged, it's not because of a cover-up or conspiracy, but mainly due to the heavy restrictions that social actors place upon themselves. It is indeed as if they witness from the viewpoint of their "group" rather from the standpoint of the "I." Similarly, police and prosecution behave with a "group"-like mentality, attempting not to trespass the borderlines set by their communities. The assumption here is that the more a society becomes "individualistic" the more actors are prone to manifest their "auto-biographical" side.
2. By the time the actor metamorphoses into a witness, he or she learns—or develops that innate ability—to narrate what is relevant. It is at this stage that the "I" which has witnessed the event withdraws behind the dubious status of an "objective witness" whose aim is to account for what is relevant from the judicial and/or social perspective. What we often notice is a deliberate rush towards representation and judgment, which in the final analysis conceals as much of the "I" as possible. In other words, by rapidly aborting and placing pressure on the

[29] Civil-law systems have their own ways of working through precedent, namely, by codifying past rulings and transforming them into statutes ready to be integrated into future verdicts. The process of codification, however, seldom comes from the courts themselves, but willy-nilly from lawyers, judges, and publishing presses specialized in legal matters.

process of fact finding, not only alternative representations are avoided, but all kinds of individualistic accounts are also evacuated.

3. The witness–narrator invariably narrates as if a third person is present, besides himself (herself) and the prosecuting official authority or judge. In societies where kin feeling is predominant, the third person tends to represent the normative values of the group directly or indirectly implicated in the crime in question, thus diminishing the possibility of the "I" to surface at the forefront, at least in the presence of an official authority. In this case, the attorney or some other privately appointed authority may assume the role of a confidant for the accused or witness. Moreover, since the receptor will not necessarily perceive the narration in the same eyes as the narrator, the investigating authority tends to deploy strategies to demarcate itself from what witnesses have stated, in preparation for the final verdict. But those same authorities, however, will also have to convince the social actors that their version of the story has been objectively validated, thus pushing them to borrow statements from the various parties involved in the conflict. That's particularly true whenever the community in question is bound by strong kin norms and the like.
4. Considering that a narration is a structured account of an event, which may carry a meaning and purpose, the issue that is relevant for our purposes is whether it would be beneficial for analytical purposes to push for the distinction between "raw accounts" and "structured narratives." During an investigation, actors are seldom permitted to freely narrate on their own, since their utterances are framed within a question-and-answer formula. Their statements tend therefore to de facto fall into isolated fragments, which police reports artificially piece together into first-person narratives without any transcription of the original utterances. Only in the second stage, when actors are in the presence of an investigating judge is the question-and-answer mode kept in its original form. And even here the utterances are re-transcribed into an official Arabic, which, once more, metamorphoses the original into something else. In short, what we notice all along is a willingness to transfer each case to the Jinayat in sets of already articulated narratives. But whose narratives are they? When, under special circumstances, we get a rare glimpse of actors narrating on their own, the picture may shift in another direction, pointing to other concerns, different at least from the factual evidence constructed by the judicial authorities. Finally, a parallel issue ought to be considered, regarding that of a possible distinction between narrative and discourse: when a narration is constructed in such a way that it intends to go "beyond the fact" into a self-articulated meaning (e.g. social connotations), it is then constructing a de facto *discourse* of the witnessed event. Ricœur is careful, however, not to push too narrowly the distinction between narration and discourse: "The attested fact must be meaningful, which renders problematic a harsh distinction between discourse and narration."[30] For our purposes here it may be useful to speak of a "discourse of justice," while keeping the possibility of individual or collective discourses by social actors an open one.

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[30] Ricœur, *La mémoire,* 203.

The encounters that plaintiffs, defendants, and witnesses have with investigating judges immediately tag along police investigations. But while police interrogations of witnesses are all filtered in a single report (known as the "seizure sheet," *waraqat dabṭ*), the depositions drafted by judges are on one-to-one basis. Consequently, as each witness receives his or her own individual account, the question-and-answer style is better preserved, even though the attempt to bring cohesiveness to the case remains as strong as before.

One of the witnesses (b. 1937), described as "close to both sides" in the *qarāba* field, had his home located close to the crime scene.

> I was at home during the fight, which is only 300 meters away. I heard the sound of shots. I went out and my son gave me a ride on his motorbike. When I reached the scene of the fight I saw 'Akal[31] al-Muhammad beating the defendant Anwar b. Hilal with the rifle's magazine over his head. When I asked him why, he said that **his father killed my family** (*ahl*). I saw the bodies on the ground in front of Hilal's home, and the defendant Hilal a hundred meters away, who was joined by his son Anwar and his wife. They all ran away. A day before the incident I saw the defendant Hilal drinking tea with the victims. The causes of the dispute (*khilāf*) is that there is an uncultivated land (*arḍ bor*) that we call "the wall," estimated at six hectares, and the victim used to summon the defendant Hilal not to graze his sheep on the land. The defendant Hilal also summoned the victim not to come with his sheep to the wall zone. I think that's the cause of the dispute.[32]

Such single-passage statements are quite common when it comes to depositions uttered in the presence of an investigating judge in the privacy of his office located in the Palace of Justice. As the statements are seldom followed by a more thorough examination, the information carried in such depositions replays the same themes of the police reports, adding slight modifications. At times, however, the witnesses seize the opportunity to completely deny what came in the police report, on the basis that they were either under the shock of the incident or tortured and intimidated. But here again the "accounts" are quasi-complete, de facto taking the role of structured narratives, in particular that the implicit general policy of investigating judges is not to disrupt the fragility of the police depositions.

Another witness, also introduced as "close to both sides (*qarīb al-ṭarafayn*)," was interrogated by a judge.

> The day of the incident I was 200 meters away from the defendant's home Hilal. I saw him in front of his house, and the three victims and the plaintiff 'Akal were close by grazing their sheep in front of the defendant's home Hilal. The defendant Hilal summoned the plaintiff 'Akal to move out of his space with his sheep. He refused and they started a fist fight. The victim Ibrahim said: 'Shame on you!'

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[31] Used interchangeably with 'Aql in all documents.

[32] Dated 2 April 1994.

> And he shouted: 'Let us behave properly as all people do.' Suddenly the defendant Hilal entered his house and went out with a Russian rifle in his hand. Right in front of his home he met with the victim Ibrahim and shot him to death. Close to him were his three kids: 'Akal, Muhammad and Shamsa. He shot to death Muhammad and Shamsa, then pointed his rifle towards 'Akal but no bullets were left. He dropped the rifle on the ground and ran away. As to the defendant Anwar al-Hilal he was working on the land cultivating potatoes and has nothing to do with the fight. But when he heard about the fight he followed his father out of fear for himself. I add that a day prior to the fight the two sides did spent an evening together, and that there were no disputes among them.[33]

There were more accounts like the ones quoted above. If they look all similar it's because neither police nor prosecution were aggressive enough to work out the details and hammer the witnesses on subtle discrepancies or inconsistencies. If we look at the five accounts as specimen, including that of the defendant, we realize that they add little to one another as long as we remain at the macro level of events. But as soon as we go into the details the discrepancies soon begin to surface, in particular regarding the defendant's son, and alleged utterances and provocations by the victims prior to their being shot by Hilal, not to mention the status of the village "wall," and the location of the victims when they were shot. But do all such details matter? The crime seems simple enough not to go any further: after all, the defendant gave himself up and confessed his crime on the spot, only denying killing Shamsa (we shall see the relevance of such denial later). So why bother? From its early days, the case seemed already clear cut and locked into Hilal's full responsibility. It became a question of deciding on the punishment and compensations for the victims' heirs. Do details therefore matter? And which details? The actors' obstinacy at ruling out incongruent details stems from an inner feeling that "all is clear." A shepherd shot to death three family members over an alleged land dispute and then ran away: in the actors' mindset, not much could be done to "save" the defendant. But the real issue here is the *withholding* of details, minute descriptions, and data that may not fit with the already constructed whole. The actors behaved like researchers who limit utterances to statements and behaviors that would fit the outcome of their research, while a more thorough investigation would have pointed to dissonances that would have manifested the endless variations to the same event. To quote Bruno Latour, "If social scientists wanted to become objective, they would have to find the very rare, costly, local, miraculous, situation where they can render their subject of study as much as possible able to object to what is said about them, to be as disobedient as possible to the protocol, and to be as capable to raise their own questions in their own terms and not in those of the scientists whose interests they do not have to share!"[34] What Latour admonished to his fellow social scientists, could be reiterated regarding actors in general, including in our case, witnesses, policemen, prosecutors and judges. We will encounter some disobedience later, but *not* in any of the official documents.

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[33] Dated 5 April 1994.

[34] Bruno Latour, "When things strike back. A possible contribution of science studies," *British Journal of Sociology,* 1999, 51(1), 105–123.

The criminal case as a legal artifact

A common mistake in criminal matters, and which goes back to a notion of the "social" that owes much to Émile Durkheim,[35] would be to assume the existence of a broader "cohesive society" whose normative values the actors obey or fail to obey. For instance, when faced with a criminal case whose witnesses and prosecutors seem reluctant to go beyond certain facts, we attribute such a behavior to a presumed "norm" within "society" at large, that is, the community in question. The problem with such an approach, however, is that we will fail to see how *a criminal case concretely proceeds.* What in effect holds a given "society" together are not simply the presumed "norms" which push actors to behave in a certain way, whether predictable or not, but all kinds of *networked experiences* which at some juncture translate into objectified "artifacts" or "things" through which actors deploy their strategies. Once a crime takes place within a community, it immediately translates into a "case" in the hands of the police, who in turn begin to transform it into a "file" with documents, depositions, reports, photographs, procedures, and hearings. In other words, a routine crime, which initially has no particular shape or structure, and per se does not causally obey to any "social norm," is soon transformed into a *method of inquiry,* as something that appears to exist only as an *artifact* because of the way things, data, and events are examined. It is the existence of a multitude of such artifacts that would constitute the solid ground for the presumed cohesiveness (or lack thereof) of a "society" of individuals and groups.

"In the name of the Arab people of Syria": thus begins the referral report, a statement that is there to remind us that justice is both majestic and always performed in the name of the people. Now eight months after the crime, amid police and investigating judge interviews, the dossier begins to receive its shape. It's in effect in the handwritten referral report, on November 1994, that all previous depositions and memos converge into a comprehensive structure that is there to influence the case until its very end. The case now receives a purpose, an assessment of the facts, an elucidation of who said what and which accounts ought to be taken more seriously than others, which of the accounts overlap (an indication that facts are corroborated), and, finally, the judge's proposals to go on with the case: who should or should not be punished, and what should be the regiment of punishments and compensations. Experience shows that the referral reports are very decisive, and that one is to expect little change from this point on either in terms of factual evidence or the defendant's status. A case could still drag on, however, for years in a row for a variety of reasons, chief among them is the difficulty of getting the witnesses on time during the court hearings (see below), even if no new factual evidence is brought into the picture.

In what may seem like a pure exercise of judicial authority, the judge *orders* the case around seven points:

1. Stop the trial of the defendant Anwar b. Hilal for the crime of premeditated killing (*qatl 'amd*) and participating in it for lack of evidence.

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[35] Émile Durkheim, *Leçons de sociologie* (Paris: Presses Universitaires de France, collection Quadrige, 1997[1950]).

2. Pass all relevant papers to the district attorney to pursue all necessary procedures, and to the referral judge, in order to proceed with the accusation of the defendant Hilal Khalif al-Khalaf with the crime of intentional killing (*qaṣd*) of more than two persons, based on article 534, section 6, of the penal code, and the accusation of an attempt to intentionally kill based on article 533, section 199, of the penal code.
3. Try him at the Jinayat court in Idlib.
4. Proceed with the suspicion against the plaintiff ʻAkal Ibrahim al-Muhammad for allegedly committing the felony of bodily harm, based on article 540 of the penal code.
5. Try him at the Idlib Jinayat court.
6. Charge the defendants ʻAkal al-Muhammad and Hilal al-Khalif for the military fee.
7. Once the sentencing is finalized, forward the file to the military judiciary in order to investigate the illegal possession of military firearms attributed to the defendant Hilal al-Khalif and Faysal al-Khalaf.

Now the tone is set for the case. The referral judge is *ordering* all kinds of authorities to do what he just told them to do. He then, in a single 20-line paragraph, states all the known facts of the case, prior to listing all witnesses one by one in conjunction with the statements attributed to them. The third section of the report consists of a "legal discussion" of what the second section revealed in terms of accounts, individual statements, and evidence: facts are assessed and some of them are outright rejected. In the final section the judge pushes forward his proposals: the defendant must be tried for his killing of three persons and punished accordingly. In sum, all what has been done and said in the previous eight months receives its preliminary structure: the *method* of investigation is now set, statements and facts have been assessed, and the results that will follow will be an outcome of the deployed method. But whether the judge is simply "stating" the known facts, or "discussing" them in light of the penal code, he is in fact *ordering* all actors to restrict themselves to the contents of his report. The case has fully metamorphosed into an objectified artifact: lawyers from both sides of the spectrum will from now on only debate the pros and cons of the report; for judges it provides them with a structure without which they wouldn't be able to survive.

The section on "legal discussion and its application (*fi al-munāqasha wa-l-taṭbīq al-qānūnī*)" is of special relevance.

> Since medical expertise has established (*thabuta*) that the bodies of the victims Ibrahim and his son Muhammad and daughter Shamsa all lost their lives as an outcome of wounds from bullets;
> and since the statements of the plaintiff ʻAkal, his mother, and witnesses X and Y, in their depositions, and the confession attributed to the defendant Hilal al-Khalaf in the police report and his interview [by the investigating judge], all point to Hilal shooting at the victims;
> and since what the defendant Hilal claimed in his police deposition and interview—that while the victim Muhammad was holding him, the plaintiff ʻAkal

> hit him on the head, and as a result fell on the ground, he then saw his son Anwar holding a rifle, which he took from him, then he fired three warning shots in the air, which pushed his victims to assault him, then he shot Ibrahim and his son Muhammad, while not knowing how Shamsa was shot—has not been confirmed with any evidence, but to the contrary **all evidence shows that such statements are untrue**;
> and since his minor son Anwar denied having been present at the murder scene, and certified that when he came he saw the bodies of the three victims on the ground, which also has been confirmed by the victims' relatives and the witnesses, and by the statements of witnesses X and Y in their depositions, which means that the defendant Hilal, as soon as he shot to death his three victims, attempted to kill ʻAkal, but was unable to do so for lack of ammunitions, so he dropped his rifle on the ground and ran away: *he was therefore the only one shooting,* and consequently, **he was the one who shot Shamsa**, contrary to his claims; in addition, the aforementioned two witnesses confirmed in their depositions that the defendant Hilal, as a result of a **small dispute** with the plaintiff ʻAkal, hurriedly rushed towards his room and stepped out with a rifle, and soon afterwards started shooting, *which shows that the defendant Hilal was not in self-defense, contrary to his claims;*
> and since the act of the defendant Hilal…*constitutes a single crime under article 534, section 6 of the penal code…*
> the defendant Hilal al-Khalaf is accused of murdering…based on article 534, section 6 of the penal code…[*all bold and italics are added*]

I have deliberately italicized three sentences in the referral report which all of a sudden become the *punctum* of the whole case: 1. Hilal was the only one shooting, and no one else had firearms; 2. Hilal did not act in self-defense; and 3. Hilal should be punished under article 534 of the penal code. By choosing article 534 rather than 533 the judge deliberately opted for a higher punishment, but he also averted the death penalty. In effect, while article 533 sentences the accused between 15 to 20 years with hard labor for intentionally killing someone (*qatl qaṣd*),[36] article 534 extends the punishment to life imprisonment, for instance, if two or more persons were killed (section 6). Only if the accused committed a premeditated killing (*qatl ʻamd*) would capital punishment apply (article 535).[37] (A *ʻamd* killing is also *qaṣd,* but of a higher level.)[38] When the case-file reached the referral judge it was composed of a multitude of police depositions, interviews, medical reports, and lawyers' memos and the like: it still lacked, however, a clear focus, even though the police report that contained all preliminary depositions clearly made Hilal the prime and only suspect. Now the referral report stated what the three main *issues* were: but were the arguments well founded? And was there enough reliable evidence? If we look carefully at the judge's concluding statements we realize that they were mostly based on the accounts of the two witnesses X and Y, which as we shall see later, were presumably kin related to the victims. More importantly, from the

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[36] Which stands for manslaughter in the Anglo-American system.

[37] Mamdūḥ ʻUṭrī, *Qānūn al-ʻUqūbāt* (Damascus: Mu'assasat al-Nuri, 2003), 197–8.

[38] Which stands for first-degree murder in the Anglo-American system.

four specimens quoted above neither depositions nor interviews seem thorough enough to warrant any reliable witnessing.

With the referral report behind, the case now stands at a higher level, that of the Jinayat court. The true novelty here are the court hearings and their *publicity*: will they bring anything new? They should, in principle, but various limitations imposed on the structure of the hearings act as an impediment towards the flowing of information. To begin with, once the case reaches the Jinayat—at times years after the crime was committed—the judges cannot, for all kinds of logistic reasons, devote themselves to one case at a time. In effect, in a typical three-hour Jinayat session, dozens of cases would have to be dealt with, most of them for a routine rescheduling of their hearings. The big problem for every Jinayat court in Syria is to get witnesses on time for the hearings: either witnesses claim that they had not been informed on time, or else they've managed to bribe the police officers who came to them with a convocation, so that they would avoid coming to court, or else witnesses are subpoenaed on time but fail to come to the hearings, and another convocation has to be issued. Consequently, during a three-hour hearing session, the court handles dozens of cases at a time, listening to a witness in one, rescheduling that of another witness for a second case, reading the sentencing for a third case, or listening to a counsel's plea in a fourth one. Such a lack of concentration on a single case at a time definitely places limits on the efficiency of the system: the chief judge seems at times overburdened and unable to distinguish the contents of one file from another, and needless to say, serious errors might ensue. Quite often the chief judge begins his examination of a witness with a "tell us what you know about the case," as if apologizing beforehand for being lost in a mountain of files. Finally, as already noted for police depositions, the biggest drawback in the system of hearings is that they are not recorded verbatim: every once in a while the judge dictates his scribe a brief summary of the proceedings, so that the original utterances are lost forever.

The hearings stretched for a year, from November 1996 to December 1997, producing in toto 20 pages of court *summaries*. By the time the referral report was drafted only one new issue came to the forefront, which has to do with the "sanity" of the accused (see below). Other than that, the referral report has relocated the case on a couple of issues: 1. To whom did "the wall" belong? Was its ownership common to all the inhabitants of the farm? 2. Did the accused Hilal clearly and unmistakably inform his victims that "the wall" was "his" own property? 3. How were the protagonists situated vis-à-vis "the wall" at the moment of the crime?

Let us consider in some detail a session on December 1996 as an example of how court hearings would normally function.

- The witness X was called, born 1937, identification card number…
- The representative of the district attorney pointed out that the medical report confirmed that the accused was fully responsible of his acts at the date of the crime. I [the DA representative] accept what the report has stated.
- He displayed the five-member medical report, which he read.

- I [the chief judge] wish we leave the matter of the medical report for the court [to examine].
- Witness X was called, born 1937, identification card number…, paternal cousin to the victim Ibrahim and the husband of his sister, and also cousin of the accused, with the same kin degree (*nafs darajat al-qarāba*). After taking oath, and stating that he has no hostility (*'adāwa*) to anyone and is not kin biased (*khālī al-qarāba*), he was questioned and said that he confirms what he had stated earlier on 2 April 1994. He did not hear the accused Hilal beckoning the victim Ibrahim not to graze his sheep in the wall zone of the village when they were drinking tea the night of the incident. That's my testimony.[39]
- Replying to a question,[40] he said: the wall of the village is for the entire village and ready for grazing.
- Replying to a question addressed by the defense, he said: The wall of the village is not cultivated by anyone in particular, while there are east of the location where the three victims were killed plantations that belong to the accused Hilal, and the sheep of the victims grazing inside the village's wall were outside the plantations of the accused Hilal.
- Responding to a question, he replied: The victims never had their sheep graze over Hilal's properties.[41]
- Replying to a question addressed by the defense, he said: When I heard the shots, and as soon as I came to the location of the shots, and saw the [dead] victims, the sheep of the victims had already strayed away and were located inside Hilal's plantations.
- Witness Y was called, born 1973, identification card number …, knows both the accused and the victims. The victim Ibrahim is the husband of his paternal aunt. After taking oath, he said: The day of the event I was asleep, the time was roughly 3:00 in the afternoon, because as a conscript I was on vacation, I heard several shots. I woke up and headed towards the location of the shots, and saw all three victims—Ibrahim, his son Muhammad, and daughter Shamsa—lying on the ground. The bodies were roughly 8 meters apart, close to the accused Hilal's house. I realized that the accused Hilal had dropped his rifle on the ground, which was then picked up by the plaintiff 'Akal, and I myself took it from 'Akal. When Hilal did run away, 'Akal attempted to stop him, but he couldn't. I also saw the suspect (*ẓanīn*)[42] 'Akal hitting the accused's son Anwar on his head after his father, brother and sister were all killed.
- Responding to a question from the court, he said: When I reached the location of the incident, the sheep of the victim Ibrahim were grazing inside the village wall, and then spread over the lands. I estimate them at 80 sheep. The victims' sheep never grazed over Hilal's plantations.

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[39] Note the abrupt change from third- to first-person.

[40] The hearing sessions minutes usually do not fully quote the questions addressed by judges and lawyers to the witnesses.

[41] The implication here is that "the wall zone" is outside Hilal's properties, contrary to what the defendant had claimed all along.

[42] 'Akal was a "suspect" for having allegedly used force against both the accused and his son.

- Responding to a question he said: The location of the three victims was roughly 7 meters from Hilal's home, which in turn is 100 meters from the victims' home.
- Responding to a question from the defense, he said: The closest body to Hilal's home was that of the victim Ibrahim, roughly 6 meters apart. That's my testimony.
- Witness Z was called. She's 60 years old and was the wife of the victim Ibrahim, while Muhammad and Shamsa were her children. She knows the accused since he's one of her paternal cousins. After taking oath, she said: I reiterate what I had previously stated in my deposition dated 12 March 1994 in its totality. That's my testimony.
- The other public witnesses were not present. New convocations were issued to them. The next hearing will take place on Sunday, 16 February 1997.
- [The court moves to another case.]

I've deliberately selected one of the longest hearing sessions, which occupies two full handwritten pages from the 20 that constituted the totality of the one-year hearings. In effect, in many of the hearings, witnesses are called (the judge names them, then the court's janitor shouts their names through a microphone) but often don't show up: the court reschedules the hearing and moves to another case. Moreover, as with Ibrahim's wife above, she was subpoenaed to simply reiterate statements that she had uttered to an investigative judge two years earlier, while no one bothered to examine her from fresh.

Which leaves the chief judge with the task of paraphrasing and summarizing the statements of witnesses. We've seen a similar policy with police depositions and the examinations conducted by the investigating judge. Needless to say, when the original utterances of witnesses are overlooked in favor of summaries dictated to a court scribe, the judge de facto acts as an *interpreter of speech acts,* hence the case is "constructed" more swiftly as it moves from one authority to the next. Notice in the above hearing that though the text is mostly kept within the third-person singular, it moves at times to the first-person mode in abrupt shifts, as if the chief judge chose to do so simply to give more *credibility* to the "I" whenever he felt so. The text also avoids even a minimal paraphrasing of the questions, as if only the answers matter. In sum, there's so much filtering in the transcripts of the court hearings that, in the aftermath of the referral report, the case begins to receive its final touches, leaving less and less room for the actors to maneuver.

Is he competent to stand trial?

But what makes this case unique is neither the verdict nor the witnesses' depositions. At some point the defendant Hilal started drafting short notes and memos to his lawyer, all of which written from his prison cell. As the handwriting and style keep shifting, and since all the documents included in the file were undated, it is impossible to determine how much of those notes were drafted by Hilal himself, or the kind of outside help (from inmates, family and friends) he might have received. As we only come to know defendants from their official depositions to police and prosecution, Hilal's "writing"—whether "his" own, or through outside help—does constitute a unique opportunity to look

at his mindset. After all, not that many shepherds have memoirs or express their views in writing.[43]

In what seems like his first attempt to communicate with his lawyer, an undated two-page memo details the events that eventually led to the crime.

> Dear master and lawyer,[44]
>
> From your client Hilal a summary of how the incident took place. The day of the incident I was alone on *my* land[45] working and laboring. The land is roughly 100 meters away from my house. Four hooded shepherds came by with their sheep, and they've let them graze on *my* land. I've asked them to move their sheep out. They've refused and said that we've already warned you to leave this place a long time ago. I managed to identify them: Ibrahim Hasan Muhammad and his two sons and their maternal cousin.[46] I told them that when I finish plowing and the season is over I'll sell you whatever you need. They replied that we won't pay you a single piaster, and you'll leave whether you like it or not. Ibrahim said to one of his sons: 'You told me that once my brother Muhammad comes from Damascus we'll slaughter Hilal because he's the son of a dog, and he owns all the village.' Muhammad came to me and hit me with a stick. Then it was his brother's turn to hit me with a hammer several times. Once I fell on the floor all of them started beating me. They pulled me all over the ground as I was severely bleeding. My wife came and started screaming. She attempted to save me. They began hitting her, she fell on the floor, they began pulling her around, and took some of her clothes off. They left us. We went to our home while our condition was difficult. I saw my son Anwar[47] with a Russian rifle. I took it and put it at home. When they heard my wife saying 'let's go and complain to the police,' they came back and Ibrahim was pulling the strings: 'Slaughter him, and I'll sell the sheep and tractor.' We were only separated by a distance of 15 meters. I went back home, picked up my rifle and told them: 'Stop for God's sake!' But they persevered. My wife attempted to mediate, but they hit her again, insulted her, pushed her to the floor, took off some of her clothes, boasting: 'We'll do it with her right in front of you!' I received a hit on my head from the back, while

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[43] Since the lawyer's heirs kindly authorized me access to the folder's case in 2004 (the lawyer in question died in 2001, a year after the verdict), only some of the original letters that were included in the file are quoted here. It remains uncertain, however, whether the defense forwarded them to the prosecution or whether they were later included in the Jinayat's file. In a number of cases, I've seen letters of inmates originally addressed to either the prosecution or defense (C4–1), or to the Jinayat court itself (C4–2), included in the final file upon which the verdict was based. What goes on between lawyers and their clients is after all strictly confidential, and it's up to the former to decide what to include or exclude from their presentation of the case.

[44] Punctuation not in the original Arabic.

[45] Italics added: the land—or the village wall—is already categorized as "privately" owned, hence excluding the claims of others in what appears as a subtle strategy to rebuff the victims' claims.

[46] Notice how Hilal substitutes Shamsa, which to the very end he denied killing, with maternal cousin, which by all accounts is incorrect.

[47] Anwar was a minor at the time.

> someone was holding me from behind. I was left with no other alternative but to fire warning shots up in the air **without being conscious** (*bidūn wa'ī*), since I couldn't run away. While they were attempting to take my rifle Ibrahim got shot and fell on the ground. When his son Muhammad rushed towards me the second shot was fired, and hit him directly.[48] I have no knowledge how the girl got shot.[49] I ran away with my wife and son Anwar towards the east in the direction of the police station at al-Burid, and before we got there Nuri al-Nawwaf[50] was able to follow us, and with him was the rifle, which he managed to take [from my adversaries.] He said to me 'don't take your wife with you to the police station, and don't say that she was with you, because they'll arrest her.' I've sent my wife to the al-Burid village, and drove with my son in Nuri's car to the police station. We gave ourselves up. The director and head of the police station showed up. I was in a pretty bad shape, having received so many blows on my head and body. They brought a doctor who examined me and gave me some medicine. After a while I heard my son Anwar screaming. They were beating him and he was screaming for help. I couldn't hear him anymore. A judge came and took my deposition. I wasn't fully conscious. I told him about the fight, but did not mention my wife, being afraid that they would arrest her. After the investigation was over, they took me to Idlib's prison.
>
> We now come to the public witnesses (*shuhūd al-ḥaqq al-'āmm*).[51] Muhammad Shaykh Muhammad, his son Walid, 'Umar Shaykh Muhammad and his son 'Aziz,[52] who was present during the incident, and who was previously involved in an earlier fight. The witnessing of all those is unacceptable from both the point of view of the *shar'* and law (*qānūn*),[53] because there's between us previous litigations (*khuṣūma*) and blood [was shed], considering that my father had killed their father, and the wife of the victim Ibrahim happens to be their sister. Those are witnesses that are attempting to corner me while in prison, in order to benefit from the land and homes,[54] and they've got what they wanted…

Whether the above letter was the first in the series or not is hard to determine. Its significance comes from the fact that it's the most complete when it comes at describing

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[48] Notice how the narrator Hilal (or whoever wrote on his behalf) uses a third-person indirect anonymous style, instead of the direct "I," to describe the shootings, and the purpose of which was obviously to minimize any wrongdoing on his part.

[49] Both the police and the Jinayat final ruling mention that Ibrahim's sister was shot to death, side-by-side with Ibrahim and one of his sons, while a second son who was on the scene accidentally escaped the same fate simply because no bullets were left in the rifle. It is not clear, however, why Hilal got the woman's shooting wrong: was it intentional or not?

[50] Nuri's identity and relation to the protagonists was not revealed.

[51] Literally, the witnesses of public right, or those that were summoned by the prosecution.

[52] All of which were from the victims' and plaintiffs' family.

[53] The Syrian penal code, which was enacted in 1949 during the brief dictatorship of Husni al-Za'im, and which is based on the modern Egyptian and French codes, is entirely modern and secular, and hence does not borrow much from the sharia.

[54] Hilal uses homes in plural throughout his correspondence, but it remains unclear what he owned besides his main house.

the incident itself, its aftermath and possible causes. More importantly, it sheds some light as to links with previous episodes regarding alleged feuds and bloodshed between the two families. Let us note for the moment the following observations:

1. The shooting of the three victims remains the most obscure part of the narrative. Hilal alleged that his opponents were beating him, and, when he started shooting, one of them was holding him from the back which is awkward and hard to believe. The shootings were described in the most detached style possible, as if the bullets went out on their own, without anyone being specifically responsible.
2. The missive brings two elements that were precluded from the Jinayat's final ruling: the alleged longstanding feud between the two families; and the interest that the other party might have nurtured towards the defendant's properties. Even though economic relations may have been at the core of the conflict, the Jinayat would not handle them.
3. Perhaps the most important element was regarding the status of witnesses. While the defendant clearly identified the witnesses' alleged kin affiliations and motivations, the Jinayat failed to do so. Which raises an interesting question: considering that in such worlds, plaintiffs, defendants, and their witnesses, are in all likelihood kin related, what is the value of their testimonies, and should special procedures be devised to take into consideration kin interests? In another undated letter to his lawyer, the defendant Hilal claimed that even the certified doctor who examined the three bodies was "from the kin and tribe of the victims." "I even suspect," Hilal went on alleging in that same letter, "that the locations of the bodies had been altered either by the police or the doctor."

We'll have to keep in mind all three points when going through the other memos drafted by Hilal to his defense lawyer. An issue that has constantly emerged in later letters is the possibility of peaceful settlement.

> Within a month of my arrest, 'Akal al-Muhammad[55] went and met with Nuri al-Nawwaf, and asked him to intervene in the peaceful settlement (*ṣulḥ*) to solve the matter. Nuri al-Nawwaf had forwarded a proposal to me which would solve the matter for SP600,000 ($12,000). I replied by giving him authority to sell one of my lands and pay the requested sum. But 'Umar Shaykh Muhammad and Muhammad Shaykh Muhammad had objected to the proposal and threatened 'Akal for attempting a peaceful settlement. They've made an agreement with one another to usurp (*ightiṣāb*) my homes and land,[56] and appointed themselves as public witnesses in the case. They've thrown my family out of their homes and land to a free zone (*manṭaqa muḥarrara*).[57] My brothers had met God's will and their children have now joined my family, which has grown to 33 souls (*nafas*),

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55 The third son and only survivor of Ibrahim al-Muhammad who was also present at the crime scene when his father and brother and sister were shot to death.

56 Hilal tends to mention his homes in plural, even though the official documents refer to a single home, the one close to the crime scene. By contrast, land is in most cases singular, even though in the preceding sentence it was used in its plural form.

57 Unclear what is meant by this expression. It could be public lands with no specific owner.

> all of which homeless and with no place to stay. Our land has been robbed from us by ʻAkal al-Muhammad and his maternal uncles ʻUmar al-Shaykh and Muhammad al-Shaykh. My generous master if you can bail me out (*ikhlā' sabīl*) I'll take it upon myself (*ata'ahhad 'ala nafsi*) that within a month there will be a peaceful settlement and I'll bring together my homeless family.

In what looks like one of his last—and shortest—statements, Hilal makes a final plea to his defense counsel.

> Dear master, God be on your side,
> I ask you to delay the verdict, hoping that a peaceful settlement would come, because I'm working on one more than ever before. I urge you to prolong the verdict for some time.
> And if you can bail me out for a cash guarantee I'm sure that I'll be able to reach a peaceful settlement within a month, if God wishes, and I'm ready for the court hearings, the ruling, and other matters.
> The inmate Hilal.

Since the note, like all others, was left undated, it's impossible to know how close it was to the verdict. In the sentencing, six years after the crime, the court, in addition to the 20 years with hard labor, summoned the defendant to compensate, in lieu of the blood money (*diya*), the heirs of Ibrahim and his sister each victim for SP600,000 ($12,000), to be allocated according to sharia law, thus while the plaintiff ʻAkal Ibrahim al-Muhammad (the only survivor) would obtain SP50,000 ($1,000), the heirs of the victim Muhammad (Ibrahim's son) would receive for their part SP800,000 ($16,000). The punishment was indeed severe, and was definitely far above what Hilal himself had hoped for a settlement (SP600,000 *in toto*). Moreover, when it comes to cash settlements the court's language surprisingly borrows from tribal customs: compensations are looked upon as blood money. If, as Hilal's letters to his attorney testify, he was hoping, through a friend's mediation, to work out all by himself a resolution, then such mediations must have surely failed, leaving the Jinayat to proceeded with its own harsh settlement. Because the Jinayat generally compensates far less than the expectations of the plaintiffs, the disputants tend to settle on their own prior to dropping their personal rights over the case, leaving the Jinayat with the *public* part of the verdict only. In rural and tribal areas, since blood money settlements are the norm, when the courts make their own assessments, not only do their verdicts tend to overlap with local norms, but compensations have to meet expectations; otherwise, the cycle of violence might be once more revisited. By contrast, in urban areas like Aleppo, particularly among the middle and bourgeois classes where blood money settlements are not normative, compensations are assessed on the expectations from past courts' rulings, which on average tend to be low: the plaintiffs would then assess whether to go for a private settlement and "get more," or proceed with the case.

Our démarche assumes that the use of rules by actors is as crucial as the understanding of the rules of law. Rather than simply focus on the rules of law, their inner logic and coherence (or lack thereof), we have deliberately shifted our analysis at how social actors

understand and make use of the legal rules in combination with their customary practices. The behavior of actors is detected mainly, though not exclusively, through their speech acts and utterances. What could be detected in the language of users (plaintiffs, defendants, witnesses, police and investigators, judges and lawyers, and even doctors and psychiatrists whose language is assumed to be "scientific") is an ability to contextualize action according to one's needs and strategies. They do so while they'll have to keep an eye on the rules, and, at the same time act in conformity with their own social and economic interests. In effect, it is through practice—the use of rules by actors—that the link between law and the economy reveals itself. Through language the social actors index and document a conflict or crime: in other words, they provide their own representations of the case, hoping in the meantime that their actions would tilt the case in their favor. But, in so doing, they're projecting for symbolic and material compensations, hence they're looking at their economic status once it's all over and they're back to normal life. Our case reveals some of the economic interests of all protagonists. What the defendant Hilal was attempting in his missives and notes was a representation of the crime in his own language.

Consider the following undated memo in which Hilal tossed what he viewed as "evidence":

"My master, below is some evidence (*adilla*) with witnesses to support them."[58]

Hilal's statements (numbering is his own)	**observations**
A. 1. The immediate deposition (*dabṭ fawrī*) [at the police station] has been organized according to the opponent's will—bribed (*marshuwwa*)—and one of those who drafted the deposition—policeman Jamil al-ʻAbid—would confirm this.	Hilal immediately delegitimizes his deposition at the police station on the ground that his opponents bribed the officers and imposed their will. In principle, as the Damascus Naqḍ has constantly stressed, such depositions have no value unless suspects reiterate their statements at trial. But in practice such depositions have a value beyond proportions as the courts heavily rely on them even if suspects subsequently deny every word they said.
2. When the deposition was being recorded, **I wasn't fully conscious** at all. The police fetched a doctor who gave me medicaments, but my statements were nevertheless recorded, without having gained my consciousness.	The deposition is further delegitimized with the allegation that he was not fully aware of what he was saying. This "lack of consciousness" came earlier in one of the letters to his council, but for another event: that he was shooting up in the air, without, however, full consciousness of what he was doing. Even though a simple denial in the presence of an investigating judge would have made it—at least in principle—what Hilal was attempting here was to posit his opponents as having "something to hide." Hilal killed three persons in a row, and he was expecting a punishment that could be life

[58] Punctuation added in the translation below.

	threatening. He was therefore left with two options: (i) a peaceful settlement based on blood money compensation; and (ii) to throw doubts at his opponents with the hope that the court would alleviate the punishment.
3. I've tried a lot to have my statements heard by an investigating judge, as I placed several demands, to no avail, and the only statements I delivered were to an assistant judge.	The file I had access to confirms this. The only statements that were recorded, after the deposition to the police the night of the murder, were to an assistant judge in Idlib the day after the crime. Suspects tend to seize the opportunity of their encounter with an investigating judge to deny *in toto* what they had stated earlier to the police.[59] It remains unclear why Hilal was denied access to a judge, an issue that the Jinayat did not even raise in its verdict.
B. The public witnesses in the case are *in toto* my adversaries (s. *khaṣm*) because my father killed their father, but in spite of that, the source of instigation and trouble (*fitna*) are the witnesses and their sister, the wife of the victim [Ibrahim], and there is lots of witnessing (*shawāhid*) on their assaults, etc.	Hilal was attempting to contextualize the crime in light of a previous killing, or chain-retaliations. But there's also an *indirect* contextualization regarding the motivations of his three victims and their witnesses—that all of them acted or were acting in retaliation for the killing of their father. (Note that Hilal did not care to explain *why* his father killed their father: was it also over a land dispute?) The witnesses are suspicious because they're kin related to the victims *and* like the victims are retaliating for a previous killing. Now the whole episode looks more "understandable": victims and witnesses are tied together in a *single* act—retaliation. Note that the Jinayat *excluded* all this material in its ruling. As contextualization is the main strategy deployed by the actors attempting to provide explanations for their actions, the principle of exclusions and inclusions is what governs the policy of the Jinayat (and all other judicial instances). Whenever the Jinayat excludes contextualization attempts by either party, it is de facto re-contextualizing the disjunctive elements in the case through its own judicial language.
C. The land of the victim and the witnesses is 2–3 km far from mine, and despite that their sheep only graze over my cultivations with a pretext—the village wall—and it is known that the wall is no good for the sheep to graze, and the intention (*ghāya*) of the victim and	The process of contextualization proceeds even further than in B, as victim and witnesses are lumped together under a single conspiracy theory. But the status of the disputed land is left unexplained here, and it is in another letter (which could have been drafted earlier or later)

[59] Based on a sample of 100 cases.

witnesses is to force me out of the farm, from my home and land.	that Hilal explains how property ownership has shifted since the 1960s: "The [disputed] land was [classified] an agricultural land since 1963,[60] dispensed by the agrarian reform program to the peasants who benefited from it: [five persons are listed including a woman]. I purchased the portions of X and Y since 1981, and constructed my home on the upper portion of the land, then gave another portion to the state to construct a primary school, which is still there."[61] The defendant was constructing a systematic narrative, explaining the case from his *own* point-of-view, but which the Jinayat did not care to consider.
D. The rifle had been deposited with me, and when I went to the police station [right after the killings], relatives (*aqārib*) of the rifle's owner came to me and requested that I say that the rifle is mine.	The ownership of the rifle is not important per se, considering that Hilal confessed his crime and there was plenty of evidence that he did it. Ownership of guns, however, is authorized only with a permit, and not having one is a felony. The genuine owner might therefore have had to hastily dispatch his relatives to deny ownership, either because he had no permit himself, or else he did not want to get involved. More importantly, considering that in this tightly controlled society of honor and violence, guns are the most common weapon of crime, and their *circulation* from one individual to another, from home to home, is in itself a means for consolidating relations and establishing bonds, ownership—like crime—cease to be a *private* matter: guns "protect" groups as much as they "protect" individuals. In his examination by an assistant judge the day after the murder, Hilal stated that that he purchased the rifle in Lebanon 15 years ago: "I used to go and work there, I purchased the rifle, and brought it with me [to Syria.] Everyone at that time had guns, and I've got sheep that I take with me to the eastern region."
[The rest of the paragraphs were left unnumbered.]	As with the rifle, the decision not to mention his wife's presence at the murder scene was *not*

[60] Which coincides with the coming of the Baath to power and the Party's attempt to diminish the power of big landowners, most of which own their family property titles since Ottoman times, while the French mandate did little to destabilize them; see, chapter 9 on land.

[61] It seems that this last portion was confiscated by the state as part of its *istimlāk* strategy for the public school project.

After the incident I went with my wife and son Anwar in the direction of al-Burid, and on the road I passed by the village of Jibb Abyad at the house of X. They told us not to mention the name of the woman [my wife] so that she does not get imprisoned and arrested from justice.	*his own,* but a *collective* one. Hilal was attempting to shift responsibility from the individual to the collective.
[In the remaining three paragraphs the handwriting changes and the language considerably deteriorates from plain to colloquial Arabic, indicating a likely change in authorship.] All the inhabitants of my village have seen everything before anyone else, and they've seen the distance of the bodies from the door of the house.	Same strategy as before: even the *seeing* was collective—by all the village inhabitants. Notice that the prosecution and Jinayat went in the opposite direction: to *individualize* witnesses—those same ones that Hilal attempted in vain to discredit on the basis of their kin relations to the victims.
The legal doctor who examined the bodies is from the same tribe (*'ashīra*), and he might have heard the talk of those present after we had run away.	After having discredited all witnesses, now it's the doctor's turn. The process of contextualization goes even further with the attempt to indicate that in a milieu where everyone is kin related, and crimes are not individual acts, then how is objective truth possible?
The witnesses are opponents (*akhṣām*) and the instigators. After the incident one of the witnesses Walid al-Shaykh attempted to kill my son Khalid in Latakia, while others have assaulted my brother in his village and beaten him up, and they're the ones who have damaged homes and burned their doors to the ground.	The crime supersedes those involved in it, as it soon progresses to engulf other family members from both parties.

The witnesses' alleged kin bias was picked up by the defense counsel in one of his memos to the Jinayat on August 1995: "Your honorable court, being a court of substance (*maḥkamat mawḍū'*), will notice that it is not permitted to judge by the law and deduce evidence through bypassing the witnessing of neutral persons (*ashkhāṣ ḥiyādiyyūn*), while taking into consideration only the statements of the plaintiff and his relatives." The counsel refrained, however, from contextualizing the case within the broader perspective of the defendant—that of the ongoing feuds between the two families, beginning with his father's alleged assault and the killing of Ibrahim's father. The counsel nevertheless kept nailing down the case to its main components: the disputed land, and the victims' constant trespassing over Hilal's property, the witnesses' kin problem and their contradictory statements, and the state of mind of a defendant who had been with his wife insulted, beaten up, and humiliated by all three victims. The counsel went, however, at great length, while quoting rules, procedures, and interpretations from scholars in Syrian, Lebanese and Egyptian laws, explaining that the court ought to draw a distinction between someone "who has become vulnerable (*ta'arruḍ*)" under a certain condition, and the assault (*i'tidā'*) itself: "A rightful defense does not set as a precondition the occurrence of an assault, since it is enough that an unjustified confrontation over the soul (*nafs*) had taken place, as elicited in article 183 of the Penal Code." And he then added

with confidence: "We have to understand the meaning of *ta'arruḍ* in its right context, since it implies the danger from an assault and not the assault itself, because the act of defense orients itself towards that danger so that it does not occur."

Was he insane?

Social actors index their speech in such a way that each utterance ought to be "understood" by the hearer within its proper situated encounter. That's at least how *in principle* a verbal exchange between speaker and hearer ought to proceed. It is, of course, quite common for speaker and hearer not to "understand" one another—or at least the hearer might understand the speaker only *literally,* while the symbolic social meanings are lost. More importantly, even routine utterances assume and generate a system of meanings that is made and unmade while people speak and act. For the researcher, such assumptions and generations of meaning are what social actors typically take-for-granted, upon which research relies to explicate the acting of individuals in situated encounters. From the vintage viewpoint of the social scientist, the *assumptions* in the way people talk and act prove to be the most important vehicle for social action. In effect, in any situated encounter, between what is "accepted" and not "accepted" as a form of speech, lie deeply seated and taken-for-granted relations of power. When, for instance, a suspect is being interrogated by a prosecutor, every question assumes broader status, class, gender, ethnic and linguistic hierarchies in society which are not necessarily revealed to either speaker or hearer. More specifically, the prosecutor *in this particular instance* is in a power relation with the suspect, and uses a mixture of professionally oriented juridical language *and* a common profane language, while the suspect is limited to the latter. During such a linguistic exchange, not only a suspect might metamorphose into an accused for having uttered some "revealing" things to the prosecutor, but more importantly, what stands out as "revealing" from what is not, or as "enough evidence" versus what has been disregarded by the prosecutor as "invalid," is a question of *interpretation,* which for the most part relies on the taken-for-granted undertones of the exchange. Moreover, since in the Syrian court system, cross-examination transcripts—whether conducted by the police, prosecution, and courts—do not carry the original verbatim utterances, but either summaries or transcripts in official Arabic, what "we"—as outside observers—have access to is a *primary rough interpretation* of the original unrecorded linguistic exchange.

To illustrate my point more concretely, I would like to address the issue of the "insanity" of the accused, which his defense council brought to the attention of the court since his first plea to the Jinayat in 1995. An issue like "insanity" immediately brings suspicions to both the professional jurist and the profane: What is insanity? How can we determine that a person is insane? And are only doctors eligible to determine who is insane from who is not—a diagnosis that should then be approved or refuted by a court of law? To the uninitiated, the issue of insanity, or genetic or mental disorder, ought to have a special status, simply because it may add another layer of uncertainty to the case, or else because it might become a playground for social actors to push the direction of a case in their benefit. For the researcher, however, since the issue of insanity is *linguistically* debated among doctors, lawyers, and judges, it is no different from the mundane cross-

examinations and other statements—with all their taken-for-granted assumptions and innuendos—which populate any case.

Consider for example the following exchange between an assistant judge and the suspect Hilal at the Idlib prison just a day after the crime.

> Q1: Did you shoot [Ibrahim's daughter] Shamsa?
> A1: I swear to God the almighty that I did not shoot her, nor do I know who shot her.
> Q2: X and Y claimed that they saw you shooting at the victims, then drop the rifle on the ground and run away. So how come do you deny shooting on Shamsa? And if you did not shoot her, then who did it?
> A2: What the aforementioned witnesses said is incorrect, and I completely deny shooting her. When I did run away **she was standing with the women**.
> Q3: We've seen the bodies of the [three] victims at the place of the incident located from one another by approximately 10 meters forming a triangle, which confirms the falseness of your statements regarding the shooting of only the victims Ibrahim and Muhammad in one place, so what do you say?
> A3: When I shot Muhammad he went east and fell close to his father [Ibrahim] who had fallen before him, and I confirm that I did not shoot Shamsa.

For a while the whole case had been hinging on Shamsa: Who shot her to death? Hilal denied from the very beginning that he did so, while those present on the scene confirmed that he was the one who shot her. The *implicit assumption* in the whole Shamsa episode is that *as a woman* she was a defenseless creature who would do harm to no one—certainly not to the likes of Hilal. Her killing would therefore rebuke the defense thesis that Hilal acted in self-defense, or as his lawyer pointed out, because of the *ta'arruḍ* that he was subject to from the others: savagely beaten up and humiliated with his wife, he was left with no other choice. What is revealing in the above interview is Hilal's depiction of Shamsa as he ran away: "When I did run away she was standing with the women." Whether his description was factually correct or not is beyond our means, but suffice to say that it does indeed conform to a common social understanding of the role of women in rural societies: they stand together and watch the violence perpetrated by "their" men, and assaulting them would be dishonorable. Hence Hilal's denial to the very end. While the examiner attempted in vain to corner him, the examination would not have carried the same weight had it not been over a woman's body.

My client is known to be an idiot

In similar vein, the issue of Hilal's "insanity," first initiated by his lawyer, carries similar taken-for-granted assumptions. In his first memo addressed to the Jinayat, the defense counsel noted that "**my client is known to be an idiot** (*ahbal*), and this was confirmed in the attached memo from the department of conscription (*tajnīd*), when he was summoned to serve his compulsory military service, but was soon released (*u'fiya*) because of his idiocy (*habal*)." The memo attached to the counsel's address emanated from the Syrian army headquarters, and pointed out that Hilal served in the army for one month only, in

April and May 1965, prior to his permanent release. The doctor's report, which did not exceed five lines, described Hilal as someone who "has a brain deficiency (*naqṣ 'aqlī*) to the point of idiocy (*bi-darajat al-balāha*) and should therefore be permanently released from military service." The medical report, which was approved and signed by the chief doctor and three officers, did not even bother to explain how such a conclusion was reached.

In light of Hilal's previous problems at the military, his attorney demanded the Jinayat that his client be subjected to a medical examination, a request that received the Jinayat's approval. In light of the medical examination conducted in Aleppo, which regrettably was not included in the file I consulted in 2004, the defense rebuffed the medical committee's claim that his client's "actions were sound (*taṣarrufāt salīma*)": the medical committee reached its conclusion after realizing that "the accused was not positive, since he did not respond to the questions posed to him…We have been informed by the accused's relatives that the latter, prior to his move to Aleppo for medical consultation, had been advised by some inmates in his cell to keep silent in fear of the committee's members. The accused rejects the committee's competence on the basis that it is not possible to detect the mental capacities (*al-mulkiyyāt al-'aqliyya*) for any person in an hour or in a question. **The accused suffers in effect from a brain deficiency (*naqṣ 'aqlī*) to the point of idiocy** (*li-darajat al-balāha*),[62] and if someone is an idiot (*ablah*) it doesn't mean that he would be unable to utter a single true or sound word, which prods us to place him under observation and consultation by a medical committee, and in light of that [the latter] would give its opinion regarding the safety of his mental capabilities (*salāmat mālikatuhu al-'aqliyya*), then check whether he does or not suffer from any mental or psychological illness (*maraḍ 'aqlī aw-nafsī*). For that reason we demand that the accused be placed under the supervision of a five-member medical committee,[63] comprised of specialized doctors ready to take hold of their responsibilities, which would place him in a state-owned hospital for psychic illnesses (*amrāḍ nafsiyya*) for an acceptable period of time, and then in light of that draft a report."

The counsel's plea for a second medical examination did not seem to have had much of an effect on the defendant's status (the five-member medical report was not included in the file I consulted), and the whole issue of the defendant's "mental deficiency" only came to light once more in the Jinayat's ruling in 2000: "The defense has pleaded that his client is not responsible for his actions since he has a mental illness (*maraḍ 'aqlī*), based on the fact that the accused Hilal was dismissed from his compulsory military service [in 1965] for his idiocy (*balāhat-ihi*). That was confirmed in the attached military medical report, but the [defense] plea is rejected because the medical reports of the three- and five-member committees have both confirmed that the accused Hilal does not suffer from any mental illness (*maraḍ 'aqlī*), making him responsible of his actions from the day of the crime until now. **His mental powers are normal**…" The court, which described the dispute as "simple (*basīṭ*)," rebuffed the defense's other claim, namely, that Hilal acted in

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[62] The expression originally occurred in the 1965 military medical report, quoted above.

[63] Medical committees are always set in odd numbers. Since the first committee had three members, the following one should have five. If further committees are needed, the numbers of 7, 9, 11 and 13 are the rule.

self-defense, arguing that the victims did not carry any weapons, hence posed no immediate threat on Hilal's life and family.

Writing insanity

"The accused rejects the committee's competence," wrote the defense in light of the three-member medical committee findings, which found Hilal's behavior "normal." The defense's statement would have indeed seemed strange, were it not for its legal fiction: "On behalf of my client, I'm requesting that the committee's findings be revised," was what the counsel had in mind. Otherwise, the defendant, on his own behalf, would be objecting to the fact that his medical examiners did find him "normal" and doing rather well. But the twist of irony in such statements only highlights the real issues: *Who* determines that a person is insane? And *how* would insanity be diagnosed and described? Since in the modern world "insanity" and "madness," like the rest of "psychic disturbances," are looked upon as *medical* phenomena, there is little awareness, however, among medical teams, doctors, judges and lawyers, and various other authorities of professionals and laymen, that *describing* and *diagnosing* such behavioral phenomena is primarily a *linguistic* practice whose formulations are determined by a multitude of causally linked social, economic, political and juridical phenomena, all of which, in sum, are *historically* determined. That's clearly visible in Hilal's case, and in the confusion of the various authorities—the medical and legal—over the proper description of Hilal's "mental problem." In 1965 the military medical committee diagnosed Hilal as suffering from "a brain deficiency to the point of idiocy." Then three decades later, in light of Hilal's triadic crime, his defense lawyer, which took the committee's findings for granted, described him as an "idiot," using a set of expressions in Arabic—*habal, ablah, ahbal, balāha*—all of which hinge on the fact that Hilal might have been "simple minded," suggesting in all likelihood that there was no awareness from his part of the gravity of the crime that he committed. Finally, the Jinayat court adhered by the three- and five-member medical committees, both of which found that Hilal did not suffer from any "mental illness."

What characterizes such common-sense descriptions, besides their use of a set of confusing terms that poorly describe Hilal's condition, is that there's nothing in them that is either medical or legal per se. Harold Garfinkel argued that "A common-sense description is defined by the feature 'known in common with any bona fide member of the collectivity' which is attached to all the propositions which compose it." Basing himself on Alfred Schütz's phenomenological feature of what is "known in common," Garfinkel concludes that "These constitutive features are 'seen but unnoticed.' If the researcher questions the member about them, the member is able to tell the researcher about them only by transforming the descriptions known from the perspective and in the manner of his practical ongoing treatment of them into an object of theoretical reflection. Otherwise the member 'tells the researcher about them by the conditions under which severe' incongruity can be induced."[64] Regarding Hilal's so-called "mental illness," both

[64] Harold Garfinkel, "Common-Sense Knowledge of Social Structures," in C. Gordon and K. Gergen, eds., *The Self on Social Interaction* (New York: Wiley, 1968), 71–4, reproduced in *The New Modern Sociology Readings,* Peter Worsley, ed. (New York: Penguin, 1991), 543–8.

medical and legal authorities (doctors, lawyers and judges) shared in their memos similar common-sense descriptions drawn from what is "known in common." What was here "seen but unnoticed" were Hilal's "bizarre manners" which were classified by some medical sources as an outcome of a "mental illness." But what remained unnoticed, however, were the conditions that make such *linguistic* formulations possible: the 1965 medical report, for instance, was so short and concise that all what it did was place a tag on Hilal's "mental illness," as if embarrassed to admit that the symptoms of the "illness" were so "visible" and "common knowledge" that no expertise was needed.

Bona fide common-sense descriptions are embedded within the common stock of linguistic knowledge in a given society, and without that "known in common" routine daily interactions, whether institutionalized or not, would not be possible, and society as we know it would cease to exist. For the researcher, the problematic character of "common knowledge," as expressed in language, gestures and images, stems from the fact that a great deal of decision making, judging, labeling, sentencing, policy making, economic and social well being, *unconsciously* relies on such taken-for-granted common stock. A severe incongruity can be induced whenever the social actors are unable to understand the meaning of their actions and the causal links that bind together various disparate spheres—economic, juridical, political and social—of the lifeworld. In the various *linguistic situations* that we have examined for this case—lawyers memos, investigations, cross-examinations, medical reports, verdicts, and, above all, Hilal's own writings—the common knowledge, which enabled speaker and hearer to agree or disagree with one another, prepare their strategies, and reach conclusions for the sake of the final verdict, all bear the imprints of the taken-for-granted "social construction of reality."[65]

Which brings us to the core issue of the *autonomy* of a legal system. Should we expect the judiciary to shy away from the common-sense descriptions while forging its *own* conceptual language—that is, assume a degree of autonomy at all levels: the theoretical, practical, and moral? In other words, is it possible to imagine a Syrian judiciary that would be more autonomous in the sense of deploying more rigorous practices for fact finding, the handling of witnesses' testimonies, the medical evaluation of suspects, and the drafting of rulings? We have seen that the practice of witnessing constitutes the core of every system of justice, consequently, *how* witnessing is handled reveals a lot about both the judiciary *and* society. In effect, the institution of witnessing primarily establishes a *fiduciary relationship,* which is solely based on contractual trust. Thus the way actors account for an event, and how the various official authorities record their statements and pass them along, establishes a trust relationship between the disputants, on the one, and the judiciary, on the other. Since in accounting for what happened the actors use common language, what is said and how things are said, and what is recorded and how it is recorded, all constitute various levels of linguistic practices, which, unless taken in their totality, would not make any sense on their own and for their own sake. Let us assume that a system of justice attempts to bring more autonomy to itself by, for instance, creating more vigorous procedures while investigating the crime scene, which, say,

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[65] Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality* (The Penguin Press, 1967).

would make it harder to tamper with evidence on the ground. But unless actors understand and trust such newly implemented procedures, they would not have much of an effect on investigations. We have indeed argued all along that improving the institution of witnessing would not solely rest upon procedural matters, since what is a stake here are core normative values: what is said or unsaid, and how it is uttered, and how it is recorded or censored.

Legal theory generally looks at the rules of law as the most important component of any system of justice. Not only do the rules constitute the inner substance of the system, but more importantly, they are the "theory" out of which other elements (e.g. procedures and fact finding) are constructed. Judges are therefore supposed to "apply" the rules of law, meaning that they have to "find" the adequate rule for each case, and whenever no such rule is available ready at hand (or no clear precedents are available)—for instance, in what Ronald Dworkin labels as "hard" cases[66]—judges may "interpret" the rules accordingly, in order to extract, through analogy and judicial reasoning, the corresponding rule. Consequently, if much attention has been devoted to the rules, their interpretation, and procedures, it's because they presumably constitute the core of a system of justice; and if the legal cases tend to receive so little attention, it's because they're perceived as an "application" to the rules of law.

Our approach does not intend to reverse the dubious equation between "theory" and "practice," for the simple reason that we do not believe that a system of justice functions through falsely constructed academic categories of this kind. To understand the fabric of law we have proposed to follow the *construction* of a single case—any case—from beginning to end. The rules of law, like the rules of a chess game, are a set of entirely man-made ideas that do not necessarily describe anything in the real, material world. When we claim that a system of justice is a construction, the implication is that it is solely composed of man-made rules rather than, say, of natural, divine or magic elements (what is often referred to as "natural" or "sacred" law). Thus, even if the actors claim that they're part of a system of justice that is sacred and religious, we approach the system as it is constructed through the actions of those actors. The rules are by their very nature general and abstract, while a case is concrete and theoretical, in the sense of deploying a *method in inquiry* through its construction of the case in question as a *legal artifact.* Consequently, we're only interested in how the rules of law are used by the social actors, and how such a practicing of the law gives the rules their shape and meaning. In sum, the rules of law become concrete and real in the proceedings of a legal case.

As in any criminal case, the crime that we've concentrated upon begs the question, What happened? When social actors compete for various versions of the same event, they alternate between straightforward accounts, structured narratives, and possibly discourses. There is no clear cut difference, however, between an account that could be proven, hence in principle would determine what actually happened, and one that is *accepted* as true. The reason is that when actors are accounting for what they saw and heard, they're doing so because they've been summoned by an official authority, which

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[66] Ronald Dworkin, *Law's Empire* (Belknap Press, 1988).

in turn will repackage their statements in a particular way. At each step of the judicial process, what stands as "raw information," which we'll assume are the original statements uttered by the actors themselves, are immediately filtered, then transcribed in official Arabic for the sake of receiving their final form as officially approved or disapproved accounts or narratives. Consequently, a witness account, which, say, was originally uttered in a police station in the aftermath of the crime, acts in the deposition form like a *segment of information* among other segments, all of which forming the stuff from which subsequent reports are constructed. How do then such segments of information get verified? Is there a reality principle, which behaves like a laboratory, and which tests the truthfulness of statements? If a system of truth is constructed it doesn't mean that anything goes. Each system of truth is constructed in a particular way, and it is *how* it is constructed that determines the robustness of its claims.

The accused is now in a borderline state

Questioning whether the accused is *sui juris* amounts to recovering his *ahliyya:* is he competent to stand trial and assume his legal responsibility? Or is he *'adīm al-ahliyya,* hence legally incompetent? As incompetence amounts in most instances to seeking medical expertise, usually at the request of the defense, the courts soon find themselves embroiled in a medical discourse and in the dubious task of translating a medical vocabulary into a legal one. Upon closer examination, however, the medical expertise itself becomes contentious, as the (in)competence of various committees is subject to debate. Let us illustrate a case where medical expertise was initially more than welcome.

[C3–2] On August 1979 an old man who was praying in a small mosque in Hama was stabbed with a knife by an assailant who allegedly came from the outside and who left the knife and ran away after assailing his victim. The assailant managed to hide in an x-ray room of a nearby hospital, having been followed by a small group of people who were able to track him. He allegedly threatened to blow the place with gas, but some managed to enter the room and got hold of him. The victim was transferred by helicopter to a hospital in Damascus, but died soon afterwards. When people in Hama knew of his death, they mobbed and burned the assailant's family home, which was close to the murder scene.[67]

On October 1979 the referral judge in Hama drafted his report, which in the Syrian penal tradition constitutes the first preliminary synthesis for the case prior to its transfer to the criminal court. The judge recommended not only to punish the assailant pursuant to article 535 of the penal code, but also accused his father of instigation (*taḥrīḍ*) for

[67] The case was reported and discussed by Muhammad Fahr Shaqfah, "Naqṣ ahliyyat al-qātil fi jarīmat al-qatl," *Qaḍāyā wa-abḥāth qānūniyya: al-'adāla fi al-qaḍā' al-sūrī* (Damascus, 1997), 203–21. Even though the author fails to bring to his readers many crucial details about the case (police and prosecution depositions, statements uttered by the accused that would have pointed to his state of mind and the possible motivations behind his act, and the lawyers' memos addressed to the court), most of the material proves of importance for our purposes here, in particular when it comes to the legal incapacity of the accused. It remains unclear, however, why the suspect's father was targeted from day one by the outraged mob, leading to the burning of his home, and why the court made him a second suspect with the charge of instigation. Moreover, there are no indications that anyone was charged with arson.

premeditated murder (*'amd*) pursuant to article 216 of the code. In fear of assailments against the accused and his family, his lawyer demanded that the court hearings take place outside Hama, and they were effectively transferred to the first criminal court in Damascus. It was during the Damascus court hearings that the defense demanded that its client be transferred to a hospital for medical evaluation on the basis that he was caught with "madness" (*muṣāb bi-l-junūn*), which the court agreed upon. Over a one-year period in 1980 and 1981 a number of doctors visited the accused in his hospital room, and amid conducting a battery of tests, drafted a report to the court, signed by the hospital's director, which claimed that "the perpetrator is suffering from schizophrenia (*fiṣām*), thus is not responsible (*ghayr mas'ūl*) for his actions, constituting a danger to himself and public safety (*al-salāma al-'āmma*)."

On the victim's side, the council representing the "plaintiff's personal legal right" (*wakīl jihat al-iddi'ā' al-shakhṣī*), which stands in parallel to the public authority of the Prosecution Office (DA), complained that the diagnosis was not conducted under the court's supervision, which prompted the court to appoint a three-member committee to re-diagnose the defendant. The medical committee issued its report in November 1981.

> **[MR1][68]** Upon diagnosing the accused, and after reading the medical reports and the judicial dossier, it turned out that from his **general attire**[69] (*maẓhar-ahu al-'āmm*) he was under the effect of major calming drugs. He thus suffered from a trembling in all four parts [of his body] as an effect of the medications. It was also noticed, upon his interview, that he talked to himself, without concentration, no reaction whatsoever, indifferent to the world around him. Among the symptoms that attracted our attention: total negativity, indifference, absence of reaction, even though he admitted the crime attributed to him. He denied that he was afflicted with madness (*junūn*), and when pursued about his illness, he retorted: it's a mere question of nerves (*a'ṣāb*). Pursuant to what was stated, apropos the total negativity, indifference, and lack of reaction in the patient, **we have unanimously decided** that he is afflicted with schizophrenia (*infiṣām*), that his affliction is old enough, dating prior to 1979, and that he committed his crime under the effect of the sharp seizures that regularly hit him. For those reasons **he cannot be held responsible for his actions**; he therefore constitutes a danger to public safety, and needs to be treated in a mental institution. That's our expertise.

In December 1981 the plaintiff's counsel, acting on its own behalf, that is independently of the Public Prosecution Office (DA), reprimanded the medical report, demanding its revision by a five-member committee:

1. The accused should not be diagnosed when under medication.
2. The experts did not explain why they pushed back the illness prior to 1979, the date of the crime.

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[68] Medical Report #1.

[69] Emphasis in bold and italics is mine.

3. The experts failed to explain why they think that the crime was committed under the effect of one of the illness' sharp strokes (*hajamāt al-maraḍ al-ḥāddah*).
4. The experts failed to describe the illness' symptoms (*ẓawāhir al-maraḍ*).
5. The experts did not examine the accused's mind objectively to check whether he suffers from an ethical mental incapacity (*quṣūr 'aqlī khuluqī*), as it needs to be known if such an incapacity does indeed exist, whether the accused becomes more malleable and irresponsible, or whether his schizophrenic illness makes him more vulnerable to the manipulation of others.
6. The doctors have based their assessment on what was already stated in the case's folder, rather than placing the accused under surveillance for a period of time without subjecting him to medicaments.

As the court agreed that it needed to determine with more accuracy whether the accused the day he committed his crime was *at that particular moment* inflicted with a "mental incapacity" (*naqṣ 'aqlī*), it set an appointment in November 1983 for a five-member committee[70] to assess the accused under the supervision of a court's consultant. When the accused was whisked to the consultant's office in the presence of the medical committee, he was reexamined once more, prior to the committee drafting its report.

> **[MR2]** When the accused was examined, and questions were addressed to him by the five-member committee, it turned out that he possessed at the time his **normal mental capacities** in terms of judgment, concentration, and reasoning. His thoughts proceeded logically and gradually, and he answered the questions in all clarity after understanding them, while his answers came in harmony with the questions. There is therefore **no clear indication that he suffers from any mental deficiency** that would either incapacitate or limit his responsibility. After going through his previous life story and questioning him on matters relating to periods before and after the incident, it turned out that his state of mind was perfectly sane (*salīm*), and we were unable to come up with any conclusion that would point to any severe mental or psychic illness from which the possibility of committing any crime would be imputed, even though **his angered type of personality may have contributed to the crime**, but that does not waver his responsibility. Moreover, he was not [at the moment of our examination] under the effect of any drug, medication, or alcoholic beverages. That was the overall opinion of the examining committee, with the exception of doctor M who considered the patient in a quiet (*sākin*) state, but **he was ill when he committed his crime**, and he still is, which means that **he was not fully responsible of his crime**, and that his responsibility does not add to a mere **70 percent**. That's our expertise.

It was now the defense's turn to rebut the medical report, prompting another seven-member examination in a hospital, but this time *in light of the documents of the dossier*, a request that the court sanctioned, and the defendant was examined for the fourth time in three years, in April 1984, in the presence of the same court's consultant.

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[70] All indications point to a different committee from the previous one.

> **[MR3]** After interrogating and examining the accused, and after consulting the documents of the case, **we confirm** that the accused is now in a **borderline state** (*ḥāla ḥudūdiyya*) due to his sick and immature personality, through which he might be subject to any **perturbation** from the outside world. He is therefore considered to be only **partially responsible** for his actions, and is considered a danger to himself and public safety, and therefore in need to be treated in a psychiatric hospital. But even though the patient's state of mind has long been afflicted by his mental illness, several years prior to the crime, he nevertheless bears a **70 percent responsibility** for all what he did from the day of the crime until now. This means that the level of irresponsibility (*'adam al-mas'uliyya*) attributed to him does not exceed the 30 percent, and for this very reason he should be placed in a mental hospital so that his symptoms do not develop any further, creating greater risks for himself and society at large. That was the opinion of the majority of five of the doctors in the committee…as to doctor K [who dissented] he clarified that the accused is now in a borderline state, and his responsibility for his actions is therefore limited, but it would nevertheless be **unscientific** to determine a percentage for what his responsibility really is.

On May 1984 the plaintiff's side presented a memo to the court arguing that the seven-member committee's statement that the defendant's responsibility was limited and that his actions were subject to *outside effects* indicate that *his father was the real instigator*, pushing his son and coaching him to kill the victim, which means that the father *was* as much responsible as the son for the crime.

> A criminal hand killed a human being…but not any human being…a man who by his killing, science, justice, goodness and morality, were also assassinated. A man who lived 80 years, and in him the gestures and manners of the great Prophet manifested themselves, spreading good manners and happiness among people. But we are not seeking here to list the innumerable qualities of this good man, nor do we want to seek revenge from the culprits, as much as we want to **stop harm from society** by restraining its corrupt members. That's what God implied when he said that "there's life in punishment." Life here means the life of society by undermining corruption and its effects, as any **factors of corruption** are even more dangerous than the criminals themselves, confirming what God has stated: "Who kills a soul with another soul, corruption will come to earth, as if all people were killed."

The plaintiff's party concluded that both the killer and his father should be subject to the death penalty. For its part the criminal court issued its final ruling in October 1984:

1. The accused was found guilty of premeditated murder (*'amd*) and should be subject to the death penalty based on article 535 of the penal code.[71] His punishment is, however, reduced to three years with hard labor, based on articles

[71] The Syrian penal code is known as *Qānūn al-'uqūbāt,* "the punishment law," and was initially promulgated in 1949, with minor amendments over the years.

232 and 241 of the penal code, and taking into consideration the medical reports. Moreover, the punishment should be executed as soon as the accused leaves hospital, and he is forbidden to reside in Hama for 10 years.
2. The second accused, the father, was found non-guilty for instigating murder, since no tangible evidence was available.
3. The two accused are penalized for SP200,000 ($4,000) in compensation for the plaintiff's party.

As both parties appealed the verdict, the Damascus Naqḍ took hold of the case and issued its ruling on December 1985. It ruled to formally (*shakl-an*) revoke the defendants' appeal on the basis that their representative did not carry an official authorization to represent his clients. It also revoked the plaintiff's appeal for re-assessing the punishment on the basis that the Public Prosecution Office did not appeal the court's ruling, leaving the plaintiff's party appealing with their personal right, which renders the ruling valid from a criminal point of view. (In contrast, defendants have the right to appeal their punishments.) As to the other matters brought up by the plaintiff's party, the cassation court decided:

1. The criminal court was lost in contradictory statements when it punished the defendant with the death penalty and reduced his punishment to three years with hard labor: the death penalty implies a premeditated planning, while the three-year punishment was based on the doctors' evaluation of the accused and his partial responsibility for his troubled actions.
2. The second accused was vindicated without a thorough discussion of his role (or lack thereof) in the crime.
3. The court did not explain how it came up with the value of cash compensation.
4. Even though the penal code does not recognize blood money compensation (*diya*) as such, it is still looked upon as a strong guiding principle (*mabda'*) when assessing material compensations, which judges ought to consider (rule 1049 of the criminal encyclopedia).

With the cassation ruling behind, and with the prosecution out of sight, the case now centered on personal civil rights and material compensation. The plaintiff's side took hold of the cassation's opinion that the *diya* ought to be looked upon seriously since it is de facto within customary law, arguing that sharia law assesses the *diya* of a premeditated killing (*'amd*) in terms of 100 female camels, 40 of which should be pregnant (Ibn Rushd, *Bidāyat al-mujtahid,* 2:402; *al-Fiqh 'ala al-madhāhib al-arba'a,* 5:368). For their part, the defendants argued that the illegal burning of their home ought to be deducted from the compensation. When the criminal court revalued the compensation to SP400,000 ($8,000), taking this time into consideration the status of the victim, the defendants appealed the decision, adding to their previous claim of the cost of their burned home, the argument that the *diya* in sharia law should not only be paid by the defendants (which in this case meant the father on his own, since the son was diagnosed as mentally incapacitated), but also by the entire family and tribe (*'ashīra*).[72] When the

[72] That is, the *'āqila* in the language of the fiqh.

court reassessed the compensation on April 1987 one more time, it lowered it to SP250,000, taking into consideration this time the victim's old age (close to 100). Finally, when the defendant made a request to leave the hospital, a medical committee found on February 1989 that he still suffered from the same symptoms, and his request was thus denied.

Common understandings and misunderstandings

The participants on both sides kept for years struggling with their common stock of knowledge in order to determine whether the accused (and his father) were legally responsible of the murder. As no one denied the occurrence of the murder, while the person who committed the act did not deny it either, the case shifted towards the mental capacity of the accused, and to a lesser degree, towards the father's responsibility (even though it remains unclear how the father became a secondary suspect). The general assumption behind every crime is that legal responsibility is causally linked to the act of the perpetrator; or, in other words, the *incidence* of responsibility is attributed to a human being (or a juristic person, state institution or corporation). In homicides legal responsibility is expressed in the general division between carefully planned and executed crimes (*'amd*) which may be subject to the death penalty, and deliberate crimes (*qaṣd*) which are subject to a lesser punishment. Judges may, however, stumble over *how* to determine the difference between premeditated and intended crimes (not to mention accidental crimes): actors do their best at *constructing* what they *mean* by a premeditated or deliberate crime while *documenting and indexing various descriptions of the murder scene.* It follows then that legal responsibility, which implies making someone legally responsible for an act (which might not have been performed by the actor himself), would be meaningless without the proper work of contextualization performed by the participants—which means, above all, describing what happened from various perspectives. Legal responsibility therefore does not exist in the abstract, and becomes meaningful only when documented by the participants. In consequence, broad categories such as *'amd* or *qaṣd* achieve their *concrete* meaning in the process of documentation.

This court stumbled over the issue whether the accused was mentally incapacitated. The criminal court was in effect reminded by the higher cassation court that once the agent is perceived as mentally incapacitated, it would then become meaningless to label his act as premeditated (*'amd*), which implies that once a person is incapacitated, he is de facto—if not de jure—not responsible. But then the central issue becomes, how to determine insanity? When the Syrian penal code states in a single proposition that "A person is exonerated from punishment if he was in a state of madness (*yu'fa mina al-'iqāb man kāna fi ḥālat al-junūn*)" (article 230), it leaves all possibilities open as to how *"junūn"* ought to be diagnosed. Would, for instance, a *medical* approach to madness be satisfactory from a legal point of view? In order to reach the verdict "not guilty by reason of insanity," the court demanded from several medical committees (the last two fell under its supervision) to determine whether the accused was insane *at the time of the murder,* considering that a person was not criminally responsible for an act if he was insane at the time.

In the first medical report (MR1), between the unremarkable remarks on the patient's "general attire" and the confidence of a statement like "we have unanimously decided," were general observations regarding a person that did not seem to react all too well with his environment: he talked to himself, was indifferent, lacked reaction, but nevertheless managed to "admit" the crime attributed to him. Such descriptions could easily be attributed to any "normal" person who does not feel at home with his environment. The medical report settles on too much taken-for-granted common assumptions about "insanity," which it does not even bother to clearly define or wrap up in a medical language. Being a committee of medical authority, *approved* as it was by another legal authority, the committee, based on the *authority* that it carried, had no other purpose but to state the obvious: that something was wrong with the accused. But what exactly? Since no one seems to have been interested in the accused per se but only in whether he was legally incapacitated at the moment of the crime, the whole enterprise amounted to how to formulate the accused's responsibility (or lack thereof) in a *consensual* language that would have been approved by the medical participants, and eventually by lawyers and judges. As each one of the actors had his or her own interests and motivations, a viewpoint on what happened, the sanity or insanity of the accused, and whether he *was* responsible or legally incapacitated, a consensus had to find light from the common stock of knowledge that actors shared. Such a common stock of knowledge only becomes known, however, once the actors begin to index, document, and describe the crime scene in their own *familiar* language. It reveals itself, for instance, in the police reports, prosecution depositions, court hearings, and final ruling. As each utterance by the actors plays on a common understanding of the things and situations at hand, what is therefore left unsaid could constitute the main building blocks of a criminal case. For instance, since the only purpose of the first medical report was to establish that the defendant "cannot be held responsible for his actions," the report could have been fully accredited were it not for the plaintiff's questioning precisely of what was unsaid: the nature of the alleged schizophrenic attitude attributed to the defendant, the periods in which he might have had carried such a mental illness, and, above all, whether at the moment of the crime, he did carry such an illness; finally, in case he did, did that render him legally irresponsible?

Harold Garfinkel famously stated that "the notion that we are dealing with an amount of shared agreement remains essentially incorrect."[73] Besides the fact that with every utterance both speaker and hearer assume a common stock of knowledge that they do not *explicitly* refer to, while the speaker utters his statements *with the assumption* that the hearer *will* understand, the hearer may occasionally request that the speaker clarifies what he "meant" by something. As such meaning clarifications have no end, in real life situations therefore, the process of agreement would never come to an end, as speaker and hearer could indefinitely exploit their mutual common knowledge and presumed misunderstandings ("What do you mean by this?" or "Are you sure we know what we're talking about here?" are among the most common forms of speech that would interrupt a conversational exchange in order to reorient it). At trial judges partake the sole authority to put an end to the unfolding of a case, hence to play with the notion that "enough

[73] Harold Garfinkel, *Studies in Ethnomethodology* (Englewood Cliffs, NJ: Prentice Hall, 1967), 38.

evidence has been furnished" to come up with a verdict. What the participants therefore typically do under such strained conditions is to come up with strategies that would document the crime scene in ways that would be beneficial to their purposes and interests, hoping that they would receive accreditation from the court for what they had documented.

In our case here, once the court approved the plaintiff's appeal, which de facto implied that the first medical report proved unsatisfactory, another medical committee drafted a second report (MR2). In itself, the second report, even though completely reversed the findings of the previous one, did not bring any new element of knowledge: the diagnoses in the first and second reports were so poor, leaving so much taken-for-granted knowledge, that they could have been so easily swapped with one another while completely reversing their conclusions. Notice how in MR2 the emphasis had all of a sudden shifted to the accused's "normal mental capacities," which now made him fully responsible for all his acts, past and present: the accused was diagnosed as someone with good judgment, logical, concentrates well, and "sane." The court had to push for a third medical report (MR3) to reach a compromise. In MR3 the accused was perceived as living in a "borderline state" with possible "perturbation[s] from the outside world." The doctors, save for a single dissenting voice, were even able to quantify the accused's responsibility—70 percent.

One can deduce from such medical flip-flops that "anything goes" as long as the participants are satisfied, or as long as the court is able to reach that "borderline state" among the parties. A more thorough examination of all three reports reveals the following. (a) Both parties endorsed beforehand the judgment of the medical authorities simply because there was no legal language that would have been able to assess the defendant's state of mind. Michel Foucault describes such a juridical attitude as one of doubling, where the judge doubles into a judge–doctor, and where the traditional legal authority finds itself unable to meet the very demands set by the Napoleonic penal code regarding the rationalization of the crime, and its attribution to a "sane" individual.[74] (b) A medical authority is assumed to be "scientific" and "impartial," hence it would provide all participants with a "neutral" objective language. (c) The three reports, while implicitly claiming the impartiality of science, mostly played on matters that the participants understood but were left unmentioned, in particular the crucial issue as to *how* the doctors were able to determine that the accused was *labeled* "sane" or "insane," "responsible" or "irresponsible." (d) Whenever one of the parties felt dissatisfied with the medical report, it would request more documentary evidence for what was left unsaid. The documentary evidence kept shifting between the purely medical and the legal history of the case. (e) All three medical committees operated in languages that were at best vague, shifting their analysis and conclusions in such a way only to satisfy the party of appeal. (f) As each party waited for something more to be said, each one played the game of appealing over what was un-said, until something more satisfactory came up. (g) In principle the game between the two parties could have gone forever, as it was arbitrarily cut short by the court's decision to proceed on its own.

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[74] See, Chapter 1.

As it was difficult for all three main issues—the defendant's "insanity," the father's presumed "responsibility," and the cash compensation—to come up with a neutrally "decisive" language, which would have been approved by all participants, the actors documented the crime scene by means of extra-legal and biographical events. Thus, when the two accused were summoned to compensate the plaintiff's party for SP200,000, without, however, providing any rationale for the assessment of the compensation, it was the cassation court that bailed the lower criminal court its way out: by giving customary practices—that is, blood money (*diya*)—their due course, even though there is no explicit clause in the post-sharia and post-Ottoman modern penal code for doing so. In similar vein, in all three reports the events regarding the alleged defendant's insanity were specifically vague. The depicted events thus left open the issue of documenting the defendant's insanity by the participants themselves: when, for instance, the defendant's family home was burned immediately after the crime, there was a *presumption* that the accused—due to a *presumed* mental incapacity—could not have acted on his own, hence his father must have been the instigator.

Let us imagine a situation where the medical committees would have acted more professionally: longer examinations of the patient, a better use of the medical findings (interviews, statistics, charts and graphs), comparisons with other medical cases (local and regional), or reports that would have integrated such findings with one another (personal observations of the patient integrated to findings in the medical literature at large). Let us also imagine that police, prosecutors and judges would have proceeded more thoroughly at collecting evidence, interrogating witnesses, and conducting the hearings, not to mention the drafting of the rulings, would have such radical changes forced the participants to adopt alternative strategies? Would a better professional attitude of both medical and legal authorities have created a more "neutral" territory for handling such cases? (One route that, for instance, neither medical nor judicial authorities fully contemplated regarding a presumably mentally disordered person was that person's *ability to understand,* in particular the ability to understand specifics: signing a contract, inheriting, or committing a crime, each of which implies a *different* kind of understanding and responsibility.) What is certain is the more the judiciary (and related authorities such as the medical) would opt for procedures and languages situated outside the common stock of knowledge (that is, the customary norms), the more they would become autonomous in the sense of distancing themselves from common practices and norms. The importance of such a judicial autonomy is that it would enable individuals, groups, and institutions to bypass some of their normative values in order to abide by state legislated rules of law. In other words, the more the judicial and medical authorities hide behind their professional jargons, which must lie outside the common sense norms, the greater the opportunities provided for actors to come up with alternative strategies of societal integration. The assumption here is that state controlled rules of law would have as their main purpose a better cohesiveness of society that would not limit itself to common religious, ethnic, tribal or regional norms.[75] But whatever the degree of

[75] Alain Supiot, *Homo Juridicus,* "La raison humaine n'est jamais une donnée immédiate de la conscience : elle est le produit d'institutions qui permettent à chaque homme de donner sens à son existence, qui lui reconnaissent une place dans la société et lui permettent d'y exprimer son talent propre.

autonomy of state institutions and their judiciary, for purposes of *conducting their everyday affairs* persons will always have to index and document their being-in-the-world with their common stock of knowledge even in societies with greater institutional powers (political, economic and scientific). What is therefore "seen but unnoticed" (Garfinkel) will always constitute the basis for daily conversations whose taken-for-granted undertones and routinized symbolic interactions prove necessary to minimize interference.

The homicide committed by Hilal in the passionate spirit of slaughter translated the attacker's offended dignity, his sense of humiliation at the hands of "partners" who were willing to test his will at every juncture. In the world of shepherds property as land and property as livestock are both regarded as primordial assets. "Property," in the conventional sense of the term, has boundaries separating insiders, or authorized users, from outsiders, or unauthorized occupants, and these boundaries are often sensed as sacred. Can such notion of property make sense in a conventional rural economy where trespassing means having one's livestock "freely" graze over a property claimed by another shepherd? Between Hilal and his opponents-victims it was a conflict over what Hilal "owned" on his own, as his private property, and what his opponents claimed to be part of that "collectivity" known as "the wall." In that kind of very low-income rural economy, property does not reach the level of juridical abstraction common to capitalist markets. Indeed, it is as if the "privacy" of one's property is constantly tested through trespassing, rather than through juridical protection, even though the latter is *formally* available in the modern nation-state. Thus, the initial trespass of a property boundary that has been collectively consecrated triggers an honor game of retaliation no different from the ones that we will encounter later.[76] But if defilement of property rights brings vengeance, which authority consecrates the boundaries among the various protagonists? To be sure, property has a symbolic value attached to it, but the more the economy in question rests on basic means of survival, the symbolisms tend to be attached to personal perseverance and the will to protect and desecrate. Hilal recounted in detail to his counsel how his opponents tested his will at every juncture, not only by trespassing over what he claimed was "his" land, but also by trespassing over the other's honor, that is, his wife: by making obscene statements on Hilal's woman and family, attacking the other's most intimate primordial object, his opponents sealed their fate as future victims.[77] Hilal's case could have therefore very well fitted among the honor killings or the land vendettas that we'll analyze later.[78] But what makes it unique was his counsel's attempt to frame Hilal as a complete idiot who was unable to understand the implications of his murderous act. Hilal's "idiocy" works as a supplement to his (denied) self-consciousness in particular in his correspondence where he was struggling to define himself as a bounding self: I *am* fully aware and responsible for what I did! It is at this juncture that Hilal unexpectedly

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Dès lors que cette identité n'est plus garantie par l'État, les hommes s'efforcent de la fonder sur autre chose : sur une Référence religieuse, ethnique, régionale, tribale, sectaire, etc…"

[76] See, *infra* Chapter 9.

[77] Which is fairly common in honor killings, where statements like "I'll fuck your mother!" or "I'll fuck your wife!" are meant as proto-psychotic rejections of the symbolic fiction maintained by the community.

[78] See, *infra* Chapters 6 and 9.

joins our second unnamed protagonist from Hama: having both been the subjects of scrupulous medical examinations, their homicides became secondary to the "illnesses" that various committees saw in them. Which led in the final analysis to a framing of the crimes "outside" the boundaries of the juridical jargon per se into the domain of what the French penal system would dub as the *personnalité* of the offenders. The Syrian system by contrast evades the routinized *personnalité* evaluation at all costs, introducing it willy-nilly whenever the death penalty is at stake and once the "sanity" of the offender becomes *the* contentious issue at trial.

[Chapter 4] Judicial matter-of-factness versus auto-biographical avowal: Do personal confessions play any evidentiary role?

In Arabic "avowal" stands both for *iqrār* and *i'tirāf*. But while *iqrār* implies *admitting* something—for instance, a witness admits seeing someone at a particular place and time—*i'tirāf* carries a more *confessional* tone: the fragile "I" constructs in a confessional tone the web of relations that led to the crime under investigation. Thus while in *iqrār* the "admission" comes in the context of a line of questioning by the judicial authorities, the *i'tirāf* is typically more diffuse, is not necessarily subject to the constraints of the judiciary, and more importantly, would not be limited to the case in question. There are confessions which are an outcome of the interviewing process, either by the police or investigating judge: the scribe would simply note that the suspect/accused/witness *did* "confess" that such and such a thing happened, hence this was not *iqrār* per se (an act of acknowledgment which was *interpreted* as such by the interviewer), but a full confession where the tone is more on the side of "I admit." Confessions could be either set within the framework of interviews conducted by police, investigating judge, or the court hearings, or else would pose themselves in the form of self-confessions: letters addressed by inmates to their counsels, judges, family or friends. It is this second aspect of confession, namely, the letter format, with or without clear addressee, that we will consider in this chapter from the workings of two cases.[1] The mind of the confessor seems to drift from one monologue to another, unconstrained by the facticities of the case at hand, and unrestrained by the social norms that would pose limits to an investigation. It is as if the confessor is attempting to understand what happened in her own terms, her own language, at the margins of all juridical constraints, irrespective of whether her anonymous "audience" would be effectively convinced or not. The courts would therefore normally shun away from such auto-biographical statements: either there is too much in them that would be irrelevant for the case, or else there is not enough *relevant* material that would fall within the boundaries imposed by the judiciary. In either case, they represent an embarrassment of the riches: what to do with all such details that we're not accustomed to? Auto-biographical statements would come in several varieties. Memos and letters addressed by the defendants to their lawyers, judges, friends, or family members, is one such genre. Another would be interviews granted to the local press by the defendants themselves, even though in Syria such possibility is under normal circumstances only slim. We are therefore left, albeit only occasionally, with what defendants reveal to their lawyers, and sometimes to close friends or family members. But, considering that the courts would seldom take such auto-biographical statements under consideration, what are *we* supposed to do with them? What purpose should they serve for the researcher?

There seems to be, indeed, something paradoxical about auto-biographical documents, be it memos or letters. On the one hand, they tend for the most part to be addressed by defendants to their lawyers in the hope that the counsel would sympathize with his or her

[1] We've encountered such "confessions" before, either in the format of a letter (C–X), or else as courtroom confessions, not to mention honor killings, where the assailant's prime duty would be to "confess" his crime firsthand without the need for any police investigation.

client's viewpoint. Lawyers would thus tend to classify such documents as "valuable" to their case, and then submit facsimiles to the court, in hope to have them classified in the case-file, which courts often do (the document below was found in the dossier of a murder case). On the other hand, there is little to suggest that such documents are taken seriously, either by lawyers or judges, and if direct reference means anything, the final rulings typically shun from any direct or indirect reference to such documents. Which begs the question: why are they included in the file if no one seems to make any use of them? What purpose do they serve? Should the researcher do justice to documents that the courts disregard?

To grasp the significance of such questions, one must first appreciate the kind of statements that would normally be incorporated within a case-file's compendium. Whether a statement originated from a police interrogation to a suspect or witness, or from an investigating judge's interview, or a court hearing, or a doctor's memo to the court, in all such instances, the statements would be contained within the set of normative values imposed by the judiciary. In other words, the judiciary imposes a discursive framework through which statements are filtered and approved. A policeman who therefore interrogates a witness right after the occurrence of a crime would know what to expect: he would know, for instance, what judges and courts expect from a police deposition, which questions ought to be addressed, which ones should be avoided, and above all, he would know the limits of an interview, meaning the power of social norms at indicating permissible behavior.

The importance of auto-biographical documents lies precisely in that such normative juridical boundaries do shift, giving more room to the subject-confessor. Hence their importance for the researcher, as the rigid boundaries of the typical interview and courtroom talk have all of a sudden shifted in less predictable ways. But the subject-confessor is also tangled, however, within all kinds of normative values, which reflect in personal anxieties, repressions and depressions. For the researcher, such documents ought to represent, on the one hand, valuable source for the study of social norms, how they are interiorized by actors, and, on the other, they constitute an opportunity to look at "what lies outside" the case-file. In many ways, such an attitude constitutes the breaking of a ground rule that we have set thus far, namely, that we ought to constrain ourselves to the case itself, rather than incorporate "outside" data (in particular interviews that the researcher may have conducted with participants in the case), in order to fully understand the modus operandi of the dossier. But then an outstanding characteristic of auto-biographical documents is that they are simultaneously situated on the inside *and* outside, since they tend to be *included* among other documents in the case-file, and at the same time neglected and abandoned. In other words, they are in the strange situation of being included and classified, without, however, serving as evidence. Our purpose here is to precisely question such an ambivalent attitude: What is the exact status of auto-biographical documents? What purpose do they serve? What do their drafters hope to achieve? What is their internal construction, and how do they compare to other documents in the dossier?[2]

[2] In Chapter 3 on reason and insanity, I conducted a similar line of inquiry with another case: the shepherd-who-writes (C3–1).

The two cases in this chapter involve "confessions" of a different nature. In the first one, a woman was accused of murdering her husband in order to conceal and affair she was allegedly having with another man. Once in prison, as murderess, the accused wife drafted a long letter of apology with no clear recipient—a letter that does not bear a clear addressee in mind. What is of interest to us is how such statements, delivered at the margins of other statements to official authorities for the sake of the ongoing investigation, achieve a status of their own: did the author-accused-murderess regain her own "voice"? Did she have anything to say that was not stated before to police, prosecution and judges? Or is it that the big Other speaks through me, as a woman who is now incarcerated and who could not possibly think outside the shared values of society? Considering that my speech acts are totally regulated by the symbolic order in which I dwell, there are therefore no statements situated outside the symbolic power of the big Other. In sum, what we observe here was a woman who documented at great length the power of the socio-symbolic order which made sense to her. The accused-murderess personified in her missive what she thought of the society around her.

In similar vein, the second case dwells with a father who was imprisoned for having abused of his teenage daughter by locking her up in his home's bathroom for a couple of years. Once in prison, he drafted two letters, one to the chief judge who was in charge of his case, and another one to Aleppo's attorney general. The addressees were therefore in this instance not only identified and named, but more importantly, revered characters of the Law. Here the author-father was playing his absolute trust in the grand symbolizations of justice, hence addressing the Other as a trusted figure from *within* the logic of the juridical discourse: You darn well know the bad things that I did to my daughter, but do I deserve that kind of treatment? Do I deserve that my daughter, now set free, looks at me while humiliated in my prison cell, begging for your pardon? The subject's discourse was therefore situated within that of justice itself, as if deconstructing it through its own internal syllogisms: is justice capable of understanding a debilitating suffering like mine?

Matters of fact

[C4–1] Rashīd Nāsir[3] (b. 1931), known as a "*dédouaneur public*" (or *transitaire, takhlīṣ gumrukī,* forwarding agent), was found dead in the morning of Friday, 28 August 1987, in his Aleppo apartment at the middle-class neighborhood of Sabīl, shot by a nine-millimeter gun that he himself owned and kept in his safe at home.[4] His young wife

[3] Because in highly publicized murder cases, defendants and their lawyers become "public persona," I kept all names as they fully appear in the file.

[4] For the purposes of the present Chapter, and to be as brief as possible, I limited myself to the following: (1) The typed drafts of all court rulings; (2) handwritten and typed drafts of reports prepared by the lawyers involved in the case and submitted to the various courts; (3) a seven-page handwritten statement submitted by the defendant in which she gave her own interpretation of the events that led to her husband's "suicide." On the other hand, I have omitted the following: (4) transcripts of the hearings; (5) medical reports discussing the trajectory of the bullet in the brain of the deceased, and the possibility of suicide from a "medical" point of view; (6) the original police report of the Shahbā neighborhood section after a four-day interrogation of the defendant and her daughters, prior to the transfer of the case to the

Buthayna Khattāb (b. 1950; notice the age difference with the husband) was interrogated, arrested, and accused a year later of murdering her husband. The alleged murder—or suicide?— created in Syria's largest but conservative city an unusual court attendance and gossip, and a "public interest" in a society where most news outlets are controlled by the state. In a way similar to the O.J. Simpson trial in the U.S., the "public interest" could be a sign that the "general public" acting as a big Other finally found the soap opera it was looking for: a combination of middle-class wealth, sex, adultery, and murder. The trial, and the networks of gossip, created narratives that focused on anything from martial betrayal to age difference and wealth status among spouses, as well as gender differences and the status of women in Syrian society.

One of the defendant's counsels, 'Abdul-Ghaffār al-Sammānī, noted on page one of his thirty-four-page report on January 1989, in which he appealed (*ṭa'ana*) the first ruling of the *Jinā'iyyāt* Court of December 1988, which found the accused guilty of premeditatedly murdering her husband, that,

> ...it is worth noting that this case has very much preoccupied the **public of the city** of Aleppo to a degree **unknown** to us in the legal profession in any memorable period. The courtroom, the source of the appealed ruling, and the rooms of the Palace of Justice were filled with people, men and women, including the majority of lawyers and the Palace's employees, and at times judges and professors of [Aleppo's] University attended with students from both sexes. They used to follow the long court hearings without ever getting bored or losing interest, until the appealed ruling [by us, defense lawyers] came through at about one in the afternoon [19 December 1988], an hour after all the other trials were over, in front of the small public which was **stunned** (*mashdūh*) at this surprising conclusion. That same public which saw the weeping and screaming of the accused who was hitting her face and cut a curl (*khuṣla*) from her hair, throwing herself on the floor, while screaming loudly: "Where is justice *(ayna al-'adl)*? I want justice! *(uridu al-'adl)*" And she repeated a similar utterance asking help from God so that he would protect her from the wickedness of her enemies, Al Nāsir, who were able to **baffle justice** *(taḍlīl al-'adāla)* in order to tie her up with this false accusation.[5]

Notice how the counsel used here the vaporous notion of the sitting "public," which was "stunned," as argument in favor of the unfairness of the verdict. Even though the state-controlled Syrian press generally refrains from reporting homicides, a note was dropped in one of the three state-owned newspapers, *Tishrīne,* on 22 September 1987, and signed by Walīd Ikhlāsī, a well-known and appreciated novelist, based in Aleppo, and who was

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public prosecution at the Palace of Justice; (7) photographs of the murder scene and of the body of the deceased, plus a set of miscellaneous papers on various matters (newspapers clips, such as a *Tishrīne* article, were included in the file). (A year later, in June 1995, when I came back to inspect the file for a second time, I was told that it was put away in "another room," and, for the moment, it would be hard to relocate. The ability to locate "older files," whose verdict has been issued, turns out to be a fundamental problem for researchers.) As it turned out, many passages in (4–6) are quoted verbatim in (1) and (2).

[5] Report by the defendant's lawyer, 'Abdul-Ghaffār al-Sammānī, in response to the first criminal court ruling (December 19, 1988), January 17, 1989, pp. 1–2.

at the time editorialist to the Damascus-based newspaper.[6] Interestingly, the editorial was drafted in broad terms, refraining not only from naming suspects, but even the city itself was kept anonymous.

> An ugly crime occurred in the city. The story manifests two different attitudes. The first is from a male's perspective, while the second is that of the female. The first view focuses on the cheating of the woman and her lack of fidelity to her husband, while the second concentrates on the age difference and on the action of a man buying a much younger woman, after having had all the sex and women in his youth.

Ikhlāsī was presumably referring to an alleged affair that the defendant had with a certain Hamīd al-Sayyid, also known as Abū ʿAbdo, an affair that her husband had allegedly discovered back in 1981 (at the time, they already had seven children), and which led to their divorce that same year, only to reunite in a second marriage in 1984. Buthayna's brother, Salīm Khattāb, worked in the ice-cream factory of al-Sayyid; and one of Buthayna's daughters, Hadīl, was married to a certain Talāl Shihābī. The latter allegedly came to know that fifteen days prior to the murder, Buthayna paid with her daughters a visit to the farm of Hamīd al-Sayyid, stayed there all day long, while al-Sayyid was allegedly for a while "on his own" with Buthayna. Shihābī had allegedly reported the incident to his father-in-law, Rashīd Nāsir, requesting from him personally an "authorization" for an abortion to his wife Hadīl, on the basis that Shihābī could not trust his wife anymore, since he had doubts as to who the "real father" of the fetus was. (A claim was made by the Nāsir family—the plaintiffs—that Buthayna used to routinely "pass" her daughters around.)

Even though the criminal court verdict was issued at light speed roughly a year after the crime, the appeal procedures, however, took their toll, sending the file back and forth between the Damascus Naqd and Aleppo, until the criminal court reissued its third and final revised ruling in 1994. The ruling was less severe than previous ones in 1988 and 1989, as Buthayna was this time only accused of being a deliberate accomplice in the murder of her husband (*jināyat al-tadakhkhul bi-l-qatl al-qaṣd*), based on sections 533 and 218 of the criminal code. The defendant's claim, that her husband had committed suicide, was rejected as unlikely (based on the autopsy report that detailed the bullet's trajectory in the victim's brain). She was summoned to pay her in-laws S.P. 200,000 ($4,000) as compensation for their loss. Notice that the crime was labeled as deliberate (*qaṣd*) rather than premeditated (*ʿamd*), which saved the defendant the death penalty or at best life-imprisonment.

Auto-biographical confessions

By the standards of the Syrian criminal courts, the file was rather voluminous,

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[6] In the wake of the violent and deadly crisis that erupted in mid-March 2011 between the authorities and street opponents in various cities and provinces, Ikhlāsī served as a "mediator" between the state and "figures of the opposition," which in the final analysis were the ones acknowledged as such by the state, heading a debate with Faruq al-Sharʿ in June 2011 in Damascus on "national entente."

approaching over 500 pages in toto, including, among others, all the rulings of the Aleppo and Damascus courts, the lawyers memos, transcriptions of the court hearings (as dictated by the chief judge), a postmortem, photographs, police depositions, and the interviews of the investigating judge to plaintiffs, defendant, and witnesses.

The document under consideration here consists of a handwritten seven-page legal-size memo, presumably drafted by the defendant herself. The text and margins have several words, statements and passages marked in red and blue ink, indicating that at least one of the counsels must have taken it seriously enough for a careful reading (it may have also been read and marked by judges). But considering that none of the rulings and memos quoted it directly, what purpose did it serve exactly?

Let us first have a close look at the first couple pages of the document, prior to analyzing it carefully.

> [1][7] I came back[8] to my husband precisely during the eighth month [August] of 1984; …[9] I found that my husband had stopped working because of a disagreement with his partners. On several occasions he went to Damascus to seek protection for himself (*yusattir*) in order to receive guarantees from the customs authorities (*jamārik*), but they rejected his request. Because of this, his material status (*aḥwāl māddiyya*) was weak and his health was close to very poor; from what he and my kids told me he was experiencing a stiffness in his brain arteries, which happened prior to my coming back home; his parents used to take him to the doctor and the latter's recommendations (*ithbātāt:* "evidence") are still in my possession.
>
> When I got back home, his health had improved. He used to complain a lot about his parents because they abused so much of his children by beating them up and by dropping them out of school. Due to their excessive abuse, he used to say to his parents that "I will take [my kids] to the railway station and slaughter them so that you get a rest and I get a rest from you."[10] And with all the sufferings they had inflicted on the children, they also attempted to dishonor me (*yat'anūn bi-karāmati*) by saying things that no one could possibly accept; so how could my husband accept this [kind of talk] especially that I had lived with him for twenty years. But despite all those things and matters whose only aim was to infuriate my husband, he used to give me full protection and say to them: "She is my wife and the mother of my children; if what you're saying is right, I wouldn't have felt anything for her when she was present with me." And whenever they would come to him with disturbing sayings, he would try and send me people who would convince me to go back home. My divorce at that time [in 1981] was caused by a

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[7] Original page number.

[8] For a second marriage in 1984, following the 1981 divorce.

[9] Ellipses stand for omitted passages which were redundant and repetitive.

[10] Quotations marks have been added to the translation.

> car problem.[11] The car was registered under my name and he wanted to transfer (*farāgh; faragha*) [the ownership] to him, but I refused. Had the desire been his, I would have transferred [the ownership] of the car to him, but he was coached by his parents who were against me all the time, in particular his brother, the medical doctor who told him: "Had your wife wanted to transfer the car to you, she would have already done so. Divorce her and send her back to her parents." He listened to his brother and divorced me [...].
>
> During my divorce, I stayed with my parents for three years, and in the last period, my brothers intervened and said: "Sister, we all got married and our mother stayed with you at home, and you're young; we can't accept that you stay like that; you should live with a man who protects you so you get along with him for the rest of your life. This is what God wishes[12] and that's your destiny for having lived with your husband. As long as your husband's sister and mother are at home with him, you cannot go back, whatever the conditions." A month after my divorce, I went to the *Tanfīdh* [execution bureau] and requested to attach (*ḥajz*) my clothing, furniture, and car, but in the meantime the car had vanished and doctor Nadīm, my husband's brother, accused me of having stolen the car and hidden it somewhere with five kilograms of gold [which were also missing]. They urged the Police to search my home but they didn't find anything. Despite the fact that I had taken with me my jewelry which I got [2] in the last twenty years, only to sell it, my brothers suggested that I sell the gold too and buy a house. My jewelry is properly mine, but separate to what my husband [offered] me in gold. But I rejected the whole idea and told them that I don't feel like getting into problems of renting and [apartment] rents. My brother Salīm used to work in the [ice-cream] factory of Abū 'Abdo [al-Sayyid] and he proposed selling the jewelry whilst placing the amount with the factory's owner so that I could live from its revenues in order to let my children who were nine and ten years old[13] benefit…

Considering that the judiciary works within its *own* framework for accessing the truth, which in most instances consists of question-and-answer sessions where the interviewee is *limited* to each question's framing, what is then the status of *personal statements,* which were not even solicited by any legal authority, and which would be typically omitted from the decision-making process? Even if for the researcher such auto-biographical statements would eventually lead to invaluable examination of sociological analysis, the problem of their *integration* or non-integration with the dossier at large is in itself a problem of importance, which cannot be ignored. In other words, even if judges and other legal authorities routinely *dismiss* "irrelevant" statements that they deem unnecessary for the proceedings, the researcher should recontextualize all *missing* documents, in order to re-integrate them within the totality of the documentation that the

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[11] The court records reveal otherwise: Buthayna had allegedly an affair with Hamīd al-Sayyid, which was known to her husband, and which eventually led that same year, in 1981, to their divorce.

[12] In the original: This is what God has written (for your destiny), which is a common popular saying (*hādha ma katabahu Allah*) on the basis that God *writes* and is the "author" of the Qur'an.

[13] It seems that two of the kids were left with the mother, while the remaining five were at their father's custody.

actors contribute to the dossier. Such an undertaking should normally follow a double take. First, the auto-biographical document ought to be studied *for its own sake*—that is, as a narrative, with no concern for its juridical implications. Second, the narrative ought to be valued in relation to its legal content, if applicable: Why were the bulk of the accused's auto-biographical statements *not* incorporated within the decision-making process? What would have happened had they been integrated?

What strikes in Buthayna's narrative was its obsession with "material conditions" (*aḥwāl māddiyya*) of husband and family. Such conditions would map the tangled relationships between herself, husband, children, in-laws, and her own family, in particular her brothers. Staging herself at the center, she proceeds at excruciating her husband (or, pre-1984, her ex-husband) of any wrongdoing. The husband was thus within her reach whenever he gave her and the children protection, that is, assumed his full duties as husband and father, even if his material condition proved to be vulnerable at the time. But whenever he seemed skeptical of his wife's endeavors, listening at times to his parents' guidance, which were unflattering to the wife, he was portrayed as a stranger, in need of his wife's help.

The coming back was amid the 1981 divorce and a remarriage. Never mind that the causes of the divorce would be elucidated later. Suffice it to say that the introductory passage, in all its abruptness, seems to be aiming at placing the "origins" of the "crime" (or "suicide" from Buthayna's perspective) into a post-1984 perspective, leaving the meshed episode of the divorce, to which the prosecution gave so much weight, lurking surreptitiously in the background. We are thus told that the husband, even though he opted for a remarriage, was in constant financial and emotional strains, whilst doing poorly with his business partners, parents, children, and wife. The wife's strategy was therefore to portray her husband as a failure, someone with many soft spots, who was unable to get along and do well with anyone. His health deteriorated, as portrayed in the doctor's recommendations. In similar vein, reference to the husband's financial woes occurred right at the beginning, as his *aḥwāl māddiyya* was poor enough and his health was close to very poor to merit attention. *Aḥwāl māddiyya,* "material conditions," was used, as is common in colloquial Arabic, in its plural form, associated with "very poor health." The poor material conditions in association with the very poor health will therefore be related to one another, as if one led de facto to the other, for instance, the implicit suggestion that the poor material conditions had a direct effect on the husband's health, and eventually led to his alleged suicide.

Assuming that the wife's going back home in 1984 did improve her husband's health, it nevertheless contributed at deteriorating her relationship with her in-laws. Such relations are indeed portrayed in very harsh terms, to the point that the husband allegedly threatened his parents to finish off with his own kids. Even though the alleged husband's statements look harsh on paper, for one thing, they tend to be common ground in Aleppo's colloquial, and for another, they were meant to accentuate the devilishness of the in-laws over that of the husband himself. Thus, the husband, while vindicated by his wife for his good deeds, was nevertheless portrayed as victim of his parental abusiveness. It was that kind of abuse that possibly led to the first divorce in 1981, prior to a second

rocky marriage from 1984 to 1987.

However, the dossier portrays differently the 1981 divorce: a husband betrayed by his young wife, who was then allegedly having an affair, which eventually pushed the husband to plea for divorce. In Buthayna's version, however, the divorce was fostered by her in-laws over a problem regarding the ownership of her car. Whatever the circumstances, in Buthayna's account what stands as marriage was the relationship between persons *and* things, or how a relationship—in particular if the woman *was* nineteen years beneath her husband—was a trade-off between its spiritual and sexual components, on one hand, in exchange for monetary compensations and services on the other. In other words, even though Buthayna's youth and good looks were only alluded to, from the woman's perspective, being young was what she would bring to the marriage as dowry, to which the husband would be entitled to materially compensate for. Moreover, the fact that the wife was anathema to her in-laws was only another indication of the exchange—between the spiritual, sexual, and material—going awry at some point. If the wife over-emphasizes, therefore, in her statement, her material wellbeing, and in accordance, that of her husband and children, it was presumably because she strongly perceived that, as a young woman sacrificing herself for a much older man, gave her such an entitlement. Consequently, the in-laws enmity was a visible manifestation of dislike for a woman that the in-laws thought was abusing of her status: you cannot ask more and play the bitch at the same time.

Marriage was portrayed as a patriarchal institution that "protects" women. That such statements originated from the males in the family is not that surprising, but what is perhaps more telling is the fact that Buthayna was reminded by her brothers of her being young, and that, having missed her first marriage, she would be perfectly eligible for a second one. Being young, and presumably attractive, were looked upon as part of the symbolic capital that a woman would deploy in a patriarchal society.

The husband therefore offered his wife, in their twenty-year marriage, many gifts, the core of the counter-gift per se, and which lumped together the movable capital at the wife's disposal: the car, the jewelry, and possibly five kilograms of gold. The above claims suggests, however, that the husband's family attempted, in light of the divorce, to hold some of that capital, in particular the car and jewelry. On the side of the wife's family, the endeavor was to convert the movable capital into immovable property, on the assumption that it was safer as an investment and that Buthayna would eventually need a home of her own. The whole episode was therefore portrayed like an exchange between two extended families.

On either side, the brothers seem to have played a crucial role, either at suggesting other (marital) partners, or else at proposing alternative investments for the exchanged goods. Buthayna's brother Salīm was the link between his sister and his boss Hamīd al-Sayyid. Moreover, the brother in this case seems to have played the double role of courtier and counselor, first by introducing his sister to Hamīd, then by offering that she invests in his ice-cream factory, even though only the latter episode was frankly admitted by Buthayna. She also disclosed that all investments were good enough to have had awarded her an

estimated SP70,000 in cash and jewelry. The fact that she did not go to her second wedding empty handed, that she relied on herself and her own investments, are all indications of a desire for autonomy, namely, that outside the angular exchanges of marriage, a woman is basically free to trade on her own.

Such episode was supposed to portray a competitive wife in demand by other men. The idea that she disengaged from her fiancé, went back to her ex-husband for a second marriage, only to kill him, thus does not make much sense: Why would she do it? The picture that Buthayna managed of herself was one of a "successful" woman: she invested and managed her portfolio wisely, and other men wanted her as spouse. Her going back to her ex-husband should therefore be thought in terms of a return "home"—mainly as an act of "servitude" to her children.

From now on the narrative would shift almost exclusively to the financial plight of the husband, paving the way to his eventual collapse and suicide. The husband is portrayed as mercilessly caught between three women: his mother, divorced sister, and his wife, whom he divorced, only to wed for a second time. But the triadic relationship *was* essentially a financial one, where the husband acted like a poor manager of capital circulating among three women. Buthayna naturally attempted to portray herself, in the three years of her divorce, as a successful investor, someone who finally performed better than her husband. It was no surprise, therefore, that once she got back to him in 1984, she attempted to save him with SP20,000 in cash, then by mortgaging her jewelry for another SP20,000.[14] It is typical of households, in the absence of genuine bank facilities and credit and loan institutions, to place their capital in the form of apartments, cars, and jewelry, then mortgage and sell them whenever necessary; the flow of capital never reaches the abstraction of banking transactions, as every object—apartment, car, jewelry or gold—maintains an emotional value. In fact, as each object is attached to one or more legal owners, as set within the dowry system, it was purchased and owned at a particular moment of the marriage relationship, hence belongs to the history of the couple. Each object is engraved with its own history, and accordingly, that of the successes and failures of the marriage relationship. The remaining five pages of the document will do precisely that: to associate each object-of-negotiation with its own history, as seen in the eyes of a Buthayna now in jail, charged with the dubious crime of killing her husband. Since each object is also valuable for exchange, its history is reenacted to shed some light on the complexities of gender and family relations. The jewelry, for instance, is typically for women, and offered by men in a gesture of admiration, and at the same time, as a safeguard for capital investment. The car, by contrast, is not gender specific, hence its sale would not afflict the woman's sense of honor specifically. Finally, the apartment, which unlike the car or jewelry, is not an item of luxury, but one of necessity, is what reunites the family—and more so the restricted family rather than the extended one.

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[14] At that time, the Syrian Pound was "strong" vis-à-vis the US dollar, and was exchanged between three to four Pounds for the dollar. The rapid loss of the Pound to the dollar began in the mid-1980s, at the time of the Perestroika movement, when the ex-USSR charged the Syrians in cash for every military or civil transaction. By the early 1990s, the exchange rate of the dollar to the Pound had stabilized at its current rate of 50.

> When I transferred the car ownership to him, I told him that I'm transferring it to my children, and not to you, so that if I get married the kids will not accuse me of punishing their father. I took the car from him and had it used by others. But my husband and his brother kept bugging me about the car, claiming that I had it hidden in a military casern, while others were recommending that I sell the plaque's number,[15] which was worth SP50,000, but I refused, because the car's price is to my husband, and it's his right and my children's right. I therefore rejected [selling the car], transferred its property to him without any stipulation or condition, which he eventually sold then bought a Peugeot 505. He then agreed to sell the jewelry, requesting from a buddy of his to sell it, who came to our home with SP50,000 for the jewelry, and told me: "I gave back SP20,000 to Hajj Husayn [for mortgaging the jewelry], but I've got SP30,000 left, so please count them." I said: "Give it to my husband," to which he replied: "I'll only give it to you personally, because that's your jewelry." So I took the money from him and gave it to my husband, who counted it and placed it in his pocket.

The contrast between the car and jewelry is quite revealing. Thus, while the jewelry is in its essence a female commodity with many symbolic values attached to it, the car is not gender specific, and only its ownership serves as a criteria for differentiation. As new and old cars tend to be very expensive in Syria, with prices two to four times those of neighboring countries, the husband's gesture to have his wife's name in solo associated with the car's ownership, was undeniably a gesture of trust on his part. But over the years the relationship deteriorated, so did the trust that the husband (and his family) placed in his wife. During the three divorce years, as the car's ownership turned into a contentious matter, Buthayna's attitude—to have the car's ownership transferred to her ex-husband for the sake of the children—was meant to show that her kids were indeed her top priority. Moreover, as cars are still looked upon as luxury items in Syria, they often reach a symbolic value close to immovable properties, such as lands and apartments. In whose *name* a car is could therefore be more than a mere question of ownership, as the car denotes at the same time, in parallel to trust, a private space of one's own, and a freedom to move around. That's why, when divorce knocks at the door, the car's ownership becomes the prime issue, even before the status of the apartment is settled (in case of a joint ownership), even before the value of the jewelry is raised. As to the latter, honor codes make it improper for a man to request from his (ex-)wife to surrender her jewelry, as the act of giving-back must come on a voluntary basis. In this case, based on Buthayna's account, the gold she had at her disposal was sold and its value invested in the capital of al-Sayyid's ice-cream factory, which amounted to a net cash value of SP20,000, while the jewelry was in the order of SP50,000. Again, based on Buthayna's account, the SP70,000, representing gold-cash and jewelry, were returned to the husband during the second marriage. As the wife's counter-gift reestablishes therefore a situation of financial equilibrium within the marriage, the husband now *owed* something to his wife: it was as if, indeed, she came to her second marriage with her own dowry, which, ironically, was originally her husband's investments for the sake of their being together.

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[15] At the time, it was so difficult to receive individual plaque numbers for private cars, that the latter were sold independently from old cars.

Trust and reputation come right in between the selling of the jewelry and the car. Even though such flow in the narrative might have been purely coincidental, it nevertheless detects major concerns in such patriarchal societies, one where the flow of goods and persons is regulated by trust and reputation. As reputation is gender oriented, the trust that a man places in his wife is different from the trust that he receives from his family and friends. Thus, in the case of Buthayna, having, by her own account, developed a reputation for promiscuous behavior, her in-laws distrusted her, disapproved of her remarriage, pregnancy, and her ownership of the car and jewelry. Faced by a much younger and flirtatious wife, Rashīd for his part developed a reputation of an old and weak man, an immature character who in business *and* at home was indecisive. Such a state of general impotence was only underscored more vividly by his parents' claim regarding his alleged sexual impotence, namely that "he is unable to conceive children." As soon as they've remarried, Buthayna and Rashīd were therefore confronted with a host of problems, all of which underscoring the society's honor codes and the intransigence of its norms. The value of things mixes with that of persons, to the point where the two become indistinguishable, honoring each "commodity" both for its exchange value *and* the trust that it carries.

> My husband proposed to sell our Peugeot 505, but I refused. He said that, "I'm going to sell it so that we can live properly without embarrassment from society and people. I'll pay the guarantee (*kafāla*) to the company, so that I can start working again." One day he proposed his car to the sons of al-Tahhān in street X, at a time when the director general of customs, Zakī Abū Dān, had just retired. The latter urged him not to sell the car, so that the two would unite as [business] partners. But my husband insisted to sell the car, which he did for SP325,000, and at the end of 1985 Zakī Abū Dān became my husband's associate, and was provided with a general mandate over the company. They opened a branch in Tartūs, another one in Latakia, and a third in Bāb al-Hawa[16] through al-Jazā'irlī. This partnership lasted for a year, and after a long struggle and lots of pain, during the tenth month of 1986, the disagreements began between Abū Dān and my husband, the former had misappropriated my husband's money. He told my husband that he had to pay the custom's fund the sums of SP200,000 and SP300,000 from the profits of the company—claiming that's his right to do so. The disagreements are still there until today, prompting my husband to give mandate to the attorney Husām Sha'bān to handle the case. My husband used to tell me, "What did I do so that life treats me that way? I feel tired and lost patience, and people look down on me."

Rashīd Nāsir was probably grossly disappointed at his wife's reputation and marriage, but, in the final analysis, it was his business that brought him down. Now that both jewelry and car were sold, the rest of the document laments on Rashīd's gradual loss of his business. By the time we reach the partnership problems, Buthayna's narrative

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[16] The association seems to have been a company that clears custom duties for commodities either coming by sea through the ports of Tartūs or Latakia, or through the Turkish border at Bāb al-Hawa. The person named as al-Jazā'irlī seems to have been someone who contributed in opening the Bāb al-Hawa branch, and may have been a third associate.

becomes less ambivalent, as it shifts from the domestic to the business sphere, preparing to her husband's downfall, which, by her own account, would lead to his eventual suicide. The problems that Rashīd experienced with his partners, however, were not unique to that adventurous group only, as they need to be contextualized within what Syria was going through back in the 1970s and 1980s, that is, the Baath's second phase, "the corrective movement" as inaugurated by Hāfiz al-Asad in 1970. Apparently the partnership group, nominally headed by Rashīd, used to clear for merchants commodities imported to Syria across the ports of Tartūs and Latakia, and the Turkish border point of Bāb al-Hawa. Clearing commodities in this context implies paying all customs dues, doing all the necessary paperwork, while ensuing that the commodities are well kept in safe warehouses until their status is cleared. All such actions might seem perfectly routine, so as not to require much confusion among partners. But the whimsical nature of Syrian bureaucracy, its corrupt and slow moving pace, and the lack of a proper legal framework to handle partnerships and conflicts that individuals may encounter with state agencies, not to mention the state-controlled economy, could transform a partnership of that kind into an adventurous ordeal, as it finally did.

Rashīd's choice of Abū Dān as partner was obviously not accidental. The retired ex-customs director knew all too well the vicissitudes of the Syrian customs, and as someone who served long enough in the state bureaucracy, he was probably well aware that what mattered under such circumstances was less the company itself, its partners and capital, than the networks that one would establish across the territory to satisfy the customers. For one thing, connections were needed with locals at the three points of Tartūs, Latakia, and Bāb al-Hawa. For another, other connections were needed with state employees across the Syrian territory to facilitate bureaucratic labor. Abū Dān traded therefore his experience with a general mandate over the newly established company, which, based on the above account, allegedly pushed him to "borrow" more money than needed from the firm's capital, leading to its downright bankruptcy.

But the original connection to the Abū Dāns might had been Buthayna herself, as she mentioned earlier that, three months prior to returning to her husband, she got engaged to one from the Abū Dān family. Buthayna thus appears as the one with a web of connections, a combination of emotional and business links, for instance, to al-Sayyid and Abū Dān, which in both instances led to investments, either on her own behalf, or on behalf of her husband. As a woman she therefore perceived herself as immersed in a hub of emotional and business relationships, the man is in this case was paralyzed at home, surviving from his wife's investments and affections—and motherly protection.

> [5] He incessantly complained about his company: "I've got no work and no merchant customers." I would respond to him with my customary patience, and I would listen to him with affection, the same affection that a mother would manifest towards her child, or an ideal wife to her husband. He gave me the freedom I needed at home, saying: "I don't have any mind and thoughts left in me. Solve on your own the problems with the kids and take care of them. I'm fed up with life. It has been a year since our partnership with Zakī Abū Dān, and they authorized him to work during the happy Fitr feast." My husband received an

> official notification from Damascus summoning him to close the company, unless he paid a new guarantee, or else he should pay all his dues for the previous company. He asked me to read the notification, and as soon as I read it, my nerves broke down and lost hope. So I proposed to him to sell the house, but he refused; I begged him to sell the furniture, but he refused. He said that "my home is broke."

Crime or suicide?

Even though the 21-page referral report on April 1988 recommended that the suspect Buthayna Khattāb be released from jail for lack of evidence in the killing of her husband, the totality of the report was not in her favor and rather harsh on her.

We will think court documents, such as the one drafted by the referral judge, within the two general categories of *documenting* and *indexing.* Briefly stated, social actors are able to *document* what they did, or what they are doing, through linguistic communication. In so doing, they auto-create a *method* aimed at describing and narrating their actions, which de facto implies *indexing* such actions in order to render them more palpable. The process of *indexation* could thus be looked upon as one of associating broad *linguistic categorizations* upon speech acts, whereby actors "know what they are talking about" *within a particular context* without the pain of *explicitly* stating what they are doing and talking about. From such perspective, the bulk of daily action and communication is based upon the *taken for granted* as expressed in speech acts. If, for instance, the researcher requests from his interviewee to clarify a particular term—say, what do you mean by "infidelity"?—the latter would in all probability find it strange that the researcher is pressing her on the meaning of such an *obvious* word. But to the researcher, however, it is precisely the *taken for granted* in the process of *indexing* that merits particular attention. Figuring out, therefore, what actors "mean" when they say or do something ought to be sociology's most dignified task—but how to proceed from there? Obviously, in a direct interview, the researcher might ask his interlocutor to clarify a word, a particular statement, or a specific behavior, which is what judges normally do in a closed interview or a public hearing. But does pressing the actor for more thorough *contextualizations* absolve the researcher from the task of understanding? And what ought to be a researcher's method when the interviewee is either unavailable or only available in the traces of a document, an audio or video file? For our purposes we believe that a researcher's task does not alter significantly whether he is constructing his material from observations, interviews, videos and photographs, and field notes, or whether, as in court files, the documentation is the work of others.

But while approving the practices of *documenting, indexing,* and *contextualizing* as important sociological tools for the construction of social reality, we need to supplement them with additional analytical tools for our analysis of court documents. In what follows, I'll borrow some of the categories proposed by Anselm L. Strauss for "qualitative analysis"[17] for the sake of adapting them to criminal court documents.

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[17] Anselm L. Strauss, *Qualitative Analysis for Social Scientists* (Cambridge University Press, 1987), 20–22.

Data collection. The finding and gathering—or generating—of materials that the researcher would then analyze. As the dossier already contains what is needed, that is, all what served for the final verdict, hence no "outside" material would be necessary (personal interviews or extra documents): we're proceeding with exactly the same material that lawyers and judges had at their disposal. Even though I've extensively conducted interviews with judges, lawyers, and staff from the Palace of Justice, they'll only serve for a general purpose, as the interviews did not for the most part cover specific cases, but only general procedural matters.

Experiential data. Data "in the head," drawn from the researcher's personal, research, and literature-reading experiences.

Coding. The general term for conceptualizing data; thus, coding includes raising questions and giving provisional answers (hypotheses) about categories and about their relations. A code is the term for any product of this analysis (whether a category or a relation among two or more categories).

Dimensionalizing. A basic operation of making distinctions, whose products are *dimensions* and *subdimensions.*

Category. Since any distinction comes from dimensionalizing, those distinctions would lead to categories. For example, the difference between a premeditated (*'amd*) and deliberate killing (*qaṣd*) is one of those categorizations that is explicitly stated in the Syrian penal code (articles 533 and 535). The guilt or innocence of a suspect notwithstanding, what actors normally do is a full *documentation* of the crime, so as to narrate what they would consider as premeditation or deliberate killing. Hence in themselves, categories such as premeditated and deliberate killing are empty signifiers unless they are properly documented by the actors. Obviously, the process of documentation varies from one actor to another, and a criminal dossier would typically look like a Faulknerian tale documented from myriad perspectives. However, the categories themselves are simply words that do not mean much per se, until someone bothers to attach the abstract category to a concrete event (e.g. a homicide). Moreover, since both the involved actors and the researcher proceed by categories (even though they are neither necessarily identical nor even similar), which in themselves are levels of coding and differentiation between events, the researcher's prime task, however, consists at categorizing the categories of the actors through a *relational* questioning of their pertinence to the case in question. For example, in our case here, the frequently recurring categories of fidelity-infidelity are of prime importance, but they are neither *documented* in the same way by actors, nor do they receive the same degree of pertinence, in particular among judicial instances (judges, lawyers, police, plaintiffs, defendants and suspects). One should therefore *relate* (or associate) each document with its authorial source, only to see whether the process of categorizing and documenting shifts from one source to another.

Consider how the referral judge described the relationship between Buthayna and her husband, on one hand, and alleged lover on the other. Referring, for instance, to the 1981

divorce episode, he notes that,

> The causes of divorce were the outcome of the defendant's [Buthayna] **bad behavior**, and **what the tongues said about her**. The victim had for his part, prior to divorcing his wife, treated her extremely well, offering her all what she needed, with overwhelming affection. But despite all the affection and care, she used to receive all that with complete denial and disavowal, until the divorce materialized and they separated. During that time, and more precisely on 24 October 1981, when all people **knew** of her bad reputation and immoral behavior, once **she became free in her behavior and movements**, thanks to her brother the defendant Muhammad Salīm Khattāb who used to work at the ice cream factory of Hamīd al-Sayyid for some time,[18] she did pay visits to her brother's workplace, where she finally met the witness Hamīd al-Sayyid. Their **acquaintance** (*ma'rifa*) with one another has evolved in a long enough time… The acquaintance did develop into a **solid relationship** (*'alāqa waṭīda*), which eventually encouraged her to deposit a **sum of money** with Hamīd al-Sayyid, so that he would invest it and ripe some benefits. During the three-year divorce, the relationship between her and al-Sayyid persevered, prompting people's tongues to gossip about it.

The key issue at stake was the nature of the alleged "relationship" between the defendant Buthayna and Hamīd al-Sayyid. Since both had denied under oath, on more than one occasion (when interrogated by an investigating judge, and then at the court hearings), that they were ever involved in any "love relationship" (*'alāqa gharāmiyya*), the judge's allegations for "bad reputation" and innuendos of a "solid relationship" between the two was only based on hearsay and the statements of *some* witnesses, which for the most part were left without substantiation. Thus, even though the judge did not *explicitly* suggest that the relationship was of a "sexual" nature, he nevertheless paved the way for such an assertion; his report would become meaningless without such unproved allegations. In sum, if evidence is a claim that must be substantiated by a judicial authority, then a great deal of the judge's claims would not count as evidence. Consider, for instance, how Buthayna's "reputation" turned into a direct target in the first few lines of the report. By simply going over the *labeling categories* in the judge's narrative, one can see that by shifting from one *undefined* category to another, the judge leaves much that is taken for granted:

1. bad behavior
2. bad reputation
3. immoral behavior
4. gossip (referred to as "people talking with their tongues")
5. denial and disavowal
6. acquaintance (*ma'rifa*)
7. solid relationship (*'alāqa waṭīda*)

The key point here was the concluding assertion of a "solid relationship" between

[18] Initially, the brother was a suspect with his sister, presumably for being an accomplice to the crime, but then all charges were dropped after the first court's ruling in December 1988.

Buthayna and Hamīd, considering that claims of "bad behavior," "bad reputation," and "immoral behavior," were all dropped in the narrative without anything to substantiate them—except for the anonymous "gossip" of all those "people" that were knowledgeable of the situation. Then, all of a sudden, and in the three-year divorce period, a date is set—24 October 1981—which provides the narrative with the false self-assurance it badly needs. But this date apparently only refers to Buthayna's first-time visit to al-Sayyid's factory, hence there was no evidence of anything else—in particular regarding the nature of the relationship between the two. In short, the judge in his 1–7 categorizations was as biased as his witnesses, providing no references on the origins of his speculations. Indeed, the lack of referencing places the narrative at the mercy of the judge, while the success of its survival is solely in his hands.

> Due to the growing up of the children and their becoming **conscious**, and their father's desire to prepare them for the future, he made the decision to bring his wife back to him, remarrying her on 14 July 1984, an act that was certified in a sharia court on 1 February 1987.[19] Happiness resettled at the marital home. But after a while the defendant went back to her bad behavior. She went back to visit the farm of the witness Hamīd al-Sayyid, with which she was accused of being in a relationship, with her children, and with the approval of her husband and her sons-in-law who were married to her daughters Hind and Hadīl. The defendant kept visiting that witness with her daughters, which led the witness Ahmad Talāl Shihābī, Hadīl's husband, to become suspicious. He was suspicious of his mother-in-law, the defendant Buthayna, and her daughters, including his wife Hadīl. He thought that the relationship of his mother-in-law and his wife with the witness Hamīd al-Sayyid was **not natural** (*ghayr ṭabī'iyya*). With all his doubts and suspicions, [Shihābī] started to accompany his brother-in-law, the witness Muhammad Haytham, who used to go with his friends to al-Sayyid's farm.

The narrative maintained the motto of the victimization of the victim, prior to his effectively becoming a victim. Actually, since the victim was gone, the reasons that pushed him towards divorce and, three years later, for a remarriage, remain a matter of speculation. The "suspicious" visits of Buthayna—now in the company of her daughters and other children—to Hamīd's farm are documented based on the son-in-law's testimony. The latter described the "relationship" that his mother-in-law and wife were having with al-Sayyid as "not natural."[20] But we remain in the dark, however, as to what such an assertion effectively implies, and more importantly, how the witness did find out about the alleged "sexual" nature of the relationship—or how the allegation materialized into fact. In sum, the judge's narrative goes hand-in-hand with the common "street speculation" regarding Buthayna's and her daughters' undisclosed "affairs" at the al-Sayyid's farm. The only missing link here was that of the *possibility* of a "sexual

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[19] It remains unclear why it took close to three years for the marriage to be confirmed by a sharia court.

[20] The Syrian penal code, in conjunction with other codes on the eastern Mediterranean, penalizes all sexual relations labeled as "against nature" as not in conformity with the law and subject to punishment (art. 520). What is "against nature" could vary tremendously, from homosexuality, to infidelity, incest, promiscuousness, and sex with children or with animals, all of which are *not* named as such by the law.

relationship," and the euphemisms that were used in the testimonies and reports—such as "an unnatural relationship," or "a close (solid) relationship"—only add to the speculation. When the unusually big file was made available to me in the summer of 1994, just after the criminal court had issued its third revised ruling, I was told by the court's scribe that "this is a case of a woman who was prostituting herself and letting her daughters work for money." It all amounted to whether the court, faced with an emotionally charged case, could effectively delineate the juridical from street speculation. Note that even if the nature of the "relationships" that Buthayna and her daughters were going through at the farm were of a "sexual" nature, it would still have been a long stretch, from a legal point of view, to be able to *causally* link them directly to the suicide-cum-murder.

> Fifteen days before the crime, the victim Rashīd traveled on his own for business. The defendant profited from the occasion, and went with her daughters, with the knowledge of her son-in-law and witness Ahmad Talāl al-Shihābī, to the farm of Abū ʿAbdo al-Sayyid. It also seems that the aforementioned witness regretted granting permission to his wife Hadīl to accompany her mother to the farm. He went to the farm, loudly arguing with them, urging his wife Hadīl to return home and cut her relationship with her mother, because she has been following **her mother's path**.[21] But Hadīl went against his advice and stood by her mother. Things eventually got complicated between Hadīl and Buthayna, and by the time the victim was back home, the witness al-Shihābī had informed him of the incident…and of his mother-in-law's reputation, apropos **behaviors** (*taṣarrufāt*) and acts (*afʿāl*) that are **immoral**, that she had encouraged her daughters, including Hadīl, to **follow the same rotten path**. He even unsuccessfully pushed his wife for an abortion, fearing that she was pregnant from someone else.

Statements regarding Buthayna's "immoral" behavior fell short of explicitly accusing her of a liaison of a sexual nature with al-Sayyid or someone else. Such alleged liaisons, however, regarding not only Buthayna, but also at least one of her daughters, were based for the most part on the account of a single witness, who happened to be the defendant's son-in-law. Notwithstanding the conflict of interests among family members, the judge looked at the pre-crime confusing period with a great deal of self-indulgence, posing as fact what was at best an assertion, and looking at the defendant's alleged "infidelities" as the *motif du crime.* In effect, the judge's indulgence to trash the defendant would be incomprehensible were it not for the three pages that describe, in some detail, the night and morning of the crime: the wife's "infidelities" pushed her to possibly conspire with both her "lover" and his employee (the defendant's brother), or at least with *one* of them, to kill her husband in order to free herself from her marital duties. As the victim was in a dire financial situation, an argument that would have focused on his inheritance would not have paid off, so the judge hammered the infidelity thesis instead, hoping to pin down on "motive." Notice how the defendant, in her auto-biographical document, furnished evidence of a suicidal behavior based on her husband's poor financial record and his insecure personality. One can see that between the court and the defendant it was, indeed, a story of two diverging tales: one that focused on infidelity versus one that sought for the

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[21] Notice the use of "path" (*maslak*) rather than "reputation" (*sumʿa*), even though it was, indeed, the latter that was intended.

material conditions of a marriage relationship.

The lingering issue was, of course, that of suicide. Consider, for example, the referral judge's conclusion on the suicide-murder issue.

> The investigation was unable to disclose how the 9-mm gun, which was legally owned by the husband with a permit, ended in the defendant's hands. What is certain is that, as an outcome to the strong dispute between them, one shot was fired when they were both in the living room, and when all doors and windows were closed. The bullet hit the victim on **the middle of his forehead**, left the skull on the rear side, and finally hit the wall behind, leaving a small hole. The victim died at once. The victim was therefore either killed by his wife Buthayna or by her brother Salīm Khattāb, the latter is known for his **bad behavior** and temper, and poor reputation, having been a sniper,[22] with a criminal past, but there's still no final evidence against him…
>
> I'm convinced that **it wasn't a suicide**. Considering that the bullet entered the forefront right in its middle, the victim, had he committed suicide, should have held his gun with a great deal of mastery in the situation he was into…We should note that the coroner indicated in his autopsy that it was a suicide and not a murder, based on his own assumptions. Then there was the three-panel expertise, which in its report found evidence, which was not fully certain, that the victim might have committed suicide, for reasons that were discussed in the report, but there's **nothing final** in their findings. But **with all due respect to medical opinion**, we were not convinced that what was stated in either reports [was correct], considering that it would be impossible for someone to commit suicide while pulling the trigger in the middle of his forehead…
>
> Moreover, what is most puzzling is the defendant's behavior in pulling the gun from below the victim's body, washing it, and then placing it back where it was. Having erased all fingerprints, it's now impossible to see who was holding the gun. Had they been only the victim's fingerprints, we would have known that he committed suicide…
>
> Evidence is therefore sufficient to accuse the defendant of deliberately killing (*qatl qaṣd*) her husband based on article 533 of the penal code…

Rebuffing medical uncertainties, opting for his own personal evaluation, the judge recommended a long sentence, but not the death penalty. Needless to say, in its first ruling on December 1988, the criminal court would follow suit. The typed sixteen-page report, however, was much shorter than the referral report at narrating the case from its beginnings, avoiding details of the defendant's alleged infidelities. Thus, the section on "facts" contained very little beyond the alleged crime itself and its aftermath, which could be looked upon as progress, as it focuses more on the legal and less on social innuendos.

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[22] There was an unsubstantiated claim by one of the witnesses that Salīm had worked as a sniper to the Phalanges Party during the Lebanese civil war in the early 1980s.

But that did not prevent the court from ascribing to the same referral views.

> It seems that the husband remained in the living room, to which he would enter from the dining room. The wife came to him with his own gun, and shot him once in the forefront, damaging his brain, and leaving him dead on the floor. The bullet left a mark on the wall. She then left the gun on the left side of the body.
>
> When the accused woke up in the morning, she requested from her daughters to prepare the coffee, and then went in the direction of the living room to bring cigarettes. As soon as she opened the door, she said, while pretending not to know, O Rashīd, what did you do to yourself? The girls came in, and the wife picked up the gun from the left side of the body, gave it to her daughter Hāzār to wash it from the blood, prior to placing it on the right side. She then called the police and family members. She also called Hamīd al-Sayyid who urged her to leave everything as it was.
>
> When interrogated by the police, she claimed that her husband Rashīd pulled the gun at her, threatening to kill her. While she held his hand and pushed it towards the ceiling, a bullet was shot, which hit him right on the front. Later on, she denied such scenario, claiming that her husband committed suicide…

The criminal court did not therefore budge from the set of premises that the referral judge had already inaugurated. In the meantime, in the few months that separated the two reports, some evidence came up in favor of the court's thesis. A quintuple medical committee, the second of its kind, argued in July 1988 that there were no signs of suicide on the body, and even though one doctor refused to endorse the report, hence blocking unanimity, the court looked favorably at its findings.

In the final section entitled "discussion and legal practice," the court described the crux of the case's main argument as the ability to determine whether the husband committed suicide or was killed. Having listed in the previous pages 25 factual items, consisting mostly of contradictory and unsubstantiated witnesses' accounts, the court nevertheless manifested a special interest in the three medical reports: by narrowing evidence to its medical, that is, scientific, aspect, the court was hoping to be more persuasive. But was it?

The quintuple medical report was obviously now the main focus, and the court argued that "it did not find that the findings of the quintuple committee were in any way contradictory to that of the previous tripartite committee or to that of the coroner for that matter, considering that there were similarities in their findings. Thus, the tripartite committee was uncertain about suicide, because it considered that suicide, under the conditions in which the body was found, would have been, indeed, unusual and rare. The committee noted that someone committing suicide would normally point the gun towards his temple, whereas the bullet entered the victim's forefront right in its middle, making it difficult for the person to hold the gun properly."

The report then begins to quote manuals in forensic medicine. From the varieties of Arabic medical sources that the report extensively quotes, the court concluded that the position of the hand proves as the key element in suicide: "The forensic doctors and scientific authorities describe that in a state of suicide the nervous actor tends to hold the gun in a contracted way, so that the gun remains in his hand, while in our case the gun was near the body. **Medical evidence to establish suicide is, therefore, *clearly* lacking**, and all the material facts [claiming suicide] are in effect contrary to medical evidence and expertise, whether those of the aforementioned committees or the scientific sources. We therefore establish that the incident was a crime rather than a suicide…"

Now the court has to find out who did it. Going through the facts of the case, the court argued that the washing of the gun the morning of the incident was perhaps the main indication that the defendant wanted to erase once and for all traces of her crime. The defendant, according to the court, only faked the morning after in the presence of her daughters, claiming that she had just discovered the body. She then changed repeatedly the substance of her statements, and even though the court admitted that the defendant seems to have been beaten up at the police station when she was first arrested (more on that below), "that would not change anything, because the defendant did not confess to the policemen of killing her husband."

The court concluded that it was fully convinced that the defendant did kill her husband, and that it was a deliberate killing (*qaṣd*) based on article 533 of the penal code, but the punishment, which in principle should have been 15 to 20 years with hard labor, was mitigated to take into consideration the special situation of the family and the general pardon law number 11 of 1988. The court also summoned the defendant that she should refund SP150,000 of damages to the victim's family, and that she herself would not count among the heirs because she was implicated in the killing.

As the defendant and her lawyers appealed the ruling, it was revoked on April 1989 by the Damascus Naqd on the following grounds:

1. "The court's majority, which drafted the ruling, had serious doubts on the veracity of the appellant's claims, inferring that the contradictory statements are a source of suspicion in her behavior, because she was attempting to divert all accusations from her." The court then added that "all such evidence points with **certainty** that the defendant was the one who killed her husband."
2. "When a crime of this kind is condemned, it has implications for an entire family, and could have serious repercussions, which means that the conviction should not be based on doubts and presuppositions, but only on **decisiveness** and certainty."
3. "The [erratic] behavior [of the appellant] could be a way to hide the true criminal, in particular if the crime was of a deliberate nature."
4. "**The court's ruling should be revoked because it was not grounded on hard evidence**."

Notice how the Damascus Naqd endorsed the view in 1., that there was "certainty" that the defendant did kill her husband, while simultaneously revoking the Jinayat ruling in 4.

The "certainty" here alludes to a *set of evidentiary facts* which point that the defendant did, if (and only if) such facts were taken for granted, murder her husband; but, looking at all evidence in toto, the court judged that all evidence is "soft." A year after the murder, it boiled down to whether the victim did commit suicide, or else he was murdered; in case he was murdered, either the wife did it on her own, or else she managed it with an accomplice. Both scenarios question the trajectory of the bullet: since the wife was shorter than the husband, could she have fired a bullet in the middle of her husband's forefront, while the husband was *standing* in front of her? What if he was sitting on a chair? The question then amounts to: What is it that judges consider as enough evidence? How is evidence constructed, transmitted from one report to another? How is it approved by lawyers, judges, and the upper courts? It essentially gets down to strategy, the ability to construct evidence, rebuff claims, convince, and even to manipulate. In sum, what the Damascus Naqd claimed, is that the facts, *as presented by the Aleppo Jinayat,* did not stand up for scrutiny. It therefore distilled that urge to find the defendant guilty of murder with the (insufficient) evidence against her.

Consider, for example, how the Jinayat handled allegations of torture and abuse, which *as a rule* and under the law are forbidden. Thus, even though the Naqd has over the years reiterated, in various rulings, that acknowledgments (*iqrār*) accumulated under torture and duress do not per se constitute evidence unless actors reiterate their statements in the publicity of a court, the Jinayat by contrast were never trenchant on the issue, opting for a *textual* approach: do allegations of torture make sense when we read the contradictory statements on paper? As allegations of torture, intimidation, duress, and psychological abuse by the police surface in the defense memos, the Jinayat would typically go for a hands-off approach.

On October 1988, one of the defense counsels forwarded to the criminal court what he described as scenes of abuse perpetrated by the police towards his client and her children.

> The accused was driven to the police station and her freedom was put on hold for four consecutive days at the station's jail with her daughters and sons, the adults and the very young. She was denied any legal help, and the judge who should have investigated the matter instead of doing the investigation by himself, left it to the police to examine [the accused] and her children. They were all beaten up and the children were tortured in front of their mother. When she was finally interrogated by the investigating judge, she was given no opportunity to seek legal help from any lawyer because the interrogation took place at the police station, right in front of the policemen who tortured her with her children. It should be noted that what was done with the accused and her children goes back to old practices from the Middle Ages when the suspect was driven to torture before the trial.[23]

The lawyer in question even found it useful to provide a brief survey of the history of torture in medieval and early modern Europe, hoping in his comparative analysis to point

[23] Report by Khalid al-Khatib to the criminal court, October 3, 1988, p. 1.

out that the whole rationale behind torture is already *dépassé.*

> History points to the fact that torture was a means to extract a confession in ancient times. Torture was used in the Middle Ages as a means to extract a confession, and this was true in both the "accusatorial system," common in England and America, and the French "inquisitorial and investigative system."[24] Confessions used to be extracted through torture, but that notwithstanding, they used to be accepted by the justice system. In what became a common method of torture, the accused used to be transferred from his prison cell to a dark underground cave and thrown half naked over his back; a heavy metal was placed over his body, and he was fed with only rotten bread and stinking water until he confessed or lost all resistance.

It was only in the court's third and final 1994 ruling, however, that the question of torture was *mentioned* on two separate occasions:

> It came out from the [defendant's] interview [by the investigating judge] on 11 October 1987, that her statements to the police were the result of physical torture (section 9, p. 4).
>
> It was reported by the witness of the defense, Muhammad Sa'id al-Farra, that he saw the accused at the police station, during the incident [of physical torture], lying on the floor, while the policemen were hitting her with a stick. He then heard voices of women screaming and weeping, only to discover that one of them was the voice of the accused Buthayna who was screaming and weeping. He also saw a policeman hitting her on the face (section 21, pp. 8–9).

As we pointed earlier, even though the court acknowledged the witness' statements as evidence, it quickly rebuffed them as "irrelevant" to the outcome of the case, namely in terms of its framing of the crime as a murder rather than suicide. What is of interest is how torture is constructed solely for *evidentiary* purposes: either it serves at getting the "truth" out of the tortured person's mouth, or else it's irrelevant; more importantly, and from the perspective of the criminal court, even if what a suspect had delivered under torture turns out to be "true," its validity is only relevant to the particular context of the final ruling. In sum, the court doesn't have to worry much about police torture, because most of what suspects and witnesses deliver under torture might be anyhow irrelevant for

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[24] Georges Lamoine, "Une procédure criminelle en Angleterre au XVIII[e] siècle," *IAHCCJ Bulletin,* 20 (Spring 1995), 61–79, p. 61: "La procédure est dite accusatoire (*accusatorial/accusatory*) par opposition à la procédure inquisitoriale (*inquisitorial*) lorsqu'une personne ou un groupe de personnes accuse une autre personne, et qu'un magistrat ou un groupe d'individus tirés au sort décident du bien-fondé de l'accusation. Elle s'oppose à l'initiative d'un juge d'instruction qui a pratiquement tous les pouvoirs." The author quotes a footnote from *The Quarterly Review*, 381 (January 1900), 198: "to discover crime, to collect evidence concerning crime sufficient to discover the criminal, to ensure the due punishment of the criminal...": "The civilized world is divided into two camps as to the best way of securing these ends. There is the French school, which is more or less followed by the other Continental nations, excepting Turkey; and there is the Anglo-Saxon school, which is adopted by English-speaking peoples... The one is traditionally known as the Inquisitorial system, the other as the Accusatorial system."

the purposes of drafting a verdict.

A defense counsel, having made his point on the historical uses of torture, now muses on the validity of statements under torture: "even the claim that the defendant's statements at the police station are genuine confessions (*i'tirāf*) seems superfluous and untrue," considering that "the fact that these statements were delivered under torture, duress, physical, mental, and emotional abuse, makes them invalid." And in conclusion: "The accused has never delivered any confession (*i'tirāf*) to justice (*al-qaḍā'*) at any point." What the defense lawyer is clearly alluding to is to opinions of the cassation court which have clearly stated that statements delivered to the police, whether under duress or not, unless are reiterated verbatim in the presence of a court of law have absolutely no legal validity. But the lawyer's pleas, however, bring some confusion, at least when he assumes that "confession" is a legally accepted category, which clearly it is not. In the same way that statements delivered to the police have no legal validity per se unless reverberated under a court of law, the same applies to a confession, which, to wit, is different from admission (the latter is in principle an outcome of an interview). The lawyer then exemplifies his position in alleged statements by the accused regarding who was holding the gun, and in which position it was when the shot was fired. Various cassation court rulings are quoted and interpreted:

> [886] "A confession is interpreted only from what it provides, in particular if the investigation does not encourage a wider interpretation contrary to what the confessor had stated [1952 ruling]."[25] In other words, a confession (or an admission) should only be interpreted within its own context of the moment, unless the investigation has widened enough, so as to invalidate (infirm) the suspect-witness based on contradictory statements from other sources.
> [879] "A direct confession (*i'tirāf fawrī*), which has been later denied, cannot be taken into consideration unless it has been supported by other evidence [1977 ruling]." Quite often suspects and witnesses deny in toto, in the presence of an investigating judge, what they had stated earlier to the police, which was the case of Buthayna's statements.
> [867] "The court should widen its investigation in order to document the veracity of a confession [1953 ruling]." It is not enough that, for instance, a suspect-witness *repeats* his statements under various circumstances (police interrogation or a court hearing), because such an attitude could be a way to conceal the true nature of the crime, or it could be the outcome of duress.
> [877] "Statements should be disregarded if made under duress or fear, when the person interrogated was watching a friend tortured or intimidated, because it is considered as an act of personal humiliation [1976 ruling]."

Notice how the issue of confession comes at the forefront mainly in relation to physical and mental (emotional) abuse. There are undeniably plenty of provisions in the penal code that discuss the nature of evidence, but when confession serves *as* evidence, and when admission *becomes* an element of truth, and when both are an outcome of torture,

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[25] The numbers and cassation rulings are based on the encyclopedic compilation of Anas Kilani.

then they indeed have a particular salience to them. As the construction of evidence implies patience and hard work, why not perform some of that work on the body itself—in a direct brutal way? Truth is supposed to emerge through labor, and through a disciplinary violence that one exercises over one's body.

In the seven-page auto-biographical document, which was our original point of inquiry, each statement is supposed to carry Buthayna's own "voice." Written in a first-person singular, and mixing colloquial (in its Aleppo brand) with official Arabic, the document sounds like a woman in her forties, worried about her seven kids, material properties (car, jewelry, gold, and some cash), and obviously worried about being the major suspect in a criminal case. But the court did not seem to have vested much interest in the document. Instead, the third-person narration of the court attributes to suspects and witnesses voices, motivations, and statements, which they may or may not have uttered, all interpreted in such a way to fit well within the court's ruling. In the Syrian system, voices of suspects and witnesses are hard to come through, in particular that they're neither taped, nor recorded verbatim on paper. The third-person narration is therefore there from the beginning, from the moment the police begins to transcribe, paraphrase, and summarize in official Arabic; or when the investigating judge interviews his witnesses, only to write depositions where the original statements have been transformed into formalized questions-and-answers; or when the chief judge, in his court hearings, has every once and a while to interrupt his interview, in order to dictate his scribe a summary of what he is doing. Worse still, and what probably adds to the ventriloquism of all those depositions, memos, and reports, is the absence of cross-examination within the system, as the investigating judge and the courts reign supreme when it comes at constructing evidence and telling us what happened. In short, what the system lacks is that free indirect style, where the judge attempts, like a novelist, to find an authorial voice for his protagonists.

Anatomy of a confession: the unwritten law of abuse

In Otto Preminger's *Anatomy of a Murder* (1959), attorney Paul Biegler (James Stewart) retorts in court when the subject of "unwritten law" was brought up by his client, a soldier who murdered a man who had allegedly raped his wife, that "there is no such thing as the unwritten law."[26] That may be, but the written law, as presented in *Anatomy of a Murder,* is open to such miniscule points of interpretation that it might just as well be unwritten. In the case analyzed in this chapter, for example, we know for sure that the father had locked in a bathroom his teenage daughter for a couple of years, with allegations of having tied her up for that period, but beyond such factualities, is it possible to root for conviction simply on the basis of "restricting another person's freedom," pursuant to specific articles in the penal code? Is conviction—or acquittal—possible without an *interpretation* of the father's obstinate behavior towards his daughter? Essentially, if the law comes down on one area, then it comes up completely short in one or more other areas. That's why in our triadic approach between the logic of narration, juridical sociology, and psychoanalysis, readers may be left unsatisfied that justice has been done, one way or the other, or that we are doing justice to the cases at

[26] Royal S. Brown, "Anatomy of a Murder," *Cineaste,* XXXVII(3), Summer 2012, 52–3.

hand.

How for a single event narrated over time and in different contexts, would the narrative shift from a speaker–author to an alternate subject of enunciation? In a police deposition, for instance, the suspect is generally placed in an unpleasant situation of being accused of crime, while evidence is not fully there yet. More importantly, however, is that the subjects of enunciation are not free to narrate whatever they please, as they would be typically constrained within a question-answer format, which are then paraphrased and summarized, prior to their transcription in a report. Moreover, as suspects and witnesses routinely accuse police of brutality, it goes without saying that a suspect, during his or her police interrogation, *may* have uttered things not on their minds. The situation would change when that same suspect is, only few days later, in the sanctity of the palace of justice, facing a judge is his or her office: once the exchange turns over from person to person, without physical duress, utterances *may* take a different route from the ones delivered earlier at a police station. Imagine now a situation in which that same suspect finds himself in prison, while his case has been dragging on for over a year with no end in sight. In the solitude of his prison cell he drafts a letter to the chief judge asking him for mercy, that same judge which had been mercilessly interviewing him repeatedly in open public hearings in the presence of other judges, lawyers, and the public at large. Each one of those settings constitutes in itself a situated encounter in which the user interacts with one or more users, and in which his cognitive faculties are deployed to tackle the specific situation at hand. In our case here, for instance, our suspect may be claiming his "innocence" from day one, but as there's no such thing as "innocence" per se, decontextualized of any encounter, we, as researchers, need to see how the notion of "innocence" develops from one situated encounter to another. Speech-act theory has taught us not to look at utterances simply in terms of their content—what they have to say—but also in terms of their *performative* side—how was it said, and under which circumstances. In similar vein, we cannot simply look at a legal case in terms of the content of arguments that were furnished by all parties, but also, if not mainly, based on the situated encounter through which such contents came into existence. In other words, there's no content without the situated encounter that made it possible.

I admit that I was abusive towards my teenage daughter, but does that make me look like a criminal worthy of incarceration?

[C4–2] In our second case from Aleppo, our suspect was a mid-aged dad who, upon his second marriage, had locked his teenage daughter from his first marriage, continuously for a couple of years in the bathroom of his apartment. One day, while the family was out, the girl burned the bathroom door and managed to escape. One of the neighbors found the girl in a nearby lobby in a terrible condition, as she looked sick and unable to walk properly. She took her to a doctor who examined her, then to a hospital, finally reported her to the police a couple of weeks later. The father was then arrested amid the police's visit to the hospital, and upon receiving the first testimony from the girl herself. Because the facts are simple enough, we can focus on their contents and modes of delivery, beginning with the father's statements, as delivered under various constraints. It's the mode of delivery that is crucial for our purposes here.

The date of the arrest goes back to December 1996, a couple of weeks after the girl had burned the bathroom door and managed to escape. As is customary, the arrest was followed that same evening by various depositions from witnesses and the suspect himself, which led to the police report—the very beginnings of a newly established case-file. The police noted in its introductory remarks that the suspect Mahmud Hallaq was arrested that day "for having locked his fifteen-year old daughter in the bathroom of his home for three years, which led to a damage in her bones and a deterioration in her health." As is customary in police memos, the suspect's deposition came at the very end, amid those delivered and signed by other witnesses.

> My name is Mahmud b. 'Abdullah Hallaq, born in 1954, an inhabitant of Aleppo, and currently a resident of the Sayf al-Dawla neighborhood, Zanubiya Street, close to the mosque…I'm in the clothing retail business…Ten years ago I divorced my wife with whom I have two children, Sahar and Wasim. I then married Mayyadah, who took care of the children as if they were her own. Soon after that their divorced mum started to create an atmosphere of hatred between my two kids and my second wife. My son Wasim, however, managed not to get affected. But my daughter **Sahar used to run away from home repeatedly**, then from school on several occasions. At times I used to search for her in police stations, and on occasions that's where I did find her. Even when our door was locked, she managed to escape from the balcony. At one point she was arrested and placed in a prison for minors. **I panicked and locked her in the bathroom roughly three years ago, in fear of my honor (*'irḍ*) and my reputation (*sum'a*)**, as I travel a lot. I used to free her as soon as I would come back from my travels, only to place her in a separate room. I used to bring her food in person, several meals a day, the same food that the rest of us ate. My [second] wife Mayyadah never interfered in all this, as I was the one who locked her up in the bathroom. 25 days before I was arrested, I came back home and saw smoke inside the apartment. I realized that the bathroom door had a hole into it, and that my daughter had escaped. I started a search and inquired with the neighbors, to no avail. I was not aware that her health was deteriorating. The only thing that I recall was that **she did not like to sit at home**. On one occasion she had left to her mother's home, stole money there, prior to coming back on her own. I only locked her up out of safety, not knowing that her health would deteriorate in such manner. I regret what I had done, and I'm ready to take care of her and get her back to me. I guarantee you I will not repeat my previous mistakes.

The woman who claimed she picked Sahar 25 days earlier in her own building lobby, said she found her in a filthy condition, was unable to walk, and was crawling on the floor. She took her up to her apartment, gave her a bath, kept her and fed her for 20 days. Her brother-in-law then informed the police, and in the meantime they had managed to get the father's phone number: "When we called him and told him that your daughter is here with us, he swiftly replied, 'Leave her there!,' prior to hanging up." She was transferred to the Kindi hospital where the police picked her up and summoned the father for an interview.

The 15-year old daughter stated to the police the day they came to pick her up from her hospital bed: "For the last three years my dad has been locking me up in the bathroom of our apartment located in the neighborhood of Sayf al-Dawla, because I used to run away often from home. I've been maltreated both by my father and his wife Mayyadah. They used to throw at me what was left of their food, and at times they locked me up in the toilet. 25 days ago, when no one was at home, I've placed a cloth damped with oil underneath the bathroom door and set it on fire. Part of the door burned, I broke it with a mop stick, and ran away, hoping that I would go to my grandmother's home. But a lady found me in the lobby of a nearby building, took me to her home, offered me food and sheltered me for 20 days. I place myself as a personal plaintiff against my father Mahmud Hallaq who has locked me up."

On two different occasions, both left undated, the father, from his prison cell, addressed himself first to the chief judge, then to Aleppo's attorney general. Even though both letters were handwritten, hence pointing to a personalized mode of communication, the differences in handwriting are nevertheless visible enough to suggest at least that he got some help either from inside or outside the prison, but the type of help remains uncertain: Were the letters dictated and polished in the process, or did they receive more substantial revisions? But whether the defendant received substantial coaching or very little, the two documents were nevertheless included in the case-file, hence part of that organic whole which is the totality of the "file," and upon which the final verdict rested. A final point before we go further: auto-biographical statements, which are usually stated in personal memos addressed to judges, lawyers, friends and relatives, and which make it to the dossier, maintain an ambiguous relation to the totality of the case. As such, they do not in principle constitute any "evidence" per se: that is, factual evidence that the court would deem relevant. Written in a personal style, and addressed to a big Other authority figure, they tend to surreptitiously offer plea bargains of some kind.

> Your honor, the wise chief judge, which I humbly seek your generous spirit and forbearance.
> Is it possible that a grand judge gets affected by the narrow ethos of a prisoner crucified in his mind and body, waiting for a court session in the hope that the case will advance and that his fate would be determined…[27] But then when the session was due, it turned up sterile, simply because the witnesses were not present, and the one responsible for bringing the girl didn't do so. But, if the judge's spirit and forbearance have no place for me, who would then listen to me? The counsel neither discusses nor does anything, and doesn't even feel what's going on with a prisoner who is like dead in his prison exile, and separated from his kids, home, and humanity.
> Your honor, the judge: I've been arrested for nine months now…What's the big crime that I did really commit…My daughter is from my flesh and blood, and **no one would protect the reputation of a minor but me**. Is it that I failed as a father? I've tried all kinds of solutions for nine years of suffering and gave up, but

[27] All ellipses are in the original Arabic handwritten text.

all my attempts of giving advice, education, and understanding have failed…What crime did I commit that now puts me in jail with other criminals, standing in the caged box of the criminal court,[28] for the simple reason that **I've prevented my daughter from running free in the streets**. Would it have been better had my case been handled in a civil court, while placed under the supervision of a social worker who would have helped me go through all this…But **putting me behind bars in a criminal court with my daughter's knowledge [*amām ibnatī:* in front (in the presence) of my daughter] was certainly not the right decision**!!! Which daughter would then respect her dad after that, amid standing in front of him, while in a position of a criminal behind bars, but which home would bring her back to me, with all the needed love and affection, after the **humiliations** that I've been through. I beg you, I beg you[29] to consider my human condition, you the wise great judge, one who has absorbed the case of a suffering inmate, whose condition has betrayed him in his role of father. Weren't you the one who said, **why is this case here with me**…If it weren't for me, then it should be for the sake of my small kids…Your honor, the judge, the impact of the accusation now in your hands is far greater than its facts…That's the interest of those strangers (*ghurabā'*) who have imposed themselves on me and my daughter who [accidentally] came in their way. It's that woman who made it clear that she would marry [my daughter] to her nephew (her sister's son), an impotent divorcé, without revealing that she would use her for house work, and then she received help from a doctor who was a friend of her, drafting a medical report on her behalf, and pushing my daughter away from me.[30] There is, however, another report in your hands from Dr. Hamidah, clarifying that [my daughter] is fully recovering—a month after I was arrested. You advise me to appeal the report, but isn't the official report of Dr. Hamidah enough…And now the girl is in the hands of the observation section, and the committee of the prisoners, and is being trained to become a nurse in the Badrakhan hospital. **That's what they do now with a girl to make her independent, so that she does what she pleases**. The

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[28] In the main courtroom of the Aleppo Jinayat, the accused are driven by the police from their prison cell at the Muslimiyyah prison north of Aleppo, to the palace of justice early in the morning, then brought in small numbers to the courtroom by 11:00 am and placed behind bars on the left side of the bench; then, every once in a while the prisoners are replaced by another group. The large number of cases that are handled in a typical two- to three-hour session makes it impossible to concentrate on a single suspect at a time, and, indeed, one gets the impression that everything is rotating fast in the space of the courtroom. The above suspect notes to the judge how disappointed he was in the last hearing, when witnesses did not show up, and when his teenage daughter did not show up either, because the person who was supposed to accompany her to court did not do it, situations which are fairly typical, and which considerably slow down the process, bringing it to a crawl at times.

[29] The first "I beg you" seems to have been added to the margin either later, or as a form of emphasis.

[30] The reference here is to the woman who has seen the daughter crawling in the lobby of her apartment building. As she reported 25 days later to the police upon the father's arrest (see *supra*), she claimed that she took care of the girl and kept her in her apartment for a couple of weeks, prior to her son-in-law calling the police, and transferring the girl to the hospital. Even though there's no reference to what the father is alleging above, the delay to report the girl to the police makes her in the very least suspicious. We need to check what she declared to the investigative judge and then to the court, prior to deciding on her case.

> father is for his part destroyed and imprisoned, his home and work have been damaged…What should I say to God, considering that you're the one who orders, and you're the wise person. I beg you to release me from prison, so I can take care of my kids, get them back to school, having spent an entire year away from them, and I'm ready to stand on bail for any sum that you would decide. I would come back to you whenever the court would need me. I'm someone who submits to justice and God…Please accept all my sincere respects. From the arrested, Mahmud Hallaq b. 'Abdullah.

Considering that Mahmud was arrested in early December 1996, nine months of incarceration would indicate that he may have drafted his letter by August–September 1996. The crux of the argument is in the question, Why am I here?, which leads to that other lingering question, Should a case like mine be tried in a *criminal* court? Why am I criminal? There is even a suggestion that all what was needed was some form of "social counseling," and that counseling would have been a better and more "comprehensive" alternative. The notion of counseling by a "specialist" may also hint at the possibility of an expertise of a "medical" or "psychiatric" type.

The question raised by the defendant leads therefore to the following: What is the borderline between a civil and a criminal case? Which leads to another question: What is the borderline between normality and abnormality? Was the father insane? Should the court and its judges have taken the issue of "sanity" firsthand and examined it from the beginning? Had the father's "sanity" been an issue, the problem would have been delegated to the medical field, so why did Hallaq's "criminality" not step outside the boundaries of the judiciary?

What is therefore at stake are borderlines between law, medicine, and expert social services. The accused himself was puzzled in his missive as to why he was classified as a "criminal" in the first place. Looked upon from judicial protocol the question becomes one of identifying what would fit within a strict jurisdiction of the legal, and one that would fall outside its scope. That is to say, the question that the defendant posed regarding his own status would in principle be posed by the judge: Is such a case, where the offender harmed his minor daughter intentionally, in such a way that could point to a disturbed mind, within my field of jurisdiction, or should it be passed to another jurisdiction, be it medical or social? But whether the accused would be "fit" to stand trial—on the basis that he is not insane, or mentally or emotionally handicapped—the other parallel issue is whether the case ought to be *stricto sensu* only within the jurisdiction of the "civil" courts, considering that the harm done was an outcome of pure "incompetence": that is, the father, faced as he was with difficulties to control his daughter and have her respect his second marriage and be loyal to him, incarcerates her for three years, oblivious as he was to psychological and physical damages that this might incite. Wouldn't it make more sense therefore to simply separate him from his daughter, subject him to counseling from a social expert, and even have him go trough a rigorous psychiatric exam?

The borderline between the judicial and medical has for the last two centuries

encountered a troubling issue: Why would the judiciary seek medical expertise? Why would judges be willing—and at times happy to do so—to handover a case to medical authorities?[31]

At some point, therefore, there is no explanation: there's nothing to understand, as what the suspect has committed has no explanation in common language or in the specialized language of the law for that matter. Therein lies the reason for seeking medical expertise: as a factor that would liberate the judge from a purely juristic justification; such an expertise, however, was never at stake.

Power individualizes, and the correspondence that the offender initiated with his chief judge and attorney general manifests that individualizing power. The "speaking I"—the subject of enunciation—creates its own shared values while evolving into something else—an enunciating subject—which posits itself as object worth of examination for its own sake, to the point that it may be incapable of being "contained" by the norms that made it possible in the first place.

Let us look at the second letter, this time drafted by Hallaq to Aleppo's attorney general. If we're right about the first undated letter, that it was drafted nine months amid his arrest, then it must have been completed by August–September 1997. Hallaq did not date his letter to the attorney general either, but, like most documents in the dossier, it had to be formally acknowledged, stamped and signed, hence *integrated* within the corpus of documents. The date of 14 June 1997 was therefore appended by the attorney general's office, which pushes it a couple of months ahead of the previous. I nevertheless think it makes more sense to read it "as if" drafted in the aftermath of the letter to the judge, as it was slightly longer, more detailed and more balanced at the same time. Upon the reception of the two-page document a court clerk added on the top left margin: "explanation of a situation" (*sharḥ waḍ'*), which broadly defines the text as one of "pleading for one's own condition," if not sanity.

The defendant first reminded the attorney general that his case was one of "**restricting freedom**" (*ḥajz ḥurriya*) of a minor. But the truth, he says, "is that I'm **protecting my minor daughter from loss, deviancy, and the road to debauchery and deviancy** (*inḥirāf*)." The notion of deviancy comes once more for a third time: "**This girl has deviated into the path of evil and error**."

> "I was previously married to **a rebellious and independent person**. She had her own **perverse manners**, looking down at marital rights. Our marriage would only last for eight years—with three separations—and she left behind two kids, a boy and a girl. When all became impossible between us, I sheltered myself in marriage, wedding to **a person who knows about values and principles**, has all the good manners, while respecting and sanctifying marriage. She played the affectionate mum for my two kids. But my previous wife only knows resentment, vowed for revenge, as she has now finally seen her wishes come true—by making

[31] See, Chapter 1.

> my daughter homeless—while having me in prison—throwing off four kids and their mother, which are suffering and needy."

Thus far, contrary to the letter to the judge, there was no strategy for arguing about differences between "civil" and "criminal" matters, and more importantly, the crucial question of "Why I'm a criminal?," was not even professed. The strategy here is quite different, as the focus is on family values. Dressing himself as a family man, he painted his ex-wife as someone so perverse to have dismantled family values while transmitting her perversity to her daughter. The father ended up in his second marriage with a daughter who neither wants him nor his second wife, and is always running away. Overall, Hallaq was hoping that his focus on "restricting freedom" would be beneficial and play well with the attorney general.

The charge of "restricting freedom" carries several meanings. At one level it simply implies that person A restricted the freedom of person B by imposing, for instance, physical prohibitions on the movements of B. At another level, it could go much deeper, as the prohibitions would have resulted in serious mental, psychological, or physical harm. Moreover, the offender could be charged for being mentally or psychologically unfit for taking care of children. In itself, however, "freedom" is a basic civil-law right, which is per se an "empty signifier" whose meaning achieves consistency only in relation to other signifiers. The defendant was playing on the notion that kids are unruly and difficult by nature to contain: What happens when an adult *is* responsible for the safety of a kid who seems to take everything with a vengeance?

> "**[My ex-wife] was able to dominate my daughter** in the very words that she whispered to her. 'Run away from home.' She would provoke the kids against us, telling them that your dad and his wife hate you and do not love you. 'Let the neighbors know—tell them that we're hungry and naked.' She openly stated with a promise: 'I'll transform the girl into a thief…so that people say that's how the father and his wife educate.' That's what my divorcée wishes, even though God has compensated me with a good [second] wife who managed well her relation to the kids, and gave them all the affection and love that they need."
>
> "My daughter managed, however, to run away from home to the streets, only to come back. She then started to go to her mother's parents, who left her in the street. The police knew about our home, and every week they would visit us with the girl in hand. It happened so many times that I got into the habit of calling the police immediately whenever my girl was missing. Each day became like a nightmare. I began locking the home's main door, thanks to an advice from the police. The judge who handles minors once told me, 'Are you certain that she'll always come back once she had left?' She soon got into the habit of running away from the balcony. When my divorcée reprimanded that she would take the boy into custody, I retorted that the girl would go too, so that we do not separate the two, as an attempt from my part to take away this whole episode of my girl running away on her own. But nothing worked out. **She had repeatedly run away from her mother**, they've followed her and brought her back. The last time

she had stolen her mother's salary. She run away…reached the 'Aziziyyeh police, who delivered her to me in the presence of her mother. But she kept running away."

"My dear sir," continues Hallaq in his plea to the attorney general (we're into the second page):
"I've been accused of "restricting freedom." Did I limit **the freedom of a foreigner**, or was it my own minor daughter? After giving up to the point that my life has become real misery—that's my reality and that's my story—I've suffered enough. Was I expected to leave my daughter in the street, so that she's picked up by barbarians who have no mercy towards their targets? What should I do to solve this problem?"
"As a father I've got feelings and emotions, and I've got great responsibilities that need to be addressed on a daily basis. How should I then compensate between my daily duties and my present grim situation? **I wished that my daughter would grow up fast**, so that she would get married and live her life as she wishes in peace. But all of a sudden I find myself handcuffed with other criminals. What did I do besides attempting to place my daughter away from perversity and its dangers?"

"My dear Sir,"
"I plea your respected wisdom, the symbol of right, justice, and law, to take my situation into consideration, and to agree for bailing me out, so that I can get back to my family and kids, who are in the worst of all conditions, and who need me more than I need freedom, and to rectify the damages that this situation has brought to my life and to that of my family, kids, and their mother." (No signature, but only a fingerprint.)

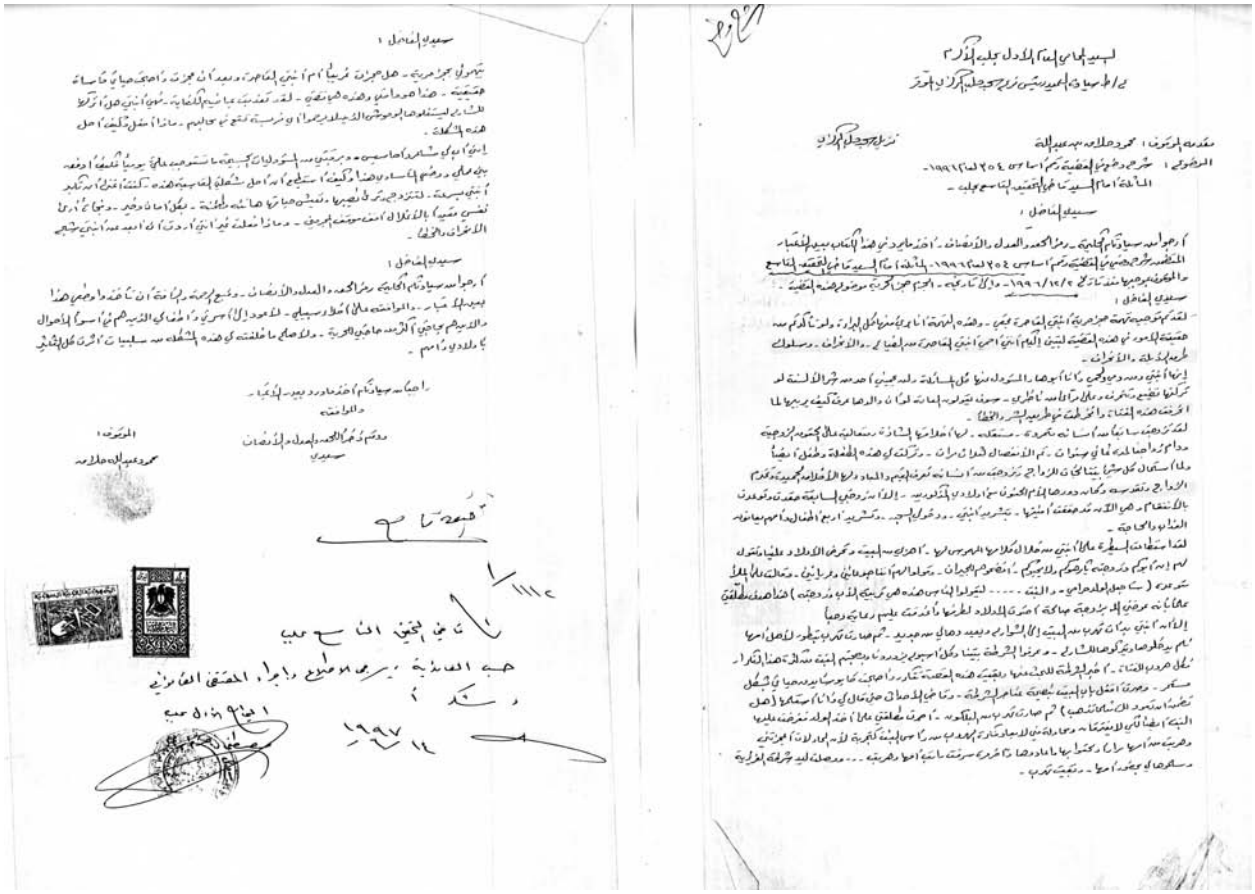

Figure 4–1: Letter addressed by the defendant Hallaq to Aleppo's attorney general in June 1997 while he was incarcerated.

We've discussed earlier what we've labeled as auto-biographical elements. Those were mostly texts where the alleged offender would create a self-reflexive gaze: actions are looked upon with the hindsight of time, the aftermath of the trial, and above all, the solitude of jail experience. The trial, its aftermath, and incarceration, take their toll particularly on members of the middle class, who see all of a sudden their status and reputation crumbling. But then why were they appended to the dossier, and for what purpose exactly? Do they matter? The question is further complicated in other ways: even if such texts matter, it would be only indirectly, as judges typically do not quote them in their verdicts, even if they took some of their contents at heart.

What is noticeable in the two letters is that movement from what's "personal" (letter to attorney general, which chronologically was presumably the first) to what's "legal" or "legalistic" (letter to the judge). Consider for instance how the letter to the attorney general is structured around the personalities of two women: one who is reckless and without moral principles (first wife), while the other is affectionate and family oriented (second wife). Such a structure gives the possibility of portraying one's life as cut in two, with the first uncanny half still interfering with the second. Hallaq therefore sees his current miseries as an outcome of that miserable first half—that "other" woman—which he feels he's unable to get rid of, in the same way that he's unable to get rid of his daughter, whose erratic behavior he associates with his first wife: *telle mère, telle fille.*

The past, however, would not have haunted him were it not for the two kids, in particular the daughter. It's as if the defendant is arguing that the daughter has inherited all her mother's curses, brought them to his second marriage, creating havoc all over. The girl's problems are therefore rationalized not only as an outcome of failures of a previous marriage, but of an insane woman whose insistence not to let anything go has worked very well in her favor. *Cherchez la femme* is therefore the general motto that runs throughout the letter to the attorney general. By addressing the problem to an evil-woman he's unable to control—his first wife—Hallaq clears himself of any wrongdoing. It's as if, conducting his trial on his own, the subject–defendant found himself not guilty by reason of his first wife's guilt. He could have pleaded for insanity, or for poor social skills, or guilty for having locked his teenage daughter for a couple of years, with all the physical and psychological (and sexual) abuse she has been through, but he didn't. The daughter's abuse was rationalized to the attorney general as an episode that would not have occurred were it not for his ex-wife's uncontrollable appetites at destruction. The daughter thus became uncontrollable like her mother, so there was no alternative but to lock her up—even the police recommended it. The reader may already have the right question in mind: considering that the girl found herself repeatedly in police custody, why wasn't she—and her dad—recommended for social rehabilitation?

Even though the text itself would not tackle the issue of social help, it nevertheless seems willing to assume that it's not the question to ask for the attorney general, as Hallaq's plea was more into a reasoning of harm inflicted from the Other—through the ex-wife. The general theme is therefore that of lost family values—and what the prison incarceration does is precisely more damage. It is as if the defendant is questioning incarceration for failing to provide the deterrent it claims, having already damaged the well being of an entire family. Hallaq therefore implicitly questions the discourse of discipline and punish, on the basis that to get him right on track his family had to be wrecked apart. A parallel issue was raised: that of the daughter who was placed on rehab, her learning experience and new skills, and the father's fears of her becoming too independent. What is therefore at issue here is that broad power relation that the state engages into with its citizens, where both penitentiary and rehab institutions are evolving towards social control. Yet, social control is impossible without that individualizing power relation with the subject: that same individual who is subjected to medical, legal, and moral discourses.

In the second letter, Hallaq admits his "misbehaviors" to the chief judge, and he does it with the same kind of virtuoso arguments against his ex-wife, propounds over the difficulties he encountered while attempting to control an uncontrollable teenage daughter, while going over his daughter's runaway habits. But then something new emerges, which was not there in the first letter. Hallaq seems to be questioning the chief judge over the very notion of what *is* a criminal: I admit that I was abusive towards my daughter, but does that make me a criminal to be humiliated in a criminal court? By asking, Why am I a criminal?, the offender is not so much looking at the wisdom of incarceration, but rather questioning the very notion of criminality. At the heart of the western penal system of the modern age (since the 19th century), which the Syrian system only attempts to mimic, lies the endeavor to construct "criminality" from a myriad

of legal, medical, and societal perspectives. In this ongoing debate "the personality of the criminal" is at the core of the tangle between the legal and medical. As the legal field itself has its own normative values, which it regulates through its own rules of law, why would it need endorsement from the medical field? Precisely because it is unable to determine what this presumed "personality of the criminal mind" is all about.
More importantly, are the complimentary issues raised by the two letters regarding social control in general. On one hand, there are institutions of social control which come in parallel to what the family is supposed to do: the school, social work, counseling and rehabilitation, and psychiatric and social institutions. Those all constitute parallel spaces of control—in the same way that the prison itself is the quintessential space for control. When the family fails, control is taken over by other institutions, usually public state institutions, and the latter may involve confinement of some sort: for instance, medical and psychiatric institutions would normally require individuals to be locked away for limited or unlimited periods. In the two letters the question that the defendant seems to be asking is, why me and not my daughter? Why was I treated like a criminal, tried, and then incarcerated, for my daughter's mental disturbances? In other words, the daughter's alleged disturbances should not have remained within the family's confines, and should in principle have migrated elsewhere—towards social institutions run by state agencies. When the state failed to take notice—in spite of repeated police intrusions in the defendant's and daughter's lives—the defendant crudely mishandled his daughter, opting for a cruel incarceration instead of the *incarcération douce* that would have been provided by a professional social institution. Accused of "restricting the freedom" (*ḥajz ḥurriya*) of another person, the defendant is reversing the accusation: I'm now the person whose freedom has been restricted, for the social aid that the state never provided me nor my daughter with.

All those silent observers

Consider what in this respect the defendant's sister had to reveal to the investigating judge; a prototype of a silent observer who knew all along that her brother was locking up his daughter, but never bothered to do anything about it. She even seemed on the defensive when speaking of "reputation"—that of father *and* daughter. What is staggering is all those "ideal" observers who knew about the lock-in, yet never bothered to report it to the police or other authorities. What such an unwillingness points to is that inability to act *outside* the community's shared values, for instance, by accepting state law as an external imposition.

> "The defendant is my brother, he has divorced his wife, the mother of the girl Sahar, roughly 12 years ago. From that time on this girl has been repeatedly running away from her dad's home, causing him all kinds of problems. At one point she was arrested and placed in a center for the care of girls (*markaz mulāḥaẓat al-banāt*). In the last two years her father tied her up and placed her in one of the rooms in his home. He tied her up for probably two months, then locked her in a room for two years until she ran away. He used to feed her either in the bathroom or toilet, because the rooms all give on balconies, and he was always afraid that she would run away. I don't know if the defendant's wife used

> to push him to do what he did with the girl. My brother only started to lock up his daughter once she had left the care center, as he was afraid of **his girl's reputation and his own reputation as well**. My brother's daughter used to excessively run away from home."[32]

A neighbor (b. 1954, male) stated that "I'm the defendant's neighbor in the same building. On many occasions the defendant asked me to go with him and look for his daughter, as she used to run away all the time. At one point we got her back from the Jamiliyyeh police station, and on another occasion from the Bab al-Faraj station. I knew from the defendant that in order to avoid such pitfalls in the future he began locking her up in one of the rooms. I don't know for sure whether he tied her up or not."[33]

Another neighbor (b. 1958, male): "I'm the defendant's neighbor, and I know that his daughter Sahar runs away all the time from home. On one occasion the police came to my home and had Sahar with them. They've asked me whether I would be willing to receive her as a third person, but I couldn't, as it was 2 am after midnight. The day of the incident I was taking up the stairs to my home when I noticed our neighbors in front of the defendant's home, with the smell of smoke all over. I went home to pray, then went back, and noticed that the bathroom door had burned out. There was like an opening in the door of a 50-cm diameter, but didn't see the girl. I've heard from our neighbors that the defendant used to lock his daughter in one of the rooms, but cannot ascertain that he tied her up. I've seen the defendant's daughter run away twice from the balcony."[34]

The daughter herself was interviewed by the police at her hospital bed: "The defendant Mahmud Hallaq is my dad. He had separated a long time ago from my mum and married Mayyadah Mayo who gave him several children. My mother had for her part married another person, and I myself live under my father's authority. As an outcome of the poor treatment that I've received from my stepmother, she forced me to run away from home on several occasions. **My father used to beat me up a lot**, and in the last three years he locked me up in the bathroom, with my feet tied. That lasted for several months until he untied me, leaving me locked in the bathroom for two years. I've run away on several occasions because of the poor treatment and beating I was subjected to. One day when my dad was on travel, and my stepmother and her kids were visiting her parents, I managed to damage the bathroom door, creating a small hole into it, then went to the front door, opened it and crawled down the stairs. I then entered the lobby of a neighboring building, where some residents noticed me. One of them took me to the home of Um 'Asim who fed and sheltered me for a while. As I had problems walking properly, I was taken to the Kindi hospital where I'm at present. **My mother never encouraged me to run away**; I leave the right for a personal lawsuit to my mother."[35]

Thus far, in spite the diversity of witnesses in the sample that I've selected, their

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[32] 15 December 1996.
[33] 18 February 1997.
[34] 18 February 1997.
[35] 22 February 1997.

statements have been pretty much been consistent. In effect, the eerie consistency seems so much paranormal that one wonders whether it's the act of writing and the editing itself—not to mention the question and answer format—that produce that kind of perversity. In themselves, therefore, the above statements, either individually or in their totality, are much poorer than the defendant's two letters, a poverty mostly attributable to the limitations imposed by the question-and-answer format, and to the self-intransigence of the questioners: not only did they impose limitations on the witnesses, but also to the limitations imposed on themselves. Thus, the line of questioning was limited to (a) the father's divorce; (b) the stepmother that was the problem; (c) the daughter that could not stand staying home, because she was beaten up and abused; (d) her repeated runaways; (e) the father's decision to lock his daughter up, and for a while, she presumably had her feet tied; (f) the final episode where the girl manages to run away for good and is picked up by residents in the neighborhood; (g) the father's arrest, trial, and imprisonment.

Topoi (a) to (g) constitute the "narrative thread" for the totality of the case, which manages to connect documents as diverse as police memos, interviews and rulings. The narrative thread therefore brings together diverse texts, in essence structured differently (some adopt the question-and-answer format, while others validate evidence and push for recommendations), around a set of tropes. The downside of it all is that one feels there's very little experimentation in the process, which implies that the file from its very beginnings has already settled for a narrative that would later be adopted up to the final verdict. Even the father–daughter police depositions look oddly similar, and it's only the role of wife–stepmother that is reversed—from a faithful loving wife to an evil stepmother.

The wife–stepmother recounted the event as follows: "I've been married to the defendant Mahmud Hallaq for close to 11 years, his daughter Sahar lives with us at home, and we have fours kids in common. Sahar used to always run away from home. She had been arrested in prison on several occasions. He father neither locked nor tied her up—and certainly not in the bathroom or toilet. She had run away from the front door which was not locked. I have no idea why she burned the bathroom door."[36]

Such statement—even though formally reverses all evidence—nonetheless follows the same narrative script, as the richness of the episode is being reduced to its most basic components: Was the girl locked up? Was she ever tied? Was she beaten up?

Even medical expertise of the girl's state when she was rushed to the hospital didn't deviate from such rules, blurring "scientific" discourse with the emotional.

> "The day of the event," said the doctor in his interview to the prosecution, "as I came to my clinic some acquaintances of mine contacted me and told me that there's a girl in their home that cannot walk, wishing that I come over to examine her. When I went there and did so, her weight didn't make more than a five-year old kid. She looked extremely thin, with apparently lots of calcium on the edges

[36] 18 March 1997.

> of the bones, with an inflated stomach. She was unable to move normally, as she was incessantly crawling on the floor. The reason for such symptoms was malnutrition and squatting for prolonged periods (*qurfuṣā'*) without any exposure to sunlight. I was told that her father had locked her in the bathroom for long periods, had her eat from the trash. I decided to rush her to the Kindi hospital, where I came to realize that she had tuberculosis [*sill*] around the intestines as an outcome of malnutrition and humidity. We were able to open a portion of the stomach and take a sample for analysis. We then subjected her to physical therapy, giving her calcium for the bones, and her condition is at present improving, in particular when it comes to the bones structures."[37]

We finally come to the testimony of the lady that took care of her and had her stay in her apartment. "Some time ago I've heard from the inhabitants of our building that they've spotted a girl at the entrance in poor condition, with worn out clothes, unable to walk, and squatting on the floor. I went down to the lobby and met the girl. My kids carried her to our apartment, we gave her food, and she ate a lot, which indicates that she hasn't been eating for some time. I then washed her, gave her new clothes, and summoned Dr. Muhammad 'Abdul-Baqi to examine her, who later transferred her to the Kindi hospital. She had stayed with me for 20 days, and was told that her father and stepmother brutalized her, and was tied in the bathroom and toilet for three years, and wasn't fed properly…I did call her dad at some point, and summoned him to come and see her, but replied that **he doesn't want her**, and that I could keep her as long as I wanted."
The expression of "crime blocking the freedom (*jurm ḥajz ḥurriya*)" of a minor, in reference to penal article 552, was first articulated by the investigating judge in his report on March 1997, which went unusually fast, a couple of months amid the arrest. Rebuffing claims by the accused that he never tied up his daughter, considering them as cheap attempts "to **extirpate himself from penal responsibility** (*mas'ūliyya jazā'iyya*)," the judge centered his hostility towards the defendant on the girl's deteriorating health conditions:

> "Statements by witnesses, beginning with the defendant's own sister, confirm that he used to **tie up** his daughter. The doctor who examined the girl confirms such a possibility: by the time the girl had been transferred to the hospital she was suffering from bone and muscle pains on the upper and lower edges, an outcome of poor malnutrition and of sitting on the floor motionless days in a raw without sunlight. She's also suffering from a swollen stomach due to malnutrition and humidity."

Tying the girl up for prolonged periods seems to have made it for the judge. In other words, the three-year bathroom lock up was bad enough, but maybe just not enough to meet the demands of a criminal ruling. The tying up had to come at the rescue, because it indicates not only a premeditated attempt to restrict the girl's freedom, but also a desire to inflict physical harm. It is as if the pervasive lock up wouldn't by itself incriminate, while "bondage" (with its sexual innuendos) was more juridically persuasive, since it *was* at the

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[37] 1st of March 1997.

root of the physical *damage* that the girl had suffered. But considering that most witnesses had denied knowledge of the tying up (*rabṭ*), limiting themselves to hear-say, namely, that the father used to lock up his daughter in the bathroom, the judge was moving on thin evidence: in the final resort, it was the doctor's report that saved him, because it strongly argued for physical (if not psychic) damage.

The defendant's counsel teasingly mused how his client had been hastily disparaged as "a savage disguised in the image of a human being, tying up his daughter with chains, incarcerating her inside the walls of the bathroom and toilet for over two years, throwing at her what's left of the family food, forbidding any contact with sunlight, etcetera." The defense then ponders, Who said such things? Where do such allegations come from? How did they circulate from the judge's report, to the medical report, up to the upper court?

The defense alleged that his client's daughter "is affected by a mental and emotional problem," a consequence of her parents divorcing over a decade ago. "Because she makes her father responsible for what happened, for preventing her a normal life with a happy family, she gave him a hard time, fabricating stories and lies from her rich imagination, alleging that she had been abused and tortured, simply to damage her father's reputation." Moreover, only one thing pushed the father to behave as he did towards his daughter, namely, "the obsession (*hājis*) to safeguard his **female** daughter's honor, by not letting her go out." Adding the redundant adjective "female" before daughter was meant to underscore the protection of *female* honor (*sharaf*), which in the last resort *is* the protection of family honor. Considering that some honor cases receive a special treatment in Syrian courts, bringing honor in this context was probably meant to mitigate the circumstances under which the defendant had operated.

Having glossed over the main episodes—the burning of the bathroom door, the girl's escape, the woman who took care of her, and her transfer to the hospital for treatment—as pure "works of fiction" with a "romantic" bent to them, good only for newspapers, the defense managed to tie up its case thanks to allegations regarding the daughter's fragile "mental health" *and* her honor: "At times, due to the constant attempts of his daughter to run away, all of which have been documented in the police records, and due to his **excessive fears at protecting her honor, *because she is a female,*** my client used to discipline (*ta'dīb*) her within the well-known and approved norms in society (*mā huwa ma'lūf wa muta'āraf 'alayhi ijtimā'iyyan*), as permitted (*mubāḥ*) in custom and law (*'urf-an wa-qānūn-an*)." The physical abuse—or discipline, for the defense—receives, therefore, its benediction from the norms of society, on one hand, and the honor étiquette, a supplementary norm, on the other. The defense locks therefore its case within the normative triad of honor, discipline, and insubordination, arguing that there's no evidence of physical abuse of any kind, but only a coercive process within the *recognized* norms, as *any* father would do.

By the time the Jinayat publicized its verdict on March 1998, penalizing the defendant for three years with hard labor, whilst reducing it to one year for mitigating circumstances, it blatantly retorted apropos the girl's so-called "mental and emotional problems," arguing

that this is an issue to be decided "only through medical expertise and **science**, otherwise the defense statements would remain what they stand for without any valid foundations." The court added: "the girl clearly stated that she used to run away repeatedly from home due to excessive maltreatment by the husband's wife, which should not have constituted an excuse for locking her up for three years, until she got all those diseases which have been well documented in the various medical reports. The accused had to treat his daughter well,[38] in order not to let her escape from home repeatedly."

Articles 555 and 556 of the penal code inaugurate the second chapter on "crimes that affect freedom and honor," and are bundled under the same heading, "forbidding freedom (*ḥurmān al-ḥurriya*)." Article 555–1 states that "a person who bans another of his personal freedom in whatever way would be punished in prison for six months to two years." The second section of the same article states that "the punishment on the criminal would be reduced, as stated in article 241 section 3, in case there is voluntary release of the kidnapped person within 48 hours, without having any other crime being perpetrated, be it a crime or a felony." On the other hand, the criminal would be punished for incarceration with hard labor in case: "(a) the period of forbidding [freedom] went for more than a month; (b) the person who has been forbidden freedom has been subjected to physical or mental torture; (c) the crime has been committed on an employee when performing his duty." In our case here the court has criminalized the defendant based on article 555 and sections (a) and (b) of article 556. The court did not therefore make much of the special relationship between father and daughter, placing both under a more abstract and generic relationship as if they were strangers.

The impotence of the father's gaze and the daughter's guilt

Feminist theory has incessantly theorized the overlap between the male gaze (*le regard*) and its production of a power structure that becomes hegemonic.[39] By metamorphosing into a hegemonic male gaze, the female is the subject of the male's eye, that is, power. The male gaze objectifies itself therefore as an hegemonic power. What such an analysis confuses, however, is first the difference between the subjectivity of the eye and the objectivity of the gaze, and second, the fact that, rather than establishing itself as an hegemonic totalizing power, the male gaze (or eye) could be helpless and impotent, torn between incestuous libidinal desires, and lack of sexual satisfaction. As in crime, there is a triangle that establishes itself between the male gaze and the presumed female victim. Rather than limit the gaze to a duality between the male that observes and the female that is the subject of observation—both sides acting as *subjects* of volition and desire—we should rather conceive the operation as a triangle involving two subjects and an object: that is, to differentiate the gazing eye and its subjectivity from the objectivity of the gaze. The woman who is gazed at cannot in return see the location of power of the eye that gazes: what she sees is the gaze as a totalizing object, but she's unable to see what the

[38] The assumption here, from the court's perspective, is that he didn't do so.

[39] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity,* London: Routledge, 1990; and Joan Copjec's critique, "Sex and the Euthanasia of Reason," in *Read My Desire: Lacan Against the Historicists,* Cambridge, Massachusetts: The MIT Press, 1994, 201–236; and *infra,* Chapter 6 on honor killings and the deadlocks of the "male gaze" theory.

eye sees. It is, indeed, such a gap that is at the basis of the lack in the triad between the subject's eye, the gazed at subject (victim), and the gaze as object, which is the only thing that the subject-victim can apprehend, because the victim cannot place herself in the same position as the (hegemonic) male's eye. The triangle (triad) is therefore between:

- the male's subjective eye of a torturer
- the female's body as the object of the gaze
- the objectivity of the ignorant, clueless and impotent gaze

The question to be posed here is that of the addressee, considering that a crime is structured on a triangle between offender, victim, and a third-party addressee which by definition remains an unspecified and posthumous audience, including in the final instance the court itself. The addressee could well be Hallaq's first wife, with whom he had a troubled relation, and which in his letter he describes as "liberal": their daughter's incarceration was aimed at a wife who wanted to be outside her husband's gaze; or, to be more precise, she wanted a space outside the male's gaze, which for her implied spending long hours of the day *outside* the marital household.

Let us return one more time to the letter to the judge, even though chronologically it may have come as second, because of its simplicity in that it obeys to a binary structure where the mother-addressee is absent.

The emphasis in this missive is on reputation and honor: the daughter kept escaping to the streets, which was dishonorable to the family, and to the father in particular. The father therefore locked his daughter to recapture his honor. The daughter was willing to escape her father's gaze, which meant leaving home and finding refuge in the streets, but the father soon reversed the situation, not only by bringing her back home, but by locking her in the bathroom like an animal, even feeding her personally rather than letting her eat on her own, subjecting her to a damaging gaze. However, as will become more evident in the (first) letter to the attorney general, this gaze has nothing hegemonic into it, as it was riddled with anxieties and fears (including incestuous traumas and sexual lust towards the daughter). In other words, it neither dominates its object of desire, nor does it achieve satisfaction in incarceration; the *jouissance* comes as the supplement in the pain inflicted on the object of lust, the incarcerated daughter. On the other hand, there is the precariousness of the daughter-victim which no documentation could possibly account for—the unspoken, unaccounted for, and un-said. She was brutalized and treated like an animal, and had her health irreversibly damaged; but what remains unsaid is the feeling of guilt that she shares with the source of the gaze—her father. In fact, perpetrator (criminal) and victim *share* the guilt that traverses both of them, like two sides of the same coin. For that very reason, the power relation which is supposed to conflate the omnipotent gaze with a power in a spatial relationship that should remind us of Bentham's panopticon, cannot possibly bring satisfaction to either party, as both are traversed with guilt and sexual lust that cannot be consummated. In her role as victim, the daughter receives her father's full obsessive attention, an outcome of an incestuous desire that has no space of its own for consummation, but only as *jouissance* in pain. She therefore shares the guilt of enjoying that unique male attention, which happens to be that of the father—the enjoyment of suffering.

Which leads us to the key statement in the letter to the judge: "But **putting me behind bars in a criminal court with my daughter's knowledge [*amām ibnatī*: in front (in the presence) of my daughter] was certainly not the right decision**!!!" The Arabic text literally says that "I'm in jail *in front* of my daughter," which could be translated either as "I'm in jail *with* my daughter's knowledge," or "in the presence of my daughter." However we translate it, what is at stake in such assertion is that what gets the father apprehensive is precisely *the reversal of the gaze:* the daughter is now the one gazing at her father in a prison cell, that is, incarcerated the way she herself was only few weeks earlier. The whole episode concerns what sets the father's perceived humiliation. The gaze towards the incarcerated daughter-woman should in principle (following all feminist conventions) come from the male-father, but here we have an uncanny reversal of that classic situation: it's the father who is behind bars, and the daughter is set free, gazing at him (assuming she wants to). Even though the father (now behind bars) seems to be looking at this as a poor *moral* lesson for his daughter, the truth is that his new condition as inmate reverses the pristine gaze of the male-father. What will the daughter do now that the gaze has been reversed in her favor? Would that constitute the road to freedom for her? Of course, the network of symbolic representations would portray the daughter in a safe heaven, away from her father's gaze, in the safety of social services. But in the illusion of absence of all prohibitions, this may not be the case.

It is at this stage that the father, in his own words, fully "humiliated," returns as *defendant* towards the judge, claiming that he cannot understand why is *his* case sitting in a criminal court. He even quotes the judge perplexed how is it that the Hallaq case came to his criminal court: the judge was allegedly the first to question, what is *this* case doing here?, either implying that there is no criminal behavior on the part of the defendant, or else that this kind of criminal behavior would first need some kind of psychiatric assistance; hence the whole charge of *"ḥajz ḥurriya"* stands only formally as true: the father did restrain his daughter's freedom, which is against the law (only the state has such hegemonic right), but there is something else to it, a moral problem, for example. However, in light of our above analysis, the desperate appeal to the judge could be also read in a different logic: there is nothing criminal per se about a father gazing at his daughter, even if it was conducted under inappropriate inhuman conditions—that's part of the family–sexuality predicament. The assumption behind such scandalous remarks is that he stands at the same time as the representative of authority and the big Other; as such he is the bearer of morality and values—and Law. Now in jail, the father is exposed in his utter impotence and guilt; while the daughter is in turn guilty for causing her father's humiliation. Taken in toto, the narrative is one of the disintegration of the familial socio-symbolic network, which, to be sure, took place before the father's incarceration. In fact, even though the father was in a position of power, and the one who triggered the omnipotent male gaze, he was at a loss vis-à-vis "his" two females sharing the same household: his first wife and their daughter. Having had troubled relationships with both, the father ends his relationship with the wife, then locks the daughter into a triangle where torturer, impotent gaze, and victim all share the same space. In reality, it was the father who *was* tortured because the moral values of the big Other and the familial socio-symbolic network were disintegrating. His solution to such disintegration was to literally place his daughter on hold, himself becoming a criminally handicapped

and clueless torturer. Crime is here understood as a transgressive act which sublates law as such, making its very abstract condition possible through a tangible transgressive act, while reinstituting moral values. The father's incarceration by the official authorities only formally reverses a situation that was already there in the first place, namely, the triangle between torturer, victim, and clueless impotent gaze. Even though the torturer stands now handcuffed, while the victim stands "free" on her own, the objectified gaze is still there; hence the reversal is only physical but not mental, as both guilt and gaze are still there on the two sides. When the father bemoans to the judge that "**That's what they do now with a girl to make her independent, so that she does what she pleases**. The father is for his part destroyed and imprisoned, his home and work have been damaged…What should I say to God, considering that you're the one who orders, and you're the wise person," he seems not to realize that he was already "destroyed and imprisoned" *before* he got to jail. Indeed, it was that incessant obsession with woman's "independence," one who "does what she pleases," as exemplified by mother and daughter, which triggered that path towards destruction and imprisonment. Deep down into himself, the father was already into a process of ego disintegration, with that uncanny feeling that the traditional values of family and sexuality, which his parents may have cherished, are nowhere to be found with the modern woman who "does what she pleases." With the big Other, the agent of social authority not fulfilling its role as pacemaker to the individual superego, the latter launches itself into a process of crime and punishment. It is revealing that in the above passage, the defendant is precisely addressing himself to no other person but a judge, the very person who symbolizes moral authority—and Law; God comes as a super-judge who oversees the sufferings of humanity—the supreme gaze. Both judge and God are, like the defendant himself, clueless and impotent, wondering on their own what will happen next once social barriers have broken down.

Such elements constituting the core of the triangle of crime as transgression—torturer, victim, and objectified gaze (the anonymous "audience")—achieve their visibility even further in the letter to the attorney general. Complaining first that the legal notion of "restricting freedom" would not fit with his own case, the truth, says Hallaq, "is that I'm **protecting my minor daughter from loss, deviancy, and the road to debauchery and deviancy** (*inḥirāf*)." The notion of deviancy comes once more for a third time: "**This girl has deviated into the path of evil and error**." Even though the lock-in process was perceived as an enterprise of "protection" towards the daughter, it was the father that needed protection—from *his* own perceived disintegration of social mores in his own family and society in general. It is at this stage that the ex-wife comes through as "**a rebellious and independent person**. She had her own **perverse manners**, looking down at marital rights," all of which reinforce that perception, in the father's mindset, of the disintegration of the familial socio-symbolic network. By the time, therefore, the father reveals at the end of his missive that "**I wished that my daughter would grow up fast**, so that she would get married and live her life as she wishes in peace," he was probably fearful of his daughter's *proximity*—that she was too close as an incestuous object of desire, which could not be confined to *any* particular space.

To be sure, the most perplexing role in all this comes to the second wife (and also the sister and some of the neighbors)—those *external and silent observers* who had seen it

all, from the husband's guilt and sufferings, to the stepdaughter's incarceration, up to the husband's arrest and imprisonment. By describing his second wife as "**a person who knows about values and principles**, has all the good manners, while respecting and sanctifying marriage," the tortured father idealizes a person who had seen it all, yet remained silent; but was that dreadful silence a sign of acquiescence? What she symbolizes is that position of an immobilized witness who cannot but observe what goes on—another devoted *regard.*

What therefore brings the two cases in this chapter together is the very *symptom of crime,* as both protagonists did challenge in their own language the aura of justice: the unconscious turns into the discourse that registers the gaps and failures of the big Other. The truth that articulates itself in those solitary messages, which are not even meant to be read by anyone, or taken seriously for that matter, is the truth about the failures, gaps, and inconsistencies of the big Other, which is in this instance is the moral side of the justice system. Against the will of both authors-defendants the justice system was brought on trial for not being able to properly handle "their" case. But on which ground exactly? Where did the justice system fail, if at all?

Every crime is a symptom of Law. While the Law posits itself as an empty abstract system of rules and norms, the criminal act in its very magical nature transgresses such socio-symbolic comprehensiveness of the norms. Crime challenges the order that it transgresses: the criminal is telling society at large that I fully agree with your justice, on the proviso that I eliminate first all those who do not fit into that order, all those who are masquerading in the name of justice, order and Law. Justice reacts to such murderous claims by enacting due process and the rule of law, which through just punishment bring the criminal back to society, as elucidated in the philosophy of the Enlightenment. But what if criminals, instead of simply acknowledging their role as instigators of public disorder, only to repent once the verdict is spelled, pursue further their transgression by *writing their crime.* Criminal transgression therefore doubles in the very act of writing as further transgression, or more precisely, the crime of writing parallels the criminal act itself. Both Buthayna and Hallaq did just that in their own way: they have reordered what society accused them of doing—a criminal act that either one failed to acknowledge—in their own language, which in spite of borrowing heavily from the socio-symbolic order, nonetheless reconstructed each crime from its own authorial perspective. In other words, in what seems like an ironic twist, all the judicial procedures that we have gone through in the first two chapters have been transgressed in practices of writing which reordered events not from a multitude of interviews (as prosecutors and judges normally do), but from the vulnerability of the subjective self. Flawed as it may seem, such writing comes at the heart of criminality, as it reminds us that the fragmented aspects of the self the subject is unable to sublate are finally "sublated" in the criminal act itself, which the alleged criminal leaves behind unacknowledged.

[Chapter 5] The death penalty, torture, and due process

So that they may become a lesson to others:
why the death penalty still matters

Figure 5–1: Five young men, accused of being part of a murderous gang, at the gallows, in Aleppo, Bab al-Faraj square, 25 October 2007; the photos were published at <syria-news.com> the day of the execution.

[C5–1] On 25 October 2007, in Aleppo's city-center, five young men were publicly hanged at the Bab al-Faraj square[1] at daybreak, in the presence of a fairly large crowd;[2] two of the men were accused of being "members" in a "gang" that had terrorized the city since summer 2007, prompting the authorities in Damascus and Aleppo for a swift *public* performance.[3] The historical piazza, which was the site in the late Ottoman period for public hangings as well, against "Syrians" who looked forward to "Syria" as autonomous from the Empire, was now crowded with people cheering up the executions. History repeated itself but with an ironic twist: amid the 1979–1982 bloody crisis with the Muslim Brothers, which was initiated with the massacre of Alawis at Aleppo's artillery school in 1979 and culminated in the Hama massacre in February 1982, the security forces inaugurated their "recapture" of Aleppo back then with a series of indiscriminate public hangings. Significantly, all five men which were executed that morning were born in the 1980s, Aleppo's most troubling period, hence were in their prime twenties upon their execution. The public performance derived from a military tribunal that was set in the Midan neighborhood in Damascus, to which all five were summoned for brief hearings, only to listen to their impending death sentence at the hands of a military judge.

Notwithstanding that the crimes allegedly committed by all five were for the most part homicides for the purpose of theft and robbery,[4] hence were neither political per se, nor

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[1] Which was used by the late Ottomans to execute "Syrian nationalists."

[2] It remains unclear how so many people managed the early hours: Were they informed beforehand? Were news of the executions circulated beforehand, and through which media?

[3] Reported, among others, by the "independent" Syria–News website, which is "friendly" to the Asad régime: http://www.syria-news.com/readnews.php?sy_seq=64439, which carried the above two photos.

[4] For the law those stood as major crimes for the purpose of pettier crimes, which begs the question as whether the homicides were "necessary" per se, or simply "for the fun of it," as the hastily staged executions seem to suggest.

touched directly on the security of the state, the fact that in 2007 Aleppo was terrorized by a string of crimes, some allegedly related to the accused, while others were possibly not, and the fact that many of the crimes were *multiple homicides* portrayed as "gang" related, pushed the authorities towards a military-style tribunal rather than a civil one. With the 1963 martial law still active (it was formally abolished in May 2011, amid the massive street protests that shook Syria), the accused were charged for acting against "the public security of the state," thus a military tribunal took hold of their dossiers on that basis. Put simply, what this unusual public display of authority indicates, is that once in a nondemocratic society the symbols of law and order are shuddered by transgressive acts of individualized violence which reach public notoriety, such publicized violence would soon urge a swift action to restore confidence in the security forces and symbols of the state. Once the spectacle was over, crowds, which included some victims and their families, were chanting, in reference to what seemed like a direct endorsement of the president to the executions, "With our spirit and our blood we sacrifice ourselves to you, O Bashshār!"[5] The irony, therefore, is that all those young men, some acting independently, while others in so-called "gangs," which were reported killing and robbing at a rate that alarmed the city and exceeded all acceptable norms, would have gone unnoticed had they simply done it "the proper way": their cases would have otherwise been at trial at the Jinayat like all the ones examined in this book. Human-rights activists complained that all five neither had proper counsel nor appropriate hearings. Moreover, as the military tribunal applied article 535 of the penal code, charging all defendants of premeditated homicides whose sole purpose was to prepare for other lesser crimes, there was little room for maneuver. What is so puzzling is the large disparity of crimes attributed to the accused, even though all their crimes came down to a single determination: indiscriminate killing for the purpose of theft. Thus, the main protagonist was convicted of 8 homicides for the purpose of theft, while his "partner" "intervened" in four homicides with the perpetration of robbery; as to their third "partner" his case was transferred to a juvenile court because he was minor at the time, hence his life was saved that morning. The military court listed in its ruling 12 crime-events of robberies and homicides committed for the purpose of robbery in May–June 2007 all allegedly related to the "gang." As to the other three who were hanged that October morning, they were accused of slaying a 62-year old cab driver in summer 2007, prior to stealing his money; but even though only one was charged for the stabbing with a sharp knife, the other two were accused of "intervention" and "partnership." Thus, even though it is fairly obvious that the quantity and quality of crimes were quite uneven, what probably helped at bundling them together in the eyes of military justice *was* the gang-nature of the partnership of the first two: having jointly committed several murders in a row in 2007, the city was afflicted with mouth-to-ear rumors that a *'iṣāba* was terrorizing the city; the fact that the public state-controlled media outlets would normally not have reported such crimes, contributed to the disproportionate bloat. But what finally did it for the "public opinion," which in the absence of open reliable sources was based on hearsay, was the "connection" between a "gang" that had been looming large in the city all summer long, killing and stealing, in conjunction with the killing of an old cab lone driver, head of a family, for the sole purpose of robbing him. Notwithstanding that

[5] In reference to president Bashshār al-Asad who presumably endorsed the event, though not publicly.

preliminary investigations showed that the slaying of the driver was unrelated to the "gang," it was nonetheless up to the military court to bundle them together, as if to satisfy public outcry to the 2007 events in their totality. Here state authorities intervened on a *moral* ground, as the big Other that is always there keeping an eye on the disintegration of moral values, that is, on the socio-symbolic order of society. Seen in this perspective, the public executions would interpellate individuals at the core of their subjectivities, hence the efficiency of such ceremonies: I'm there to take care of you, because I'm *entitled* for and *capable* of doing so, no matter how hideous the crimes are.

Nor were the public hangings limited to Aleppo alone. In effect, the same military court had executed that summer a 30-year old man who was accused of killing a child and raping him in the town of Misyaf (similar in some respects to our case below, C5–2); still that same year, another man was accused of killing a four-year old girl in the Damascus countryside; both were publicly executed. What the 2007 executions do show is that, once "public opinion" seems thorny on morality and "security," the state may opt for public executions in parallel to the invisible ones performed in the coziness of the prison yard: "security" is indeed more a matter of ideology and symbolisms than a factual matter. Syria-news.com, one of the few media outlets to have reported the event on 25 October 2007, the same day of the executions, carried two photos: one was a wide-angle view with the five men lurking in the background, all dressed in while and still hanging at the gallows; in the foreground was a crowd shot from the back; the other photo reframed in close-up the five men as they were left hanging with nooses tight on their necks. The web-news agency therefore acts as its own reframed public gaze, a parallel big Other, or an additional one to the state authorities, appended by voluntary comments delivered by its own internaut web-users.

The death penalty is too little for people like that

Like many Arabic news media outlets that also serve on the web (e.g. al-Jazira and al-ʻArabiyya), the Syria–News website, which was quick to report the executions, leaves plenty of room for its readers' comments (*taʻlīqāt al-qurrāʼ*); and comments there were, spanning from 25 October 2007 to 5 November 2010 in reverse order, with the latest first. Compared to comments on American or European websites, which could be edited, flagged, marked as inflammatory, reported as abusive or racist, or simply deleted by the editors because they could represent a "legal risk" for the publication in question, the ones on the Arab websites tend to be "raw" in comparison, that is, usually left with no censorship in sight, and, in the absence of the law, no "legal risks" are at stake, hence all kinds of messages that could be demeaning, vulgar, or racist, are left there for the eye of the beholder. Most messages, however, even when "thoughtful" (e.g. apropos the righteousness of the death penalty or the legality of the military court), were one-liners that looked like twits where the message had to be delivered with the smallest amount of words possible, with its unique punch. The anonymity of the postings gives that impression of a never ending flow of virtual SMS-texts,[6] some explicitly responding to a

[6] Abbreviation for short message (or messaging) service, a system that enables cellular phone users to send and receive text messages. As (young) internauts seem versatile in both SMS and the web, there is that rampant tendency for very-short-messages over longer thoughtful comments.

previous posting, while most were oblivious to what others had stated; the obliviousness is, however, only formal: the language game is always established in a triadic contract between the single user, others who had already posted a comment, and all potential users–readers (like myself) who would not "participate" in the debate for good, but which act as a virtual Third Gaze anonymous audience. But was it really a debate? The users were thus supposed to "comment" on the article that reported the execution, but by posting messages and responding to one another, the postings in their totality have that uncanny feeling of a collectivity working hand-in-hand together, as if subjectivization was placed on hold. Moreover, as the users' base was not limited to Syria, even though the motherland detained a crisp majority, with messages flowing from Europe, Australia, the Americas, and the rest of the Arab world, universal participation transforms the phenomenon of public executions from a sui generis problem rooted in the politics of the authoritarian state, to outright endorsement. It is as if the false intimacy of the authoritarian state, which represents executions as the enforcement of the will of the people, is even more felt and applauded from the outside: that is, from the very fringes of all those depoliticized liberal democracies where collective participation is often reduced to a voice in the ballot box.[7]

[7] Carl Schmitt, *The Concept of the Political,* expanded ed., Chicago: Chicago University Press, 2007, which constructs the concept of the state on a concept of politics in terms of "friend" and "enemy," argues that "liberalism," understood as a system which tolerates diversity, depoliticizes society at large, while confusing religious, cultural, and economic motivations with political ones. For Schmitt, however, the "enemy" is always *external,* that is, located *outside* the territory of the nation-state, which would not bear one more civil-war episode (e.g. the U.S. in the early 1860s) in the form of an *internalized* friend–enemy division. In similar vein, Chantal Mouffe, *The Democratic Paradox,* London: London: Verso, 2000, argues that "it is vital for democratic politics to understand that liberal democracy results from the articulation of two logics which are incompatible in the last instance and that there is no way in which they could perfectly reconciled. Or, to put it in a Wittgensteinian way, that there is a constitutive tension between their corresponding 'grammars,' a tension that can never be overcome but only negotiated in different ways. This is why the liberal–democratic regime has constantly been the locus of struggles which have provided the driving force of historical political developments. The tension between its two components can only be temporarily stabilized through pragmatic negotiations between political forces which always establish the hegemony of one of them." (p. 5) The two "incompatible" European traditions referred to by Mouffe come from long struggles since the Middle Ages, if not before: "On one side we have the liberal tradition constituted by the rule of law, the defense of human rights and the respect of individual liberty; on the other the democratic tradition whose main ideas are those of equality, identity between governing and governed and popular sovereignty. There is no necessary relation between those two distinct traditions but only a contingent historical articulation." (pp. 2–3) In Syria, the "symbolic framework informed by liberal discourse" hedges on a formal acceptance of the rule of law, for instance, in the court system, and its bypassing whenever necessary, as in the example of public executions, in order to re-inscribe the pre-liberal state into the spectacle of politics. Since in authoritarian régimes, the hegemony of the "populist majority" is taken over by the state through a *political* elimination of all adversaries, public ceremonies tend to desperately represent that common consensus by all possible means, including executions.

Figure 5–2: Bloggers commenting on the 2007 public executions at <Syria-news.com>; even a year later, comments were still pouring in.

One commentator, signing under the nickname of "Umar Abu-Samr," wrote a congratulatory message to the "Syrian people": "My compliments to my brothers the Syrians. The death penalty is too little for people like that. Let's hope that they'll suffer more in the day of judgment." Another commentator under the nickname of "Abdulrahman" (in English[8]) wrote, referring to another user: "He said a civil tribunal!!![9] In a civil tribunal with a strong lawyer and corrupt judge they would have been all acquitted[.] Forget about the victims[.] We're a people that only needs a field military tribunal[.]"[10] A third user under the nickname of "the broken the broken," writes "who has the solution[?] First[,] we should only have mercy for the dead[,] second[,] the young are increasingly into a process of deviation[,] who is responsible[:] is it poverty[,] unemployment or class struggle[?] The responsibility goes 40% on the parents 20% on unemployment 20% on inflation 20% on poverty[.] Those [who were executed] got what they deserved[,] but we need a solution for the future generation[.] What is surprising is that they're from the class (*ṭabaqa*) of teenagers and I'm from the same age group[.] I know that all this is pure talk and there's no one responsible[,] so if you've got a solution to all this let us know with all due respect to your religion…" The majority of messages, however, were not that "thoughtful," with thank you messages to the president of the republic and his security officers all over, some even daringly boasting that "hanging [only once] is not enough," "as they should be hanged a hundred times." With the full "anonymity" of each user fuelling the debate even further, which places us-as-"readers" as the de facto third-party recipients, the messages could become embarrassingly nasty: "What difference does it make if the tribunal was civil or military?"; "they should have

[8] Names or nicknames were signed either in the Arabic or Latin scripts.

[9] Or another way of framing the question, Is a civil tribunal possible under such circumstances?

[10] Most messages are without proper punctuation; we've added whatever necessary for the sake of clarity.

been crucified!"; "We love you, O Bashshār!"

In retrospect, *now* that the young and vulnerable "Bashshār" is at the center of an insurgency which may prove fatal to his survival and that of his clan, the odes of joy seem a bit convoluted. What is at stake here is how individual exercises of support would turn years later into strategies of insurgency that would undermine the very roots of political order and stability. The authoritative roots of power, which were interpellating subjects prior to 2011, have become all of a sudden inoperative, at least in large chunks of Syrian territory which now looks like a patchwork of opposition guerillas versus régime supporters: Is that due to a shift of power relations or to strategies of interpellation which are more or less the same except that the big Other of moral and political order has *now* shifted in other undetermined horizons? Whether régime change would introduce new disciplinary loyalties is up for grabs. Suffice it to say that the moral and political big Other is always at play: once the unifying Master-Signifier is challenged, other more complex figures in-the-name of the Other come into the picture. The feeling of guilt for being all too loyal to the *ancien régime* would find its supplement in the excitement for the inauguration of the new political order.

Figure 5–3: Still more bloggers in 2008; one of them, under the name of "the broken" (*al-muḥaṭṭam*), relates the perverseness of the young (*inḥirāf al-shabāb*) to various social and economic prejudices: 40 percent on the elderly parents, 20 percent on unemployment, 20 percent on the high rents, and 20 percent on poverty.

In the Western tradition which goes back to the eighteenth-nineteenth centuries Enlightenment, and which Syria has inherited via the Ottoman Tanzimat through its adoption of the Napoleonic civil and penal codes, public executions which were an exercise of sovereign power were skewed in favor of the rule of law and just punishment. Such a change of metaphor comes in conjunction with a new grammar, discursive

practices, and forms of life. Such metaphors and practices represent for a country like Syria "legal transplants" whose origins are western, and whose actualization in the host country may take alternative forms of life than in the society of origin, even though the contamination is always there. We have in this book emphasized the narrativization of the case-file in order to underscore the importance of recipiency: it is not the codes themselves that matter—which only act as metaphors for new tropes—but *how* a case articulates its narrative logic within the confines of a particular social space—that is to say, the public to whom it is destined in the first place. By and large, our analysis of cases points to an undeniable truth, namely, that a major paradigmatic shift did materialize since Ottoman times[11]—through the nizami courts (which still have not received the attention they deserve[12])—and modernity: now each case is thoroughly investigated by means of accounts of witnesses and court experts, in addition to forensic evidence. Even though, as we have pointed out, much is left to be desired in the way the Syrian judiciary handles some of its cases, the paradigmatic shift remains plainly visible. What is more intriguing, however, is that necessity to incessantly operate at two levels. On the one hand, the judiciary operates through a meticulous processing of cases, as best as it can, but on the other, state intervention, whether in the form of public executions or in secretive (political) arrests, proceeds as if the Sovereign is still there operating either in an open space or behind closed doors. I want to argue, based on the sample cases in this chapter, that strategies of interpellation of the crudest type (involving executions, torture, or the death penalty) would come at the rescue whenever disciplinary practices reach their limit, fail to materialize, or simply "not enough."

Let's keep everything in secret

In 2002 Aleppo had only two inmates—both males—whose death sentences were implemented; while another one was executed in 2003, no one was in 2004,[13] but those years do nevertheless set the general trend, namely, that capital punishment does exist, but in very low doses, to the point that the official criminal statistics[14] fail to even mention them. The only crimes for which capital punishment is statutory are homicide and treason, but unlike the public hangings in Bab al-Faraj in 2007, which involved multiple homicides, capital punishment is usually inflicted on individuals who may have committed only a *single* crime all their life.

Since all three inmates were serving their sentences at Aleppo's main prison house, located further north in the suburb of Muslimiyyah, the hangings took place in the early mornings. As prisons do not host special detention centers for death row inmates, executions were carried out by hanging at the prison's main yard. The timings were kept secret, with few officials invited to witness the events, and no one besides that closely knitted circle of the happy few could sneak in. The Jinayat scribe who recorded the prison

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[11] See my *Grammars of Adjudication,* Chapter 11.

[12] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity,* London: Palgrave Macmillan, 2011.

[13] Based on my own investigations in 2003–05; since prison executions tend to be secretive, I was unable to check later years.

[14] Syrian Arab Republic, The Statistical Abstracts, published yearly in Damascus.

hanging in 2003 told me that "at one after midnight one rainy cold night, I woke up at the nock of our front door, where a policeman was waiting for me at the stairs: 'Dress up quickly, and come with us, a police car is waiting below; there's an inmate to be executed.'" Not that this was the scribe's first experience ever: there were at the time three Jinayat scribes (one for each court), and one was picked up at the last moment for a ceremony like this. The original decision for the death penalty obviously emanates from the Jinayat itself, and unless it is revoked on appeal by the mighty Damascus Naqḍ, it could sit for years waiting for an exclusively devoted presidential decree for the execution to proceed. But once the presidential decree, citing specifically the case at hand and its concomitant Jinayat ruling, drops in the hands of the "prime attorney" of the palace of justice (the real boss of the Qaṣr), things would proceed swiftly in the last few days of the inmate's life, as if time all of a sudden mattered. To come back to our Jinayat scribe, he told me on a quiet summer evening in 2004, a year amid the execution he attended, that

> "we've reached the prison at 2:00 in the morning; the "prime attorney" was there together with a doctor and a shaykh (religious person).[15] They took us to the prison's courtyard where everything was set for the execution; the convict was fetched from his cell, and apparently he was told that he'll be executed only before he went to bed last night. The attorney read the presidential decree confirming the president's approval of the death penalty; the shaykh asked the inmate if he had any final thoughts, a confession to deliver, or a message for his relatives; soon after he read the Fātiḥa, we were all set for the final moments. My job was to record everything, words and gestures, including messages that the inmate wanted to deliver to his relatives, which were not present, because everything was done at the last moment, in complete rush. The inmate, having said that he regretted his crime, was then hanged, and the doctor officially declared his death minutes later. I was back home to bed by 4:00, and delivered my report to the Jinayat chief first thing in the morning."

Unlike neighboring Lebanon, where death executions tend to be advertised, made public, attended by the press—and carefully monitored along sectarian lines—contributing to the plethora of opinions and demonstrations with or against the death penalty, Syria keeps its executions secret, and reporters in particular are definitely not welcome.[16] Not that people are not aware of the death penalty in Syria, nor that they suspect any unfairness in the rulings of the judiciary. Thus, even though the Jinayat's convictions are made public and anyone could attend the hearings, newspapers rarely report on crimes, and reporters

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[15] When a Christian is executed, a priest would replace the shaykh.

[16] Iran is alleged to have the second highest execution rate in the world after China, but supplies no official figures for hanging. Public executions in Iran are usually conducted as punishment for murder or rape, though lesser crimes, such as fraud, can also incur a death sentence. In one such instance, similar in some respects to the Aleppo hangings with which this Chapter was inaugurated, four young men, ages 20–25, were hanged at a public park in Khomeinishahr in 2011 in the presence of a massive crowd, mostly young men. They were convicted for forming part of a group of more than a dozen men, who invaded a private party in the city, tied up male guests or locked them in rooms, and raped a number of women: see, *World Press Photo 12,* London: Thames & Hudson, 2012, 66–69; Thomas Erdbrink, "Iran Resorts to Hangings in Public to Cut Crime," *The New York Times,* 21 January 2012.

tend to lack the curiosity towards the judiciary. More importantly, and considering that all three official newspapers and the mass media at large are fully controlled by the state, the moribund media fails to attract public attention on any subject worth mentioning. But even though there are no public debates on capital punishment, it would be safe to admit, however, that the majority would shamelessly approve the death penalty, primarily on grounds of deterrence, or else that it's fully justified to execute someone who committed such an abhorrent crime, showing no remorse, while posing a threat to the moral integrity of society.[17]

A further scrutinizing of capital punishment, however, reveals that beneath the most common perceptions lies deeper layers of religious and secular values regarding death, the body, sexuality, crime and the judiciary.[18] There might be concerns from the authorities that, for a country like Syria which does not particularly pride itself on human rights and civic values, the death penalty might be used by pacifists and activists around the world against the Syrian state and its abusive monopoly over violence (even though the death penalty is active in some democratic societies, such as the United States and Japan). The prime concerns, however, for the secretiveness of the death executions must be internal. Since everyone is aware that the state's prisons contain thousands of political activists (some are non-Syrians), some of which never had a just trial, the fear would be to use those civil unpolitical cases for political purpose. The state, therefore, is not that much fearful of open protests—which were anyhow extremely rare in Syria (until the inauguration of the "Syrian revolt" in March 2011)—and would rather contemplate the symbolic significance of the death sentence for civil prisoners.

Capital punishment for serious offenders is typically activated by the Jinayat, then approved or revoked by the Damascus Naqḍ once appealed, which is fairly common for cases of that caliber. In light of the crime the Jinayat makes its final decision as to whether the offender should be kept permanently in jail (life imprisonment), with or without parole, or whether the death penalty ought to be applied. In either case, the offender must have committed a *'amd* crime, that is, that he or she performed his or her crime with premeditation and careful planning.[19] In many of the deliberations that are presented in this book the most crucial decision turns into that ability to distinguish between a *'amd* and *qaṣd* crime, since the latter is limited to fifteen years of imprisonment. Lawyers for the young man who raped a boy, and in the meantime asphyxiated him when he started screaming, would argue that the prime motivation was sexual gratification not murder (C8–2). By placing rape as the prime motive, lawyers prevented *de justesse* the death penalty for their client: the asphyxiation took place inadvertently and without prior planning. Most of the *'amd* crimes, however, have their culprits incarcerated in jail for long periods, up to life imprisonment, with presidential pardons (*'afū*) every once in a while considerably shortening the detention periods. Only a tiny fraction, however, of the *'amd* crimes would go for the death penalty. On what

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[17] If publications are any indication of the general interest, the paucity of printed sources on the death penalty would indicate that the broad public shows no interest in such matters.

[18] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity*, Stanford: Stanford University Press, 2003.

[19] Which stands for first-degree murder in Anglo-American penal law.

basis is the choice for capital punishment made? The limited number of cases at our disposal does not probe for easy answers. To begin with, a homicide[20] would be construed as *'amd* (premeditated killing) only if "beyond any reasonable doubt." Even though such a terminology, originating from Anglo-American law, is non-pervasive in Syria, it is safe to assume that some of those incarcerated for life had their cases classified as *'amd* without, however, the "required" hard evidence. Because evidence is confusing, obscure, and at times inconclusive, and since the limited role of counsels at court hearings is even murkier, what gives a crime the consensus of premeditation becomes a question of customary practice. Some judges would go for the death penalty for no other reason that they beheld the homicide as disconcerting, beyond what the mores of society would tolerate, such as the killing of a child to hide deviant sexual behavior (C5–2), or the killing of a spouse for inheritance purposes, or else because of a lover lurking in the background (see, "swingers" case, C6–3[21]). The fact that most *'amd* killings would proceed without the death penalty poses the question as to whether capital punishment has mainly that symbolic aura attached to it—not necessarily as a tool of deterrence, but more so for what sticks out as vicious. Even though guidelines on capital punishment or discussions on its usefulness in law books and lay publications crucially lack, I would venture with the following nine points as an unofficial guideline:

1. Degree of viciousness.
2. Motive or the *niyya* of the accused: was there any indication of premeditation or *'amd*?
3. How the crime was committed; especially the manner in which the victim was killed.
4. Outcome of the crime; especially the number of victims and their age category; children who may have been killed for a sexual motive may create a strong incentive for the court to opt for capital punishment (C5–2 *infra*).
5. Sentiments of the bereaved family members, in particular the parents of a murdered child.
6. Impact of the crime on society: the authoritarian nature of the Syrian state may prompt for speedy executions like the ones described above (C5–1), whenever it feels that the impact of crime on society is making the state look impotent.
7. Defendant's age (full responsibility implies being a major above 18; minors are relegated to juvenile courts, hence subject to lesser sentences): it is common for families to send one of their minors for an honor killing, or at least staged as such, hence avoiding the criminal courts altogether in favor of the more lenient juvenile courts.
8. Defendant's previous criminal record.
9. Degree of remorse shown by the defendant.

[C5–2] Each death sentence is approved in a separate presidential decree (*marsūm jumhūrī*), signed by the president of the republic. Basim al-Saleh b. Bakri (b. 1965) was convicted by the Jinayat for premeditatedly killing a little girl prior to attempting a forced sexual act on her. Once the Jinayat sentencing was concluded in 1995, which recommended the death penalty, it was ratified a year later by the Naqḍ, and the presidential decree was signed on 18 July 2002, only to be followed by the execution in the early morning of 22 July 2002. Such an uneven chronology is fairly common: as many years pass between the crime itself and the conviction, the presidential decree

[20] Except for honor killings, see, Chapter 6.

[21] Chapter 6 on honor killings.

elongates the wait even further, but the execution is secretively scheduled barely a week after the president's endorsement. Jum'a b. 'Isa al-Matar (b. 1969) was on the death row for the premeditated killing of Jasim al-Muhammad, and the non-intentional killing of another person, and for non-intentionally hurting a third person. The presidential decree was signed on 10 October 2002, based on the Jinayat ruling of October 1997, and his execution took place in the courtyard of Aleppo's prison on 15 October 2002. Sha'ban b. Sulayman Salu (b. 1974) was on the death row with the other two for premeditated killing in preparation for a robbery. The presidential decree was signed on 16 April 2003, based on the Jinayat ruling on December 2001, and his execution took place on 27 April 2003.

I was told that the executed had neither been informed beforehand of the presidential decree endorsing their execution, nor of the exact date and time—until the last moment. The fact that only a couple of days separate the presidential decree from the execution is an indication of how much it's important to maintain secrecy. Executions are conducted in secrecy in the early morning hours, at one or two after midnight, and in the presence of the advocate general (*al-muḥāmi al-'āmm al-awwal*) or a representative of his; a Jinayat consultant; a *bidāya* first-instance judge; the police chief of Aleppo province (*muḥāfaẓa*); the prison's director (who is generally from the police and carries the title of *'amīd*); the prisoner's counsel, or another attorney in case the latter is absent; an official doctor (*ṭabīb shar'ī*); and a religious shaykh, or a priest in case the prisoner is Christian. All the spectacle is recorded by one of the two (previously three) Jinayat scribes. Once the presidential decree is signed and passed to the advocate general, precautions are taken at the Muslimiyyah prison, and the prisoner in question is isolated on his own: for instance, a fight is artificially created, and some of the prisoners are placed in isolation as punishment. Several years therefore precede—in our case here, six—the presidential decree. In the meantime, the prisoners on the death row wait for the Jinayat ruling to be overruled by the Naqḍ; or for the special pardon committee to lesser the punishment to permanent incarceration; or else to receive a presidential pardon. "Death-row inmates reach the point when they instinctively know they'll be executed," one of my informants told me, "as they can feel it coming." Whatever they may have felt in the long years amid the Jinayat conviction, or in the few hours prior to their execution, we will never know. I'm not aware of inmates on the death row who wrote memoirs or gave interviews, or of someone writing on their behalf, a friend, family member, or fellow inmate. They all died incognito in silence, exactly as they lived, in a society that does not place much virtue in the writing of personal confessions. Consequently, the only things we know of them are their mute "voices" in the austere Jinayat files.

After enumerating the official authorities that were present that night, the handwritten report on its second page proceeds with a description of the hanging:

> "After the *bidāya* first-instance judge solicited the sentenced [to death] to deliver his last statements [*aqwāli-hi al-akhīra*], which were recorded separately, Shaykh Muhammad Jamal al-Hut reminded the convict to read the two *shahāda*s, demanding from God forgiveness for what his two hands had committed. The convict was taken by the police to the hanging podium, where a rope was placed around his neck, the chair was slid below his feet, his body swung motionless up

> in the air, breathing its last moments."
>
> "The doctor said after examining him: 'The convict Basim b. Bakri has been diagnosed, and is now certain to be dead as a result of the execution of the death penalty by hanging until he died.'"

A brief addendum notes that the convict demanded, upon uttering his last words, to fetch if possible the father of the little girl he had murdered so that he would ask his forgiveness. He also wished not to deliver his body to his parents (who apparently were neither informed of the date of the execution nor authorized to attend), and to give it instead to a scientific institution that would benefit from it.

Basim was accused of a murder he allegedly committed on 29 March 1994, and whose Jinayat ruling was concluded in August 1995, which is speedy by Syrian standards. From the eight-page typewritten Jinayat final ruling, we learn that Basim was a policeman who was fired because of his "bad manners" (no further details provided). Upon his dismissal he went back to his village of Tall-Rifʿat, divorced his wife, and lived with his mother and sisters, close to the plaintiff's home, whose little girl was eventually found dead. On 29 March 1994, the report claims that Basim took the ten-year old Nuʿayma for a tour on his motorcycle. He allegedly drove her two kilometers outside the village, approximately 300 meters from the main highway that links the village to Aleppo. The assailant apparently took his victim to an agrarian no-man's-land where they could not be seen, and when the little girl started crying and urged him to drive her back home, he repeatedly slapped her on the face. The girl attempted to run away, but he managed to hit her with a one-kilogram stone, which was enough, according to the postmortem, to have her fall on the ground. He seized that opportunity to hit her two more times, and once he realized that she was still breathing he stabbed her twice with a knife on her shoulder. When he was certain that she died, he hid the body between three large stones, prior to returning to the village. Based on a tip from someone who saw them together, the police arrested Basim and accused him of murder. He apparently did not resist, immediately confessed, and was escorted by the police to the murder scene. In his confession to a Tall-Rifʿat judge, Basim was quoted saying that his main motivation was to retaliate against his victim's sister Ghada, which he claimed was "exposing" his own sisters to young men. He then reiterated his confessions in the presence of another judge in Aleppo. The victim's mother, however, maintained all along that the real motive was the perpetrator's desire to rape her daughter. The victim's father, for his part, had posed himself as an individual plaintiff (*muddaʿi shakhṣī*), demanding compensation.

The verdict in its section entitled *"adilla"* (evidence), pinpoints to several reports indicating that the assailant might have had a sexual liaison with the victim's sister Ghada. The Jinayat tends to describe an "illicit sexual act/relation" either as *zinā* (the "Islamic" term for an illicit act/relation), or else as a *fiʿl munāfi li-l-ḥishma* ("an act that is contrary to decency"), or that someone was caught with another in a *waḍʿ muhīb* ("a dreadful situation"). The Jinayat report, in Basim's case, uses all these terms interchangeably, pending on their original location in various reports, from the police, to the investigating and referral judges. When we sum up all reports, three alternative

scenarios become possible (even though the Jinayat did not present them in the form outlined below):

1. Basim and Ghada were having an affair, and the day of the murder, the little sister saw her older sister with Basim in "a dreadful situation." Basim decided to get rid of the little girl and dragged her out for a ride, then killed her exactly as described in the Jinayat report. With such a scenario, the prime motive for killing was not rape of a minor, but getting rid of a potential witness. The doctor's autopsy confirmed that no penetration took place, while Ghada for her part denied allegations of an affair.
2. Basim was annoyed that Ghada was trying to set up his two sisters with other men, which the latter denied: "I used to visit the offender's two sisters because they work on wool machines, and our relationship was commanded by work only," said Ghada in her examination at the Jinayat on April 1994. One of the sisters for her part also denied such allegations: "My brother's allegation that the victim's sister used to bring men to us is totally unfounded," said Ibtisam to the investigating judge on March 1994. Be that as it may, in this scenario Basim's "annoyance" would have translated into anger, first towards Ghada, but because he was unable to harm her, he turned against her little sister. In his original deposition to the police on March, right after the murder, Basim confessed for having had planned to rape Ghada, but was unable to do it, retaliating instead against her sister. However, in his deposition a month later to the investigating judge, he once more confessed his killing of the little girl, but denied, on the basis that earlier statements to the police were extracted under torture, that he ever committed his crime as retaliation against Ghada, or for the purpose of rape. That leaves everyone with the obvious question: Why did Basim commit the crime he confessed he did if there's no motive? In sum, a confirmed criminal, but without motive.
3. A final possibility is that the original intent was indeed rape—and only rape, meaning that neither Ghada nor the perpetrator's sisters had anything to do with it. Basim was simply interested in the little girl, and that was it. There isn't much evidence to support such a hypothesis, except for a statement made by a retired policeman claiming that he saw the accused the second day of the murder at the police station wearing only his underwear (*culotte*), noticing what looked liked dried sperm of six-centimeter diameter inside the frontal part of the underwear. For its part the Jinayat interpreted the sperm incident as an indication that there was an unsuccessful rape attempt prior to the killing: "It would have been impossible that [the accused's] sexual feelings (*'awāṭifa-hu al-jinsiyya*) would have been aroused *after* [my emphasis] the killing of the victim, and upon returning to the village." The ex-policeman's testimony, however, was enough evidence for the Jinayat that the prime intent was indeed rape, shunning other scenarios that would have placed Ghada as *femme fatale*, which would have placed Basim on the abyss of a hideous act because of his impotent gaze—to "perform" what he had in mind. In other words, Basim's inability to consummate

his sexual lust for Ghada turned into sexual violence against her sister.[22] Never mind that sex and violence do often mix, contrary to the Jinayat's interpretations, and that evidence here did run very thin. Of course, since Basim confessed of the murder, the Jinayat probably felt that it had what it wanted, even if *motive* was not there. But besides the fact that confession is never enough, and that confessing is sometimes a way to hide something at the margins of the crime that is even more morbid than the killing itself, the lack of a convincing motive should have given a hard time for the Jinayat to decide between a *'amd* or *qaṣd* motive. The Jinayat could have, for instance, adopted the position of the defendant's counsel which pleaded non-guilty on the basis of insanity, along the lines we've debated in the two cases on insanity in Chapter 3: "My client is affected by a defect (*khalal*) in his brain and thought, consequently his actions are an outcome of an insane (*mukhtall:* "unbalanced") will and consciousness, which justifies why he committed the crime in the way he did—without any prior image in his mind, without any thought about it[23]—but once he did hit his victim, the thought of killing came to his mind at that very moment";[24] which led the counsel to represent the crime as an unpremeditated killing: "the thought of the crime was the outcome of its moment (*walīdat al-sā'a*) in which *he* [my emphasis] was situated." That hypothesis, however, did not modify the Jinayat's mind regarding the intent of the killing, as the plea for insanity went nowhere. As a matter of fact, the Jinayat had no clues as to what really happened, or why the murder was committed, stumbling as usual on "demonstrative evidence." But the killing of a small girl for what looked—in appearance at least—a sexual motive, in the peculiar setting of a small town, where secrets are common knowledge, gave the Jinayat enough confidence in itself and mission, enabling it to rush towards a sentencing in an amazing speed, while bargaining for no less than the death penalty. Allegations of an affair between Basim and Ghada, which were denied by everyone, including the defendant himself, must have caused quite a stir. Similar allegations that Ghada might have acted as a "set-up girl" for Basim's sisters fostered in all probability a great deal of controversy. But by habit the Jinayat operates and sentences with little plausible evidence. Most of its reasoning subtly combines common sense and guesswork. It therefore opted not to go for the possibility of an affair between Basim and Ghada, which would have required

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[22] In similar vein, the sexual lust of the father towards his teenage daughter materialized into an impotent gaze where the girl was locked and bonded on a bathroom floor for a couple of years (C4–2). Sexuality thus turns into violence against the object of the gaze once a feeling of total impotence exacerbates the subject of the gaze, with the potential of murder looming in the horizon.

[23] Note how the counsel uses the combination of "image" and "thought" to clear his client from any premeditation; the two would coalesce into a *ṣūra dhihniyya,* a "mental image" that would visualize the act of murder *prior* to its commitment.

[24] Because there was no prior "mental image" of the killing, which would have signaled premeditation, it was the very act of hitting the girl with a stone, which was the product of its moment, hence deliberate but non-premeditated, which led to the killing. What is of value here is the representation of the "insane-as-unbalanced" offender as incapable of reproducing a "mental image" prior to committing the act of murder. Obviously, such claim does not stand evidence: why should someone who is "unbalanced" (*mukhtall*) would not be able to "imagine" what he or she is doing *beforehand* but only *after the fact?*

> messing people's lives even further, and on the investigative side, that would have required thorough and tough examination skills. The Jinayat opted for the hypothesis of a culprit acting on his own, solely to satisfy his sexual perversions (even though there was no effort to show them as perversions), but when that failed to materialize, he killed his victim, more in shame than revenge. The other alternative would have portrayed Ghada as a *femme fatale,* whose charms pushed her lover and admirer towards the killing of her little sister, in a murderous act that *transferred* revenge from the older to the much younger sister.

The lay discourse plays it safe when it comes at *interpreting* the fate of individuals. Either the socio-symbolic order and its machinery predominate, hence are posited as objectified artifacts analyzed as such by an external observer, or else all evidence for interpretation must be backed with hard facts, receiving acknowledged dues from peer review—the big Other of professionalism and authorial sanctity. In similar vein, the juridical discourse, as witnessed above, opts for the safest route, eschewing alternative possibilities which have nonetheless been explored and duly noted in writing, *eo ipso* in the verdict itself, which even though had accounted for possible deadlocks, only opted in the final analysis for sexual deviancy against a minor.

Should we therefore accuse the juridical discourse of oversimplification, in order to expedite its ruling in order to receive approval from the Damascus Naqḍ and third-party audiences of sorts? What such discourse does is enumerate all possible scenarios, only to filter the one that it sees best for the purposes of a final ruling. The problem, however, is more serious than it may first appear. In effect, what the juridical discourse does is to narrate events from a *first-person perspective,* which *eo ipso* implies a narration based on the rationality of individual action. To operate a paradigmatic shift, which is the very purpose of this book, we need to think actors as operating within multiple-worlds of action, hence the transparency of what they do and think would not be available to them as firsthand experience. In other words, the agentive causality which we require as agents from the first-person perspective is simply not available.[25] Such an illusion of perspective is at the cornerstone of viewpoints elaborated by both prosecution and defense. Thus, while the court's verdict, which closely mastered that of the prosecution, reasoned in terms of an assailant hungry for sex to the point of assaulting a little girl who was incapable of understanding his sexual lust, the defense for its part reasoned in terms of an assailant who was insane and incapable of "imaging" what he was doing. Hence both sides reasoned in terms of a first-person "self" that was either there (premeditated act) or not there (insanity), which precipitated the death penalty and its execution.

To bypass such deadlock, we need to think of the subjective "self" as a fragile entity which receives its recognition from an external gaze. To achieve such potential we need not go further than the Jinayat's own verdict, which elaborates on possible scenarios. That is to say, *all* the above three rationalizations must be *simultaneously,* in all their manifest contradictions, taken into consideration, as if emanating from a single system of truth, but with different layers. If Ghada *was* indeed at the center of action, as *femme*

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[25] Robert Pippin, *Fatalism in American Film Noir: Some Cinematic Philosophy*, University of Virginia Press, 2012.

fatale, then she must be accounted for to understand Basim's tragic act. In other words, there is no need to separate, as the court unsurprisingly did, Basim's killing of Ghada's sister from Basim's lust for his beloved Ghada. Once we accept that Basim developed a sexual lust for Ghada, only to be rejected, prior to developing an urge to rape her, Basim's final act would retroactively look like a bold attempt to place Ghada as a third-party "witness" for his hideous act against her little sister. In other words, the younger sister was sacrificed for the Third Party gaze of the older one: it was, indeed, the murder itself that transformed the mysterious and inaccessible Ghada as third-party addressee, inflicting her with a feeling of guilt that she may have not accepted, not even acknowledging her role as recipient of her sister's murder. In his groundbreaking study of American *film noir,* Robert Pippin notes that "the *femme fatale* entrances in noirs often suggest the extreme view of a magical spell or mysterious erotic power that can render the male forever *afterward* a mere dupe, a *passive victim* of such power, a *nonagent*. [my emphasis]"[26] Notwithstanding whether Ghada would fit in such role of *femme fatale,* what is of interest here is the *retroactive* side of agency: it is only in retrospect—which in noir is insinuated by means of the flashback and voice-over techniques—that the agent looks at his life as a complete loss—one deprived of a *conscious* agency. Let us imagine for a moment Basim on the death row for few years, not knowing if and when he will be executed, and probably indifferent to the possibility of execution and his fate altogether: he realized back then that he was the passive victim of the Object of his desire; his fate was in somewhere else's hands; and the presidential decree would only come as a final relief, in continuation of the fate of a lost agency. The court (and the presidential decree) *supplement* that non-agency by acting as the big Other which make decisions on behalf of the lost agent—for his absent voice. Even though Basim may have developed a sexual lust for Ghada, then transferred it to her little sister by murdering her, he died executed on a podium and completely desexualized: the murder itself places a sudden end to the tormented sexual (death) drive.

Let us reappraise the court's verdict. Even though it outlined all possible scenarios, the court, as is customary, finally opted for the one that was the most "plausible" in the eyes of justice, which briefly runs as follows: Basim developed a perverse lust for the little girl, whom he knew from her elder sister Ghada; he managed to trick her into a ride on his motorcycle, and once he found himself on a terrain where no one would see them, he attempted to rape her, then killed her out of fear that she would become an unbearable witness. In such scenario, it was sexual lust that stood as the main culprit, with the attempt to consummate it that led to the murder. Hence premeditation stood only for the desire to rape, not for the murder itself. Still, within the court's understanding of premeditation, that was enough evidence to charge the assailant with first-degree murder and the death penalty. The assumption here is twofold: first, there is an *agentive causality* at works, namely the availability of first-person perspective fully aware of its desires and actions; second, such causality could be traced to the act of murder itself; thus, even though the murder may not have been premeditated, but the rape *was.* To elaborate, the court worked with premeditation as a tool for just punishment: the assailant premeditated his crime of rape, and only then murder became as a supplemental option to conceal the

[26] Pippin, *Fatalism,* introduction.

primordial premeditation. The court therefore rationalized premeditation within the confines of a discourse commonly offered by prosecutors and councils alike, as an act that was deliberate, well thought, prepared beforehand, and executed with a "calm spirit" and willingness to harm. All such rationalizations presume the first-person perspective which is fully *conscious* of its actions. On the one hand, premeditation, as defined in article 535 of the penal code, receives its benediction from a concrete positivity, the murder itself, which once looked upon retroactively, looks understandable—the desire to rape and humiliate. On the other hand, premeditation is no more than an empty signifier, as it receives its substance only from the cases at works. What is at stake is that the issue of agency is presented against a backdrop of other contingencies that would represent the criminal act in alternative perspectives.

Which is precisely what we did. What we opted for was to take account of alternative scenarios, as documented in the dossier, and bring them together into a grand exercise of hermeneutics that may have proved anathema for the Jinayat. Are we therefore justified in doing so? The interplay in each case in this book is that of the difference between what actually happened, the court's rationalizations of such events, and the distinct point of view of the participant narrator (the researcher and reader) alerted to the way the narration and the action, as documented in various memos and rulings, can come apart as it were, if we are sufficiently attentive and willing to bypass the conformism of the university discourse.

You must become independent

[C5–3] When I was offered the case below, regarding a young men who murdered a senior citizen to rob him his motorbike, I was told that the youngster would surely be at least permanently incarcerated, but I then lost track of the file, as it was impossible to get back to my original sources and check the final ruling. Notwithstanding the uncertainty on the verdict, the case probes similarities with the previous ones where the death penalty was applied. For one thing, the total self-absorption of the youngster in his act, as if nothing else mattered but the motorbike that would have granted him "independence" from his family milieu, makes it morally repulsive. It was, indeed, the murderous act itself that would finally untie father and son: it is as if to prove himself as man, the son had to become a murderer at the image of his father, only to dissociate himself from the name-of-the-father.

In Minbij, a major city in Aleppo's province, a youngster found an old man sitting by his Honda motorbike.[27] He politely asked him for a ride to a nearby village where he lived with his family. They made a deal, and the ride would cost the young man 150 liras ($3). On the road the youngster asked his driver to stop for a while at a road juncture, where he said his brother lived, to check if he was home. But as soon as the driver turned his motorbike off, the young man pulled a gun under his shirt and shot his driver from the back right on the neck, killing him on the spot. He then took all papers and identifications he found in his victim's pockets, in addition to various banknotes amounting to no more

[27] Aleppo Jinayat 229/2/1998; the murder and motorbike theft occurred on the road to Minbij; final ruling missing.

than 300 liras ($12), burned the body with kerosene from the bike's tank (using for that purpose one of the victim's shoes), and returned to his parents' home with the motorbike, where he allegedly told them that he had just purchased it at Minbij for cheap. A couple of days later, when he was interrogated by the Minbij police soon after his arrest, he told his interrogators in a cold voice that his father was pushing him for employment so that he would get independent, but he was unable to find a job, and as he always needed cash, he bought lottery tickets without luck. His decision to steal a motorbike came, in his own words, from deprivation and need. The motorbike, for young men and people in such rural region, was the only affordable, albeit expensive, option for transport, whenever a car was out of question, as it was, and still is, in the majority of cases. For the young man it must have symbolized independence and freedom, and the ability to ride for hours in the countryside, to seduce girls, while outside his parents' reach.

There's presumably something "culturally" foreseeable in a murderer who was raised in a home where the father had years before committed himself a murder, and was sentenced for several years in prison: *tel père, tel fils.* Yet, there's neither anything predictable in such an attitude, nor is motivation clearer. The case reveals all the ambiguities of young men who grow up under harsh conditions, and who come of age in circumstances that reveal in their persona curious shortcomings.

'Abdul-Karim Ahmad (b. 1979) was only 19 when he committed his crime in January 1998. His victim (b. 1934), which he shot point-blank for the sole purpose of stealing his motorbike, must have been his father's age. From his own testimony, when he left his parental home at Jrablus (his birthplace) that cold morning of January 13, he was determined to steal and kill, if necessary. Witnesses within his age category claimed that he proposed to them on several occasions to set up small gangs that would swiftly move on the road between Jrablus and Minbij to steal motorbikes. Having been raised in a family with criminal precedents, always short on cash, with incessant feuds with other local families, a gun, albeit unauthorized, was always hidden somewhere at home; 'Abdul-Karim did not seem that much perturbed that morning when he picked up the 7mm gun, allegedly without his parents' knowledge, which was possibly the defendant's uncle's property, but was hidden in 'Abdul-Karim's parental home with his father's benediction.

> My father used to preach me to **rely on myself**, and work to save money for the military service.[28] As I wanted a rapid way out for some cash, I purchased a lottery ticket hoping that I would win, but didn't. I therefore got that idea of stealing a two-wheel motorbike, and began preparing for it. I told my mother and sister that I've got a two-wheel motorbike hidden in Minbij, and they urged me to bring it here. I told them that it was smuggled. **My mother handled the matter** by fabricating that I had purchased a motorbike several months ago—that was on Sunday, two days before the murder. I know there's a gun hidden in our home, under one of the mattresses in the room where I sleep. I took it on Tuesday

[28] The mandatory military service, which lasts for two years and a half, and which involves every male beyond the age of eighteen, is so low paid—a monthly average of 150 liras ($3)—that it becomes a heavy financial burden on the conscripts and their families.

> morning, and checked that it was loaded with three shots. I've hidden it under my shirt, and that day of 13 January 1998 I took a seat in a minivan to Minbij for 500 liras. I went to the motorbike bazaar in Minbij searching for my victim, but found no one. I headed towards the Minbij market, and started looking between the Saray and the Aleppo road for anyone with a motorbike who was willing to give me a ride. I would then kill him and steal his bike.[29] I noticed an old man at the southern entrance of the market standing on the pavement with his motorbike. I made a deal with him for a ride for 150 liras. It was 2:30 in the afternoon. I also told him that I have a brother who works at the vineyards north-east of Minbij, and that I need to see him. He agreed to stop there. We took the Jrablus road, and after we've crossed approximately 5–6 km, upon reaching a low bridge, I've asked my driver to head east, towards a steady agrarian road. Once we've passed 1 km on that road, and reached some trees on the vineyard, I've asked my driver to stop and wait for me for a while to check whether my brother was there. When I headed towards the trees he had already turned the engine off. Without noticing me, I took my gun from under my shirt, held it with both hands in his direction, and went towards him. At that precise moment, he turned the engine on and positioned the bike in a direction opposite to mine. When I was right behind the bike and within a meter's range from the driver, I held the gun with my two hands and pointed it in the direction of the driver's neck and head. I pulled the trigger once in his direction and hit him point-blank on the neck. He was sitting on his bike and immediately fell on the ground with his bike. I've adjusted the bike back to its standing position, while the body was a meter's away towards the east. Blood was coming out of the body, and I think that the driver-victim must have died instantaneously once he received the bullet behind his neck.

'Abdul-Karim went on to describe how he altered the motorbike's appearance. He took off some of the metal parts protecting both the back and front wheels, threw them away, searched the body for the bike's license and other identifications but could not find them. Instead, he found 300 liras in one of the victim's pockets, prior to burning the body. He took the victim's shoes, filled them with the bike's gasoline, which he spilled over the body, picked a lighter from his pocket and set the body ablaze. Prior to leaving the place, he made sure that none of the bike's parts were left behind, dropping them under a bridge close to Minbij. Remarkably, and in what in hindsight looks like his biggest error, he headed back to Minbij and went to a shop that did some minor repairs on the bike. Now he was finally ready to go back home after a long day of labor.

> When I came back I didn't find my dad at home, and told them [mother and sister] that the motorbike I told you about, which was hidden, is now parked outside. **My mother believed my story**, I went inside and put the gun back in its place without anyone noticing me. When my dad came home, he began talking with my mum, and heard him say that **he doesn't believe a word of what I said**, that this motorbike is not mine, that most probably I stole it or killed its owner, or else took it by force. I told my dad that I've purchased it from an incognito person

[29] An acknowledgment of this kind could be interpreted as a blunt pre-determination, punishable as death penalty or permanent incarceration.

> in Minbij, without its registration papers, for a price of SP25,000. He then told me that we should do our best to get its authorized papers.

The following day, after many hesitations, ‘Abdul-Karim decided otherwise. He went back to Minbij and left the motorbike near the Saray, practically at the same location where he picked up his victim. A week later he was arrested by the Minbij police and accused of premeditated murder (*‘amd*).

When on January 13 1998, ‘Abdul-Karim left his Jrablus parental home in the morning, only to pick up his victim near the Minbij market in the early afternoon, he for sure didn’t know his victim: he had never met the old man before; he probably did not know that his victim was a father to four minors; that in order to feed and shelter them he was using his motorbike as a cab, for 125 liras a ride, between Minbij and neighboring villages—rides that in the cold days of January must have been harsh. But along the Jrablus–Minbij axis, in all those small towns and villages, areas where land disputes are common, and where honor killings and feuds are no less common, the atmosphere is one of total calm and peace, a peace symbolized best by the beauty and quietness of nature itself, its olive trees and the dark brownish earth that feeds them. When ‘Abdul-Karim left his home, he had no one particularly in mind. He was, indeed, attracted to the very idea of an *anonymous* encounter, someone that he would murder not on any prior knowledge, feud, persona, looks, or body, but for the sake of a motorcycle. In many ways, therefore, ‘Abdul-Karim drifted away from the usual family feuds, predominant all over the Syrian countryside, and in many of the cities’ suburbs, where people are typically targeted based on their kin affiliation, the *nisba.* In such environments it doesn’t make much sense to target someone anonymously, betraying one’s family’s honor for the price of an old motorbike.

A crucial aspect of such cases is the father–son relationship, which stands in contrast to that of the mother: first, the intergenerational relation; second, the kin alliances; finally, the autonomy of the young. When interviewed by the investigating judge the day his son was arrested and accused of murder, the father claimed that his possession of an illegal firearm at home, allegedly the tool of the murder, was in self-defense.

> The gun that was found in my house is without permit. It was brought by my son ‘Abdul-Karim [the accused], alleging that he had picked it up from his uncle, i.e. my brother, because we’re wanted for an affair of **retaliation** (*qaḍiyyat tha’r*). I said I don’t mind having that gun in my house, because we might need it one day. But we haven’t used it in any criminal act, and **I don’t know whether my son has used it to kill someone**. To your knowledge, I’ve left prison two years ago, where I was incarcerated for four years for killing someone. As to my son ‘Abdul-Karim, **he doesn’t have any work**, and even though I’ve attempted to guide him, **I’ve failed**. On Tuesday 13 January 1998 I was out of my home for the evening, and upon returning at 11:00 at night I found that my son had brought a two-wheeled Honda motorbike. When I’ve inquired about it, he said he bought it for SP25,000, and that it had been smuggled. He purchased it from someone **he didn’t know**. As I was suspicious of his claims, I said to him and his mother that this motorbike will bring lots of damage to us, and I’m afraid that behind this bike

> there's a theft or homicide, and I've summoned him to give it back to its owner next morning. We don't want any headache. As to the money, he claimed that it was in his possession, but I don't know if that's true.

The father's statements were enunciated in such a way as if he knew all along the trouble to come: he had the strong feeling that behind that motorbike was perhaps a crime, if not a homicide; his most intense hunch was regarding his own son, namely that his son was like him, someone ready to commit murder, and be jailed for it.

The rivalry between father and son was contained by an acquiescent female gaze—that of the mother (and sister). Thus, while the mother believed and protected, the father was suspicious, seeing a son crafted in his own image, that of a criminal who "doesn't have any work," and whose only talent was to imitate his father's gross failures. The father was with his brother embroiled in an affair of retaliation, and guns were within reach in the household for "protection." The son therefore came of age in a household where on his father's side criminality was normative: his crime, against someone "he didn't know," was a quintessential mimetic act to assume his father's mantle, a mimesis that we'll encounter elsewhere (C9–2), and which was unconsciously pursued as a gesture of independence. The father's acknowledgment to the investigating judge that "I've attempted to guide my child, but failed," leaving the son without any work, came in parallel to the son's confession to the same judge that he always wanted to "rely on himself," and that the way out of his family's entrapment was to get some cash *on his own*.

The son must have been called for military service when he was 18, and it was barely a year later that he committed his crime, even though there is no record of him serving in the military[30] when he committed his crime; there is no record either for having had completed a high-school degree, or for showing any inclination for a technical school or hand occupation. In other words, he did fit within a typical profile of youngsters among the popular classes with no particular professional inclination or talent by the time they've reached the age of maturity and summoned for military service. To prove to himself that he reached maturity, he targeted someone of his father's generation, but only *anonymously:* the crime itself doubles as a rite of passage from childhood to maturity, and *at the same time* as a mimetic act towards the father. In the triangle that we've set as norm for homicides, what matters is not the relation between criminal and victim (which was *unknown* to the assailant), but that between criminal and addressee, which in this instance was no one else but the father. In his interview with the judge, however, the father only partially accepted the guilt: by acknowledging the poor education of his son and the latter's inability to manifest any talent, he admitted his son's "failure," but not the crime. That is to say, he did not want to see himself as recipient of the crime, as that Third Gaze of an external audience, refusing to accept the reception of his son's guilt on his own behalf. (One of the Jinayat's scribes told me that the death penalty was still pending regarding ʻAbdul-Karim, but I was unable to verify it on paper.)

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[30] Young men who are the only males in the family (*waḥīd*) have the right to avoid the military service. Hence, if Abdul-Karim was indeed the only son, his decision to serve in the military would have been his own.

Whatever ‘Abdul-Karim’s fate may have been, the resonances with Basim of the previous case (C5–2) are quite striking. In both instances, a person was sacrificed for the sake of another third-person addressee. For ‘Abdul-Karim the motorbike must have played in his imagination such a preponderant role as a fetish object of desire to the point that it transformed his victim, a father of four, into a mere object. “Property” in the form of a bike becomes even more important than its original holder, hence it is *transferable* through a criminal act. The boundaries that separate individuals and things into authorized users and outsiders are transgressed in the criminal act itself: it is as if the sacredness of bourgeois property *must* be transgressed in order to reverse the original violence of acquisition, as sanctioned by the Law and the shared values of society. Through murder I transfer a property that was his to me. Such an unconcern for human life, followed by a lack of remorse, is what pushes the public at large for the death penalty.

As in the previous case of Basim, what ought to be underscored is that difference between what actually happened and the distinct point of view of the narrators. The court itself is one such narrator, which has the luxury to opt for *one* possible scenario—the big Other of moral and juridical order. What proves more revealing, however, is the point of view of the main protagonists themselves, which tend to be oblivious towards their victims. If as Hegel has reasoned, “self-consciousness is desire itself,” it attains its “satisfaction” only in another self-consciousness.[31] Hence in a homicide what the murderer’s self-consciousness desires is the self-consciousness of the addressee, not the victim; the murderer being *eo ipso* unconscious of the external gaze that traverses his criminal action, which obfuscates the murder into a relation between assailant and victim, the murderer merely treats his or her victim as an object. What we therefore require as agents from the first-person perspective, as the courts normally do in their rulings, proves a sheer impossibility, as the very logic of crime relate the events from something close to a third-person point of view—that of the third-party addressee—namely, that of the beloved object Ghada in the previous crime, or that of ‘Abdul-Karim’s father. Hence the uncanny burden placed on the shoulders of such addressees.

Torture and its limits

[C5–4] The case was strong and unusual enough to have incited a news blurb in *al-Ḥayāt,* the Arab world’s prime international newspaper.

> Damascus—The first criminal court in Aleppo has issued a verdict to imprison for 10 years with hard labor three policemen for having deliberately harmed and provoked the death of Ahmad Farawati while being interrogated.
>
> This case is looked upon as an important precedent in the annals of Syrian criminal law. Ahmad (50 years old) was arrested by a police patrol composed of first assistant Jamil Qadahnun, and the two policemen Nazih al-Sha‘ar and Saleh

[31] G.W.F. Hegel, *The Phenomenology of Spirit,* Chapter 4.

> ‘Isa to the police station located in Bab al-Nayrab,[32] based on allegations that Farawati was selling heroin. At the station he was tortured until death.
>
> The [state-owned] newspaper *Tishrīne* [October] wrote that the autopsy report had indicated that Farawati had received many blows on his left hip that caused a hemorrhage, which in turn stopped his left kidney from functioning; in addition to completely damaged tenth and eleventh ribs, which led to another hemorrhage causing death.
>
> Farawati’s family had initiated a legal lawsuit against assistant Jamil and his companions, and upon investigation it turned out that the allegations [for selling heroin] proved inaccurate; in addition to reports claiming that first assistant Jamil had demanded from Farawati, few days prior to his arrest, a sum of money exceeding SP50,000, for the purpose of trading it as *diya* [blood money] to the father of the youngster Muhammad ‘Arabsh, who also died as an outcome of torture while being arrested and tortured at the same police station for charges of theft. [*al-Ḥayāt,* May 11, 1998][33]

When I’ve inspected the completed dossier a year later in 1999, I realized that it was pretty much detailed on torture, and on admitting death as an outcome of torture, but there was no mention of the quid pro quo between the police and Farawati on the alleged SP50,000–*diya.* If that were to be true, then the police was trading one murder for another: you’ve killed our son under torture, therefore you owe us SP50,000 as blood money; and to get that kind of money, the police had to torture and kill yet another mid-aged man with allegations that he was selling heroin, and let him pay the vulnerable *diya*—in cash.

Where does this unusual case on abusive torture by the police which led to the death of the interviewee stand in relation to the other cases in this chapter on the death penalty? After extensive research, the court opted for manslaughter over first-degree murder, which meant eschewing the death penalty or permanent incarceration. Hence what we have here is a unique case of torture and death where the death penalty was *avoided* and traded-off in a juridical jargon between the central authorities in Damascus and their regional counterparts in Aleppo. It is such standoff that is worthy of our attention in this section.

In this study, we argued that it was abnormally legitimate for witnesses and defendants

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[32] A neighborhood known since Ottoman times to have been at the periphery of the city, serving as hub for the trade with the countryside, and controlled by rival clans and families.

[33] A copy of the newspaper clip was appended to the dossier I consulted when the hearings were in progress. Interestingly, even though I’m unsure whether the Syrian media (television, newspapers, websites and blogs) reported the event, the dossier did not carry any Syrian news items related to the case, which leaves the honor to an originally “Lebanese” newspaper whose Beirut office handles the Syrian news (the Damascus office is considered to be a mouthpiece of the Syrian mukhābarāt, with its reporter at large Ibrahim Hamidi arrested and jailed for brief periods in the aftermath of the disappointing Damascus Spring that brought Bashshār al-Asad to power). It is as if the prosecutors wanted to benefit from the prestige of the Lebanese liberal media to press charges, rather than on local outlets.

alike to allege, once done with the police investigation, and in the presence of a more hospitable investigating judge, that their *original* statements, as reported in police memos (which dubiously serve as an inauguration to the case-file), were extracted under inhospitable conditions, either under duress, intimidation or torture—*hence should only stand as unproven allegations*. Such allegations were, however, only *reported* in the dossier, usually by lawyers acting on behalf of defendants, but left as such without further investigation, as though they were meant as routine operations that did not matter. If reported at all in the verdict, the judge would simply weigh in such statements in relation to other evidence, prior to making up his mind as to whether there was any merit in them. In other words, allegations of misbehavior and torture were *textually* processed, and traded as such with counter-allegations in the case-file.

The only matter that would ultimately turn around such routines was the death of a suspect–defendant, hence the significance of the Farawati case. In its "facts" section, the verdict in April 1998 of the criminal court in Aleppo documented the events that would eventually lead to Farawati's arrest and death.

> The accused [policemen arrested for manslaughter], consisting of elements from the Bab al-Nayrab police station, and based on reports they had received that the [deceased] victim Ahmad Farawati was trading heroin, went to his home to arrest him, but did not find him, and found instead his wife the witness Aysha Shehade. They escorted her to the police station and investigated her with violence, while managing to extract from her information regarding the whereabouts of her husband and wounded son. The two were eventually whisked to the police station, and an investigation began, while they were kept isolated from one another. Violence was exercised on both: the victim was hit with a stick 200 times on his feet, and his son received a similar treatment. The son apparently revealed the location of the heroin, and was accompanied by the two assistants in a car to the alleged place. At the station, first assistant Jamil and the two policemen Nazih Sha'ar and Saleh 'Isa pursued their exercise of violence on the victim, hitting him with a stick on his feet repeatedly, kicking him with their feet all over his body. One of the blows apparently damaged two of his chest ribs, the tenth and eleventh, creating a severe blood hemorrhage that eventually led to the victim's death, in spite of the hospitalization that took place at 9:00 in the morning, which was ordered by the head of the station, as soon as he came to his office and realized the emergency of the situation. The accused alleged that they did not beat the victim, who asked permission to use the toilet, and while there fell on the floor, which caused his broken ribs. However, the facts do not match such allegations, pointing to acts of abusive violence exercised against the victim by the accused. For her part, the victim's wife filed a civil lawsuit against the accused.[34]

In the "evidence" section the verdict accounted for 17 items consisting mostly of

[34] Even though in civil-law systems the criminal courts do offer cash compensations, albeit low in value, the parallel civil lawsuit, initiated by the plaintiffs, is usually meant to pursue *additional* material compensation for the alleged damages inflicted on the victim and his family.

statements provided by witnesses, including ones furnished by other inmates who were under arrest that same fatal night, in addition to the early police and postmortem reports.

Before pursuing evidence, let us first look at the logic of the verdict itself. The three accused policemen, Jamil Qadahnun (b. 1962), Nazih Sha‘ar (b. 1962), and Saleh ‘Isa (b. 1957), were found guilty of torturing the victim Ahmad Farawati in one afternoon, causing his death in the early morning, which led to their conviction for manslaughter (*qatl qaṣd*), on the ground that there was no premeditation for murder, for 5 years of imprisonment with hard labor, but extended to 10 years, considering the severity of the circumstances. The verdict cited article 536 of the penal code for a harmful act that caused death without premeditation (that is, the crime fell short of murder); articles 367–247 for the fact that the accused were policemen who misused their official authority; and article 541 for inflicting harm on the victim’s wife ‘Aysha upon her interrogation.

It remains puzzling why it took so long to reach a verdict on April 23, 1998, considering that Farawati’s death must have occurred in the night–morning of August 2, 1991. Even though we’ve encountered such long delays in other cases (e.g. Sabiha Dal‘un, executed in Idlib’s prison in 2003, in the aftermath of a 20-year long wait for the verdict, C5–5 *infra*), this one raises *additional* concerns: considering that much of the evidence was ready by 1992, and that the autopsy and medical reports were in favor of the victim, and that every witness, safe the policemen, confirmed an excessive use of violence, why did it then drag for so long? The delay was already visible early on, as it took almost two years to come up with the referral judge report and the first synthesis of the crime. Soon after its publication on March 4, 1993, it was appealed by the two lawyers on behalf of the three policemen, which the judge had officially charged of manslaughter (*qatl qaṣd*). By December 14, 1993, the Damascus Naqḍ had rejected the appeal, approving the judge’s findings on the ground that he got his “facts” right, and that accordingly he made the right conclusions. All this points that at least by the end of 1993, the case was moving on a fast track, possibly ready for its verdict; so why 5 more long years, with no new evidence in sight?

This unusual case, on the death of an arrested man under torture, seems to have alienated the judges of Aleppo and Damascus, on one hand, from the officials at the Ministry of Justice in Damascus on the other. For a country known to routinely arrest its citizens for political reasons (“national state security concerns” in the official jargon), while imprisoning and torturing them without in most instances any right to lawyers, journalists, family visitations, appeals, and judicial reviews, with some of those “political prisoners” vanishing for ever in their prison cells, judges seem to have drawn a thin red line between their “civil” cases, which they routinely handle on a daily basis, and the other “political” cases over which they have no access. Another aspect of the controversy is the routine intimidation and torture that “civil” suspects and witnesses are subject to in criminal (and at times civil) cases by the police, and which are reported by witnesses to investigating judges; even though such complains do not seem “enough” per se to have spurred investigations by the Jinayat. For its part, the Damascus Naqḍ has repeatedly stated in various rulings in the last decades that a statement uttered to the police, whether peacefully or under duress, should not constitute per se any valid evidence, unless

reiterated publicly in a court of law;[35] but the courts notoriously fall short at forcing out investigations for an abusive use of torture. In short, judges seem to have willy-nilly approved the random use of torture, as long as it brings the needed "evidence," and as long—hence the novelty in this case at hand—it would not cause the death of the accused–witness. Hence judges seem to be operating under a two-sided red line: one that detaches "civil" cases from their "political" counterpart, and another separating "legitimate" from "illegitimate" civil torture, the latter leading to death due to excessive violence.[36]

From Aleppo to Damascus, judges seem to have interiorized such in-between border lines, without, however, formulating them explicitly, without ever publicizing them, skirting off the use of torture by the police in nonpolitical criminal investigations. Because judges seem to have made up their minds, receiving the benediction of the Damascus Naqḍ by the end of 1993, which endorsed the findings of the referral judge, one would have expected that the case would have moved rather swiftly by early 1994, with a speedy trial that would have sealed the file by the end of that year. Resistance to the policemen's guilt and their possible conviction on grounds of manslaughter, assuming there was any, came mostly from state officials, in particular the Ministry of Justice. Thus, in 1997 the Minister of Justice addressed in person an appeal to the Damascus Naqḍ grouching that the referral report in 1993 did not enough scrutinize the medical reports, which, from his viewpoint, did not thoroughly construct the "causal link" between the various blows that the victim was subject to, on one hand, and his addiction to heroin and asthma illness on the other. In other words, was the death caused by police violence per se, which the minister's memo seems to grudgingly admit, or was it an outcome of a combination of heroin addiction and chronicle asthma (which is what the minister was hoping for)? The minister chastises the referral judge for not having done enough to explore this route. The other contentious issue, according to the minister, was apropos the policemen who appealed the referral report, which demanded a reviving of the investigation and its broadening to other witnesses, even offering to be reexamined themselves, but were not take seriously by the Naqḍ in its revocation of the appeal, which the minister argues, was unbalanced and premature in its judgment. To underscore his position, the minister forwarded his appeal as a "written order" (*amr khaṭṭī*), obligating

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[35] See, *supra* Chapter 3, C3–1.

[36] The Lebanese newspaper *al-Nahār* has reported on June 16, 2010, that "The Egyptian judiciary has ordered to take out a body and have it subjected to an autopsy, after accusing the police of killing its owner." The person in question had apparently died on June 6, and newspapers and internet sites had published photos of his pointing to heavy-handed torture. The initial autopsy alleged that the 28-year old victim had swollen a quantity of Bango (brand of hashish) which was stuck in his throat, leading to death by asphyxiation. The extraction of the body, which will take place in Alexandria in the presence of the DA office and the victim's parents, will permit for another autopsy. According to eyewitness accounts, the victim Khalid Muhammad Said was present in an internet café in Alexandria when informers (*mukhbirīn*) unexpectedly dropped in and started annoying the customers with their rude manners. As Khalid complained, he was driven out of the café, dragged to a nearby police station, then dropped as a dead body by the same team few minutes later, with his skull, jaws and spinal cord completely broken. He died instantly. In sum, as in our case here, a red line was crossed, in a country that is know both for its routine torture of its inmates *and* political prisoners (most notably members of the Muslim Brotherhood), and all this seems "approved"; but when it comes to killing a young man under torture for no apparent reason, "public opinion" is alarmed, and a new autopsy is now in the works.

the Damascus supreme court to handle the matter for a second round no matter what. In its response on April 28, 1997, the Naqḍ stated that the issue of a "written order" was not warranted in the code of criminal procedures (article 366), considering that the case already received a review in 1993; moreover, the new appeal failed to indicate which "evidence" needed to be specifically addressed by the Aleppo judges, hence there were no grounds for a reevaluation. By revoking the second appeal in 1997, the Naqḍ finally cleared the way for the final verdict that was to be passed by the Aleppo Jinayat the following year.

A dividing line therefore de facto established itself between the judges in Aleppo, who received a full endorsement from their upper colleagues in Damascus, on one hand, and the politicization of the case through the Ministry of Justice on the other, even though the minister's appeal was supposed to have kept matters within the confines of legal reasoning. What is noticeably more visible here, compared to other cases in this book, are various levels of discrepancies between what witnesses had stated in different circumstances. If in our other cases, the police reports were generally taken as sacrosanct and as bearers of the truth, by contrast the August 2, 1991 report for the killing of Ahmad Farawati, drafted the night of his death, which systematically denied any wrongdoing, was a source of suspicion from day one. One way to handle the numerous discrepancies between what the police alleged that the witnesses had stated that night, and later statements delivered the following week to the investigating judge by those same witnesses, denying previous statements in toto, is, for our part, to compare and contrast. Even though we've gone through such denials in our previous cases, the tragic death of Ahmad Farawati had prompted the judicial authorities to question the possibility of a deliberate "murder" rather than simply "manslaughter" (it eventually opted for manslaughter against murder). More importantly, police torture was not in this instance a source for revealing the truth, and nothing but the truth. At least judges were highly skeptical, and their skepticism was disclosed in every memo they had delivered, beginning with the referral report, skepticisms that considerably delayed the resolution of the case. The judges reasoned that the red line had been crossed, and that they needed to avoid a politicization of the case, hence every step had to be measured for its own sake to avoid a possible "political" backlash from the top.[37]

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[37] Richard McGregor, *The Party: The Secret World of China's Communist Rulers,* New York: Harper, 2010, elaborates on how the Chinese Communist Party "As an organization, [it] sits outside, and above the law. It should have a legal identity, in other words, a person to sue, but it is not even registered as an organization. The Party exists outside the legal system altogether." (22) By contrast, in Syria's constricted patrimonial political system, neither the legal system has been violently challenged since the coming of the Baath to power in 1963, nor has the Party stood as the organizing matrix for the economy and society at large. Indeed, the basic components of law—the civil, penal, and commercial codes—are fairly "liberal," dating from a pervious era, and have only been undermined either by unruly practices of socialization targeting private property, or else incrementally by presidential decrees and parliamentary legislation short of a grand view in legal matters. But even if the Syrian legal system does not suffer from arbitrary violence for due process, it nonetheless seems paralyzed—or at the very least mute—whenever a political problem emerges from the top, and due process is hijacked by other means. That was the case when gang members were publicly executed in Aleppo in 2007, or as this torture case shows, once the ministry of justice seemed upset at the insistence of the Aleppo judges for charges of involuntary manslaughter against the three policemen. Moreover, as there are few legal intellectuals, the prominent ones tend to be authorities in sharia law, and are only taken seriously in personal status matters, the only

The police report that initially triggered the affair was drafted on August 2, 1991, presumably the night Ahmad Farawati tragically died. It indicates in its "summary" section that "Husayn Farawati, an Aleppo resident, was brought to justice, having been put into custody for selling heroin; his father Ahmad died while under investigation for trading heroin. It was found that he was hiding in his stomach a sample of heroin sealed in cellophane paper. Was kept [in custody] by the judge. The body was delivered to his family. Three were arrested from our station, pursuant to arrest warrants: [officers] Jamil Qadahnun, Nazih Sha'ar, and Saleh 'Isa."

The introduction to the eight-page handwritten report states that "We were informed of the existence of a kilogram of heroin in the possession of Ahmad Farawati, which jointly belongs to his son Abdulrazzaq, who is now in custody in Aleppo's prison; the drug was prior to that stolen by the two thieves Mustafa Aqil and Umar Idris, an information that was provided to us by the thief Mustafa, which led to an arrest warrant number 784 on August 1, 1991. His son Husayn Farawati was also a suspect and an arrest warrant was issued for that purpose and for trafficking heroin. We therefore went to search for the father and son in the Midan neighborhood in Khan al-Zaytun. As we saw the door open, we knocked, the owner greeted us and told us to come in. Once we told her what we came for, we've arrested the two aforementioned suspects, and escorted them to our station here, then proceeded with investigating the owner of the place Aysha Hamawi (b. 1938), which has stated the following":

> "I inform you that this morning at around 5:00 a.m., you came to my home in Khan al-Zaytun and found the door open. You've knocked and informed me of your mission: to arrest my brother Ahmad Farawati and his son Husayn, which were wanted on your part. You've arrested them; they've had been around for half an hour prior to your visit, but they never informed me of the purpose of their visit. There was no physical or moral damage (*ḍarar ma'nawī*) as a result of your visit, and everything was within the boundaries of the rules of law."

Before we compare statements, let us recollect what Farawati's wife (b. 1936, then widowed, which eventually filed a civil lawsuit for material compensation) had to say:

> "I inform you that this morning you came to the house of my daughter Fatima in the Bab al-Nayrab neighborhood while we were sleeping. You've asked me on the whereabouts of my husband Ahmad and son Husayn, and told you that they were staying in the home of my husband's sister Aysha in Khan al-Zaytun. It was Aysha's son Muhammad Ali Farawati who had informed me that my husband and son were staying the night in their home. I accompanied you to the house, where

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area that receives occasional attention. (Witness, for instance, the debate in 2009–10 around an alleged revamp of the 1953 personal status code, which culminated in a complete debacle, with minor amendments to the existing code.) Besides the fact, therefore, that the few secular legal intellectuals do not have the ear of the leadership, there are no public debates on torture or the death penalty. In sum, there is only a political leadership, but no parallel legal one.

> you've arrested my husband and son and took us all to your station. I have no idea why we were all arrested."

One reader who apparently had reviewed the file for the defense, wrote in the margin where it was stated that "she came with us to show us the home's location": "contradiction." The possible element of contradiction consists in the distinct (and conflicting) versions of the events that Farawati's wife recounted to two different authorities, first to the police and then to an investigating judge that same evening, presumably following her husband's death. First, in the police report all allegations of torture were omitted; second, the same report alleges that Aysha accompanied the policemen from her daughter's home to the location where her husband and son were eventually arrested. It is precisely such claims that her statements to the investigating judge would contest. That the two statements were "signed" the same day is remarkable, an indication that the *source* of interrogation proves more relevant than its bearer: who is interrogating, and for what purpose? What is the format (or procedures) of investigation? How are they inscribed on paper, and is it solely for purposes of examination by the upper Jinayat court? What are the procedures for recording on paper?

> "I was in Damascus, and came to Aleppo on Thursday, August 1, 1991. I reached Aleppo at 10:00 p.m. to my daughter's home, Fatima Farawati, who urged me to stay the night with her. I accepted her invitation, and by 3:00 this morning a police patrol from Bab al-Nayrab came to our home, and drove me to their station. While there, two policemen started beating me up on my legs, asking me to locate where my husband Ahmad and son Husayn were hiding. I volunteered to be taken there, and once we got to my husband's home around 5:00 a.m. they've seized him with my son Husayn and got us all to the station. Once there, I was isolated from my husband and son, and placed in an adjacent room where I was hearing my husband screaming in a loud voice. I overheard them say that my husband made it in his clothes, and that he had to be hospitalized. I don't know who did the beating among the police."

Such discrepancies among testimonies from the same person, or testimonies furnished by different persons, would turn out to be a common feature of this affair, and it's not hard to understand why. The police obviously wanted to scrap off evidence of violence exerted on a lone mid-aged woman, so they've redacted in its entirety the episode of fetching her to the station, torturing her, until providing information on the whereabouts of husband and son. In the sanitized police draft, she would accompany them directly to her husband's location, with the station *intermedius* completely deleted. The prosecution would construct its case entirely based on such discrepancies, what was euphemistically dubbed as "contradictions," *tanāquḍ.*

How did Ahmad Farawati die? Since torture had been admitted early on, as there was no way of eschewing it (the autopsy report was in itself badly damaging, see *infra*), questions abounded on its severity, on one hand, and, on the other, whether Farawati's own health problems, in particular his alleged heroin addiction and asthma, did contribute to his fatal death. In other words, was it mainly a question of severe torture methods, or

was torture "reasonable," but had to be factored in with Farawati's shaky health, which the policemen had no knowledge of?

Let us note here that for some reason the police memo on August 2, 1991, which inaugurates the case-file, did not carry any statements by the three suspects of the killing. As the report indicates that they were under arrest since Farawati's death, their only statements would be delivered to an investigating judge within the coming 24 hours. It may well be that, as policemen, they should not be interrogated by fellow policemen, but only by judges and prosecutors from the public prosecution office. For its part, the eight-page handwritten police memo only carried the first two witnessing accounts above, by Farawati's sister and his wife, while investigating additional witnesses, among them the head of the police station; a policeman present at the station when Farawati and his son were under investigation; three males who were under custody at the station that day; a man who was arrested that same day on charges of heroin trafficking; and two males who witnessed Farawati's heroin addiction.

Instead of going through such testimonies right now, I want to break the order of exposition, and concentrate first on the three suspects' statements to the prosecution. Such statements would serve as the prime template for what effectively took place within the 24 hours of Farawati's arrest and death.

The first suspect was officer Jamil Qadahnun (b. 1962), and was examined by the prosecution on August 2.

> Q1. You've been accused of manslaughter (*qatl qaṣd*)?
> A1. There's no truth to what has been attributed to me; the truth is that the head of the department had asked me to meet with one of the informers (*mukhbirīn,* s. *mukhbir*),[38] who had apparently provided information that Ahmad Farawati was trafficking heroin, and that he was in possession of one kilogram. I met with the informer as planned, who notified me that the victim Ahmad Farawati was sleeping at his daughter's home, and that his wife was helping him in the heroin trafficking. I formed a small unit composed of Husayn Haddad as our head, myself as an assistant, policeman Saleh 'Isa and the van's driver. We headed towards the home of Farawati's daughter, and we were with the same outfits that we usually wear at the station.[39] Once there, we were unable to find the victim Ahmad, but his wife was present, so we took her to the station. She informed us of the Khan al-Zaytun home,[40] and at 5:00 in the morning we headed to the location. As the door was open, we went in and found there Ahmad Farawati and his son, both of which were under a customary arrest warrant (*mudhakkarat tawqīf 'urfī*) issued against them in absentia. Since we did not find any drugs, we took them to the station for investigation, and we separated husband, wife and son

[38] Notice that the name(s) remain unrevealed, and, based on the case-file, no "informer" has been questioned, hence the credibility of this side of the narrative remains at stake.

[39] This little detail on outfits could indicate that the police unit was not there for a personal vendetta, but on an official mission, which the head of the department was duly informed all through.

[40] Once more, the alleged torture episode is suppressed.

> from one another, each in a room. When we pressured them on drug claims, they were in full denial. When I was investigating the victim, and I don't recall who was in the room, because the door was left open and people were coming in and out all the time, I felt that he was ill at ease, and he pointed to something he was carrying in his pocket. It was a small thing that he was using for his asthma relief, which was recommended to him by prescription. It was at this moment that saliva came out of his mouth; so I held him and helped him stand up, but he couldn't, and dropped on the floor. I took him out of the room, and once I sprayed his face with water, he looked better. I took him back to the lockup room, as he was able to walk his way through on his own. Ten minutes later I heard a knock at his door, and one of my colleagues told me that the victim was asking permission to use the bathroom. It was policeman Mustafa 'Ubayd who opened the door for him, and when I've asked the victim to stand up, he couldn't; so I've asked one of the inmates, 'Abd al-'Ayn Qirqanawi, to help him get through to the restroom, and with the help of another inmate by the name of Khalid Kurba, they both helped him stand up, dragging him out. The restroom had two edges, each with a 30-cm height, and when they had him sit, he accidentally fell on the edges. We took him back to the lockup room, took off his clothes, washed him with cold water. When 'Abd al-'Ayn managed to wake him up, he was in pain, we wrapped him with a blanket, then took him back to the lockup room. He pleaded for a second visit to the bathroom, we authorized him to do so, but he kept feeling unwell. Which alerted the department head who demanded that we take him out of the lockup room and have him hospitalized, considering his poor health condition.
>
> Q2. The investigation alleged that you kept hitting the victim on his two legs, and that he was subjected to roughly 50 stick-blows. You and two other colleagues, Abu 'Imad and Abu Ibrahim, had inflicted the victim to many severe blows.
> A2. That's absolutely not true. Neither me nor my colleagues had inflicted any physical harm on the victim.
>
> Q3. When the victim's son was called upon, who was under arrest at the same station, he was seen with blood on his feet, more precisely under his nails, as an outcome to the violence that he and his father were subjected to.
> A3. We neither tortured the victim nor his son, and what was seen as blood on the son's feet was due to the fact that he was barefooted and was not wearing any shoes.

It is such total denial of *any* torture that would eventually play badly for all three defendants. Already "public opinion" was not in their favor, and the fact that they were arrested and became suspects from day one, did not play well either. Why then such stubbornness? The restroom "accident," where allegedly the victim had fallen accidentally on a salient edge, was rapidly rebuked by autopsy reports, in conjunction with the released photographs, all of which pointed to an undeniable excessive torture. To understand the behavior of all three policemen, a simple truth must be stated, namely, that they were not used to such scrutiny; those are people that torture inmates and suspects routinely, while constantly denying it, and all of a sudden one of those suspects

dies the same day he was taken into custody for investigation, creating havoc, with those same denials that worked in the past as apology losing their charm. The unexpected twist was indeed in the attitude of judges and prosecutors, as they've come to realize that a red line was crossed, and that the policemen, whom they've relied so much upon in the past for their diligent torture methods, lost their ground defense. Indeed, all benchmarks have all of a sudden shifted; something *had* to be done.

What may have surprised the three policemen and their cohorts at the Bab al-Nayrab station was how fast the indictment moved against them from the early weeks of the investigation. Thus, by August 22, a public suit had already targeted the actions of the Bab al-Nayrab station and its departmental head, and by October 22, an investigating judge had drafted a two-page memo to the head of Aleppo's palace of justice restricting the culprits to only three policemen who exercised the violence that caused Farawati's premature death, while recommending that a fourth be vindicated from any wrongdoing for lack of firm evidence. He also recommended that all three be tried for manslaughter under articles 536–212 of the penal code. So, even though everything was set in rapid motion since 1991, the verdict would have to wait until 1998: prosecutors, who were eager to bring all three to trial, may have underestimated the power of mores and the routinization of "acceptable" torture, which was invariably met with deaf ears. Thus, the investigating judge in his early report argued that all three policemen had no intent to kill, but only "to annoy [*iz'āj*] the victim in order to extract statements from him upon investigation," adding that such acts represent "an abuse of a public office in the way an individual was threatened and killed." It was that thin borderline between "annoying" a suspect under interrogation for purposes of "extracting valuable information," and pushing that "annoyance" to the point of no return, that was left unquestioned. Moreover, having de facto approved such "annoyances" for long periods, prosecutors must have had underestimated how much the routinization of torture would give them a hard time to nail down suspects on any wrongdoing. If that not-to-be-exceeded borderline is *the* act of killing, while torture is unofficially "approved," as long as no one dies, then would those policemen at work know where to stop? Why not ban torture altogether, and prosecute those who exercise it? In sum, if prosecutors had a long way to go to criminalize the behavior of the three officers, it's because they did not realize first hand how much the routinization of torture had to be reappraised, because those who were not in favor of a criminal verdict (for instance, at the department of justice) played that "approved torture" motto, constantly delaying the verdict up to 1998 with appeals and counter-appeals.

Let us move to the early deposition of the second convicted policeman Nazih Sha'ar (b. 1962) on August 2.[41]

Q1. You've been accused of participating in a homicidal crime?

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[41] Note that even at this early stage, once the initial police investigation has been completed and suspects and witnesses have passed to the authority of an investigative judge, suspects must be informed of "all acts attributed to them," and their right to a lawyer during their early custody within the *garde-à-vue* detention limit. What remains uncertain, and considering that a trial may take years to come (for this case it was in 1994), how long should suspects be kept? When is it that a suspect ceases to be a suspect, for lack of credible evidence, and should be set free, at least until further evidence has been collected?

> A1. From about 4:00 to 5:00 this morning I've accompanied first assistant Husayn Haddad, first assistant Jamil Qadahnun, and the policemen Saleh 'Isa and Nayif Lakhmuri to the home of the victim's daughter. The victim was not there, but only his wife, whom we escorted to the station on charges of drug trafficking. My colleagues headed to where victim and son were supposed to be. I did not accompany them, as I had to bring the wife to the station. I've kept an eye on the victim's daughter home for a while, so that no one would know about us, and no one would tell the victim about our search. I returned to the station in one of the police cars, and once there I was told that the victim and his son had been arrested. **I did not beat up the victim Ahmad Farawati, nor did I see any of my colleagues perform such acts.** I've noticed the assistant Jamil Qadahnun proceeding with an interrogation of the victim, but **I was not present in the same room, as I went out for my morning prayer.** As soon as I came back from the mosque, I saw the victim in a sick state, as he was having breathing problems. **I was only looking at him from a distance**, and did not mingle with him, because I'm not a member of those who interrogate, and only an assistant.[42] **I did not even come close to him.** The guard of the lockup room and its manager were taking him in and out all the time. It was at this time that I left to bring some breakfast, then sat with my colleagues and had breakfast. The guard of the lockup room, Mustafa 'Ubayd, was telling us that the condition of the victim was good; I've seen them taking the victim in and out of the lockup room on a couple of occasions.
>
> Q2. The investigations point out that you and first assistant Jamil, with a policeman known as Abu Ibrahim, had violently kicked with your feet the victim on several occasions, and this after he was beaten up with a stick by the aforementioned Jamil Qadahnun on his legs, so what do you have to say?
> A2. That's not true. I neither kicked the victim with my legs, nor did I see my colleagues harm him.

The emphasis here is on distance: I was not there, I didn't see a thing, I wasn't in the room where Farawati was being interrogated (and tortured), I had to leave for the morning prayer, then I went out to buy breakfast; and also the full denial of torture for himself and his colleagues, with a twist of inescapable contradiction: I deny totally torture for myself and others, even though I wasn't there most of the time.

The first forensic doctor to examine Farawati's body was on August 2. The report notes several deep bruises on the body, which indicate that violence and force have been exercised, even though there was no indication to exact timing, which must have been alarming: "There's a first deep bruise on the left side of the head, 2-cm by 1-cm in depth roughly. Three more show up below on the same side with similar qualifications, which may have been the result of kicks inflicted on the face." In the following section, "the opening up of the body," the autopsy indicates that when with the help of a scalpel the skull was dissected beneath the areas that showed deep bruises, "there is no indication of

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[42] A reader marked this sentence in parentheses.

violence or force, or broken bones in the skull, and when the brain area was dissected, there was no indication of a blood hemorrhage in the mouth and ear areas." It was only in the lung and its thoracic cavity (thorax and chest) that indications of a blood hemorrhage were perceived. It is at this stage that the report documents the two broken bones in the chest—the tenth and eleventh on the left side—one of those "facts" that would stick in subsequent prosecution reports, and in the final 1998 verdict. The two broken ribs have apparently damaged small and larger arteries, inflicting a hemorrhage in the thoracic cavity. After examining the heart and the kidneys, the autopsy grapples with another "fact" that would push for further scrutiny by both prosecution and defense: "once we reached the stomach, we proceeded with a dissection, and found a foreign body (*jism ajnabī*) the size of a suppository,[43] which was wrapped in a cellophane material normally used for wrapping chocolate, one of its edges had been damaged; as to the rest of the stomach and the intestines there's no sign of damage." The postmortem concludes that the victim had "in his lifetime" been subjected to several blows and kicks which in themselves would *not* cause death. What caused death, however, were the two broken ribs and the damage that they've inflicted on blood arteries and other sections of the thorax.

As always, the autopsy was signed by the certified medical doctor who drafted it. As it was a one-man job, there could be, in some problematic instances, as was the case here, further medical scrutiny. A three-panel committee of doctors was called to re-examine the body that same evening of August 2, and an investigating judge interviewed them and recorded their "collective statements" once they were done with their postmortem. As this case is unique in both facts and outcome, particularly that three policemen were under custody since August 2, with possible murder charges, it is hard to tell if the speed of such reports was an indication of the police attempting to formulate its innocence, or whether the public prosecution office was already aware of the seriousness of the charges, hence setting the record straight as early as possible, knowing that the condition of the body would constitute the most damaging evidence. With the postmortem of the victim's body, the dossier included gruesome pictures of the corpse after its dissection on August 2. Ordered by the investigating judge, the four pictures were shot only few hours amid the completion of the autopsy, and were wrapped together as a "photographic report of a killing incident." While the first and third pictures clearly show considerable autopsy work on the intestines and thoracic cavity, presumably to locate the "foreign body" mystery, the fourth one shows a rope loosely tied to the victim's legs, without, however, pointing to its source. Surprisingly, however, the dossier, at least the photocopied version I received in 1999, did not include any photos of the corpse *prior* to the autopsy. Such pictures, however, in particular had they been performed with a micro-lens, would have been more relevant than the post-autopsy ones that were included.[44] The latter seem to have been relevant for the work of later medical committees, such as the five-panel committee, which was summoned on October 3, 1991, by an investigating judge to reexamine the body. The committee, which met with the judge in Aleppo's main

[43] This is the only sentence in the handwritten autopsy report that has been underlined, possibly by a reader–expert working on the case-file.

[44] The five-panel report on October 3, 1991, mentions that its predecessor three-panel report included 18 photographs. I am not sure whether all of them were appended to the case-file.

university hospital, fully endorsed the work of its predecessor, the three-doctor panel on August 2, which in turn, had endorsed the coronary report. The crux of the matter resolved around a couple of factual interpretations, namely, that the death did not occur as an outcome to a damage to the skull and brain, but to blows on the thoracic area that damaged two ribs and blood vessels, resulting in a severe blood hemorrhage; all reports endorsed the existence of the cellophane foreign body, said to have been discovered in the stomach, and "whose content remains unknown," according to the three-panel committee. The five-doctor panel approved all such evidence, even though in this instance the body had apparently not been kept in a fridge for two months, nor accessible, hence all evidence was based on textual (2 medical reports) and photographic materials (18 post-autopsy photos).

وزارة الداخلية
شعبة الأمن الجنائي
ادارة الادلة القضائية
فرع التصوير الجنائي

سجل مصور لحادث قتل

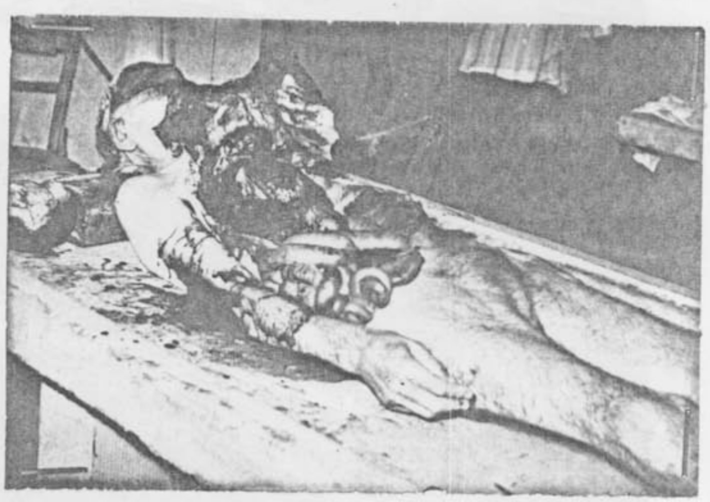
الرقم المتسلسل ....

ايضاحات عن الحادث :

بتاريخ ٢ / ١٩٩١ الساعة عشرة صباحاً قبل قاضي التحقيق السابع لتصوير جثة
المدعو أحمد محمود فرواتي وذلك بعد تشريح الجثة من قبل الطبيب
الشرعي بحلب وذلك بالطبابة الشرعية.
وعليه تم التقاط الصور التالية تثبيتاً للوقائع.

رئيس مكتب التصوير الجنائي

ايضاحات عن الصور :



صورة لجثة أحمد فرواتي في الطبابة وهو مشرح

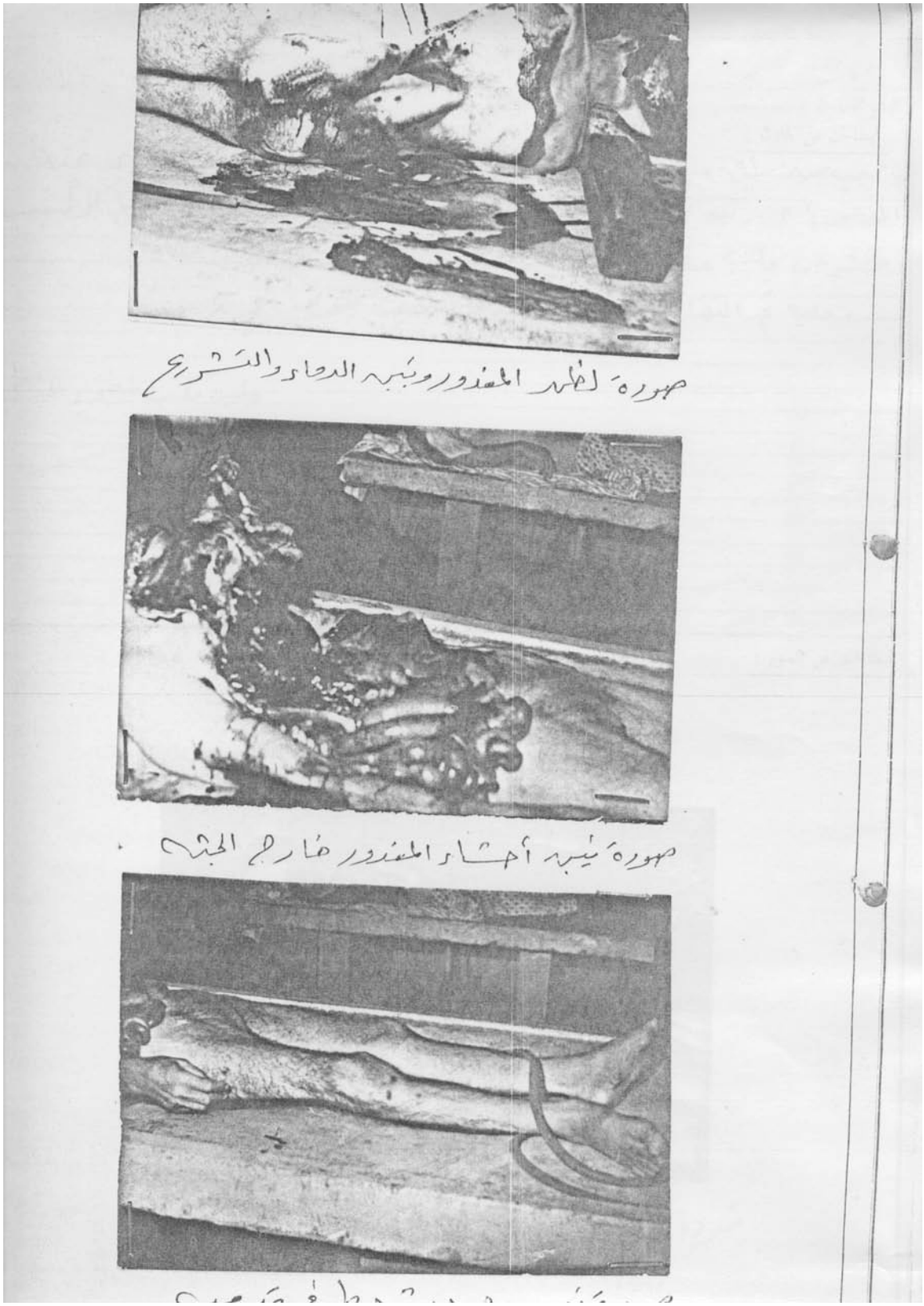


Figure 5–4: Pictures of the deceased Farawati that were taken in the aftermath of the autopsy report, in the layout of the forensic photography department of the Jinayat, which make it impossible to assess the extent of the alleged torture.

The two-page report of the five-panel committee, which begins with an introduction fully endorsing previous medical reports, was mostly composed of a question-and-answer session at the hospital, conducted by an investigating judge.

> Q1. To professor Zakkur: Apropos the heroin that was found in the stomach, in the form that was described in the three-panel report committee,[45] which was wrapped in cellophane paper damaged on its parts, and which was consumed prior to the arrest,[46] would it lead to the breakdown that witnesses described and that was documented in police reports, when the victim went to the restroom?
> A1. We'll have to assume for our part that what those witnesses have stated is exact, even though there is **no analysis that would point that this substance is heroin**. Moreover, the effect of heroin is through breathing, and not on the intestinal system; and the report points out that the foreign body was almost intact and did not lose much of its shape.
>
> Q2. To professor Zakkur: Would the fall of the body in the restroom, in the way described in the original report, and which took place on the two 30-cm edges of the room, would that lead to the two broken ribs as described in the three-panel report, or was that caused by the heavy foot kicks the victim was subjected to on his chest?
> A2. When the victim was transferred from the investigation room to the restroom, he was in such a dire situation that he was unable to walk, and needed help. This shows that he was already in poor shape before falling in the restroom, as he was repeatedly losing consciousness, which was due to the hemorrhage that was described in the three-panel report, in addition to the accompanying photographs. That's why the fall in the restroom would neither provoke that kind of loss of consciousness nor two broken ribs for that matter nor a severe hemorrhage. As to the various kicks, it's impossible to speculate on their force and the kind of damage that they may have created.
>
> Q3. Would the old cardiac infraction in conjunction with heroin use generate the loss of consciousness?
> A3. The described infraction was in a stable condition, in the sense that its duration was no less than six months, and in six months the situation of the heart would go stable. Moreover, as the infraction was on the left valve, which would not have any effect from the physiological point of view in conjunction with the contracting of the heart.
>
> Q4. Would the asthma condition of the victim, as described in the report, have

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[45] The committee did not identify the "foreign object" as heroin, nor was there any lab examination that identified it as any kind of drug; the autopsy refrained also from any identification with a toxic substance.

[46] That's another assumption that has never been proved. The possibility that this substance, assuming it was indeed heroin, was tucked in Farawati's body either during his investigation and torture, or after his death, does not seem to have been explored.

> contributed to the loss of consciousness?
> A4. The asthma pump that was found with the victim is no indication that he had asthma, and even if he did, that would not have mixed with the other factors that were unrelated to this illness, considering that the heart was quasi-normal. As we've repeatedly stated, **the hemorrhage, which led to death, was the outcome of the two broken ribs**.

Since all medical reports were more or less conclusive at isolating the alleged asthma condition from the alleged heroin use on one hand, and the reported fall in the restroom from the internal thoracic hemorrhage on the other, evidence in this respect was narrowed to one factor only, namely the two broken ribs which, since they were not an outcome of the bathroom fall, must have been caused by violent beating. In sum, the broken ribs caused the bleeding, which in turn led to death. The prosecution would carry this fact in the seven years that it took the case to conclude, constituting a major cornerstone of the dossier. The other cornerstone would unexpectedly come from the damning evidence furnished by no one else but the inmates themselves who were into custody at the station that day of August 2. That the public prosecutor would take inmates seriously is an important precedent, but in the final analysis, the prosecution had no other witnesses, besides the policemen who tortured the victim (and who proved less reliable than the inmates), and the various doctors who conducted the autopsy and commented on the condition of the body. However, the testimony of one of the inmates, that of Khalid Husayn (b. 1956), would prove the most damning, as it will be quoted in every report and memo by prosecution and judges. Khalid would furnish two depositions on August 2 and 3, one to the police and the other to an investigating judge, and like the other witnesses that we've encountered earlier, the double-witnessing would come at price, as the torture scenes would be only revealed to the judge.

> I was under custody at the Bab al-Nayrab police station, and that Friday morning [August 2] at around 2:30 the wife of the victim was fetched and they hit her with a stick 40 to 50 times, and she was screaming and asking for help, and all that was taking place in the room adjacent to us. I heard Jamil Qadahnun telling her that you've got only two choices, either the merchandise, or else [the location of] your husband and son. They've left the station, and half and hour later the same policemen came back in the company of the victim and his son Husayn and his wife,[47] and started hitting the son Husayn on his feet 201 times with a stick. He was screaming and asking for help; I was counting each one of those hits, as I was receiving their sounds in the other room. Jamil was telling him, I want the merchandise from you (that is, the drugs).[48] They then placed him in the lockup room, while the victim was in the investigation room, and we were able to watch all action from the little window in our cell. He was screaming all the time, but after a while his voice all of a sudden vanished. They've managed to have him stand up; I think it was the assistant Jamil who helped him stand up for several minutes, after which they've placed him in our cell, and we heard the victim

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[47] Did the wife accompany the policemen to the location of her husband?

[48] In parenthesis in the original Arabic.

> asking permission to leave to the restroom…When I knocked at the door and told Jamil that the victim needs to go to the restroom and can't stand on his own, he replied, Leave him die on his own here.[49] It was then that they've asked me and another inmate, 'Abul-ayn Qirqanawi, to carry him to the restroom; and once we did, we had to hold him to finish his task, but he was unable to pee. It is not true that he fell on the restroom's floor,[50] as the two of us were holding him all the time. We then took him back to the cell, and after a while we knocked the door asking permission to take him one more time to the restroom to clean him up. Jamil came to open the door for us with two more policemen. In the restroom we took his clothes off, cleaned him, and I gave him a pajama that was mine. Once back into the cell, I knocked the door one more time, and told the guards in the corridor, This man seems to be dying, to which they replied, Let him die, let this dog die. They finally opened the door for us once I told them that there's saliva coming from his mouth. I was told that they took him to the closest hospital.

It was on October 23, 1991, that an investigating judge delivered a first preliminary synthesis of the dossier, which would serve as template to the other memos, up to the 1998 verdict. The centerpiece of the judge's argument was that "there was no intent to kill," "even though there were visible signs of violence and force exercised on the victim to extract a confession (*intizā' i'tirāf*) apropos the drug substances that were the subject of the investigation." The use of "confession" in this context rather than "evidence" or "statement" in the sense of an "acknowledgment" (*iqrār*), points to an understanding of a "factual evidence" that would be fully delivered by the tortured victim as a "full confession" that would not even need an interpretation (from the hearer) as an act of guilt. Moreover, a "confession" is "extracted," hence the need for torture, because the confession would emanate from the body through torture. The judge went on with his argument as follows: "In terms of results, their actions constitute a participation in harm that would lead to death (*al-ishtirāk bi-l-idhā' al-mufḍi li-l-mawt*), based on articles 212–536 of the penal code, specifically article 534…due to the fact that what they did does not point to an intention to kill (*niyyat qatl*) the victim Ahmad Farawati, because **intention is an internal hidden matter** (*al-niyya hiya mina al-umūr al-bāṭiniyya*) in homicidal crimes, but could only be **manifested through external conditions and material acts**, which would point to the intention of the doer, in that it aims at killing. However, based on the facts of this case and the evidence that came through, there is **no absolute indication** that would point to the fact that when all defendants, when they were harming the victim, and practiced violence and force on him, had the intention to kill him, considering that all what **they wanted was to extract a confession from him**. Moreover, there is no evidence that the defendants were in any way enemies to the victim. For all those reasons the components of manslaughter (*jarīmat al-qatl al-qaṣd*) are not there in this suit." By the time the referral judge report followed suit nearly two years later on March 4, 1993, this reasoning does not seem to have abated, as the manslaughter charge would be avoided one more time in favor of a lesser one of an inflicted harm that would involuntarily lead to death.

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[49] A reader underlined this last sentence.

[50] This is the second underlined sentence, probably by the same reader as above.

It is indeed in such instances that time, which we've probed earlier, would factor decisively. Let's say beforehand that in the long five-year 1993–1998 interlude, which led to manslaughter charges in the final verdict, no new evidence has enhanced the file, and based on the dossier itself, there is no palpable evidence either of a shift in narrative logic. To begin with, there were two sets of court hearings, the first took place in the summer of 1994 and lasted until the end of the year, and then after the appeals that reached the Damascus Naqḍ, another set of hearings were conducted between November 1997 and May 1998, both of which kept reshuffling the evidence that we've documented earlier. There seems to have been therefore a behind-the-scenes negotiations and quid pro quos that may have led to the shift to the manslaughter charge in the verdict, and which is what gave this case its unique character.

Torture as the obscene supplement of Law

In various political and cultural studies of torture that would relate the state or a régime of power to individuals, or the torturer to his or her victim, or a power relation as lived through the subjugated body and the pain inflicted upon it, the consensus is either that such dynamic allows the régime in power to consolidate its grip over the individual lives of its subjects, hence the purpose of afflicting such agonizing pain over the body would be to destroy the person's sense of self (the state manifesting its limitless sense of power), or else that torture has less to do with the subjugated body as it acts more as an allegorical system deployed by the state as a means of representation of itself.[51] In other words, torture would be devoid of its own physicality—as if pain and pleasure did not matter in their own finitude, for the contingent bodies that carry them—as it would only serve as a tool of representation for the state's omnipotent mighty power.

If we were to finesse such reasoning within an historical perspective, which must take Europe as *the* mark of transition to modernity, there was a paradigmatic shift between an *ancien régime* representation of torture, which implied public representations of executions at the sovereign's whim preceded by acts of violence and torture aimed at the sinful body of the lawbreaker: the sovereign, acting on behalf of the state, was at the same time displaying his will *and* acting as agent for the amputation of evil in the sinful body of the offender. In a *public* display of sovereign violence, therefore, torture did not exhibit itself as an individualized process of subjection—between torturer and recipient—but framed within the wider process of political power: individuals were targeted as inscribed within wider collectivities, the clan, the family, or the territory. In the modern transition to modernity that marked the eighteenth and nineteenth centuries, institutionalized disciplinary power made the public display of violence redundant, if not shameful, hence *secretive,* still exercised, but not admitted as such. Even though Foucault portrayed anonymous disciplinary power as the dark side of the Enlightenment, it nonetheless *produces* the individualities of subjects *qua* subjects. The subject is caught within a web of discursive formations as autonomous, self-sufficient systems of truth and

[51] Lisa Wedeen, *Ambiguities of Domination,* Chicago: Chicago University Press, 1999, 77–83, on "the exaggerated formulation of the torturer as a representative of the state with limitless power" (Elaine Scarry).

practices, the functioning of which could be explained without reference to any generative principle of socio-symbolic formations. In other words, discourse has that aura to it as a non-subjective power relation, as it only aims at depicting the positive unconscious of knowledge, or the historical *a priori* that made possible the very existence of such discourses possible.

To elaborate, the Foucauldian approach, while successful at portraying individuals caught in a web of normative discursive practices towards which they would resist subjugation, it creates confusion regarding the assimilated empirical contents of those subjects who have been subjugated to disciplinary power relations. What if we are *already* alienated *in* the socio-symbolic order as the condition of possibility for our existence as subjects? Put more bluntly, *what* is it that *really* happens when "I" as a subject *am* tortured at the hands of a policeman? What is at stake here is the very gap between the discursive space, which receive its genesis from an historical *a priori* of knowledge, and the positive content that fills out. The juridico–discursive model of power fills that gap by claiming that violence and torture may prove "useful" from extracting the truth from the mouth of the lawbreaker. Notice how in our case here of the three indicted policemen, all rulings acknowledged torture as a "useful" means for accessing the truth. Thus, when the court bluntly stated that all what the policemen "**wanted was *only* to extract a confession from the defendant**," the implication was that torture *was* fine as long as we're into a confessional mood which would ultimately deliver the truth from the tortured mouth of the offender. But the court was acting within a hypocritical double bind: on the one hand, the court behaved *as if* torture was officially sanctioned, while no item in the penal code *officially* sanctions such practices; on the other hand, the court only *implicitly* sanctioned shared values that are normally taken for granted *as if* they were situated within the juridico–discursive model of power. It therefore all amounts to at understanding such disparity between the juridical discourse of power, on one hand, and practices of torture on the other which are not discursively accounted for, but only acknowledged at face value "for their own merit." Even if in newly formed nation-states like Syria torture would prove more common than democracies in Europe and North America, where disciplinary practices share a deeper *longue durée* common history, what needs to be accounted in both instances is the *modus operandi* of torture as a process of self-subjectivation that dispenses with any reference to the socio-symbolic norms of society.

It is, indeed, such thematic abyss that traverses the core of this book and its excess of cases and practices. Once we accept that social reality was constituted in discourse, which could be historically traced and documented, how can we then account for practices that *are* publicly denied, such as torture, only to be acknowledged as *residues* of the legal system in the uncanny role of unlawful but "socially useful"? The discrepancy must be situated in the suspension of the disciplinary efficacy of the relationship that situates individual subjects caught in a web of discursive practices, by bringing to light the obscene supplement—e.g. torture—which secretly cements it. That is to say, torturer and recipient are predictably caught in a power mechanism which is inevitably eroticized, sustained by a disavowed pleasure.

To elaborate, what is at stake here is the masochistic libidinal attachment of the master–

servant relationship, which in the annals of police torture translates as a relationship staged between a torturer seeking the truth and a recipient delivering the truth, but which must be acknowledged as a *private* bodily performance where the subjectivities on both sides are liberated, but disavowed. Which points, in the final analysis, to the law's obscene addendum of torture as an enjoyment (*jouissance*) *qua* practices of domination. If the law needs such surplus of enjoyment via torture then it must be inherently imbalanced: its abstract code stands as an empty signifier which receives its content only through the transgression of crime, to which torture comes in parallel as a supplementary *jouissance.*

Rather than limit ourselves to the historical genealogy of power which asks, How is power practiced?, one should therefore aim for a different perspective: What is power and where does it come from? Such a shift in perspective translates a concern with the subjectivities of individuals: How *does* a human psyche "really" work? Or how does the psyche work in conjunction with the socio-symbolic order which at the same time is "external" to it yet inscribed within its gaze?[52]

There is something wrong with my wife's sexuality

[C5–5] Sabiha Dal'un (b. 1952) was a schoolteacher at the small town of Mi'atmisrin in the vicinity of Idlib (north of Syria, close to the Turkish border).[53] The year before she married Muhammad Fulfulah (unknown birth date), a mechanical engineer who was employed at Idlib's water facility. Being a very conscientious consumer he used to wake up early in the morning to pick up the cheap 7:30 microbus to Idlib. They both were graduates of Aleppo University, Sabiha as an arts major, while Muhammad graduated from the school of engineering. Sabiha's attorney describes the Dal'uns and Fulfulahs as "cousins," and Sabiha, at least in her early depositions, insisted that her marriage was "a very happy one."

On the morning of 18 April 1983 Sabiha went to school as usual for her 8:00 class. By 9:30 a policeman came to fetch her because of a suspicious fire that broke in an empty home, which belonged to her parents, and which was located right next door to hers. The policeman must have told her that a body was burning in that empty home, which they thought was that of her husband. When the burned body was later identified as that of Muhammad, Sabiha claimed that in the last week prior to his death her husband had been unusually worried about problems in his workspace: apparently, higher than average quantities of fuel oil were consummated at Idlib's water facility in March, which could neither be solely attributed to possible leaks nor to cold weather. Muhammad became presumably a suspect, prompting him to summon his supervisors that an investigation be open, hoping to clean his name once and for all. Sabiha went on alleging that her husband's depressing condition, which everyone else in the family must have noticed, pushed him towards suicide. But can someone commit suicide by burning himself in an

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[52] Fabio Vighi and Heiko Feldner, *Žižek: Beyond Foucault,* New York: Palgrave, 2007, Chapter 1.

[53] Idlib Jinayat ruling 24/1994, the crime occurred in Mi'atmisrin (Idlib province) in 1983, final ruling in 1994. One of the defendants was executed in prison in 2003, while the fate of the other one remains uncertain.

oil tank, as if, in his last moments, Muhammad was sending a weird message to his supervisors? The police remained skeptical. Further postmortem examinations revealed that the body was subject *prior* to the burning to cuts from a sharp metallic object, which must have led to his killing prior to burning the dead body in an oil tank.

Eventually the whole case was soon to be construed against Sabiha as prime suspect, with one of her brothers, her nephew, and mother as direct "participants." After 11 long years, and by the time the Idlib Jinayat criminal court issued its final ruling in 1994, the circle of suspects had narrowed down to only Sabiha and her brother. They were both sentenced to death and summoned to compensate the victim's family for SP400,000 ($8,000). It took ten more years for Sabiha's (and her brother's?) death sentence to become effective. She was in effect hanged in Idlib's prison courtyard at the very end of 2003.[54]

Considering that the case spanned for two decades, the crime received several conflicting narratives, which we need not get into here. Since Sabiha and her brother Ahmad were from the very beginning the prime targets, and a decade later were the only two left, I will stick to their stories, beginning with the more credible ones, namely the ones that the Jinayat, based on medical and eyewitness reports, thought were the most reliable.

Several months after her husband's murder (or alleged suicide), Sabiha, now a prime suspect, was on November 1983 incarcerated in Idlib's prison. That day a prosecutor visited her in prison for a prime interrogation. Judging from the large amount of documentation that this case sprawled, the interview the day of incarceration offered probably more clues than anything else in the file. The other crucial deposition was that of Sabiha's brother Ahmad, both of which, in tandem, furnished the grand narrative that served as template to the ones provided by the referral judge in 1987 and the Jinayat in 1994. I will therefore begin my exposé with those two accounts.

On November 1983 Sabiha finally settled on a different narrative, prior to denying in toto all her imputed statements, alleging that she was beaten up and humiliated by her interrogators. She told the prosecutor who visited her that day in prison that when she was 14 she and her maternal cousin had a short sexual liaison which eventually led to losing her virginity. Marriage came as a possibility to conceal the matter.

> My cousin promised that he would marry me, and once we were ready my parents claimed that I was his sister through breastfeeding. For that reason he married roughly six years before me. In spite of his marriage he would drop by my

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[54] Having worked on the case in 2004–05, a year after Sabiha's execution, there was at the time uncertainties regarding her brother's fate: will he be executed, like his sister, as requested by the Jinayat's verdict? It does seem, however, that he was spared the death penalty on the basis that he was "commanded" by his mother and sister to kill the victim, relegated only to the role of "accomplice." The son of the counsel who was hired by the victim's family recently told me (Beirut, 13 August 2012) that Sabiha Dal'un was hanged in Idlib's prison yard on New Year's eve in 2003, while her brother was spared the death penalty sand serving a life sentence: "At 5:00 in the morning on January 1, 2004, I got a call on my mobile from the victim's brother, congratulating me for Sabiha's execution, and thanking me for the efforts that my dad (who died a couple of years earlier) had invested to bring justice to this city. I was terrified and did not know what to say."

parents' home frequently, and at times several times a day. I would feel that he was looking at me in such a way that he loves me, without ever talking to me. After his marriage I fancied the victim[55] Muhammad Fulfulah. He was a quiet person, moral, and **without experience with women**. What encouraged me going for him, I think, was that due to his simplicity it would be difficult for him to **discover my [loss of] virginity**; my feeling was that had he discovered it, he would not reveal it to anyone. As to the timing of our marriage, I had it timed in such a way that it coincided with my menstruation cycle, so that things would get confusing to him—and in effect he got confused. When he began having doubts he talked about it to his uncle 'Abdul-Rahman, but it all ended there.

After our marriage I've noticed that the victim [my husband] had a very strange and extremely **weak sexual desire**. He used to come on me only once every 7–8 days, even though we were newlywed at the time. I used to hear some stories at school, in particular those coming from Layla 'Ala-ul-Din, who has been married for 5 years, that her husband has lots of sex with her, and at times more than once in a single day. For that reason I used to constantly ask from the victim Muhammad to **cure himself**. He used to reply that he would be ashamed doing such a thing, but I retorted: 'If you're ashamed going to a doctor in Idlib, then go for medical advice in Aleppo or Damascus.'…

Roughly 5 to 6 days prior to the incident, which is the subject of this suit, between 12:00 and 12:15 pm, someone knocked at our home's door. Once I opened I noticed my maternal cousin 'Abdul-Qadir standing there at the door, with his car parked nearby. As I thought that his wife was in the car, I invited him in. Once in, I asked him about his wife, and he replied that she wasn't there. He held my hand and pulled me strongly towards him. I first resisted, but then gave up in order to **compensate for my husband's deficiency** (*naqṣ*). We had sex on the bed, we lied there for a while talking to one another. We began exchanging love statements (*aḥādith gharāmiyya*), and I told him about my husband's sexual weakness. Without even realizing, when it was close to 2:30 in the afternoon, we were surprised with my husband suddenly popping in. 'Abdul-Qadir immediately stood up and wore his pants, then left our home. I begged my husband not to get angry, telling him that it was the first and last time. I even proposed to divorce him, promising that I'll give him back my golden jewelry, in addition to the premium and late dowry (*muqaddam* and *mu'akhkhar* of the *mahr*). I would even give him the house we were living in, and which my father had transferred under my name [as dowry]. All this so that he would hide the matter. But Muhammad refused all that, bragging that **he would create a scandal**.

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[55] Syrian criminal literature, *a fortiori* that of the courts, commonly use the epithet *"al-maghdūr,"* which translates as "the betrayed," for "victim." In the depositions to police and judges victims are routinely referred to, whenever they are named by witnesses (including suspects), as "the betrayed," which gives an awkwardness to the *written* text, in particular, as was the case here, the main suspect was recounting her experience with her husband, which she had allegedly murdered. Obviously, since the original oral utterances are unavailable (as they were unavailable also for the court), it remains uncertain whether such attributes of politeness were stated in the "original," or an outcome of the "editing" that would transpire only in the written text.

Sabiha then went on to describe how for days her husband refused to talk to her, and how she and her brother Ahmad (b. 1939, state employee) planned for the killing. Since from that point on Ahmad seems to have been the main instigator, with his sister acting as close accomplice, we're leaving the description of the crime scene to him. (We'll come back to Sabiha later.) The two interviews were in fact conducted in Idlib's prison under the same prosecutor, in two consecutive days. Ahmad was to come first.

> In the days prior to the incident, which is the subject of this suit, whenever I visited my parents, my mother would come to me on her own and tell me, 'My son, your sister's husband is going to create a **scandal** for us. He's going to **touch on our honor** (*'irḍ*). Your father is 80-year old and he's a respected person, and we're a known people (*jamā'a*) with our honor (*sharaf*) and good reputation.' When I urged her for a clarification, she added: 'Sabiha's husband has detected **something moral** (*akhlāqi*) regarding your sister, but **she never gave me any details**.' Whenever I would repeat my question to her, she would say, 'It's a question of honor (*'irḍ*). You'll have to find the solution for it. Once the news spreads among the people, we'll be exposed and a lot of harm will come our way.' For that reason, and for my mum's words, I began thinking about it, and a day or two prior to the incident, I began thinking of getting rid of the victim (*maghdūr,* the betrayed) Muhammad Fulfulah.
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> At about 9:00 or 10:00 the morning of 17 April 1983, I went to my parents' home and found there my brother Muhammad who was on vacation at the time, and my son Mustafa. I can't remember anymore whether I met them together or each one on his own, but I told them, 'Be ready, **I have a matter** (*mawḍū'*) in mind.' When they asked me what kind of problem it was, I didn't furnish any details, but said, 'It's a question of honor.' I then urged them that we all meet in our sister's home Sabiha at 2:00 after midnight…
>
> It was raining that night…and once I reached my sister's home I noticed that the door was left slightly open. We entered the house and saw Sabiha sitting in the living room. She took us to the room where the victim was sleeping; I recall she stood at the door and did not enter the room. We saw the victim sleeping in his bed. I immediately placed a pillow on the victim's face, and I can't remember whether it was rectangular or squared, or what color it was. I strongly pressed over his head with it, and then my son Mustafa picked up a pick which Sabiha had supplied, and hit with it the victim on his hand. My brother Muhammad did also hit the victim on his chest with the same pick…

Ahmad went at recounting how they wrapped the body with a cloth and moved it to the empty house next door, placing it in an oil tank, burning it "as a cover up, so that people would say that he burned himself on his own in a suicidal act." The prosecutor was, however, after a long line of questioning, still puzzled by one thing. Considering that it was the sister who *was* adulterous and not her husband, *why not punish the sister?* After all, since it was a question of "honor," as the accused purposely claimed, Syrian law de

facto "protects" all those (males) involved in honor killings. Had Ahmad killed his sister for her adulterous liaison with her cousin, he would have received no more than a year of imprisonment—instead of the now pending death penalty. Not only does society dislike that innocent people like Muhammad Fulfulah be punished for not doing anything wrong, but it lives in the hope that their assailants receive the maximum penalty. Moreover, since an adulterous woman represents the highest dishonor that someone could imagine to a family, the prosecutor did not shy from asking his accused, "Why didn't you think of killing your sister Sabiha?" And Ahmad replied, "I didn't think of killing my sister Sabiha because killing her would have provoked lots of big questions. Consequently, [her husband] the victim would have spoken, he would have said what he knew, which would have brought shame (*'ār*) on us." Even the referral judge, who drafted his 45-page report fairly late on January 1987, was still puzzled by the same question as the prosecutor: "The four defendants Ahmad, Sabiha, Mustafa, and Fatima [the mother], have decided to destroy the soul of the victim Muhammad in order to hide a scandal (*faḍīḥa*) that would have come upon them and their families, because the defendant Sabiha was caught in a **dreadful state** (*ḥāla murība*) with her cousin 'Abdul-Qadir. **So instead of killing the defendant Sabiha, they've sacrificed an innocent person**."

That which we dare not speak about

What is important for our purposes is that Sabiha's alleged "immoral act" remained the biggest secret taboo within her family, so that we are led to believe, based on Ahmad's statements above to the prosecutor, that even his mother allegedly did not dare describe what the "problem" with his sister really was, endlessly repeating that "it's a question of honor." Ahmad's brother and son were in turn *not* informed of the "problem," because apparently, Ahmad, like his mother, would not speak the unspeakable. Which again led to a more than puzzled prosecutor inquiring specifically about that unspeakable: "Didn't you enquire from your sister Sabiha regarding the subject matter of the statements (*mawḍū' al-aqwāl*) that your mother had told you about?" Ahmad coldly retorted: "What happened happened, and what took place took place. That kind of talk will not help in anything. I swear to God that I never asked her anything."

If we were to believe the accused's claims, he allegedly went that night to his sister's home in the company of his brother and son in order to "protect" their honor, not knowing, however, what was exactly "wrong" with his sister in the first place. All four then conspired and killed the husband, which allegedly was the only one with his wife and mother-in-law to know what the "problem" was. What *was* then that "thing" that no one dared to talk about, and for which the murder was committed? What *was* that "thing" whose only denotation was the word "honor," but which otherwise remained indescribable? That "thing" *was* so horrific that not only it had to be kept a secret, but it was what no speech could bear—and the only person who could have found the language for "it" had to be eliminated. So it's as if the assailants' dictum was: "Let's eliminate that person who had the ability to *document* what effectively happened, and which we're unable to utter ourselves." In effect, among family members the assailants had lost that ability to *say to one another* what the problem was, what was the honor issue that tormented the sister, mother, and finally the sons. And were it not for the sister's own

utterances to the prosecutor, a day after her brother was interrogated, the court and judges, as well as "we"—as outsiders—would have been permanently locked out of the alleged secret.

Knowledge of Sabiha's alleged infatuations with her maternal cousin were taken even more seriously than the crime itself, thus accorded a higher status. It wasn't so much the *act* itself that shocked, but "knowledge" about it, and its possible reverberations within a community. "Knowledge" ought to be taken here in the strong sense of the term: as something that rests on factual evidence, that could be linguistically formulated, interpreted, and passed around through intersubjective communication. That kind of knowledge, which the assailants feared that their victim would pass around within the community, was what they feared most, dwarfing the crime itself. It all coalesced around notions of shame and honor, which in effect are *practical interpretations* of factual evidence. Thus, whatever Sabiha and her maternal cousin might have done as teenagers, then after their respective marriages, *interpretations* of such acts are what matters most, since it's at this level that individual acts, which in principle should be of no concern but to those who practiced them, achieve that communal status. They simply transgress individual wills while binding family and community in a fateful encounter. That kind of knowledge—upon which a family's honor is very much at stake—reverberates more easily *outside* the clan than in its *inside.* The assailants were thus abhorred by the idea of communicating to one another Sabiha's "sinful" behavior, and allegedly went out of their way committing their crime without prior knowledge as to what was Sabiha's secret was all about. Only Sabiha was finally able to talk about it *after the crime*—but only to a prosecutor, which to her must represent some kind of an external authority—the big Other. She did so only after long hesitations and incompatible accounts of her marriage and husband's killing (or alleged suicide). Sabiha's "sinful" behavior—or rather, its *linguistic* component, which describes such behavior and interprets it as something "shameful"—was among assailants their biggest repression, something that they failed to talk about, and mentioned only obliquely, as if its mere revealing would contribute to its reiteration.

When asked by the prosecutor, "Why do you think that your mother did not mention to you the information (*ma'lūmāt*) that she had?," Ahmad replied: "Last Tuesday at 12:30 in the morning of Wednesday, I received a convocation from the men at the military security agency who were investigating. I was told by the investigator that my maternal cousin 'Abdul-Qadir was in effect my sister Sabiha's lover (*gharīm*).[56] That's why I now believe that my mother did not provide me with the details of the matter (*mawḍū'*) precisely so that she would cover up (*taghṭiya*) for her sister's son. I also think that she is still covering up for her sister's daughter.[57] And according to the information I received from the military security folks,[58] I can say that my mother, and for the past 19 years, has

[56] The term *gharīm* traditionally stands for opponent, adversary, antagonist, or rival; it also comes in conjunction to creditor or debtor; it therefore remains uncertain why it was used here as "lover," possibly as colloquy to *maghrūm* or *'ashīq,* which would have been more appropriate terms.

[57] The sister's daughter was not mentioned anywhere else in the case-file, hence it remains unclear what the accusation was in this respect.

[58] When one or more of the suspects either has a military record, or else is/are serving in the army

been **covering up what she knew about her sister's son**." In his reply to the following question, "Did your mother summon you to kill the victim Muhammad?," he unhesitatingly replied with a no, adding that even his father knew nothing about the whole matter. Regrettably, the prosecutor failed to ask him that, Had you known beforehand what the military security folks later told you, would you still have acted in the same way? Would you still have killed your brother-in-law? Would you have gone after your cousin?

If we were to therefore believe Ahmad's replies to the prosecutor, the assailants were presumably the only ones in town not to have known what was Sabiha's "problem," namely the *mawḍū'* that everyone repeatedly referred to, not knowing exactly what it was. Now that *confidence* in his mother, which hitherto had blindly pushed him towards the crime, was finally given a critical appraisal. Knowledge of his sister's infidelities, however, now finally admitted to the prosecutor, did not come from *inside* the clan, but ironic as it may sound, from military intelligence.

Ahmad's accusation that his mother had been "protective" of his maternal cousin, even if unsubstantiated, nevertheless sheds some light on the role of women and their relation to truth and honor. If we were to believe Ahmad, his mother never documented him his sister's "problem," which he only learned about much later *en passant* from military intelligence amid his incarceration, but she nevertheless insisted that it was a question of honor, *implicitly* implying that something must be done with the husband. The mother was hence protective of her own lineage, preferring not to denounce her sister's son, in the same way that she was protective of her own daughter, opting for a "solution" against the husband—who at any time might reveal that awful "truth"—sparing her daughter from an honor killing at the hands of her brothers (or father for that matter). In sum, what did spare Sabiha's life from her own clan—but failed to spare her from the death row—was that her alleged infidelities took place with her maternal cousin. Had it been with a man from the "outside" her own mother would in all likelihood have turned against her.

Based on witness accounts, the husband began in turn revealing his marital agonies in bits and pieces to close relatives. Thus, for instance, the husband's maternal uncle presumably acted as his confidant for some time prior to his abrupt killing. Even though he did not reach the point of revealing his discovering of his wife with her cousin in his own marital bed, he apparently had doubts about his wife's virginity. He allegedly voiced such concerns to his maternal uncle 'Abdul-Rahman (b. 1949), who in turn reiterated them in his deposition to the prosecutor. When questioned in court on April 1988 by the chief judge as to why he thinks the victim Muhammad confided to him personally, the witness Muhammad stated that "the victim told me that his wife was the one who had summoned him to talk to me about the issue of the loss of virginity, and when they came to visit me for the last time, I've noticed that they were not on agreement. The victim did not mention anything to me regarding an incident that may have occurred to him at work." Five years earlier, towards the end of 1983, when witnesses were being interviewed by an investigating judge, the same witness had stated the following:

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at the moment of the investigation, or at least was/were in service when the crime occurred, the military police would conduct their own investigation in tandem to that of the Jinayat court.

> The day following the marriage of the victim Muhammad, he came to me—considering that I was his mother's brother—and was in an unusual state: "disturbed" (*muḍṭarib*). We left my home and took a walk west of the road that passes in front of our house, and by the time we were outside town [Mi'atmisrin], he told me, 'O my uncle, how does one get married?' And I replied: 'What did you do?' He then said: 'I stood over my wife's legs, and threw myself over her.' He didn't mention whether he repeated this operation (*'amaliyya*) or not: 'My wife told me to lie down over her and penetrate my penis into her vagina, which I did.' When I asked him whether his wife felt any pain, he replied: 'She didn't feel any pain.' I then asked him of the number of times they had sex that night, and he replied: 'I had sex with her four times.' But it was unclear whether he meant four times during the first time or throughout the past period as-a-whole. I then inquired as to why he was asking me those questions, but he replied that 'there's nothing in my mind.' I suspected, however, that there was something he was hiding from me. The following day, late in the afternoon, he came to me and we took the same walk. When we were outside town, he said: 'My wife is not convinced that she had lost her virginity, saying that she was supposed to bleed a bowl of blood (*ṭāsat dam*).' I said to him: 'A woman is not supposed to bleed that much when she loses her virginity. In any case, I'll send her my wife, who, as a woman, will know how to deal with her.' The same day, before the call to prayers in the evening, I went with my wife to the victim's home Muhammad. I left my wife with Sabiha, and went with the victim to his bedroom with the pretext that I was going to check out the new furniture. When in the bedroom, I asked Muhammad, 'Do you still have the blood-tainted handkerchiefs from the night your wife lost her virginity?' He went looking for them, and showed me two sheets of Kleenex, and I noticed that the quantity of blood was large, and the color of blood dark red, resembling a woman's blood towards the end of her period…The following day I went to my sister's home, the mother of the victim Muhammad, and told her, 'I slept the night of the marriage in the house of your son Muhammad, who doesn't seem to know where God is placing him. He doesn't even know whether his wife has lost her virginity or not.' I then asked her to inquire about the matter and bring to me all relevant information.

One needs only bring in parallel the concluding statements that Muhammad's wife uttered to the prosecution to understand the scope of the problem: "My husband the victim Muhammad had a weak personality, was sexually weak, and he refused medical treatment…I told you all the truth, but would like to add that the following day right after my husband saw me with my cousin 'Abdul-Qadir, I informed my mother, and she told me that my brother Ahmad will take care of it. But I never told her about losing my virginity [as a teenage girl], and I never told that to anyone, neither before nor after my marriage. My husband threatened me that he would tell everyone—my parents, husbands of my colleagues at school, and all the persons that he knew—about my liaison with my cousin. I was personally convinced that he would do it, because he had such a weak personality, and didn't know how to keep a secret—in particular when it came to his maternal uncle 'Abdul-Rahman…"

In a classical honor killing framework, as the prosecutor and referral judge reminded the defendants, and as the Idlib Jinayat years later in its final sentencing reminded the public at large, the family would have opted to punish the promiscuous wife—not the loving husband, who was innocent from any wrongdoing. Why did the Dal'uns reverse then that strategy, and opted for safeguarding their woman rather than punishing her?

Strong mother, weak son-in-law

A recurring theme in all the depositions that we've encountered thus far, and in many others included in the case's folder, was an alleged "weakness" in the husband's character. The Dal'uns in particular did not spare, even after the murder, their *own* victim and son-in-law from harsh critiques: he was so weak a character that he couldn't figure out whether his wife was still a virgin or not (a claim reiterated by his maternal uncle); he had no experience with women; he was unsure of himself, to the point that he would go after his uncle for anything that troubled him, rather than seek professional medical advice; his personality traits even erupted in the workplace; and he was someone who looked at every penny in his pocket. To be sure, a character's perceived "weakness" is no judicial category, but the defendants attempted to use it as much as they could, without success. More importantly, Muhammad's "weakness" was cynically used by both sides. In effect, in a society that punishes an adulterous woman, but spares an adulterous man, Muhammad's "weakness" might have prevented him from exercising his quasi-legal right of killing his promiscuous wife: the courts would have doubtlessly cleared him within one year. But, having instead preferred to suffer one humiliation after another on his own, the Dal'uns, in their own words, and out of fear that that their son-in-law might talk (an outcome of his weak personality), preferred to eliminate him rather than punish their woman.

Another recurring theme is that of an omnipotent Dal'un mother, apparently someone who used to coordinate all major decision-making within the household. Rather than opting for her daughter's punishment, hence saving a son-in-law she didn't care much about, and leaving a nephew practically "widowed"—rumors circulated that he was the true father of Sabiha's only baby—she preferred to eliminate the only source that could break the imposed silence and bring the truth to the wider public—the source that would have dishonored the family.

The semantics of love and sexuality

Sabiha's tragic fate and her incarceration led her to reveal to the "public" of the judiciary not only details about her private life, but more importantly, provide a picture of her sexual life since her alleged liaison with her maternal cousin—the semantics of love, courtship and sexuality within a small rural community. When, for instance, Sabiha stated to the prosecution that her defunct husband was "sexually weak," as if sitting on a psychoanalytic couch and revealing her life to an authority big Other figure, such statement is part of the "semantics" of a specific society, but in itself it has no legal value unless "translated" or "coded" into a legal terminology.

Consider Sabiha's various descriptions of her husband's alleged "impotence":

> [he was] without experience with women
> simplicity
> difficult for him to discover my virginity
> he would not reveal [my lack of virginity] to anyone
> strange [character]
> weak sexual desire
> [my neighbor and her husband were having] lots of sex
> seek medical advice

When it came to her cousin-lover-sexual-partner, she had nicer words:

> I first resisted [my cousin], but then gave up in order to compensate for my husband's deficiency
> [I and my cousin] began exchanging love statements, and told him about my husband's sexual weakness
> My husband said he would create a scandal

The husband's "character weakness," as portrayed by his wife, was therefore only to be surpassed by his "sexual weakness." If, however, the "character weakness" was, still according to the wife-defendant, "visible" to family and friends, or even for that matter to his colleagues at work (as evidenced by the fact that he was taken as *bouc émissaire* as soon as the fuel leaks were revealed), by contrast his "sexual impotence" was only known to his wife, hence by revealing it for the first time to the prosecutor she was de facto transforming it into the *motif du crime.* Which is precisely what the prosecution will do: the "motive" would indeed become that "invisible" "sexual" element, albeit twisted in the other direction: it's the wife which had an excessive "sexual lust" (while the husband was apparently "normal"), which pushed her to sacrifice him—both figuratively and literally—in favor of the cousin.

Sabiha's statements represent some of the normative values of her community, creating a particular semantics for the couple love/sexuality. Males are thus represented as either sexually "normal" or "deficient," "experienced" or "inexperienced," with "weak" or "strong" sexual desires. A male with a sexual "problem" should seek "medical advice" (medical is here used for *ṭubbi,* which is not specifically psychiatric consultation), preferably in a big city like Aleppo or Damascus, for the sake of anonymity, and to avoid the gaze of a small rural community. For women virginity and its loss prove as essential elements at creating that atmosphere of "trust" and "honor" among a newlywed couple. It's up for the man to "discover" and "confirm" his wife's virginity, while a "failure" in this respect, or the realization that the wife was no virgin, could be scandalous, with an honor killing looming in the horizon.

The "honor" factor was indeed the hub in Sabiha's brother statements. In its double meaning as *'irḍ* and *sharaf,* honor becomes, at least from the brother-defendant

perspective, that *other* motive of the crime. In effect, while the sister provides the prosecution (and later the court) with a "hidden" prime motive—the husband's impotence—the brother offers the other more "social" motive—honor. Again, here, as before, the prosecution will twist around that second motive, arguing that it should have been Sabiha that should have been sacrificed for dishonoring her family in her sexual liaisons—not her husband. The prosecution will therefore construct its case to the very end through a double-motive lens, motives provided by the two defendants, but twisted in a different direction by prosecution and court. In short, in the decade-long period in which the case took to complete, not to mention the decade-long wait for capital punishment, only "motive" mattered, at least much more than forensic evidence.

For sociologists like Anthony Giddens and Niklas Luhmann, love, passion, eroticism and sexuality, are among the quintessential processes of individualization of modernity.[59] While they exist "for their own sake," they create socializing practices that tend to damage old communal values, favoring the individual subject over the community, family, and clan. While Sabiha's statements to the prosecution should definitely be read with such lens, from the viewpoint of law they are no more than shared values. As law treats norms as statements of what one ought to do, it differentiates itself from the factualities of social norms by declaring what is legal and illegal, and it does this through a process of 1. selection of specific statements from witnesses, 2. a codification of those statements in the normative language of the law, and 3. a condensation of all codified statements into memos, reports, and verdicts.

They spoke too much, or too little

The counsel's memo, addressed to the three-panel Jinayat court on February 1993, begins with an unspecified Qur'anic verse:[60]

"Do not kill a soul that God has forbidden you except when it is just (*ḥaqq*), and the one who is treacherously killed, we provided his custodian (*wālī*) a power check (*sulṭān*), so he does not exceed in violence, as if he is victorious."	The Qur'anic verse, in particular when it serves as an opening to the memo, not only acts as a source of wisdom and inspiration, but, due to the ambiguity of its meaning, opens new frontiers of interpretation. The "power check" in this instance is supposed to be the authority of the state through its various institutions, chief among them is the judiciary.
Contemplate, my dear fellows, the body of the betrayed engineer Muhammad Fulfulah lying on the floor after he has been asphyxiated, then burned, and ask yourself whether any guilt has been associated with his killing. Imagine then his deceived family (*ahl*), prior to answering my question: why should the blood of the	The attorney is trying to persuade his audience that the defendants committed their act without shame or guilt—with total indifference to the victim and the consequences of their act.

[59] Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love, and Eroticism in Modern Societies* (Stanford University Press, 1993); Niklas Luhmann, *Love as Passion: The Codification of Intimacy* (Stanford University Press, 1998).

[60] In the first column are the attorney's statements, and in the second are my comments.

killers be dearer to society than the blood of the victim?

Any human being would be surprised at how much this crime has affected our society, first in its causes and motives, then in the style of its execution, and also in the fact that one of the criminals is an **educated** woman whose job was a teacher forming a new generation of students, while the other is also educated (*muthaqqaf*), and worked until recently as an employee in medical services.

The second emphasis, besides guilt, is "style," which by all accounts was horrific—in cold blood.

The emphasis on education, and the fact that the wife was a schoolteacher and an alumni of Aleppo University, is an attempt to discredit the *necessity* of the crime even further, considering that most criminal acts are committed by individuals from the lower classes of society. It could also be to underscore "the cold blood" character of the crime. Because the affluent and more educated tend to be materially more at ease, their crimes become even more impenetrable.

The defendant Sabiha Dal'un, which you have come to know, has proven that she's a true **viper**, acting behind her **instincts**, who marries to **protect** herself, then to protect herself even further pushes her brothers, chief among them the accused Ahmad, and her mother, to participate with her at finishing off her husband the victim Muhammad, who was known in his own town, among his colleagues and friends, as a very decent fellow with high moral principles. The reason is that he had caught her in the criminal act itself (*jurm mashhūd*), while enjoying herself in sin and desire, on that same legal marital bed (*sarir zawājiha al-shar'i*). She had participated with the others in her crime, with such cool nerves, in such a way that one feels bewildered. We should not forget that when your respectful court had decided to go for the death penalty,[61] she was stone faced, as if she didn't care for less.

Muhammad has been portrayed throughout the case-file, including by his wife, as a low-key decent fellow, who couldn't have harmed anyone. His total inexperience with women made him a true victim of a vampiric woman like his wife Sabiha. But while Muhammad was mocked by his wife and relatives for his low-key allure, those same qualities are portrayed here as those of someone who could be "trusted."

As to the accused Muhammad Dal'un, whom you have known, he was the one who had planned for the crime. He was indeed, with his sister Sabiha, the main organizer and executioner. But **it would have been preferable** that, for someone like him, so much concerned with honor and pride, **to have killed his own sister instead**, considering that she was into illicit sexual liaisons, rather than putting an end to the life of the victim and young engineer who did nothing wrong, except for having seen his wife with her lover and

Notice the use of "relative" rather than the more common "cousin," as if to emphasize the "closeness" even further.

[61] The reference is probably to an earlier "preliminary" verdict, which was revised in 1994, and to which the present memo was addressed.

relative (*qarīb*) Abdul-Qadir Sha'sha'a on his own marital bed.

The facts of this case show that the accused Sabiha Dal'un **gave herself up** to her relative Abdul-Qadir Sha'sha'a who took off her virginity when she was still a teenager. But when she became an adult and received her education degree, her marriage to him was impossible—both having shared the same breast—she therefore threw herself at our victim Muhammad and married him. Muhammad is known to have pursued a **moral life**, who never before had gone out with a girl or woman, which made him an easy target for our accused Sabiha, having married him in the fall of 1982. The night of her marriage, when she was into her menstrual period, she threw herself at him **from the top** and had sex with him, and chose that timing precisely in order to confuse him, so that everything would remain messed up in his mind, thinking that he was the one to have forced her out of her virginity. But our victim nonetheless suspected something, having confided to his maternal uncle that there was **something wrong** in his wife's behavior—and sexuality.[62]

"…gave herself up" to her cousin: the term does suggest some kind of passivity on the part of the teenage girl. The act is seen in parallel to "threw herself at our victim," when the possibility of marrying her cousin had no issue in sight.

The virginity—and its loss at an early age—are indeed the main ingredients of the prosecution arguments. Sabiha was indeed a woman preoccupied with shame, for the simple reason that she had sinned as a teenager, lost her virginity, and kept pursuing her cousin.

The theme of virginity is then pursued even further, as it is customarily the husband who has the exclusive right to deflower his wife—not a relative or someone else. A woman is "forced out" of virginity.

For her part, the accused Sabiha, once she settled into her marriage with the victim, freely pursued her sexual lust, going back to her lover Abdul-Qadir who got into the habit of seeing her in her marital home in the morning hours, when the husband was in his job at the electricity company, while the accused's teaching hours were usually in the afternoon. **Fate** had it that the husband came back home in the morning of a day in early April 1983, and that soon as he entered the bedroom he found his accused wife in her transparent sleeping outfit, with her lover lying naked besides her. He hastily wore his clothes and left the room. The promiscuous (infidel) wife (*al-zawja al-zāniya*) was in panic, and begged her husband to forget what he had just seen, alleging that it was the first and last time…The victim, having seen his wife in such a situation, told her mother about it, making it clear that he would tell the truth to his parents whatever the

It is common to see defendants as sources of all evils. In this case, the root of all evils is the defendant's sexual lust, which is what led to her virginity loss in the first place, and to her pursuance of more sexual pleasures after her ill-fated marriage. In other words, the sexual lust would have led the defendant from one state of agony to the next, ultimately destroying her husband's life—and her own—in addition to having thrown her brothers and mother with her into the mud.

The defendant is only portrayed negatively through slurs: she's manipulative, cold blooded, lusty, promiscuous, and a whore (the logical conclusion) with no heart.

[62] See above for the text of the cross-examination between the investigative judge and the maternal uncle regarding the victim's confession to him on his troubled marital sexuality.

cost. The mother, however, was afraid of scandal, and instead of telling the truth to her kids, in particular the eldest the accused Ahmad, in order to finish off (*qaḍā'*) with this **infidel whore** (*al-zāniya al-'āhira*), she informed the husband that what matters here is honor and custom, thus it would be better for him to conceal the whole matter to avoid scandal. She insisted on that…

The accused Sabiha, once the body was completely burned, took the body from the tank, placing the head on a stone, then lighting it with some papers. She left to her school as if nothing had happened to her innocent husband…

The "nothing had happened" stance was repeated twice in two consecutive paragraphs to underscore the cold bloodedness of all accused ("in cold blood"), if not their outright indifference for a human life.

Motive is one of those empty signifiers that receives meaning only from the documentation of the users themselves. How did the plaintiffs' advocate present his case to the court? Clearly "motive" was in his mind what would bring the case together, which in this instance principally translates as Sabiha's character analysis, which is principally a character assassination at the hands of the prosecution. Motive unhesitatingly takes a single stance, as there doesn't seem to have been that many alternatives in the defendant's worldview—at least not from the lawyer's perspective. She was someone who got infatuated with her cousin as a teenager, before any court would have provided her with legal rights on her own. Having sinned from that early age—a sin based on sexual lust—she had to, on one hand, hide her sinful behavior and marry the victim Muhammad (who in effect was victimized in his marriage before he even got murdered), and pursue her long term illicit relation with her cousin. In sum, the theme of sexual appetite coupled with reckless behavior would be enough to bring the defendant's character together. Her behavior would become even more reckless once caught in delictum in the act itself—on her own marital (or "*shar'i,*" as stated by the lawyer) bed. Having created a one-dimensional monster with gross sexual appetites, the lawyer was here at odds at explicating convincingly how the choice to eliminate the husband went through. Now that the wife's sins have been revealed, why not follow traditional custom through an honor killing? The lawyer asks the question to himself and the court, but seems to find no convincing answer. Why go after the husband?

In the lawyer's narrative, even though the mother seems the one to have given benediction, she steps into the background once sister and brothers make their final plans. The monstrosity of the act and its banal execution—"in cold blood"—are only explicable through this unusual ability of the offenders, and a fortiori the sister, to sustain their *distance* with the act, to the point that Sabiha went to her regular school teaching job early in the morning, only few hours after the killing, "as if nothing had happened." In sum, the lawyer's argument was that honor had to be preserved *within* the family, rather than spill outside, and to do so required that the only element from the outside, the husband, had to be ritually sacrificed. Which is precisely the hardest thing to explain: in a very traditional rural community, where marriage is sacrosanct, and where men and women have to remain faithful to one another for their lifetimes, the family decided to

rally behind "the one who dishonored us," while sacrificing the one who "knew about it." The counsel stumbles upon such a reversal of fortunes and the more he finds himself unable to make anything out of it, the more he unleashes his anger towards the defendant in machismo style.

Selective use of language, key-wording, and language games

The plaintiffs' advocate picks up therefore on that first confession, selects what fits better with his own scenario, corrects what he thinks were malicious errors, discredits many of the facts, prior to narrowing the cross-examination to the only element that really interested him. Basic rules of memo writing: *process all the texts of the case-file in order to create your own text: select, decontextualize, bring statements from different sources into one text, recontextualize, and, finally, such juxtaposed combinations of elements would become "the plaintiff's lawyer's memo" in the case-file.*

From the first June 9 testimony, the counsel only eyed the double-burning hypothesis, eschewing possibilities of natural death or suicide, and to underscore its veracity, he reiterated that the confession took place voluntarily, without any pressure or duress, and only in the presence of an investigating judge in the privacy of his office. That's important to keep in mind, considering that the defendant went through several versions in 1983 alone, alleging that she was placed under pressure. In effect, by July 20 she would deny in toto everything she had stated in her previous testimony. Other inmates, who were imprisoned in the same cell as Sabiha, had alleged that she told them several stories in which she fully confessed her killing of her husband. By November 25 she had, however, come up with another version, this time fully confessing her killing of her husband, with the help of her two brothers and nephew. Here the counsel played the same trick as before, namely a ten-point presentation of the defendant's "main points" of her November 25 interview–confession. He then linked the facts of the crime with its root cause: namely, that the husband caught his wife in a "witnessed crime" (*jurm mashhūd*), when she was practicing sex with her cousin on her marital bed. The husband refused to swallow such a humiliation, threatened to inform her family, and the rest of the town if necessary. Sabiha bargained for her life, proposing to her husband a divorce, and to forgo the dowry and other prearranged payments, and giving up her jewelry and the apartment under her name. At this stage the lawyer's narrative seems almost complete. The plausible narrative was in effect corroborated with all kinds of factual evidence, memos and reports, and testimonies of witnesses. The motive of the crime was also there: the illicit sex that the defendant as wife was having, the husband's threats, and the sense of honor on both sides.

The lawyer is nearly complete, and he could have stopped at this stage. But he'll proceed even further, as he's still only in the middle of his memo. Now that the brother's role has been established, he'll go through Ahmad's cross-examination, summarizing it into 8 points (headers), in order to bring the sister–brother testimonies close to one another, as if they were in mutual agreement, and as if one confirmed the other. The memo then underscores two points made earlier. First, Ahmad's testimonies were delivered while "he was totally free, without any mental or physical pressure from any party," even

though "he was beaten up at some point by state secret agents (*mukhābarāt*), but as he stated it himself, that did not prevent him from telling the truth." The lawyer was referring here to an episode where secret agents interrogated the then suspect Ahmad, since at the time he was serving in the army. Second, the lawyer underscores once more the validity of the two-burning thesis.

That immoral thing

For the court, in its 1994 verdict, and in the aftermath of a decade long investigation, the problem began when in the night of his marriage the newly-wed Muhammad Fulfulah "suspected that there must be something wrong in the virginity of the accused Sabiha as soon as he penetrated her." That was soon followed by the husband's impromptu visit to his own home in one morning, at a time when he was supposed to be at work, where he found his wife, on that same bed where he made love to her, naked with her cousin. Suspicion then took a turn for the worst, as threats and counter-threats prevailed, followed by the mother's decision, based on the testimonies of her son and daughter, to end the existence of her son-in-law. In short, the court perceived this case as one of honor, but instead of killing the person who dishonored family values (a perfectly legitimate attitude, we are told), the *wrong* man, who simply happened to have been the husband of the culprit, was killed instead. Which *partly* explains the severity of the judgment—the death penalty.

In the final section of the verdict devoted to the discussion of factual evidence (all of which duly laid out in the first section) from a juridical perspective, the court reiterates its broad view of the matter that it all began with that "suspicion" (*shakk*) that a devoted and innocent husband had nurtured towards his wife as soon as they consummated their marriage. And, "considering that it's all about the honor of a family, the decision was made to kill the victim Muhammad Fulfulah to protect the family's honor and reputation." The defendant Ahmad stated to the investigating judge that his mother had told him that Muhammad detected in his wife "something immoral," which prompted the mother to beg her son to kill his brother-in-law at his earliest convenience. The crux of the argument amounted to the statement that "all conditions for a premeditated killing were set." Hence the death penalty.

When the Law enjoys itself

We began this chapter with a public execution of youngsters who were lawbreakers, who frightened the city with "unreasonable" serial crimes, and were perceived by the population at large and the law as mercilessly breaking all shared values around them, as if nothing mattered beyond their own fragile narcissistic superegos. We then focused on two men of different generations who heartlessly killed their victims, without emotion or sign of vengeance; the courts gave them a well "justified" death penalty verdict; which was also Sabiha's fate, but this time the murder was neither one of indifference to the victim nor righteous vengeance, as there was no revenge per se against the husband, except that he was behaving more like a woman than a man, hence he had to be axed for not mastering the symbolic honor codes. Finally, in an interim case, which was unique to

the Syrian penal system, and which I've deliberately placed between three death penalty verdicts, three policemen were accused of manslaughter for torturing to death one of their inmates, which considering how much torture is well spread in the prison system, if not acknowledged, raises uncanny concerns on the *limits* of torture.

Syria is a new nation-state, not even a century old, and whose "newness" implies that its juridical symbolic order received an abrupt makeup over a century ago by transplanting modern Napoleonic codes into the old defunct Ottoman system. The error here would be to make a blunt division between "modernity" and "non-modernity," only to argue that the Syrian system meets or fails to meet certain criteria of "modernity." In late-capitalism there is nothing that would be off the ground of contamination between "modernity" and pre-modern lifeworlds, hence there is no need to reason in terms of a lifeworld that is pure an uncontaminated and another one that belongs to modern late-capitalism. To wit, even an externalized gaze of a westernized world that demarcates itself from non-western "Oriental" lifeworlds is hard to sustain, so much the transplants and contaminations among lifeworlds have taken a toll on modern lifestyles.

Consider, for example, the public executions with which we've inaugurated this Chapter. One could easily argue that such representations of state power are obsolete in that they belong to a previous defunct era of sovereign power that was meant to be abusive, hence they have no existence in modern democratic societies. For Syria, they must be remnants of an old past that has not yet matured into modernity and the political and legal rights of citizens. More importantly, what such public executions obfuscate is the existence at the core of "society" of archaic forms of power relations which point to a lack of disciplinary practices inscribed in institutionalized discursive practices as documented by the likes of Weber, Norbert Elias and Foucault. By the same token, torture and abusive violence are corrosive in police investigations as some cases in this book show, but whose excessive and unlawful ethos is seldom systematically investigated: they're simply documented, but left aside as if nothing really mattered. Yet, what such critical appraisals miss is precisely the uncanny coexistence of a multiplicity of forms of power relations in Syrian society. Thus, the state authorities do at times feel obligated to break the routinized procedures of judicial investigations, submitting non-political lawbreakers to hastily patched military trials, prior to executing them in public at dawn in the most symbolic of all spaces, as if normal life should not be affected and go on in spite of all what happened. But such practices come as supplement to routinized civil trials of sorts, like the ones documented in this book; the latter, however, are not free from permitted-but-denied torture either, which is seldom investigated, or at the very least, would prompt for a retrial. In other words, both public exhibitions of torture and the secretive ones conducted in police stations are symptoms of the Law's obscene addendum to its underworld of sadistic enjoyment *qua* practices of (political) domination. To be sure, such practices are not unique to nondemocratic societies, as the obscene superegoic addendum of the law is inscribed at the heart of democratic societies with a strong penchant for law and order; even though in the latter police brutality is more exposed to the whims of the mass media.

When it comes to the death penalty, it stands as capital punishment all over the world,

even though Europe at large has prohibited it since the 1980s.[63] To be sure, the national differences are significant, but what is at stake in Syria is the *secretiveness* of such executions; or, more importantly, the paradox that surrounds the much wanted publicity of public executions, versus the jailed secrecy of the death row inmates. The latter's execution is fairly selective, pending a presidential decree amid the Jinayat's recommendation, set within a time framework that defers the decree over many years, even though all appeals were already exhausted. The secretiveness of executions of death row inmates must be thought in conjunction to police torture: both are fairly known, but kept behind a veil of ignorance. Publicizing such matters would bring unwanted debates to the public eye. In sum, the general motto is, we know such things are happening, but there is no benefit in publicizing them. Thus what ascribes public officials to the law is the very ability to transgress it, where everyone knows that it has been transgressed (what the public routinely detects as "corruption (*fasād),*" which only consolidates perverse transgression even further without unmasking its uncanny mechanisms), yet we collectively play the game that transgression is there, but "useful."

By the same token, the likes of Basim, 'Abdul-Karim, and Buthayna have all transgressed the law in their own way, prompting the state to transgress (not retaliate) by its own means. When the state rehabilitates the death penalty it reestablishes the power of the big Other as the bearer of moral values and civic virtues—that there is always "someone up there" to guard us against evil. It is indeed the very *discreetness* and *arbitrariness* of the death penalty, the fact that out of all the homicides only a very narrow (and insignificant) margin would go for capital punishment which gives it that aura of uniqueness. Hence the significance of the death punishment is less in its acting as possible deterrent (there is no evident empirical correlation between homicides and the death penalty) and more its role as the externalized *subjectivized* Gaze of the state, which re-inscribes itself as the third-party audience as a necessary component of crime. Basim and 'Abdul-Karim picked up victims that did not matter much to them ('Abdul-Karim's act was in his own admittance one of pure randomness), as if unconsciously aware that the recipient of the crime was not the victim but someone else who acts as a third-party gaze, and whose feeling of guilt is left *un*acknowledged by the recipient itself. Sabiha for her part treated her husband like a male residue, someone with whom she shared no sexual lust (which she had dutifully kept for her cousin, her prime and only love), and which had to be dispensed of because he was *too much* of a burden, hence his murder was precisely that uncanny source of *excess of jouissance*.[64] What the death penalty does is, so to speak, "confiscate" that third-party gaze in order to reconstitute the consistency of the big Other in the name of the integrity of the people and the nation-state.

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[63] Robert Batinder, *L'Abolition,* Paris: Fayard, 2000.

[64] Another case was that of the two young lovers who murder the husband, only to engage in sex for a second time while the corpse was still in the room, see C8–4.

[Chapter 6] Who has the capacity to receive an honor crime?

A Lebanese journalist was reporting from the Idlib countryside on August 2012, in the heat of the insurrection that would mark the downfall of the Asad régime, how in the holy month of Ramadan the towns and villages were receiving their daily sporadic shells from the official state army (or, more accurately, its élite paramilitaries) at sunset, just when their inhabitants were ready to consume their meals after a long troubled day. The journalist described a situation where the central government and its "national" army and paramilitaries were totally disconnected from their local populations, like those in the Idlib province. As the main roads, army barracks, power plants, utilities, were still under state control, the local populations connected via back roads, alleys and small avenues, which were controlled by the Free Syrian Army (FSA), a conglomeration of gangs and militias with no real central organization. In Saraqib, a small town on the Idlib–Aleppo highway, to which we have devoted one of our cases (C7–4), the reporter met a young woman by the name of Ibtisam, who had just left her marital home in Aleppo, amid the city's sudden takeover by the FSA. Ibtisam lived for nine years with her husband, whom she described as a supporter of the Asad régime, and a member of its "thugs" youth-gang, the *shabbiḥa*;[1] she decided to honorably quit when the city was bombarded heavily by the special forces. Her husband, with whom she had five children in common, used to routinely beat her up for no reason, accelerated his abuse in the wake of the revolt that had swept the country since 2011, as if punishing his wife for the revolt's "successes." The irony is that her brother, who had joined ranks with the FSA, and who in that fateful August was fighting in Aleppo "the mother of all battles," summoned her to get back to her husband—his "political foe"—to save her honor, or else he would leave the battlefield and "honorably" kill her at their parental home in Saraqib, where they grew up together. Ibtisam's mother said that her son only wanted to "protect" (*al-sitrah*) his sister, nothing more, even if that meant going back to an abusive husband, which, adding insult to injury, was working as a "thug" for the government. Ibtisam told the reporter that there was no way going back in time, seriously considering the possibility of fleeing to the nearby Turkish border, only to live among the Syrian refugees in one of the camps in the Hatay province.[2]

Ibtisam, who was born in Idlib, wedded her husband, a resident from Aleppo and close friend to her brother, as a teenage fifteen-year old girl: "I stopped loving him three months after our unfortunate wedding, when he started beating me for no reason; this has been going on for nine long years, the beating accelerated with the revolt." Observers failed to report that the "Syrian Revolt" has no true urban character, as the four major (Sunni) cities—Damascus, Hims, Hama, and Aleppo, which formed in Ottoman times the backbone of the economies of Bilād al-Shām and modern Syria as well—were taken hostage to youth-gangs and small militias in rural areas with no true political motivation, or program for that matter; the kind of groups that would have been impossible to chaotically survive as they did in non-politicized urban settings tightly controlled by

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[1] The equivalent of the *balṭagiyya* in Egypt, see, Salwa Ismail, *Political Life in Cairo's New Quarters: Encountering the Everyday State*, Minneapolis: University of Minnesota Press, 2006, 139–45.

[2] Hazim al-Amin, *al-Ḥayāt,* Beirut, 12 August 2012.

families and intelligence services. To wit, the modernizing programs of the Baathist state have produced in the countryside a surplus labor force which has been uprooted from its rural underpinnings, and which between its underemployment and unemployment has metamorphosed into a reactionary force with no true vocation, whether social or political.[3] In the wake of the Arab Revolts, those male youth-gangs were primarily mimicking protests across the Arab world against paternal and familial authority, with the state acting as the proxy agent that needs to be changed in order to move to that undefined "something else."[4] What we therefore witness in the case of Ibtisam is the marginalization of women from the Revolt, whose condition may have even become worse, caught as she was between a "revolutionary" brother whose attitude towards women was still as reactionary as it ever was, and a husband who became more abusive than ever: husband and brother shared the same vicious honor values even though they stood on an opposite political spectrum. The Lebanese reporter failed to report that an honor killing in Syria is a "small" matter: the killing of a woman for an "honorable motive" boils down to a one-two year punishment at most, while in neighboring Lebanon such crimes have been indexed since the 1950s as regular homicides, with indictments ranging from manslaughter to first-degree murder.

Even though honor killings are of different sorts, they could, however, be divided into two broad spectrums. The first, and probably most common, are honor crimes perpetrated for an "honorable motive" (*dāfi' sharīf*), as the Syrian Jinayat inaptly labels them. The assailants are invariably men but related to their women victims through kin affiliations. The motive of the crime is sexually rooted: the woman victim, whether married or not, would be accused of an illicit "affair," irrespective of whether it has been effectively consummated. But, whatever the case, she would be perceived, inside her own kin, as having had dishonored her family and the values that they stand for. Such crimes ought, in principle at least, to be classified as first-degree murders, *'amd,* that is, considering that their planning was premeditated—even though some assailants would argue that the sinful woman was caught "in the act itself," which prompted an immediate action from the part of the assailant—they ought to be treated as homicides. How come then do they receive such a special treatment? Once the purpose has been identified as having an "honorable motive," the courts would then indulge at categorizing the crime as *qaṣd* rather than *'amd,* then would reduce it even further to a "killing with an honorable motivation" (*qatl bi-dāfi' sharīf*), considerably reducing the punishment to a year or two (including the mandatory 6 months between incarceration and hearings).

A second much broader category of honor would not be "honorable," in that it would neither receive a special treatment, nor would it be limited to the one-two year punishment (Chapter 7). Those are criminal cases that would be related to land (Chapter 9), married couples (C6–3), incest and rape (C6–4, 6–5), or more broadly sexual taboos (C6–3). Whether such cases would be deduced to a common logic is another matter: as

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[3] Over 300,000 jobs were lost in the agricultural sector in 2003–07; 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.

[4] Anand Gopal, "Welcome to Free Syria. Meeting the rebel government of an embattled country," *Harper's Magazine,* 325(1947), August 2012, 35–42.

this chapter will attest, it all depends on the method of analysis, what we understand by honor, and how honor would unfold in relation to crime in a concrete situation. Pursuant to the framework of analysis revealed earlier, namely, the triadic link between performer, victim, and audience as third-party gaze, we will question the enigma of recipiency: who is the audience in honor killings? If the victim herself was not "what mattered" most to the assailant, then to whom *was* the crime dedicated? What makes honor crimes so special—at least the ones perpetrated against women for the sake of cleansing the family's honor from indecent sexual transgression—is the indeterminacy of the recipient. Is it the community at large? Was the assailant acting on behalf of the shared values of his community, which remain unnamable and taken-for-granted? Was he sacrificing himself for the sake of his community or acting selfishly to negate his repressed sexual lust? Or would the murder itself re-inscribe the unnamable and taken-for-granted in order to grant it the *visibility* it was carving for?

From "murder" to "honorable killing"

[C6–1] On June 13, 1995, Muhammad al-Hamid b. 'Ubayd was, at one after midnight, at the point of completing a late night shift to friends and acquaintances in the popular Maysar neighborhood in Aleppo, when he suddenly noticed two men with a very young lady on a three-wheeled motorcycle:

> I saw a three-wheeled motorcycle with three persons, one of them was my sister Hind who is seventeen-year old, and who had left home for two years. We've heard from people that she's become a prostitute (*dā'ira*). I took a taxi and followed them, once in mahallat Hawirz in Bab al-Nayrab, the motorcycle took a turn towards a dusty road. I left the taxi, entered a park, and followed them: I saw all three—two men, and my sister Hind: Having heard her voice, I was now sure that it was her, near the wall of the park. I went in their direction with a razor (*mūs*) in my hand so that I would be able **to kill her and wash my shame** (*ghasl 'āri*). Once I was close to them, I identified my sister; but one of the guys took hold of me and stabbed me with a knife in my right leg and ran away. I grabbed my sister and **killed her (*dhabaḥ-tu-ha*) from her neck** all way through [that is, the neck was completely cut, from one vein to the other, *mina al-warīd ila al-warīd*]. There was no one present when I slew my sister; no one drove me to do it; **I decided it all by myself (*min dhātī*) for an honorable purpose** (*bi-dāfi' sharīf*) to wash [cleanse] the shame for my family. I went to my buddy 'Abdul-Malik Barri and told him what I did and demanded from him to inform the police.[5]

In his deposition to the police, only few hours after he murdered his sister, the twenty-year old Muhammad was talking in that quiet and unassuming voice. Not much would change in later depositions or in his testimony when faced with the travails of criminal justice: unlike the more "common" criminals who hesitate, shift positions, and give contradictory statements, this type of criminality—involving "honor killings"—presents itself with a different tone, that of duty, honor, humiliation, righteous anger, and shame.

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[5] Deposition to the police by the accused, the night of the murder, June 13, 1995.

For one thing, the accused come self-assured in the presence of the law: not only does Syrian law grant them protection, but, more importantly, the perpetrator, because he committed an act in view of cleansing one's family's honor, only needs to let his act go public. Otherwise the whole point behind the slaying of the sister (or wife, or mother, or cousin, or any other woman) loses its purpose and *raison d'être,* which is precisely to inform those who already "know" of the sister's whereabouts, her alleged loss of virginity, and her going out with other men, that all this is already over and behind us: thank God, the family's honor has been cleansed (or "washed," according to a common Arabic dictum), once *saved* by someone from *within* the family. Thus, two things already demarcate honor (*sharaf*) killings from other homicides: first, they are invariably restricted to the family and its closest ties; second, even though men could be *in principle* targeted, honor killings, where honor is de facto associated with a sexual act (whether consummated or imaginary), invariably victimize women (as we'll see honor killings involving men as perpetrators and targets follow a different logic, and are processed as regular homicides by the state judiciary);[6] third, they are by state law "protected." In fact, even though article 533 of the Penal Code states that "Who kills another person deliberately (*qaṣd-an*) shall be subject to hard labor from fifteen to twenty years," article 192 treats "honor" killings under a special category:

> If the judge realizes that the motive (*dāfi'*) was honorable (*sharīf*), he should rule according to the following directives:
> - permanent internment instead of capital punishment (*i'dām*);
> - permanent or fifteen-year internment instead of permanent hard labor;
> - temporary internment instead of temporary hard labor;
> - simple imprisonment (*ḥabs basīṭ*) instead of imprisonment with labor;
>
> The judge could also protect the accused by refraining from the publication and dissemination of the ruling, procedures normally required as part of the punishment.[7]

Syrian penal law, like many others in the Arab and Islamic worlds, shamelessly goes for reduced sentences for the "criminals" who committed a "killing for an honorable purpose"—*qatl bi-dāfi' sharīf* is the technical term used by the courts to classify such cases. However, in practice, and in the great majority of honor killings (and this applies to that of Muhammad 'Ubayd as well), the offenders (the system does not perceive them as "criminals") are punished with three years of imprisonment which are usually mitigated (*tukhaffaf*), thanks to a complacent verdict, to one only. A presidential decree in summer 2010 raised the punishment to two years, amid protests from feminist civil-right movements that raised concerns apropos the barbaric nature of honor killings, prompting Syria's grand mufti, Ahmad Hassun, to declare on his website that honor killings are contrary to Islamic principles. All such good intentions, however, were apparently not persuasive enough to shake the good old mores beyond what only very recently became a two-year punishment. Thus, the processing of honor crimes as regular homicides, as neighboring Lebanon has been doing since the 1950s, seems like a long way to go. Thus,

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[6] Chapter 7.

[7] Mamduh 'Utri, *Qānūn al-'Uqūbāt* (Damascus: Mu'assasat al-Nuri, 1993), 197 for article 533 and 75 for article 192.

by the time the imprisoned offender is waiting for the judge's ruling—six months to one year—he[8] would have already served most of his prison sentence.

Honor killings are therefore much more concise than other types of homicides: the court ruling comes proficiently faster; their files are thinner (the 'Ubayd file, for example, is altogether less than twenty-five pages); there are fewer witnesses and less direct- or cross-examinations; finally, because the murdered victim is usually a woman from within a clan whose slaying became urgent for her closest relatives, no lawyers are appointed on the plaintiff's side, and, indeed, it is the Public Prosecution Office (DA), the *niyāba 'āmma,* which is in charge of such crimes and assumes the role of prosecution. In sum, honor killings are processed with a great deal of expediency, zealotry, and self-assurance. The accused knows beforehand that he doesn't have much to do—he even would not need a counsel (the state appoints one on his behalf)—but to accept his fate for a one-year prison sacrifice. As to the *niyāba 'āmma,* honor killings receive an up-front treatment: they are indexed as such from day one, and once classified as *qatl bi-dāfi' sharīf,* the rest is a simple six-month routine. It is, indeed, the killer himself who performs the master task of identifying the crime as an honor killing from day one: first, by giving himself up to the police as soon as the crime is committed, an indication that this is no regular homicide, executed for the petty reasons, where the police would have to search for a criminal at large; then, by identifying in the original deposition to the police that the crime is one of "honor" (it is crucial that such identification is performed by the criminal himself rather than the police).

In fact, honor killings should probably be placed in congruence to *rites of passage* since they seem to follow a common pattern which distinguishes their slayings from other types of homicides. It is as if the offenders are providing the courts, their families, relatives, and the "public" out there with all the signs that would distinguish *sharaf* crimes from other slayings. First, the female victims have their neck cut in a specific way:[9] horizontally, in half a circle, so that the frontal part of the neck is completely cut from one end to the other— *mina al-warīd ila al-warīd,* from one vein to the other. For example, in the 'Ubayd case, a description of the victim's neck and the way it was horizontally clean-cut, was reproduced verbatim in each report and the final ruling as well; in addition, the referral judge report (which is usually the first basic comprehensive report to be submitted to the criminal court, and also, as it turns out, would serve as the basis for future rulings) made the point that the victim (or *al-maghdūra,* the betrayed, as the court texts call all their victims irrespective of the crime and its context) was slain "like a sheep (*dhabh al-ni'āj*),"[10] which from the court's perspective would provide further indication that it was indeed an honor killing.

Second, the court would heavily trust all relatives of the victim. It would ultimately amount to one thing: that the victim had a "bad reputation," and, because of this, she has dishonored her family. In the 'Ubayd case, testimonies and depositions came from a very

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[8] In most instances it is indeed a male; women, even though have the right to "wash their honor" too, seldom commit such crimes and are rather their *object.*

[9] Not all of them, of course: in the second case below, the crime was committed with a gun.

[10] Report (*asās*) 285/3/1996, decision (*qarār*) 49/3/1996, dated February 25, 1996.

limited number of persons, and, as is usual in such cases, neither the police nor the prosecution have even bothered to verify such allegations: everything was taken for granted and at face value. Thus, besides the testimony of the accused himself to the police (at eight in the morning, less than seven hours after the crime), his brother testified, as a "witness," claiming that his sister was "homeless (*mutasharrida*) for two years, had a bad reputation, and was confined to a prison cell on more than one occasion."[11] Then was the father's turn, another of those "witnesses" (we learn later, on the same page of the report, that the father preceded his son by killing his other daughter for ultimately the same reasons: she was also homeless for two years, with a bad reputation), who testified that his daughter "used to run away from home in order to go out with young men." Also included is a testimony from a neighbor to the family who reiterated the sister's going out at irregular intervals, and, of course, the "bad reputation." A second neighbor made the point that the two sisters—the first one killed by her father and the second one by her brother—had been going out, without their parental consent for two to three years, and that they both enjoyed a bad reputation.

Third, this "bad reputation," which every "witness" reiterates on his or her own, is then scientifically corroborated thanks to the coronary's report: the victim, as the doctor aptly pointed out, "was not a virgin (*ghayr 'adhrā'*)."[12] This statement is in itself "sufficient evidence," among others, that the victim had such a "bad reputation," as all those who knew her had already asserted.

Finally, the ritualistic process concludes with the grand finale of the verdict which *publicly* establishes, for all those who are interested, that there is "sufficient evidence," beyond any reasonable doubt, that it was indeed a *qatl bi-dāfi' sharīf.* Hence the courts serve well the strategies and priorities instituted by the actors themselves rather than impose anything "legal" on them. The social actors who commit a *sharaf* crime, because, in their own eyes, the behavior of one of their relatives has been shameful and dishonorable to the family, hence act in accordance with well established norms within their own community. What is of interest to us here is that actors (and their "milieu") impose their own normative values on the judiciary. Thus, the state and its judicial apparatus seem to operate within the social *habitus* of shame, status, and honor, providing actors with their judicial equivalent.[13]

My husband and my mother were not lovers

[C6–2] On April 20, 1994, Fadila Ahmad 'Ali spent her last night with her husband. The Kurdish couple from a village close to Aleppo had a bad year: Fadila was accused by her husband for starting an "affair" with her son-in-law—the husband of her own daughter—and by April of that year, still according to her husband, she was already three-month

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[11] Handwritten report by the fourth examining magistrate (*qāḍī al-taḥqīq,* investigating magistrate, *juge d'instruction*) in Aleppo, number 1101, decision 65, dated February 10, 1996.

[12] Report prepared and signed the day of the crime, June 13, 1995.

[13] For a study of the complex relationships between shame, honor, and status, see, Michael Gilsenan, *Lords of the Lebanese Marches: Violence and Narrative in an Arab Society,* Berkeley: University of California Press, 1996.

pregnant from her lover. In fact, the husband was dead certain in front of his prosecutors that the fetus was not his since he had no sexual contact with his wife for the past six months.

On April 20, after several months of a disrupted family life, Fadila visited Aleppo and apparently had in mind staying at her brother's home for the night. Her husband who was doing his best in tracking her whereabouts was informed of her visit and went to join her in his brother-in-law's house. Their hosts, thinking perhaps of the possibility of a happy reunion of the couple after a difficult year, were so excited that they gave them their own bedroom for the night and decided to sleep in the living room. Fadila and her husband Rashid spent therefore the night together, for the last time, and no one would ever know for certain what happened that night. Few hours before daybreak, Rashid pointed his gun at his wife (when she was probably still sleeping) and emptied two bullets in her head. She died immediately. Having confessed his crime to the police only few hours later, Rashid was imprisoned, had a straightforward trial (as all honor killings do) with a final verdict on March 21, 1995, and by April was set free.

Syrian criminal procedures already severely constrain defendants and witnesses under direct- or cross-examination, but what complicated matters further here was that all interrogations had to be performed with the direct assistance of Kurdish interpreters. Rashid Ouso (b. 1956) surrendered to the police and acknowledged his crime shortly after killing his wife, and his first statements on the motives and circumstances of his crime were uttered in front of a police officer in Aleppo. After describing his occupation as peasant (*fallāh*) in the village of Sa'ar Najak, he goes on to describe his wife's adulterous life:

> I've been searching in the last four months for my wife Fadila 'Ali who had left our home in our village Sa'ar Najak with my daughter's husband, Rif'at 'Ammuri. Yesterday [April 20, 1994], at sunset, I went to the neighborhood of Wadi al-Mu'azah where the home of my brother-in-law, Ourya 'Ali, is located. I saw there my wife Fadila and probed her for the reasons for leaving our home and tried to persuade her to go back for the sake of her children. But she refused to do so, and we ended up staying together until midnight. I went to bed with my wife in our room [our hosts' bedroom] while Ourya, his wife, and children remained in the living room where they had their beds done and slept there. Once everyone was asleep, I picked my 7-mm war-gun and shot my wife with five bullets[14] in the room [where she was sleeping] and **watched her die**. I left the room and informed my brother-in-law Ourya 'Ali of what I just did and told him that I'm going right now to **give myself up to the police**.[15] Which is what I did, hence came and surrendered to you [...]. I pose myself as a plaintiff against my daughter's husband, Rif'at b. Muhammad Shaykho 'Ammuri, since he damaged **my reputation**, and it should be noted [that I knew] that they used to sleep

[14] According to the autopsy report, only two bullets were found on the victim's head.

[15] Which constitutes the quintessential act of surrender for an honor killing.

> together in the neighborhood of Ashrafiyyeh[16] in the home of my cousin, Jamal Tino.[17]

Several hours later, when interrogated by a judge, Rashid appended few other "pieces of evidence," hoping to make his honor plea even stronger. He thus pointed out that three months earlier, his wife, son-in-law (her alleged "lover"), two sons, and their neighbor's sons, were all accused of theft and confined to Aleppo's main prison. Then, a month prior to the murder, his wife was freed and her "lover" followed suit few days later. Since then, they both moved to Aleppo, and, still according to Rashid, they had to be as close as possible to the others who were still imprisoned. It was for this very reason that he decided to travel to Aleppo to meet his wife. He furnished identical descriptions provided earlier to the police, with the chronological puzzle which eventually led to the night of the murder, but adds a detail: *he wanted that night to have sex with his wife but she refused.* After describing the scene of the killing, he elaborated on his wife's adulterous relationship:

> I did on a previous occasion **take by surprise** my wife with [my son-in-law] Rifʿat in my own home at night. They were having sex and had taken their clothes off and were together in a single bed. When I deplored what was going on, they started hitting me and threatened to kill me.[18]

In a way similar to the first referral judge report which shapes and structures all forthcoming memos and rulings, the very early statements of the defendant would structure all the topoi to be found in subsequent testimonies: the adulterous wife, her pregnancy from her lover, her short-lived prison sentence in Aleppo, and her excuse for settling in the city to help in her two sons' release from prison, in addition to graphic details of her relationship. The sexuality is in particular useful as evidence to "confirm" that *penetration* (coitus) did occur, hence *zinā* could be legally established. The defendant, having found so many good excuses to kill his wife, will act, throughout the period of his own trial, as a *chef d'orchestre* orchestrating what others would say and do. Thus, the court with its judges, witnesses, defendant, and its attending public becomes the space for a *rite of passage* where the victim is demonized for having betrayed her husband, children, and family, and where the murderer-defendant metamorphoses into an *innocent* human being whose only problem was being too naïve, soft, indecisive, helplessly betrayed by his promiscuous coquettish wife, whom *he* had caught in *flagrante delicto.*

It is no surprise therefore to find that the rest of the testimonies, with witnesses on both sides, come together with a remarkable sense of faked coherence and with the same repetitive arguments, which applies to the two sides, that of the victim and her killer. In fact, while the regular *tha'r* crimes are divisive because they create infernal fractures

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[16] Which used to be an Armenian neighborhood, now predominantly Kurdish.

[17] Deposition to the police on April 21, 1994; the memo which contains several depositions was dated May 2, 1994, and was addressed to the *juge de paix, qāḍī al-ṣulḥ,* in Jabal Samʿān.

[18] Interrogation memo (*maḥḍar istijwāb*) of the defendant, #72/1994, April 21, 1994.

between families and clans which regress over generations,[19] *sharaf* crimes for their part bring together, in a superfluous show of harmony, the two families of the victim *and* her killer: everyone, with few exceptions, would seem to endorse the perpetrator that his wife concluded her destiny with the fate she rightly deserved—death.

Let us begin with the hosts. Ourya ʻAli, the brother of the victim, after corroborating all allegations concerning his sister's affair with Rifʻat, added that he saw the two of them earlier that day, prior to the murder, when he was visiting one of the defendant's cousins. He noticed his sister with Rifʻat trying to hide themselves behind a door. He defied them, urging them that each one goes separately to his own home. But he was surprised to find his sister with Rifʻat knocking at his door at around two in the afternoon, but when they begged him to leave them alone for a while, he refused to do so. He then saw his sister giving Rifʻat, prior to his leaving, some cash and a gun. His brother-in-law suddenly showed up, and from this point on, the story overlaps with what we already know. As to Ourya's wife, Nabiha, and their daughter, their two- and one-page statements add nothing new.

Happily, the defendant's cousin, Jamal Kito, a taxi-driver which some witnesses had claimed that the victim and her lover were the morning of the murder at his place, had more to say. He first claimed that the victim and her son-in-law dropped regularly at his apartment once the victim's two sons have been imprisoned. At times, they used to stay for the night and they all shared a single room together with Fadila and Rifʻat always having separate beds. One night, as he came late from work at two in the morning, his wife told him that she saw their two guests laying in bed and having sex; they also had a joint shower in the morning and Jamal noticed that they started kissing openly—a "suspicious behavior," *sulūk mashbūh,* according to their host who decided to throw them out. His wife Fatima provided a separate testimony supporting her husband's statements:

> I woke up one day on sounds of kissing and [body] movements and saw the victim Fadila with Rifʻat on the top. They were having sex (*yumārisān ʻamaliyyat al-jamāʻ*), were uncovered without any blanket, and had no clothes from the waist down. They went to the bathroom together and stayed there for an hour. When I told my husband about it, we decided to force them out. I then learned that the accused Rashid had killed his wife. It should be known, however, that I've seen the victim [Fatima] hitting her husband on several occasions in our home, and she was helped in this by Rifʻat.

Comes finally the testimony of the daughter of the accused, Zaynab (b. 1977), that same daughter whose husband was allegedly having an affair with her own mother. It is certainly the only one which marks a departure from the rest, the voice of a traumatized betrayed woman.

> The accused, Rashid Ouso, is my father; Rifʻat Muhammad Shaykho ʻAmmuri is my husband; and the victim Fadila is my mother. I have no qualms with anyone of

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[19] See *infra,* Chapter 7.

> them, and **I don't know who killed my mother**; I don't know either of the reasons behind her murder. I haven't seen my husband since the day of the incident: we live together in our home in our village of Sa'ar Najak, and my father did too. There were previous problems between my mother and father, and for the last twenty years, **my mother had an immoral behavior** (*taṣarrufāt lā akhlāqiyya*) with a lot of people; they used to have sex (*yumārisūn al-jins*), but I don't know them. I used to **hear** [these stories] and my mother used to **absent herself from home**. My husband never left the village with my mother, and he never touched her either; and she never slept in our home. There [was] no love relationship (*'alāqa gharāmiyya*) between my husband and my mother. But the people of the village do not like my husband. The allegation that my husband and mother were having sex is incorrect.[20]

Not a single word of Zaynab's statements were cited in the final court ruling which cleared her father from his crime and reduced his prison sentence to only one year. In the typed five-page court ruling, statements of the accused and four other witnesses were extensively cited, one of them was Zaynab's sister, Huda, who had testified of her mother infidelities with her son-in-law. As to Rif'at, who seems to have been a key figure in this tragedy, the court heard nothing of him since he vanished from his village the day of the murder and never came back. There is therefore no sign of him in the file, even though he should have been a prime witness; but every other witness mentions him—only to demonize him, and is categorized in the *Jinayat* final ruling as a *ẓanīn,* a suspect. According to the ruling, his crime was that of *sifāḥ,* or *zinā,* that is, adultery and fornication, and the court summoned a one-year prison sentence for such a "crime."[21] Thus, according to this logic, a person who kills his wife with charges of adultery and fornication as a *motif du crime,* is sentenced with the same one-year period as that other person with whom the wife allegedly committed the adultery. Articles 473–477 of the Syrian Penal Code severely punish adultery, fornication, and incest, with prison sentences of three months to two years; and article 476 in particular considers the status of *aṣhira,* that is, the brother/sister-in-law and the son/daughter-in-law categories, as in parallel, from a legal point of view, to the categories of mother-father and brother-sister: that is, sex *between* these categories is considered "legally" incestuous and hence illegal (subject from one- to three-year incarceration).[22]

Discriminations against women parallel the gender gap in the text of the Penal Code. Thus, in article 473, the first one in the series devoted to "illicit sex" (as *zinā* or *sifāḥ*), an adulteress should be punished from three months to two years of internment (§1). Her partner (*sharīk*), in case he was married, is subject to the same prison sentence, but if he was not, the period is mitigated from one month to a year (§2). As to evidence (*bayyina*) which establishes that a person was engaged in "illicit sex," §3 of the same article surprisingly limits "legal evidence" on the "partner": "Besides the legal acknowledgment (*iqrār qaḍā'ī*) and the misdemeanor which has been witnessed (*al-junḥa al-mashhūda*),

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[20] Interrogation of Zaynab Ouso by a judge and in the presence of a Kurdish translator, #1187/1994, dated July 11, 1994.

[21] *Jinayat* final ruling (second court), #168/2/74, dated March 21, 1995.

[22] *Qānūn al-'Uqūbāt, op. cit.,* 178.

only the letters and written documents drafted by the partner are adduced as evidence (*adillat al-thubūt*)." But article 473 says nothing on how to determine that a woman *was* an adulteress: besides her confessing to the court, or direct witnessing of her in a *jamā'* with her "partner," what would be enough evidence in this (or any) case?

What is more surprising is the following article 474 devoted to adulterers. When we come to men, "The husband is punished from one month to a year of internment whenever he commits the *zinā* in his marital home or when he overtly manages a place (*khilya:* "cell") [for fornication] wherever that may be" (§1). The same punishment applies for the "partner" (§2). Thus, besides the fact that punishments differ between men and women, article 474, unlike its predecessor (473), leaves a blank page as how to determine that a woman *was* the "sexual partner" of a man she was not married to. And article 475 makes things worse by limiting the right to file a lawsuit to the husband only (§1).

The 1953 amendments to the 1947 Code summoned extending the prison sentences to some *zinā* acts, in particular those occurring *within* the same family and whose status is either incestuous or semi-incestuous: "Considering how much the crime of fornication is bad for society, the punishment in article 476 has been prolonged for this type of crime."[23] Article 192 severely limits the scope of article 533 by establishing "honor" as a special category to be dealt with separately and with much reduced punishments (one year only in the majority of cases). All articles of the Penal Code related to sexual offenses overtly distinguish between men and women in terms of the periods of punishment, evidence, and the right to file a lawsuit.[24]

Rethinking recipiency in honor killings

One way to understand honor is to introduce Jacques Lacan's notion of the "big Other" (*le grand Autre*) as a field of social étiquette and appearances.[25] Honor crimes do bring together for the individual actor both the subjectivity of the act itself and the objectivity of étiquette and appearances. The honor games are situated at the level of the socio-symbolic chain of signifiers which constitute the world of appearances that actors would normally abide to. An event, such as a woman "going out" on her own, would provoke a "break" or "seizure" into the symbolic chain of étiquette and appearances. But in regard

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[23] *Qānūn al-'Uqūbāt, op. cit.,* 177, note 2.

[24] In the U.S. in 22 states adultery remains a criminal act, a vestige of the way American law has anchored legitimate sexual activity within marriage. In most of those states, including New York, adultery is a misdemeanor. But in others it is felony, though rarely prosecuted. The U.S., however, remains exceptional among the liberal industrial nations, where for the most part adultery is not covered by the criminal code. Most U.S. states have purged their codes of law regulating cohabitation, homosexual sodomy and fornication—sex between unmarried adults—especially after a 2003 Supreme Court decision in Lawrence vs. Texas, which made sexual activity by consenting adults in private legal across the country. But the question of how that ruling affects adultery remains unanswered because others may be harmed by adultery—a spouse and children. Several courts have alluded to the constitutionality of adultery laws since the Lawrence decision: *The New York Times,* 15 November 2012.

[25] Jacques Lacan, *The Four Fundamental Concepts of Psycho-Analysis,* New York: Norton, 1981, Chapter 3: "Of the Subject of Certainty."

to what exactly? The "break" is in "the eye of the beholder," that is, located in the gaze (*le regard*) of a kin-related male which identifies the woman's act as abhorrent and outside the socio-symbolic order that constitutes the norms of society.[26] But then it's a long way to go between the "objectivity" of the gaze, as embodied in the big Other of the community, and the subjectivity of the criminal act, which would victimize the woman, declaring her as a postmortem outcast. What is significant in honor killings is that the judicial authorities would not indulge into the "internal motivations" of the killer, as they would normally do in homicides. Thus, one of the reasons why honor crimes receive so scarce attention, hence are conducted with scant evidence and no "character analysis," is that the court is only interested in étiquette and appearance: who broke which order, and whether the victim deserved her fate for having gone her own way. As a rule, therefore, the offender, having already voluntarily given himself up, would not receive the scrutiny of a normal assailant, because in this instance it is the objectivity of the (criminal) act that really matters. As to the victim, her past behavior is retroactively evaluated, beginning with her murder at the hands of a "relative" up to past episodes that led to it. In other words, the whole process of psychic evaluations that we've encountered in regular homicides (Chapter 3), and which at times pushes medical examiners for absurd claims of motive, sanity or insanity, is here totally absent. It is as if such scrutinization, albeit minimally, would only apply to the victim, which once dead, would have assailant, relatives and friends alike posthumously assessing her character and deeds.

But who is the third-party addressee in honor killings? The assumption here is that the killing should not be primarily looked upon in terms of the relation between killer and victim (the two may not have even known one another, at least not so closely), but (as we did in previous chapters) in terms of a triangle where killer and victim are performers on behalf of a third-party's gaze. As a rule, therefore, an honor killing can only be staged for the Other's gaze. In other words, neither does the killer act on his own behalf motivated by some kind of deep psychic disturbance, nor is the victim targeted for a profound perversion in her behavior, in spite of all what is said and done posthumously on her behalf. In his very act, the killer transfers his guilt to a third party, which we'll argue is the community at large—the big Other acting as community in a desperate attempt to systematize its symbolic meaning: the rituals of honor thus act like a system of representations which in their very essence are theatrical, involving an elaborate mise-en-scène, and the killer's role lies precisely in the transference of guilt to a third party. What in fact triggers his act, in a deeply divided society along kin, ethnic and class lines (e.g., landowners versus tenant farmers and peasants; property-owners versus propertyless), and where women are harshly dominated, are unexpected changes in the symbolic texture of intersubjective relations—for example, a woman's behavior that disturbs the symbolic order, which is interpreted as an abhorrent vice, whose resolution must be death. In other words, the symbolic order acts like a mask that would "restitute" social inequalities: it is the big Other that is at work, and whose contingent disturbance—in an act that is a pure subjective contingency—needs to be addressed through a counter-subjective contingent act. If the addressee of the murder in honor killings is the community at large to which

[26] As is well known, psychoanalysis operates a split between the subjective eye that sees (*le voir*) and the objective gaze that is not tied to a subject (*le regard*), see, Lacan, *op. cit.,* Chapter 6: "The Split between the Eye and the Gaze."

killer and victim both belong, the recipient maintains an ambiguous relationship with the killer—or more specifically with the guilt that he transferred to them: the community at large is neither ready to assume its guilt, nor to recognize the killer as someone who saved its honor. The killer has therefore to incessantly return for that recognition, which may imply more violent acts.

Framed a bit differently in an anthropological language, an honor killing would look as a *symbolic exchange,* where "gift" and "counter-gift" are symbolically exchanged, through the body of the victim, between the assailant who gives his community what he owes them—the permanent restitution of the symbolic order—and the community which approves of the killing, hence restitutes the assailant as member of the community.[27] The symbolic object is at the same time given and destroyed in the rite-of-passage—the honor killing itself. Hence the assailant is in a double bind: on the one hand, he proceeds through a *rite of binding* with his community: "I tie you to me by giving you the body of the women who does not deserve to be part of us"; on the other, is a *rite of unbinding:* "You will not be able to give it back to me." The enjoyment (*jouissance*) that the female victim allegedly nurtured with her male partners is here transferred to the assailant: his *jouissance* comes at the expense of binding himself to the socio-symbolic order of his community through the act of *sacrificing* his victim.[28]

A word of caution is helpful regarding the "masculinity" and total power of the big Other. For Lacan the gaze (*le regard*) is an *object,* hence is neither male nor female, but outside the realm of the subject proper: the gaze is not the male subject objectifying a woman. As Joan Copjec has persuasively argued, feminists[29] and film theorists alike have operated with the misconception of an omnipotent male gaze to which the observed subject is totally visible to the Other and to itself.[30] Visibility would be congruent with a knowledge which would be produced by the apparatuses of the patriarchal régime, the norms of law and custom. In an honor killing the woman-victim would thus be subjugated to the gaze of the Other through an internal mirror mechanism: not only she would be subjugated to an omnipotent male gaze, but, more importantly, she would see herself as being looked at, internalizing that external gaze. We thus become visible not only for the Other but for one's self as desiring subject. The desire of the subject is therefore regulated—if not completely apprehended—by the desiring Other, be it the patriarchal régime or any other source of power. The apparatuses of apprehension could be, following Foucault, régimes of truth emanating from a multiplicity of discursive powers; or sociological norms which the subject "discovers" in daily encounters, "learns" and abides to. In all such scenarios, however, what the subject "knows" and abides to

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[27] Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies,* New York: Norton, 1967.

[28] Jean-François Lyotard, "Peinture et désir," in *Textes dispersés I: Esthétique et théorie de l'art,* Leuven: Presses Universitaires de Louvain, 2012, 52–75.

[29] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity,* London: Routledge, 1990; and Copjec's critique, "Sex and the Euthanasia of Reason," in *Read My Desire: Lacan Against the Historicists,* Cambridge, Massachusetts: The MIT Press, 1994, 201–236.

[30] Joan Copjec, "The Orthopsychic Subject: Film Theory and the Reception of Lacan," in *Read My Desire: Lacan Against the Historicists,* Cambridge, Massachusetts: The MIT Press, 1994, 15–38.

constitute what sociologists call the "social construction of reality," all forms of knowledge, norms and laws which construct the subject as subject of knowledge. But whether one postulates, pace Foucault, modes of "resistance" to such régimes of truth, or else a moral subject which can choose, the subject remains trapped in what it may or may not desire.

Following Lacan (and the Kant of the antinomies of pure reason), Copjec argues that the subject is already a split subject from the beginning: a subject which is apprehended by the social and symbolic order (the historically rooted social constructions to which Foucault and others have paid much attention), and a subject whose desire is under the power of its own imaginary. The subject of desire may not desire anything at all, be devoid of any desire, or may desire without knowing what it desires: "I desire you, even if I am not aware of it."[31] What the subject desires in the Other escapes it, as it does not know what "it" is: what Lacan has named as the *objet petit a,* or the small object of the Other which obstructs our gaze of the unnamable Thing.[32] Even if my desire is apprehended through the gaze of the Other, the processes of apprehension escape me, since they are neither rooted in any visibility nor knowledge. Theories which render the subject totally visible through knowledge rooted in historically organized modes of discursive reasoning (medical, juridical, and so on), fail to see that the subject is not totally apprehended by such socially constructed power relations. Indeed, the subject perceives the latter primarily as *repressive* in their very essence: the repression of *jouissance* tout court.

To come back to our honor killings, it would be misleading to simply portray them in terms of a patriarchal régime of truth, a combination of juridical and customary norms, which would apprehend both assailant and victim in an infernal circle of death engineered by the male gaze. Even if my desire is triggered by the gaze of the Other, I fail to see what I desire in her (*objet petit a*): "I take you as object for myself unknown to my desire"; "I identify you, you to whom I am talking, as the object which you lack."[33] As Copjec puts it, "it is the *repression* of this desire [of the Other] that founds society."[34] To say that the law is only positive, that it does not forbid desire but rather incites it, is to see honor killings as incited by the law (whether customary norms or state law), whereby a socially constructed scenario apprehends both assailant and victim to do what they did. When the assailant therefore voluntarily gives himself up in the immediacy of his crime, only to proudly confess his rightful act, he is confessing the law, that is, he is saying what the courts wants him to say, namely, that the law, which promotes rightful vengeance, was the cause of his desire, say, for the dishonor that his sister caused to his parents and family. It is therefore no coincidence that Syrian law labels such homicides as "killing for an honorable purpose": the law causes the killer to *have* such desire to "wash his honor." Which would leave out the essential: that the subject has no knowledge of what he or she

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[31] Jacques Lacan, *Le séminaire, Livre X: L'angoisse,* Paris: Seuil, 2004, 38: *"Je te désire, même si je ne le sais pas."*

[32] Lacan, *L'angoisse,* 36.

[33] Lacan, *L'angoisse,* 38: *"Je te prends pour l'objet à moi-même inconnu de mon désir"; "Je t'identifie, toi à qui je parle, à l'objet qui te manque à toi-même."*

[34] Copjec, "The Orthopsychic Subject," 24.

desires.

What is unique in our second honor killing (C6–2) is that the triangle of murder is here more complex than in C6–1 (which acts as prototype), as it is apprehended by an external gaze: that is to say, it is the triad of performer–victim–audience in its totality that is looked upon from the outside through an external gaze—that of the victim's daughter Zaynab. The triangle itself is composed of the father who committed the act of killing, his wife–victim, and her lover, which was also the wife's son-in-law (the husband of her own daughter). The addressee of the murder was not located inside the triangle but outside it: the daughter's female gaze which acts as a depersonalized object. It is as if the father committed his act on behalf of his daughter—the true addressee—and like any recipient she was not prepared to recognize in the murder accomplished by her father–partner an act of communication, that is to say, she was not ready to assume the guilt, and heal her family in the aftermath of the murder, whilst conceding her husband's escape, and her mother's poor reputation. In other words, the crime's "beneficiary" would neither take over her family's mantle (as in C9–2), nor recognize her father's gesture for that matter. Herein lies the daughter's crucial statement that "I don't know who killed my mother": the inability to recognize her father's act. The reason is not some emotional psychic disturbance, but in that implicit knowledge that the father did "it" for her, hence as the recipient of the murder, the guilt was transferred to her, but she was unable to assume it as such, to internalize it, hence the denial. Moreover, the illicit affair between mother and son-in-law, which was surprisingly public knowledge to the point that the two lovers were not attempting it to conceal it even from their closest relatives, was also not admitted by the daughter. The only thing that she conceded was her mother's "affairs" *in general,* which she claimed, she "heard" about from others, but never came to *witness* personally. The daughter therefore clears the two males in her family, accepts her mother's infidelities, even though firmly maintains that she was unable to understand why she died the way she did. The wager here are the abstract relations between "seeing," "hearing," and the truth. Zaynab "heard" that her mother was relentlessly engaged in "immoral behavior," even though the daughter refrained from "admitting" that her mother was *specifically* engaged in an illicit affair with her son-in-law, that is, with her own husband. But what were the sources of such "hearing"? As voice primes over seeing, Zaynab only "says what she sees." The voice acts like an organ without body, as she doesn't just "see what she hears." Zaynab therefore did not want to *see* what she had heard from unnamed sources: by limiting her gaze to hearing, she refuses to see what her mother had done. When the Jinayat would not take her testimony into account, it was in all likelihood because the court privileges, as a general policy, seeing over hearing. When one sees only what they heard, or when one refuses to see what they've heard poses a problem for the bearers of law: we're not allowed to hear voices, but only to see what could be presented as evidence. Zaynab's attitude was therefore one of demureness, as it expressed more delay, hesitation, indecision, than a sense of consciousness which did not (want to) *see* what her mother was up to—that obscene Thing—the unsayable.

Zaynab therefore neither "saw" her mother committing that obscene Thing, but only *broadly* "heard" of her "infidelities," of her excessive desires, without anything

specifying the son-in-law as the object of desire; nor did she "see" her father retaliate against her mother: the prosecuting judge "told" her of the honor killing. Zaynab's *imbroglio* was therefore "mastered" by eschewing the internal process of *voir-dire,* not, however, in its modern Anglo-American meaning of screening potential jurors for the sake of a just trial, but more in its old Latin Anglo-Norman connotation of "to speak the truth." *Voir* in its modern French incarnation stands for "to see"—or the externalized gaze—while *dire* stands for "to say"; thus, the *voir-dire* represents a quintessential act of "saying the truth about what I have seen and witnessed." However, *voir,* in its old Latin connotation of *vērus,* designates both "true" and "see," which means that "to see" *is* "the truth; while *dire* stands for the Latin *dīcere,* "to say," "to see."[35] The combination of both terms, therefore, as *voir-dire* strongly suggests a desire of "saying the truth from what I have seen and witnessed." Zaynab for her part eschews such process: "I haven't seen anything—neither my mother having an obscene affair with my husband, nor my father murdering my mother—I'm therefore unable to tell the truth, because I haven't *witnessed* a thing, nor have I seen the *physical* acts themselves." To be sure, such demeanor would not indicate an attitude of "escapism" of any sort: we all have our own ways of escaping the unbearable, which precisely amounts not to see in reality—or as a pure act of imagination—what we do *not* want to see; hearing, therefore, saves us from what we do not want to see—the obscene Thing—the unsayable.

The burden of the external "objective" gaze is therefore alleviated by only hearing things, by reducing events to their "voice," which amounts to speaking within the constraints of the socio-symbolic norms of language. If, as we've argued in this chapter, the assailant re-inscribes his murderous act within the "objectified" gaze of the big Other, which in honor crimes, is no one else but the community-at-large, acting as if someone is giving him approval, Zaynab for her part was that other recipient, through which the big Other *speaks* differently: by *telling* her what she needs to know, rather than letting her *see* the obscene Thing. That is to say, the truth becomes bearable by not seeing it, but by obfuscating it through the "voice" of the big Other.

The complexity of the second honor killing, which is only formally similar to the more common ones (in line with Case 1), stems from the incestuous proximity of the infernal couple: it is as if mother and son-in-law were publicly exhibiting their affair in a desperate act of pure *jouissance*—sexuality becomes sexual all over again, and is delivered from its boring homely atmosphere, once the community at large is provoked. But the community was also "too close" to let such transgressive act go without its due punishment. As in other honor killings, therefore, the symbolic order has been disrupted through the sudden emergence of a pure subjective act—the mother's excessive desire and her sacrifice by the husband. But its difference as an enigma of honor lies in the incestuous nature of the affair—"too close" to sustain itself by its own means—not to mention the generational difference.

Which brings us, one more time, to agentive causality, towards which we raised serious concerns in this book. The juridical discourse operates within a Cartesian division

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[35] American Heritage Dictionary, 4th edition.

between a conscious subject and an external act committed by that same subject. In order to rationalize premeditation (or the lack of it) the subject must be legally responsible, that is, not caught in a symptomatic behavior, such as dementia or insanity, that would "relieve" him of his responsibility. Put simply, the assumption here is that either we are fully responsible through an internal conscious motivation, or else we're unconscious because caught in an "external" state of delirium, which gets hold of us, rendering us irresponsible in the eyes of the law. In both stances, however, the assumption is that the crime scene could be narrated from a first-person perspective, and in case of delirium or insanity, the narration would lose its side of witnessing the truth. What we are questioning is precisely such presumed availability of the first-person perspective, which the courts would like us to think is constructed though the narrative work of suspects, witnesses, lawyers and judges. But what if such an attitude proves untenable, a product of a Western juridical metaphysical discourse, where the aim is to promote "due process," "fairness," "equality," and "justice" as the main ideological modules of the system? Consider, for example, the honor killings as a product of such deadlock—that of an illusory first-person perspective which is simply not available. When the assailant gives himself up to the police, in the hours after committing his crime, only to construct a preordained perspective of the killing that looks convincing to the point of disappointment, and which would serve as template to the verdict, is he really reflecting *his* own first-person perspective? The Cartesian motto would here stand as follows: "I've killed, therefore I've saved my family from dishonor." But who *is* that speaking "I"? What does it stand for? By thinking the honor killing, as we did for the other crimes (homicidal or not), in terms of a triad between performer–victim–audience, and positing that "audience" as the potential recipient of the murder, we de facto have decentered the first-person perspective upon which every verdict stands. As human beings, whether criminals or not, we are caught in our daily lives in the mirrors of gazes, of the externalizing gaze of others on us, of the big Other which stands as moral authority; in the deadlock of sexual difference; in what we want to "hear" but not "see"; in the "truth" that is left un-said simply because it is too much of a burden for the consistency of our socio-symbolic order; in the vulnerability of our own selves-as-persons; in the flexible and often elusive boundary between the intentional and non-intentional. All of which render the first-person perspective a bit superfluous. We suggest rethinking such antinomies in terms of a struggling "self," one which cannot reflect upon itself in a pure act of objectivity. When juristic discourse represents premeditation as "a well-thought act," conducted with "a balanced mind," with "a calm demeanor," we must rethink all the above as a virtual impossibility; they must be probed with an alternative gaze in order to make sense.

Negotiating sexual freedom

[C6–3] The third case we're examining here,[36] which dragged at the Idlib Jinayat for

[36] Idlib Jinayat 6/1998; crime occurred on July 1988; defendant (b. 1951) arrested on September 1, 1988; Jinayat ruling on 17 June 1998; Naqḍ ruling on 5 April 1999 revoked Jinayat sentencing; case renumbered 370/1999 amid Naqḍ ruling summoning the Idlib Jinayat "to search for the defendant's motive in committing the crime which is the subject of the suit," *al-baḥth 'an dāfi' al-muttaham li-irtikāb al-jurm mawḍū' al-da'wa.*

over a decade, shows the difficulties encountered by the courts whenever honor killings would not fall within the broad categories of honor depicted thus far: that is, women who have dishonored their families; or inter-generational clan feuds (Chapter 7). The assailant and his victim in this case pursued, after an accidental encounter "on the road," a brief friendship in which they acted as "business partners," sharing a taxicab owned by the defendant as a joint business adventure during their off-duty hours as state employees. Their friendship soon encompassed their families, so that their wives were also in contact with one another, exchanging mutual family visits. When the defendant's wife and then his daughter from a previous marriage both complained to him that his friend and "partner" made unwanted sexual advances to them on separate occasions, touching them on various parts of their bodies, grabbing them for a kiss, the defendant asserted that he at first did not believe them: he liked and trusted his "partner" so much that he naïvely thought he wouldn't do such a thing. His suspicions began, however, to grow when he heard statements on various occasions from his "partner" expressing beliefs in "sexual freedom," in a society where "women—even wives—would be freely exchanged for the sake of sexual pleasure." The defendant further claimed that his "partner" had a serious crush on his daughter, which became more and more "visible" to him as time passed. In a climate of growing distrust between the two, and while they were going for a ride one day in the direction of Hama, the defendant was allegedly angered by remarks regarding "sexual freedom." He said that images of his wife and daughter being seduced by his "partner" came to his mind like in a light stroke. He took a turn, stopped the car, and shot his "partner," killing him instantly, and leaving his body lying on a field, prior to its discovery by the police. It took several days for the body to be identified, and for the defendant's arrest.

Struggling with motive

Even if the court were to fully trust the defendant's account of the events as outlined above, such a crime, following the common norms, would hardly fit within any of the two broad categories of honor killings. First, the defendant and his victim were unrelated to one another, except for their common origins as inhabitants of the eastern city of Dayr al-Zor. They only had a brief friendship, and there's no record of previous feuds either individually or among their families. Second, allegations regarding the victim's misbehavior towards the defendant's wife and daughter could not be substantiated by independent witnesses. Finally, allegations surfaced during the hearings that the defendant himself was having an "affair" with the victim's wife—a woman of "bad reputation," the Idlib Jinayat hastened to report—adding further to the complications as to the defendant's "motives." Even though the defendant and his counsel exemplified the case under the banner of "honorable motive" (*dāfi' sharīf*), the accused did not, however, surrender himself immediately to the authorities, and it took over a month, from the time the victim's corpse was found, to identify the defendant as a prime suspect, leading to his immediate arrest.

When a council pleads his client's motivations under the rubric of "honorable motive," for a case that isn't "obviously" so, the court might have a hard time to find its way through. Witness here, for instance, the pace of the investigations. The victim's body was

found on 23 July 1988, and since its location was within Idlib's province, the corpse's identification was relegated to Idlib's police. The defendant was arrested on September 1, and an Idlib Jinayat court convicted him a decade later with the death penalty. The following year, a Naqḍ court in Damascus revoked the Jinayat's ruling on the basis that it failed to identify a proper "motive" for the defendant's act. In one word, therefore, all those courts were struggling with the issue of "motive": *Why* did the defendant commit the crime which he had acknowledged upon his arrest?

For the defendant and his counsel, the answer came down to "honorable motive." But it took ten long years for the Jinayat to decide on the case, opting for the harshest punishment possible: a *'amd* killing, punishable under the death penalty. Having shunned the "honorable motive," the court found no valid excuse, however, for the killing. It noted, for instance, in its final ruling, that since the "partnership" between defendant and victim over a taxicab license did not involve much financial wrestling, and since there wasn't much going on between the two beyond sharing a car, economic motives did not seem to have been an issue here. The court was left with one motto: *cherchez la femme.*

In its verdict, the court harnessed the victim's character: "The victim used to party a lot. He loved going out at night, drinking a lot, and believed in **sexual licentiousness** (*al-ibāḥiyya al-jinsiyya*). His wife Amal had illicit sexual affairs, with the full consent of her husband. One such relation was with an officer at the internal security, for which she received money. In early February 1988 the victim met the defendant, and borrowed some money [2,000 liras] from him. A friendship soon consolidated, and they began working in common as drivers on a touristic car that belonged to the defendant. They exchanged in the meantime many family visits. Two days before the big Adha feast, the victim traveled in the defendant's car with his wife and children to Dayr al-Zor where his in-laws home was located. The victim and the defendant then drove back together to Raqqa [where they both lived]. During the investigations, the defendant acknowledged killing his victim, claiming that in spite of their strong friendship, the victim attempted to **assault both his wife and daughter**. During a trip [from Raqqa] to Hama whose purpose was to buy tires for the car, he made a turn from the main road and killed his victim. He denied any affair with the victim's wife Amal." The introductory statement also noted that they were both employees at a governmental institution that managed the al-Furat dam and lake.

Swingers: unconventional hedonistic lives, and the exchange of sexual partners

The court soon found itself in a situation where the alleged assaults on the defendant's wife and daughter, which for the defense pointed to the "motive" of the crime, could not be substantiated by independent witnesses, and that the statements by the two women themselves were unreliable and hardly constituted any evidence. Not a single witness came forward to either back up or deny those allegations. The court had no other choice but to turn its attention to the victim's wife, and here it found what it wanted. First, the victim's nephew claimed that his uncle's wife was such a disgrace on the family that the victim had been pressured on several occasions by his relatives to divorce her. He also claimed that, few weeks prior to his murder, his uncle had suspected something

"unusual" between his wife and the defendant, as the latter was multiplying visits to the victim's in-laws in Dayr al-Zor. Another witness came forward with the allegation that he had a short sexual liaison with the victim's wife, which he took out for a trip to Lebanon, and that he paid the husband for his wife's services. A second witness, an officer at the internal security, made similar allegations. The wife's victim acknowledged for her part having had extramarital affairs with her husband's consent: "My husband considered himself a **progressive (*taqaddumi*)**[37] individual, and for that very reason he summoned me upon our marriage not to wear a scarf. He then began expanding his social relations and spending a lot, far beyond our means. That's why two-and-a-half years ago he established a friendship with an officer at the Raqqa police, and the latter started spending on us. He then booked for us a room at the Siyahi Hotel in Aleppo, where **I had sex with him in the presence of my husband**. I also had sex with him a second time in Latakia. When the officer was transferred to Aleppo, my husband befriended another guy who paid us SP6,000 [$120] and took me for a trip to Lebanon…I deny any relationship between me and the accused."

As more witnesses—among them the victim's two sons—came forward claiming that a relationship between the victim's wife and the accused did exist, which added to her overall "bad reputation," the court began narrowing on that one thread it had left. After rebuffing all claims of alleged assaults on the defendant's wife and daughter as invalid, the court concluded that "the defendant committed his crime with a peaceful mind and balanced thought. He planned his crime carefully 20 days prior to its occurrence. He seized that opportunity, when the wife and children were in Dayr al-Zor, and persuaded the victim to a ride with him in a location far away from his place of residency… then killed him in the middle of the night…All such factors indicate that the premeditated *'amd* motive was fully present, and that **the claim for an honorable motive is without any grounds**." Besides the death penalty, the defendant was summoned to compensate the victim's heirs for SP800,000. The Naqḍ for its part revoked the ruling on the basis that "every crime has a cause and motive," which the Jinayat failed to clearly identify.

The price of sexual freedom

We noted that in Case 2 the incestuous nature of the crime, even though formally an honor killing, gives the case a unique stance, and it is *only* in this regard that the second case could be similar in some respect to the third case of the swingers, even though in the latter, the court refused to treat it as honor per se, hence the death penalty (it remains uncertain whether it was effectively applied). The third case is about a devilish couple, where the husband and wife use each other's services for the sake of sexual *jouissance.* To bypass the routinized sexual ineptitudes of conjugal life, husband and wife are into a self-crafted partnership. The "progressive" husband sets himself and his wife into a

[37] The term *taqaddumi* is quite common in politics, designating all those on the "left," in particular Baathists, Nasserites, communists, and Palestinian revolutionaries, which stand for "secular" "socialist" values, and which come opposite to the *mutakhallif,* the "conservatives" whose political programs support family and clan values, traditional norms and religion, and peasant and rural life; besides the Muslim Brothers, anything remotely linked to "tradition" would stand as *mutakhallif,* a term that became in vogue in the 1960s amid the Baathist takeover of politics and the military.

partnership on behalf of a third-party gaze. One can see how such partnership effectively worked in the episode described by the wife herself, as "witness" to the prosecution, whereby she details a scene in an Aleppo hotel, where she was having sex with a police officer with the husband watching. In such episode the wife's sexuality is consummated through the husband's gaze as a third party—that is, as addressee to his wife's programmed infidelities, which he fully supported and encouraged. As if that was not enough, the couple were constantly looking for a third-party-outsider that would act as the outside gaze for their inside partnership—a "witness" to their infidelities. Needless to say, the dynamism is here very different from the regular honor crimes. In honor killings, the symbolic chain that reproduces social étiquette and appearances (Lacan's big Other) is well respected, and the *raison d'être* for the woman's murder is precisely to reinforce those symbols which have been temporarily disrupted thanks to the woman's alleged (sexual) misbehavior. The woman's killing—akin to an execution—is meant to be "public," in the sense that it punishes a private behavior through a public act, and the killer's actions in the aftermath of the crime are meant to transform a private act into a public lesson of morality. The dualism of the act of killing, set between a male killer and female victim, metamorphoses into a public event shared by the third-party gaze of the community to which both killer and victim belong. The killer—set as "defendant" in the judicial process—would soon be "recognized" by the community for restoring the symbolic order; he may even assume, once released from jail, a leadership role among his peers. In sharp contrast to the rules of honor and honor killing, our third case of swingers establishes a totally different logic of honor. To begin with, honor nurtures the thesis of the "innocent male" versus the "adulterated female," hence the killing itself erases all sources of adulteration and contamination; without the male's presumed innocence the logic would simply not work, and the private act of killing would not have been absorbed into the symbolic chain of values: that is to say, it would have maintained its status of "murder" rather than "honorable killing." By contrast, the couple of swingers did not operate on the duality of innocence versus contamination: neither the male nor female are here innocent; their sexual playfulness and promiscuity is rather shared both ways in a *double entente.* More importantly, what they did was to *consensually* construct a third-party gaze that acted as "witness" to their acts. There is no crime that is not dedicated in the final analysis to an addressee and third-party gaze, and in the case of the swingers, male individuals were picked up at random to satisfy their needs. In the longest of those third-gaze "partnerships" was a married man with a family in Dayr al-Zor, which soon metamorphosed into a business partner, only to end up as the husband's killer. The swingers thus established a practice whose aim was precisely to mock the traditional bourgeois middle class values, that is, to mock the family as a bedrock of satisfied sexuality and emotions. But instead of the usual infidelities common among married couples, the swingers transformed their sexual conquests into an open game, which they both openly acknowledged, and which they wanted to share with the outside world through third-party gazes. The attempt here was therefore to "break" the symbolic order of étiquette and appearance rather than "restore" it: only the court by declaring a death penalty verdict attempted to "restore" the symbolic order, while in regular honor killings the court acts in parallel to the wishes of the social actors themselves, that is, it gives a juridical cover to a ritual already endorsed by the community itself (Cases 1 and 2). In sum, in an honor killing the original criminal sin is committed by the woman only, which

the male addresses by officially criminalizing the woman, and bringing her back to society through murder (the "honorable killing"); while in Case 3, the criminal sin *was* shared by wife and husband—they were both partners, constantly looking for third-party gazes as partners. It was in the last instance one of those partners who committed the murder, bringing the couple back to (social) justice.

Oedipus unbound

A common characteristic to the criminal cases at our disposal is the repetitive nature of evidence. That's particularly true of crimes with sexual motives (incest and rape), but it's also very visible in the more regular criminal cases. It is therefore the original deposition of the alleged culprit to the police and investigating judge that structures the entire case. This is not only true of honor and sexual crimes, but also applies to the more regular crimes such as thefts and murders. The initial deposition—the only one in the dossier to "accurately" describe the crime—is quoted almost verbatim in the dossier's major sections. Memos, reports and rulings quote verbatim the description of the crime scene as initially provided by the alleged culprit from the first day of his or her arrest. Thus, even though a great deal of such "confessional" evidence is later denied by the defendants themselves (probably at the instigation of their lawyers), the various court and judicial instances would consider the culprit's initial deposition as the most genuine and relevant to the case. Understanding why the culprit's initial deposition structures the entire case proves of fundamental importance to the understanding of the inner workings of the Syrian judiciary in criminal offenses.

It is as if the suspect decides beforehand what kind of punishment fits best with his or her case; the modalities of punishment; and the procedures that ought to be followed or avoided. A prime reason for giving so much weight to the culprit's own documentation of the crime scene is that the system would not permit much room for constructed corroboration. The absence of any serious collection of evidence, such as fingerprinting and DNA testing, considerably limits the forensic tools at the disposal of the police and the public prosecution office. Moreover, direct- and cross-examinations tend to be restricted (as is the case in most civil-law systems), even though the procedures themselves do not impose limitations per se, while the nature of such restrictions must be thought in terms of self-imposed norms. The original defendant's deposition therefore shapes the *motif du crime* for the dossier at large, and it's that kind of narrative that is generally endorsed by the judicial instances and the courts.

[C6–4] Our fourth case,[38] which the investigating judge in a sober account on 28 August 1995, described as "one that is greatly puzzling and astounding, being of such a rarity for the judiciary," has the mother-plaintiff accusing her son of raping her while asleep in their own home. In judicial language, the alleged crime was that of a young man accused of "**having unwanted sex with his mother** (*mujāmaᶜat umm-ihi bi-l-ikrāh*)." Rape (*ightiṣāb*), as defined in art. 489, is whenever the offender threatens *or* forces someone *other* than the legal spouse into a forced copulation (*jamāᶜ*), must be punished for a

[38] Aleppo criminal courts, case 288/1996.

minimum of 15 years with hard labor, or to 21 if the victim is a minor younger than 15. Notice how the threat of force is all by itself illegal, even if no copulation took place. Moreover, the article does *not* seem to take into consideration a forced sexual intercourse—"rape"—among married couples. Finally, all the articles that fall under the rubric of rape (489–492) are not gender specific, which means that offenders or victims could be *simultaneously* male or female. Compared to U.S. criminal law where "levels of sexual assault" have gradually replaced a basic "definition of rape," which has become nearly impossible to sustain in a system where both alleged offenders and their victims come to court armed with experienced lawyers,[39] the Syrian definition of "rape," understood as *ightiṣāb,* is simpler, as it generally involves a male perpetrator who allegedly penetrated a female victim for the sole purpose of forced copulation (*jamāʿ*) (C6–5), although cases of underage boys being "sodomized" by an adult are also common (C8–2). Article 492 unexpectedly brings the topos of rape (*ightiṣāb*) to the domain of familial incestuous relations, albeit the word "incest" (*sifāḥ al-qurba*) remains at bay: when a 15- to 18-old minor is forced into a sexual intercourse by a legal or illegal "parent" or brother/sister-in-law, father/mother-in-law, or anyone who legally acted as "parent" (*sulṭa sharʿiyya*), the offender must be punished for 9 years with hard labor. Article 493 inaugurates the section on "adultery" (*faḥshāʾ*), which is framed in similar terms to "rape," except that in this instance the illegitimate sexual act which is described as "beyond decency" or simply indecent (*fiʿl munāfī li-l-ḥishma*), is subject to a minimum of 12 years with hard labor.

The original depositions of both parties to the police were in a brief two-page recto-verso handwritten report. The mother Fattuma (b. 1955) claimed that at two in the morning that same day (June 3), while sleeping in the inner courtyard with her daughter and son approximately seven meters away, she felt a hand fondling her leg:

> "I woke up and saw my son Nidal next to me, who threatened his sister once she woke up and told her that he would kill her if she started screaming. He then forced me into the eastern part of the courtyard, and when I pushed him away he threatened to hit me with a stone. I told him 'I'm your mother,' and he responded 'I want to sleep with you. **Why do you allow (*tasmaḥīn*) my father and you do not accept me?**' He then grabbed me and forced me on the floor, when I felt losing consciousness (*ighmā'*) once he threw himself over me. After a while I managed to wake up, saw my (pajamas') pants close by, and noticed some sperm on my sexual parts, which shows that **he did it with me** (*ifta'ala bi*). I then washed my sexual organs only (*al-nāḥiya al-tanāsuliyya faqaṭ*) and also my face. He then urged me that we travel. No, **my daughter has not seen her brother penetrating me** (*yujāmi'u-ni*). I request that an investigation be opened, and to have me medically examined. I consider myself as plaintiff on my own behalf (*mudda'iya shakhṣiyya*), and ready to pay a deposit…"

That was followed by the son's deposition. Nidal was a single man (b. 1974) who was living with his mother and sister.

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[39] "Definition of Rape Is Shifting Rapidly," *The New York Times,* August 24, 2012.

> "I was asleep in bed and suddenly woke up with the **desire to have sex (*uḍājiʿu*) with my mother**. I went to her bed and had my arm over her leg. She woke up and I forcefully pulled her from her bed towards the eastern dark section of the courtyard. I then threw her on the floor and took her (pajamas') pants off, but **I have no knowledge whether I had sex with her** or not because I was in such a nervous state. I've had such states of mind before, with the desire from time to time to have sex with my mother, and I did attempt that before but it never happened. I regret all that. When I've woken up my mother, my sister woke up too, and I've insisted that she shut up or I'll slaughter her (*adhbaḥu-ha*), but she never left her bed."

The final deposition was that of the sister. Nora was born in 1980, hence six years younger than her accused brother.

> "At two in the morning (June 3) while in bed close to my mother, I woke up at my mother's voice. I saw (my brother) Nidal with my mother sitting beside him. She then stood to leave the room, but my brother followed her to the eastern part where it was dark. He told me: 'Go to bed, and if you follow me I'll hit you.' I went to bed without knowing what happened between them. I would add that **my brother did attempt previously to have sex with his mother**, but he promised not to do that anymore. He never talked to me before about an unnatural relationship (*'alāqa ghayr ṭabī'iyya*)."

The report concludes that the plaintiff's husband had left to Lebanon two months earlier, and all her brothers were also outside the country; it was therefore not possible to take their depositions. A medical report confirmed the presence of sperm in the mother's vagina for the last twelve hours, but was short from identifying the source.[40]

Except for the defendant's deposition, which will be denied in toto in a counter-deposition to the criminal court on January 1996, not much novel factual evidence would come to the dossier. It was as if everyone—from police and prosecution, to the Jinayat court, not to mention plaintiff and defendant—were all satisfied with the three statements uttered by the mother, son and daughter, and that everyone was convinced of the accuracy of the rape scene. But the "rape scene," however, was precisely the indescribable part, as it allegedly occurred in total darkness (the eastern part of the inner courtyard), with no witness outside the plaintiff and defendant, both allegedly fainted and only recovered after the fact, while the daughter—and only "witness"—preferred to stay in bed, because she allegedly felt threatened by her brother, leaving him with her mother in the darkness of the courtyard.

There are few more details in the three depositions (*maḥḍar istijwāb*) that mother, son, and daughter individually shared to the investigating judge. The son was interrogated first the day after the alleged rape (June 4). The night of the incident (June 3) the defendant

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[40] DNA testing is not common in Syrian courts.

was at a wedding ceremony at their village of Khafsah Kabir where, according to his own testimony, he went back home totally drunk. His mother was on the floor and asleep, and his sister was close to her:

> "I came close to my mother with the intention of having sex (*mujāmaʿatu-ha*), and once she felt my presence she pushed me away. I tried to beat her, and in the meantime (my sister) Nura woke up and I addressed her with a threatening voice—'Go to bed or I'll kill you!' Once my sister was back asleep, I pulled my mother's hand and took her to a dark corner of the eastern part of the courtyard. Since my mother was resisting me, I held her and forced her on the ground and pulled her (pajamas') pants off. **I did not, however, penetrate her** (*ujāmiʿu-ha*), since I had left her and begun to cry. When I woke up I came to the conclusion that I often feel things that I'm unable to explain. When, for instance, I'm asleep, two persons that I do not recognize come by and wake me up from sleep. One of the *mashāyikh* (village elders) told me that I might be under **the influence of magic** (*siḥr*). I soon began to do abnormal things, when I woke up, I realized that I drunk a lot the previous night. I must add that I never had sex with my mother **before**.[41]"

To the question that the doctor's report indicates that penetration (*mujāmaʿa*) had occurred to your mother, while you're in denial, the defendant replied that "that's utterly false. My father is married to another woman and has been living in Beirut for three months, and has not come back ever since." The interrogator added in a note that the defendant was "thoughtfully" (*yujibu bi-rawiyya*) replying to the questions, and he often mentioned that he was into a "scandalous" situation (*faḍīḥa*).

A couple of remarks apropos this second testimony. First, the defendant, 24 hours after his first testimony, fully denied sexual penetration with his mother. His first testimony to the police (the day of the alleged incident) acknowledged the *possibility* of penetration. I say "possibility" because his alleged fainting once he pulled his mother's pajamas leaves room for uncertainty. Both mother and son had fainted in their original police deposition. Twenty-four hours later, the son denies penetration *in toto*—a stance that will be maintained at trial. Now, as in his prior deposition, the defendant portrayed the alleged incident in a dreamlike stream. Either he was unconscious, or else he was dreaming, not to mention magic and his conversation with a wise elderly man. He has been doing unusual things in his dream life; his encounter with his mother—whether fictional or true—took place in a dark corner of the house; while his sister went to bed as soon as he summoned her to do so. Portraying the rape episode through dreamlike magical images enables the protagonist to review the scene via an external gaze, that is, as a spectator gazing from an outside "neutral" point.

The mother gave her own deposition to the investigating judge two weeks later (June 20). Contrary to her son (whom his mother claimed had often worked in Lebanon with regular visits to his family in Syria), she alleged that the three of them were in that village

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[41] It remains unclear whether the "before" here means before the current incident or including the alleged rape.

wedding and all returned home early in the morning. She slept as usual on the floor close to her daughter while the son was in his own bed five meters away in the west of the courtyard. The plaintiff-victim then repeated similar statements to the ones already furnished in early June to the police: that she woke up at 2:00 in the morning only to find her son's fingers over her leg; that the daughter woke up and was threatened; that her son took her by force to a dark side of the courtyard and raped her:

> "I fell on the floor on my back and my head hit the wall. I lost consciousness for a while, then took hold of myself. **My son had left me naked** by taking my pajamas off. I felt humid water inside my vagina and realized that **my son had raped me**. He pulled his bed (from the courtyard) to the bedroom and slept after telling me 'Go and complain against me in the morning.' I went out in the morning with the excuse that I'll be buying some bread, and told the police about the incident. They went and arrested (my son) and subjected me to a medical examination…Roughly two months prior to the incident, (my son) had torn my clothes off, and I had complained against him to the police back then. The *mudīr* (director) of the *nāḥiya* (district) gave his guarantee that **I won't be beaten up and humiliated**. My husband Musa al-Dhahir works in Lebanon and has a second wife who lives with him over there. He has been already absent for three months prior to the incident, and he never came to visit us. When my son was arrested and jailed, my husband came back from Lebanon, and when I told him about the incident, he promised that he would attend the court hearings and testify against his son…I should add that my son has no medical problem, never went to a shaykh (village elder), and I'm not aware that he's tempted by any magic (*siḥr*)."

The third deposition, that of the daughter, also on June 20, doesn't add much to the above, except perhaps on a single point worth mentioning. The night before the incident, her brother had already proposed sexual penetration to their mother and apparently threatened her with a bottle with the following words: "**You don't have one man only, but you've got two men.**" If the one man refers to the husband and father, and the two men to the father-husband and son, then we're into an unbound Oedipus. The absence of the father, and the son coming to fill his father's shoes, have all played in the son's imagination. More importantly, they've become tools for the disputants to rationalize their behavior. The mother probably perceived her son's behavior as one of father-envy, while the son gives "the absence of the father" parody a central theme: he went out to Lebanon for a work opportunity, stopped visiting us (his family), probably forgot all about us, and married another woman without even apparently divorcing the first one. Thus, the lack of authority, or its weakness, pushes the son to substitute himself to the diminishing authority of the father. Such a weakness was an outcome of a multitude of interrelated factors: the weakness of the internal labor market and the availability of other nearby markets (primarily Lebanon); the dissolution of family bonds: the father not only went for another and stronger labor market, but left his family behind and married another woman; finally, the other male figure in the family—the son—was in turn left with no role, whether real or imaginary, in the absence of the father figure. The sexual penetration of the mother substituted for the loss, placing the son in the commanding role of the father—as head of the family.

When informed that "the doctor's report had detected some sperm in your mother's vagina, and that this must have resulted from penetration, which you have been denying," the son replied to the investigating judge (June 4) that "there's no truth in that because my father is married to another woman, and both live in Beirut and he didn't visit us in the last three months." The mother could not therefore have had any sexual intercourse in the last three months because of the absence of the father. And, in his reply, the son strangely took the prosecutor's question literally, as if he was asking him about his mother's sexual liaisons in general, and as if he wasn't specifically targeted by that question. But the reply could also be read as follows: "Since my father *was* absent, I *was* not there too, therefore my mother could not have had sex with anyone." The substitution with the father figure worked both ways: as an absence (no father), and as a presence (penetration).

In the extremely brief doctor's report on June 3, the medical examiner noted that he did not see any bruises or signs of violence on the mother's body, which shows that "most probably there wasn't any resistance from her part." Furthermore, "and when her sexual organs were examined, there were no signs of violence or force (duress) either. Upon further examination it turned out that there are remnants of sperms in the vagina, indicating that the woman had intercourse in the last twelve hours.[42] **It is worth noting that she took off her clothes in an ordinary way and without shame.**" How the doctor could have reached such a conclusion about the plaintiff's clothing remains uncertain, but it's worth noting that the implied "consent" in the doctor's report was thus far one of the few things that could have played in the defense's favor. In itself, the doctor's remark points to an invisible "social order" at work: étiquette and conventions are in particular operative for a woman undressing in front of a doctor she hardly knows, and which will examine her for an allegation of rape.

The first comprehensive report was drafted by an investigating judge (*qāḍī al-taḥqīq*) on August 28, reiterating word-for-word the June depositions of the only three "witnesses" in the case. In a manifestation of sympathy towards the plaintiff, the report concluded that

> "the defendant's denial does not match any tangible evidence (*dalīl mādī*) for the sperm that the doctor's report confirmed was present for twelve hours in the plaintiff's vagina. Consequently, the defendant's denial and his allegations of magic and loss of consciousness, and his inability to explain his actions, all point to attempts to minimize the gross nature of the crime that he committed, and to delineate himself from any responsibility, considering that his father was absent in Lebanon for the last three months."

The judge therefore recommended a punishment for the crime of rape with violence (*ightiṣāb bi-l-'unf*), which is punishable under articles 489–199 of the penal law.

The gap between the defendant's denial, the lack of an "outside" witness, and the

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[42] Obviously DNA testing could have determined the sperm's origin, but that kind of testing has still not been routinized in the Syrian forensic labs.

presence of sperm in the mother's vagina, led the judge to the conclusion that the denial relied on no "tangible evidence," overruling the possibility that the mother could have been penetrated by someone else than her own son. Only DNA testing could have brought that kind of "evidence." But the judge bridged that "gap" all by himself and proceeded with the criminalization of the defendant.

The dossier was finally transferred to the Jinayat criminal court through the referral judge whose ruling was submitted on October 30. Again, the report mostly consisted of a word-for-word reiteration of what had been stated before without any substantial change. Only in its concluding remarks did the report drift from those submitted by the general prosecution and investigating judge: both had reconstructed the misdemeanor (*junḥa*) to be one of rape punishable under article 489 of the penal code, while the referral judge condemned that kind of rape—the son to his own mother—as "an act contrary to life" (*fi'l munāf-in li-l-ḥayāt*), punishable under article 506 of the penal code, even though the judge simultaneously approved the lesser punishment of forced intercourse under article 489/1. He recommended, however, the more forceful punishment under article 506.

When the dossier was transferred to the Jinayat, the court was seized with the opportunity to begin the examination process from scratch. The complete hearings, however, handily comes in four handwritten pages, the outcome of two sessions on February 8 and March 7 1996, which do not add much to the case. In the first session the defendant stated that he reiterated his previous statements on January 17 to the Jinayat, in which he had stated that (articles 273 and 274 of the penal code require that defendants be interrogated prior to the hearings in order to check whether they abide by their previous declarations to the police),

> "There's no element of truth in what was attributed to me. It is out of question that I would do such a thing, and my mother's allegations are lies. **I've noticed her going out quite often**, and I've seen her with people. The day of the incident I've requested not to go to the wedding, and that she goes back to her parents' home because of her behavior. But the second day she made the claim that I've had sex with her. The police arrested me, and my statements to the investigating magistrate were incorrect because I was not aware at the time of what I was saying. I therefore request to be declared innocent."

The defendant thus acknowledged his previous statements, only to deny their veracity due to a "lack of awareness," therefore de facto "withdrawing" his previous testimonies a month prior to the courts' hearings. Nonetheless, in that very brief assertion, it was the only time that accusations of misbehavior were made against his mother, the kind that are usually furnished by defendants in honor killings, prior to their acquittal. In fact, and in a way very similar to honor statements in C6–1 and C6–2 the plaintiff transformed himself, less than a month prior to the Jinayat hearings, to someone protective of his mother's honor, of her honesty and sense of shame. The crime committed here—assuming there was a crime—was one of incest rather than murder per se: the young man who denounced his mother's improper behavior raped her but did not kill her. Rape therefore assumes here the status of an honor killing. But instead of honoring himself, the offender

was dishonored, and the mother reassumed her role as mother, as someone protective of her child.

As the defendant only recapped his January 17 statements, the first hearing session of February 8 had nothing new: its sole purpose was to let the defendant deny his after-crime statements. But even the second and final session of March 7, which had the mother and her "witness"-daughter examined, had absolutely nothing new either. Indeed, a common trait to all the interrogations that we've been through is their low-profile attitude towards disputants and their witnesses, to the point that court examinations—always conducted by the chief judge—seldom add any new factual evidence to the dossier prior to its circulation within the Jinayat.

On June 6, only a week prior to the verdict, the court received two different pleas, one from a representative of the prosecution office, and the second from the defendant's lawyer. The former, who recapped all the known facts once more, pleaded to punish the defendant according to articles 489/1, 497, and 492 of the penal code. The latter while aiming at the alleged mother's misbehavior, then shifted in a three-page memo to the mother's and daughter's contradictory statements.

The Jinayat ruling of June 15, based on that of the referral judge, sentenced the defendant to ten years imprisonment with forced labor according to article 489 of the penal law.

Documenting the indescribable

An actor has that inner ability to recognize and organize "socially acceptable behavior" or "joint lines of action." In the interaction between psychoanalyst and patient (analysand), the process is one of linguistic communication, where the psychoanalyst decrypts and interprets the meaning of words and statements uttered by the patient. The psychoanalyst's "synthesis" is itself rooted in language and cannot escape the "hermeneutical circle" of any interpretivist enterprise. In the criminal case outlined above, there were three settings that served as the basis for the interaction between the three "witnesses" and various policemen and judges (in addition to a medical expert): the police station, the investigating judge's office, and the courtroom. The above quoted statements were all uttered in those three well-defined settings, and were then either quoted verbatim or paraphrased and edited; but the social order is not *given* once and for all, as it is rather construed in every situated encounter. What we see unfolding, from document to document, is the three "witnesses" documenting incest and rape. By the time the verdict was ripe, we come to realize that what those "witnesses" were doing was an attempt to delineate the "socially acceptable behavior" between mother, son, daughter, and the absent father. It is therefore possible to pick up individual statements, as they were stated in the documents (which might not conform to the oral originals), and analyze them as *units of social behavior,* or as *indexical expressions* situated within *frames of analysis.* The combination of indexical expressions and practical actions constitutes the contingent accomplishments of organized artful practices of everyday life. Moreover, the contingent nature of social behavior limits measurement to indices of the actor's intended meaning. In other words, for every utterance, there exists an intended

meaning, which is indexed on what the actor recognizes as "socially acceptable behavior." For that very reason, what we see are three witnesses struggling to define the acceptable behavior of their community—*not* the rape itself (or the possibility of incest), which only looms behind the scenes.

Let us consider some of the witnesses' statements, uttered on various occasions, in 1995–96.

1. mother: I'm your mother.
2. son (based on mother's testimony): I want to sleep with you. Why do you allow my father, and you do not accept me?

3. mother: I felt losing consciousness once he threw himself over me.
4. son: I have no knowledge whether I had sex with her or not because I was in such a nervous state.

5. sister: I went to bed without knowing what happened between the two of them.

6. son: I did not, however, penetrate her, since I had left her and begun to cry.

7. mother: I felt humid water inside my vagina and realized then that my son had raped me.

8. mother: [I was assured that] I won't be beaten up and humiliated [by the police].

9. son (based on sister's deposition): You don't have one man only, but you've got two men.

10. doctor: It is worth noting that she took her clothes off [for the medical examination] in an ordinary way and without shame.

11. son: I've noticed her going out quite often, and I've seen her with people…She should have gone back to her parents' home because of her behavior.

12. son: I was not aware at the time [after the arrest] of what I was saying.

Even though the above statements were kept in their chronological order, the dates of their enunciation is not what matters most, at least for our purposes here. Observe first how the son's two most incestuous statements in 2 and 9 were not based on *direct* utterances by the son himself, but by allegations from the mother and sister. The two statements fall short of directly accusing the son of incest, but nevertheless prepare for the rape charge, even though rape is not explicitly mentioned. Incest, and its corollary, rape, are therefore present through their very absence, and the *non*-said about the incest and rape combo constitutes one of those "indexical expressions" which would delimit the

social negotiations taking place within a specific setting. In other words, the triad of witness-actors, together with the others involved in the framing of the case (policemen, lawyers and judges, and doctors), were all attempting—each one independently, and also in conjunction with each other's statements—to frame what was socially acceptable behavior based on the event under discussion. They did so by indexing various expressions and behaviors into what was acceptable/not acceptable. For example, the doctor in 10 seems to be suggesting that the way he saw the mother undressing and dressing for the purposes of his medical examination indicated a bodily "ease," even though she was in the presence of a male stranger; hence the assumption here was, having done it without shame in front of a perfect stranger, she could have done it with anyone else. But that's never stated explicitly, and the doctor did not bother to realize that when people undress, they usually do so differently from one setting to another. As before, the indexical expression, which in this case consisted of a negotiation of what was a shameful behavior in the privacy of a doctor's clinic, was based on what was *not* stated by the doctor. By the same token, the son's statements in 11, which amount to an accusation, never come to terms with what this "going out" was all about: the mother's shameful behavior was simply *implied* because the "going out" on her own was not a socially acceptable behavior for a woman. Considering that the contingent nature of social behavior limits measurement to indices of the actor's *intended* meaning, the process of indexical expressions is like a language game where actors *allude* to things and background information which are always assumed without being explicitly stated.

Which is what brings this case to Case 2 when it comes to the *voir-dire* conundrum. In this instance, mother, daughter, and son all engaged in a deliberate policy of marking the obscene Thing as the unsayable, that about which the truth could not be revealed. Indeed, the whole rape episode, whether real or imagined, wrestled with that *abyss* between the *voir* and the *dire,* so that the combination of *voir-dire* was a near impossibility. If "speaking the truth" places the protagonists on the verge of an abyss which they are unwilling to penetrate, it is because the son's excessive desire could not be *seen,* that is, there was that impossibility at *visualizing* it as such, even in terms of basic testimonies that would not hide the truth beneath the veil of fainting, loss of consciousness, memory loss, or magic. If, therefore, "to see" implies half the "truth," while the "to say" is that other uncanny half, then in this alleged rape crime, no one was able "to see" anything, because no one was willing "to say" anything that would be grounded on the vulnerable act of *seeing.* Obviously, such a deadlock did not prevent the court from proceeding with its verdict, punishing the assailant for raping his mother, *as if* the court made the connection between the antinomy of "seeing" and "saying" through its own reasoning, which assumes the availability of the unavailable first-person perspective totally conscious of its own actions.

Triple rapes

[C6–5] In the late 1990s, on the road from Bab al-Hawa to Idlib (northern Syria), two peasant families working in farms owned by large landowners, reported similar cases of

burglary and rape.[43] In the first incident, the farmer and his wife were awaken by midnight by loud knocks at their door. When the farmer asked the intruder to identify himself, he said that he was a shepherd who had lost some of his sheep, and was asking for permission to search for them in the farmer's own land. When the farmer, who still had his door locked, gave his word that he saw no sheep on his lands, the intruder begged for some water. But as soon as he opened the door, the farmer was surprised at the sight of three-hooded men brandishing a knife and a gun, and threatening to kill him if he asked for any help. They sealed his mouth and hands with a tape, and did the same with his wife, searched the home carefully, picking up whatever valuable goods they found—there was no cash on the way, which is not that uncommon to farmers: a black-and-white television set, a watch, and few other personal belongings were among the items that the assailants took with them. The wife alleged that each one of the three men raped her while she had her hands tied and mouth sealed. Even though it was very dark that night and the electricity was off, the woman was able, thanks to the lights of passing cars and trucks (coming mostly from Turkey) on the main road, to identify at least one of the assailants, who, needless to say, denied all charges.

Four months later, three hooded men in the same area allegedly used the same procedure to violate the sanctity of another farmer's home. They also used tapes and ropes to tie the farmer, his wife and daughter. After stealing their TV set and few other items, all three allegedly raped the 23-year old daughter who sustained that she was still a virgin at the time. That second incident triggered a more prolonged police search, which eventually led to the arrest of three farmers, all of which kept denying all charges until the very end. The two thefts would have been "minor" were it not for the alleged physical assaults on the homes of the farmers: in both cases, the farmers claimed that the assailants intruded their privacies, tied them up, then raped the wife in one and the daughter in the other. The alleged rapes have therefore de facto imposed themselves as *central* to both.

When on 3 November 1997 the house of the farmer (b. 1936) on the Bab al-Hawa–Idlib road was allegedly intruded after midnight by thieves, and some of its properties stolen in the presence of the owners, whose only daughter was raped by the all three offenders that same night, the farmer waited until the early morning hours to report the incident to the Mi'artmisrin police. In what follows was his first 9:00 a.m. deposition.

plaintiff statements	**comments**
At 4:20 after midnight I heard a light knock at the door of my house. I opened the door and saw three persons, among them the sons of Fawwaz Sultan from Mi'artmisrin. I don't know their [first] names. The third is called Amin. I don't know his last name (*kinya* or *kunya*). He's from the village of Yatinah. They were hooded, and asked me for their lost sheep. I told them that I	Considering that all three intruders were hooded—even though the description failed to mention how the faces were exactly concealed—the plaintiff was quick to identify them. The defense would play precisely on that weak spot in the plaintiff's deposition: if all three were hooded, and it was still very dark and the house without electricity, how then did the

[43] Idlib Jinayat 357/1998.

haven't noticed anything.	plaintiff manage to identify them that easily? More importantly, however, is that the alleged offenders were not identified by their *full* names: while two of them were purportedly the sons of X, the third was known through his first name only. In sum, none of the offenders was *fully* identified, but only *globally* in terms of the *nisba:* father, locality, and village, that is, in terms of *what really matters.* But what matters for the community is not necessarily what the state authorities are looking for: to the latter what matters most are *individuals* identifiable with their *full names.* The plaintiff's strategy—in the early hours after the incident—was to locate the assailants through their community.
They pushed me into the room and tied my hands and feet, and did the same with my wife and daughter with a scotch tape. They also sealed our eyes and mouths to *prevent* us from screaming and *seeing*. They started searching the room, mishandling the furniture, opening the closet, then searched into a small wallet, looking for money, but didn't find anything.	
They assaulted my 23-year old daughter Sabiha, and all three did it with her (*ifta'alu ma'aha*).	The daughter's rape, in the father's account, was extremely concise—one sentence. In itself it doesn't account for the gravity of the accusation, as it says the indescribable. But such conciseness is typical of many accounts—in particular when it comes to sexuality—as it is generally assumed that the listener will realize on his or her own the gravity of the situation, and will refrain from asking for more. What really matters here is *what is left out,* and which the listener will have to assume on his/her own.
They picked up various objects, took a black-and-white size 12 TV (SHARP), a clock, and a watch from the closet's drawer.	Notice that the stolen objects were accounted for in the same flat tone as the alleged triple rapes. But since we're relying on *modified* police transcripts, we'll never know for sure the level of *performance* in

	the plaintiff's voice. As the TV set was the most easily identifiable object, it will turn out as the only *reliable* piece of evidence.
They seized a golden necklace from my wife's chest. Even though they couldn't find anything else, they stayed in the house for about an hour, searching and damaging all along before leaving.	
I would like to request investigating all the three that I've named, and to subject my daughter to a medical examination. I'm therefore placing myself as a plaintiff on my own behalf (*mudda'i shakhṣī*) against all three. I recall that Amin was wearing a *gillabiyya,* while the sons of Fawwaz Sultan had regular pants and jackets. All three were hooded and carried different kinds of knives. That's my deposition.	Since every crime must be investigated by the general prosecutor, even if no plaintiff is available, plaintiffs can still pursue a case as part of their individual rights. Many plaintiffs, amid private settlements, drop their case before the final ruling.

The overall deposition was very brief, which is not unusual. The police's lack of aggressiveness continues all along with prosecution and courts in the shallowness of investigations and interviews. The plaintiff's deposition therefore represents the basic minimum, which was pursued by a police visit to the farmer's home, whose description was included in their report. They've noticed that the house was in bad shape, the drawers were all open, and "a 20-cm blood stain covered the sheets of Sabiha's bed." Had the triple rapes effectively occurred, the assailants might had dragged Sabiha on her bed, where she was sleeping prior to their intrusion, and raped her there, or else the blood stains might have been an outcome of later bleeding. The police was not, however, that curious at working out such details: much of the investigations heavily rely on the *unsaid* (*le non-dit*). During their visit they managed to interrogate Sabiha (b. 1974) and her mother (b. 1937).

Sabiha's deposition	**comments**
At 4:20 a.m. this night, while I was home with my father and mother, we heard a light knock at the metallic door. My father opened the door, and three hooded persons jumped in. Two were the sons of Fawwaz Sultan from Mi'artmisrin—I don't know their names—and the third was Amin from the village of Yatinah—I don't know his full name.	Thus far the documentation is identical to the father's, which is not unusual. Depositions, cross-examinations, and court hearings are populated by statements that are repeated verbatim from one person to another, even though uttered in different contexts. Sabiha's deposition did not even specify whether she "guessed" the intruders' identities on her own, or whether all three made such a guess later—*ex post facto*.
They tied our hands, legs and eyes with	The documentation of the rape scene, even

scotch tape. All three raped me, and the first one was Amin. I knew that even though *my eyes were fully closed,* because he was wearing a *gillabiyya.* Then the sons of Fawwaz Sultan followed. We couldn't scream because they had sealed our mouths with tape. They left me alone and went away, taking a TV set and two watches with them.	though more detailed, didn't add much to what the father had stated earlier.
We were afraid to go out until the morning. They had threatened that they would kill us if we went out, and I noticed that they carried several knives.	

The daughter's deposition only established what the father had already stated, adding very little to what was known. Again, it is not that uncommon for family members who witnessed the same event to come *together* with an almost identical description, even though they were *separately* interrogated. The assumption that *common witnesses,* who were *common victims,* should come with a "united" stand is shared by both speaker and listener, namely the alleged victims and their interrogators. What seldom comes in such interrogations is the "voice" of the victim herself, who even though might have "shared" the "same" crime scene with other persons, had a *different* perception of the obscene Thing, or of few salient details which might have gone unnoticed to others.

Silence and the force of what is not said

In criminal investigations it is common practice to scrutinize statements uttered by plaintiffs, defendants and witnesses, with the hope to detect inconsistencies, in order to show that the other side is not telling the truth. Consider, for instance, how the defense counsel acting on behalf of the sons of Fawwaz Sultan, two of which were accused of theft and rape, scrutinized in a memo addressed to the Jinayat the inconsistencies in the statements uttered by the plaintiff Sabiha on various occasions. In addition to her first statements above to the police few hours after the alleged thefts and rapes, Sabiha had more to say to the prosecution and Jinayat judges.

Sabiha's deposition to the prosecution	**comments**
I heard someone knocking at the door and say: "My uncle, did you see any sheep?" My father responded by saying: "Go and look for them in the cotton fields!" The other replied: "I need some water to drink." When my father opened the door to show him the water tap in the generator room, three persons rushed through. One of them was wearing a dark gray *gillabiyya* with a jacket; the other two were slightly taller but	No mention here of the *hooded* intruders, as in the police deposition, though the introduction here is more detailed.

younger. Both were wearing pants and jackets, one was slim, and the other was more obese.	
They threw themselves over my father and tied his hands and legs, sealed his mouth and eyes with scotch tape, prior to hitting my mother with an ax. They had a small lamp, tied her shoulders and taped her mouth and eyes. One of them stood close to me and said "If you move I'll slaughter you." I was afraid and begged them to leave and take whatever they wanted. The others came and tied me with a scarf and a pajama that were mine and close to me. They threw me on the floor and my mother started screaming. One of them told her "Shut up you *'abiyeh!*[44]" They placed a cover on my eyes and started messing around with the room.	
One of them said, "If we can't find anything in the room **we'll tarnish the man's reputation**." He came towards me and another held me from the front, when the third raped me. The other two also raped me after they took off my pajama. One of them sat on my belly with his legs crossed after I've hit him.	The triple rape scene is here a bit more graphic, even though it's still very concise. For one thing, it associates rape with manly honor—that of the father—and also as "compensation" for failing to find much valuable goods.
…I'm certain that those who assaulted me were Amin al-Amin and two of the sons of Fawwaz Sultan, because I know the first from his voice and look—he's tall—and because he used to bring us some stuff last year. In the last year and a half he attempted to pick up fine potatoes for his sheep, and when my mother stopped him he got upset…As to the sons of Fawwaz I've also known them because I've heard their voices before. A year ago I've heard one of them, Burhan, say to my mother, "What did you get from your parents?" And she replied to him, "I got some chains of gold." He said: "Where do you hide them?"…	Even though the alleged assailants received a better identification, there's still not much evidence, mainly because the victim had no chance to *see* them, but only got to identify them through their voices.

[44] I'm uncertain as to the meaning of this word. There's a possibility that it's rooted in *'ayb,* shame, which would give it a "shame on you!" accusation; or, more commonly, "slut": "Shut up you slut!"

The defense went on with statements by the plaintiff, uttered in different contexts, contrasting them in order to show how contradictory and unreliable they were. Due to the fact that the assailants were hooded, and their victims had their eyes sealed, not to mention the complete darkness in the room, such factors, according to the defense, pushed the plaintiff to speculate, leading to gross errors. Picking up on Sabiha's statements—this time to Idlib's Jinayat court—that "I knew who they were because I was trying to talk to the assailants so they would respond," the defense sarcastically rebuffed such claims, noting that "what is so surprising is how such a young girl with her mouth tied with a scarf, who had just lost her virginity, and who was raped by three men in a row, was still able to talk to them, hoping that they would respond, with the sole purpose of identifying them through their voices…This girl must have such ingenious senses, enabling her to identify all three rapists with such a precision under circumstances in which most people would have lost their minds." The defense cited the medical report, drafted on November 1997, in which the three examining doctors concluded that "it would have been impossible for a girl to have been fully conscious after she had just lost her virginity and went through three successive forced penetrations." For its part the defense looked at the plaintiff's allegation that "I was fully conscious all that time" as "contrary to scientific logic." One of the accused, Amin al-Amin, had for a time his own counsel, who in a memo to the Jinayat pointed at his client's age—47—and that of his second wife—25—as an indication that his client could neither have teamed with two of a younger generation (b. 1971 and 1973),[45] nor could he have raped a woman of the same generation as his wife. Basing himself on the medical report which adduced that there were no visible signs that Sabiha's body had been subjected to violence, the counsel questioned for his part how a young woman "in her prime age" that was raped could have maintained her calm all along, "because a girl that was raped and lost her honor and fortitude metamorphoses into a beast (*waḥsh*) that destroys itself and every body that comes close to it." For its part, the Jinayat in its final ruling, and referring to the two Sultan brothers, reached the whimsy conclusion "that it was unlikely from an intuitive point of view (*al-nāḥiya al-fiṭriyya*) that two brothers would come together to jointly rape the same girl."

The centerpiece of the case was not the alleged thefts but the rapes—a 23-year old women lost her virginity, while a married woman was raped in the presence of her husband and children. As no one—not even the accused, prosecution and judges—seem to have had the guts to question the veracity of the alleged rapes, the identification of all three accused became the center issue. The fact that they managed not to be seen but only recognized from their voices was the major hurdle for plaintiffs and prosecutors alike. Moreover, all three defendants had witnesses endorsing that the nights of the alleged incidents they were at different locations to the ones supported by the plaintiffs. Prosecutors and judges also targeted the plaintiffs' main representation of the process of identification: they pointed out that only the daughter was able to identify her rapists, while both parents, in a gesture of solidarity, simply followed suit and had no means to come up with a close description of their assailants. Yet, as noted earlier, a barrier of

[45] Those were the two left out suspects of the many sons of Fawwaz Sultan.

mutual silence soon erupted over the alleged rapes, and the young lady would not be pressured for "more." Identification notwithstanding, the biggest handicap was motivation: why did such acts occur? Small rural communities tend to have their norms challenged even more strongly, in light of such incidents, than much larger urban agglomerations, in particular when the alleged perpetrators were farmers and shepherds like the bulk of the working population. Consequently, possible motivations or intentions of the assailants were only hinted at, never forcefully elaborated upon. Yet, one should precisely look at beneath and behind such allegations, accusations and counter-claims, and see how presumed motivations *implicitly* keep popping in—and even imposing themselves—in the process of negotiating crime. Such communities are in effect structured along ongoing violence, feuds, honor and shame, so that an accusation of rape, where the victim clearly identifies her rapists from day one, would not go without all the unconscious social prejudices that it entails. Moreover, when the victim was a young woman, which society perceives as naïve, and with a limited social and sexual experience, questions abound as to her legitimate "right" in offending the honor of older men with responsibilities towards their families and community. Such a harsh questioning as to the "legibility" of the main witness for witnessing the conditions she was placed into was evident, for instance, in the "scientific" medical report. Her "legibility" was further suspected by witnesses, police, prosecutors and judges. Thus, for instance, the Idlib Jinayat, in its final 17-page ruling on February 1999, probed how Sabiha could have possibly known her assailants solely from their voices, considering that "as a girl (*fatāt*) she had been much less in contact (*iḥtikāk*) with the accused [prior to the incident] than her father." The court, which was referring to Sabiha's assertion that she had been *observing* the accused for months prior to the incident, because they kept trespassing over their properties, while overhearing two of them addressing her mother regarding her inheritance, stated in its opening address that "we are not willing to argue with the plaintiffs on the veracity of their claim on the rapes that Sabiha had been subjected to from three persons." Having already distrusted Sabiha's ability to identify *on her own* her assailants, as if she was in need of a mentor, the court then argued that evidence pointed that Sabiha had been the *sole* source for such identifications. Sabiha's maternal uncle had witnessed first to the prosecutor and then in court that her father had told him that he solely relied on his daughter's knowledge of the assailants' identities. A policeman overheard Sabiha saying to her mother that "There's no one but them—the house of Fawwaz Sultan," while Sabiha herself was quoted as providing contradictory evidence apropos the (un)certainty of her information, as she kept shifting between a firm "I'm sure it's them," to a more uncertain "I think it must be them," or "I suspect them." (In some witness accounts the Sultan brothers—not simply the accused two but all of them—were referred two as "bad guys" (*ashqiya*) often looking for trouble.) The court must have therefore *assumed* that the identification of the accused did not come firsthand, but was an outcome of guesses and speculations. In its concluding statement the court agreed that there is no tangible evidence that would decree anyone of the accused guilty of any wrongdoing, ruling that all three should be immediately set free.

Denying the facts, finding the truth

If our general idea that every crime is not to be solely limited to the analysis of the

relationship between murderer and victim (there could be none), but invariably involves a third-party addressee, which may be a collectivity (in honor killings), which might not be aware of itself as recipient, or might know it but nevertheless refuses to undertake such burden, then we should also think of incest and rape within the framework of a triangle of crime, even though in such instances there was neither murder nor murderer per se. Both rapes in C6–4 & 6–5, however, were committed as if they were murders—to figuratively murder the victim via gross intimidation.

In the incestuous rape between mother and son, the third-party addressee was no one else but the absent father. It is not that in his criminal act the son wanted to "replace" the father, as much as to place the burden *on* him. But the father would not indulge at recognizing in the crime accomplished by his son an act of transgression for the lack-of-father he was experiencing (or the lack-of-husband that the wife-mother was into), that is, he would not be prepared to assume the guilt. The absence of the father, both real and symbolic (as the emblematic figure of the Law), placed the son in the privileged position of an impotent male left with his own gaze with his mother as the object of desire. The (alleged) act of rape not only violated the sanctity of the mother's body, but more importantly, it attempted to murder the mother as mother, that is, as bearer of family values and conventions (the motherly superego). In other words, it was indeed that agency that hindered the protagonist's normal sexual relation, the maternal superego, which had to be murdered through the symbolic (and real) act of the rape. In his interviews at the hands of prosecutors and judges, the son repeatedly portrayed his mother as a woman with "excessive desires," an *accusation* of sorts which was implicitly shared by the doctor who examined her, which signals an enigmatic deadlock for the son: "If my mother is having so much fun with so many outsiders, why not me in the meantime?"

In the confessional evidence, commonly shared between mother, son and daughter, there was that eerie uncertainty as to whether "it" really happened: once confronted with the outside gaze of the judiciary system, which forced all three protagonists to objectify the criminal act, the act itself could neither be documented-as-seen (the excuse was a magical loss of consciousness) nor accepted as such in its materiality, as something that *did* happen. Thus, while the outside gaze of the judiciary represents the big Other in its symbolic dimension of social order and conventions, the incestuous desire by contrast was long nurtured *inside* the family domain, hence oblivious to social norms. The incestuous desire, in the way it *publicly* disclosed itself through rape, was therefore dissimilar from the unfolding of an honor killing in public. I underscore the distinction between how a criminal act presents itself in public, as shaped by public events, and as represented as such by the narrative of the judiciary, and the way it may have unfolded in private, in the intimacy of the bedrock of the family and sexuality. In the first honor killing with which we've inaugurated this Chapter, it was indeed the public representation of the murder that proves much different from the incestuous crime (C6–4): in the honor killing, there was no allegation as to anything incestuous between the brother-murderer and the sister-victim; hence all the crime centered on the *public* persona of the brother-and-sister combination; even the sister's alleged "infidelities" to her family's honor, were only posthumously represented through the external gaze of kin

members, as pure acts of betrayal. Let us imagine for a moment that there *was* an incestuous desire between brother and sister, and that the brother had raped his sister instead of killing her, the case would have been *legally* identical to the fourth one between mother and son. So, between regular honor killings, which tend to be fairly common, and the less common incestuous triangles,[46] it all amounts to what was publicly displayed in the language of shame and honor. Had the son killed his mother instead of raping her, with allegations that she was unfaithful to her absent husband, it would have become an honor killing in line with C6–1. Such distinctions are revealing because, as we have repeatedly argued, each crime, whether involving a murder or not, is set within a triangle where the offender and victim are not the only two parties at stake, as we have to look at the other side of the triangle for the real recipient, which could be a person, a collective agent, or a collectivity in the form of the community to which both offender and victim belong. In common honor crimes (C6–1 & 6–2), the addressee is the community at large, while in an incestuous crime the recipient is no one but the absent father. But even regular honor killings do not obey to a single logic. For example, between Cases 1 and 2 there were big differences at stake. In C6–2 the mother-victim was allegedly into an affair with her son-in-law, which already sets the murderous triangle into an incestuous partnership. Here the wife, which had dishonored her husband, split as lover to her daughter's husband, that is, with her own son-in-law. Again, this case could be brought in parallel to the incestuous C6–4, as both involved incest, but differ on the *public* resolution of the crime. In C6–2 because the husband took action against his wife and murdered her for an "honorable purpose," the incestuous triangle fades back into privacy, becoming irrelevant for the juridical handling of the case. The sublime beauty of Case 2 is that each protagonist split as an incestuous Thing: the husband-murderer was father to the daughter whose husband was allegedly having an affair with his own wife; the wife-victim was mother to the daughter whose husband was allegedly into an affair with her mother; the daughter, acting as recipient to the murder, was also the wife to a husband who allegedly was into an affair with her own mother; finally, the daughter's husband, who vanished in the aftermath of the killing, was at the same time the son-in-law and lover of the mother-victim. However, the complexity of the incestuous triangle was of no interest to the Jinayat court, as what mattered for the verdict was the fact that the husband committed his crime as husband (that is, not as father) in order to honorably redeem his wife for her infidelities (that is, she was not redeemed as mother to the daughter with whom she was having an affair with the latter's husband). Case 2 could have therefore been similar to Case 4 had the father simply *reported* his wife's infidelities with her son-in-law; the court would have labeled the case as "a sexual act against nature," subjecting the wife/mother and the son-in-law/lover to a maximum 15-year punishment. What therefore sets all such cases apart was not so much their *internal private* motives and dynamisms, as much as the juridical nature of the crime, and the very act that made them subject to the public gaze in the first place.

The novelty in Case 3 (the swingers) was that uncanny split of two mid-aged couples, each comprised of a husband and wife. As the first couple was the one to have initiated the second into its "progressive" mores, it was also the one to have instituted the rules of

[46] Incest is obviously much less reported than honor killings and other sexual crimes; its criminal representation, however, should be far below its social existence.

"exchange," even though it remains uncertain what the quid pro quo with the second couple consisted of (allegations had surfaced regarding the husband-victim in the first couple to have been in an "affair" with the wife in the second couple). Whatever the level of "exchange" (sexual or otherwise) among the two may have been, it is clear that they mirror one another, that is, the second couple was recruited by the first to act as an external gaze. In a way similar to the husband-father-murderer in Case 2, the husband-murderer in the second couple found himself caught in an infernal triangle between his wife and the other husband and wife. He could have done what the husband in Case 2 did: kill his wife for blatant infidelities, and the crime would have been classified as in Cases 1 and 2 as one committed for an "honorable purpose." Or, to shift the perspective even further, had the husband in Case 2 behaved like the one in Case 3, that is, had he killed his son-in-law rather than his wife, he may have been punished with the death penalty in lieu of the much mitigated one-year incarceration. What such possibilities illustrate is that with the special juridical category of "honorable purpose," the chastisement waiting the murderers may shift dramatically—from the one-two-year norm up to the death penalty—pending on *who* is targeted in the murderous triangle, and *how* the murderer behaves in the aftermath of the crime. The "honorable purpose" provides that unique opportunity to register the crime directly in the symbolic chain of social étiquette and appearances (the big Other), precisely by targeting the woman rather than her alleged lover(s). The husband-murderer in Case 3 may have felt deeply dismayed and dishonored at his partner's behavior, but the decision to kill the partner rather than his own wife made the "honorable purpose" impossible to apply under such circumstances: the crime was, as expected, classified as a homicide. The husband may have therefore taken the risky route of the death penalty to commit a murder with his wife as the third-party addressee: the feeling of guilt was transferred to her, and as all recipients she was not set to recognize in the murder accomplished by her husband an act of redemption *for her own sake,* that is, she would not have been disposed to accept herself as the bearer of the guilt.

As the daughter in Case 5 rightly observed, her brutal victimization right in the presence of her parents was a direct message to her father: the father was the true recipient to the crime. The three men could have been content with theft only, and could have left as soon as they took hold of the few things that caught their eyes, but they decided to go ahead and rape the daughter (we're taking for the purpose of this analysis all allegations of theft and rape at face value, as we did for the other cases). As in Case 4, rape directly challenged the symbolic big Other, and the symbolic order is redeemed only by bringing the criminal to justice and charging him of crime. There was therefore no "honorable" exit here: there *was* no woman to be punished, hence all *was* criminal.

[Chapter 7] When punishment is left to the judiciary:
Kin wars between shared meanings and law

From a number of select cases, though not exhaustively treated as in the previous Chapters, this Chapter raises the issue of the importance of "kin" as *ahl,* on the one hand, and the routinized violence that kin affiliations would necessitate on the other. It has become normative in the humanities and social sciences to perceive violence as contained *within* the state institutions, as if that kind of Hobbesian self-containment would preempt its spread through the democratized (and depoliticized) social body. Thus, either "the *legitimate* monopoly of violence" by the state, as Weber posited, would, at least in democratic societies, self-contain private violence in the social body, or else the failure of such containment would spread around, in civil institutions, damaging the very roots of civil society. Thus, in the concept of the political as developed by Carl Schmitt, politics assumes a concept of the state, and vice versa, around the "friend" and "enemy" division.[1] However, Schmitt argues that in so-called "liberal democracies," a tradition that goes back to nineteenth-century Europe, the takeover of politics by the state *eo ipso* implied a depoliticization of culture, art, the sciences—and society at large. When it comes to undemocratic societies, however, it is usually assumed that the state monopoly over violence is quintessentially *non*-legitimate, in the sense that it never received public endorsement (e.g. through democratic suffrage), struggling for legitimacy by *other* means (cult of the leader, public ceremonies, the big Other of intelligence services which interpellate individuals even in their most intimate lives).[2] Hence the state is not only (illegitimately) monopolizing violence, but in the meantime, robbing civil society of its political identity—the killing of politics via the shared public ceremonies which interpellate individuals through a process of faked political participation.

What is important for our purposes here is that for a nondemocratic country like Syria, where the presence of kin is strong, what happens when the state illegitimately monopolizes violence and kills politics along its way? On the one hand, kin violence and its rituals of honor and clan belonging *precedes* the modern nation-state; hence is unrelated to the existence of the latter, even though, as this Chapter shows, kin violence is *reshaped* by the state, in the same way the state is affected by kin violence to the point of contaminating entire institutions (e.g. the venerable Republican Guards composed of a majority of Alawis). In the "Syrian Revolt" that ravaged the country in 2011–12, the question was raised as to whether Syria was in full-fledged "civil war," which implies that violence was *primarily* and outcome of *internalized* societal divisions along kin, class, ethnic, regional lines, rather than simply a product of a "society" protecting itself against unruly violence from the top, that is, the state and its machinery of violence. Needless to say, the "Syrian opposition" in all its factions (Muslim Brothers, Salafis, nationalists, liberals, communists), opted for the second safe alternative, namely, that violence was an outcome of excessive state violence, hence "society" was protecting itself against such unruly violence, which de facto politicizes the "Revolt" as a quintessential act of *legitimate civil action against the illegitimate monopoly of state*

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[1] Carl Schmitt, *The Concept of the Political,* Chicago: Chicago University Press, 2007.

[2] Lisa Wedeen, *Ambiguities of Domination,* Chicago: Chicago University Press, 1999.

violence. The alternative would be to trace back social fracture, as this Chapter does,[3] into the infinitesimally small—the nonpolitical violence already contained in the strategies of kin groups for the symbolic survival of their affiliations. State violence would only sit "on the top" of the routinized violence of kin, exacerbating it through its court institutions, or by creating institutions *within* the state where kin is all what matters. One should note at this unique and exceptional historical juncture that the notion of *ḥarb ahliyya,*[4] which is routinely rendered in foreign languages as "civil war" or *"guerre civile,"* has nothing "civil" into it: the Arabic *ahlī* implies a strong commitment to both kin and ethnicity (or the *ṭā'ifa,* as a "confessional (sectarian) alliance" which manages the religious identity of a group), understood as strong ingredients which attach an individual citizen to region and locality above everything else, including a presumed loyalty to the state. "Civil war" by contrast stands as the Westernized and idealized rendering of *ḥarb ahliyya,* or *ḥurūb ahliyya*, namely, as a war among "civil" groups where kin, clan, or ethnicity would not matter that much. We must therefore admit that, in such societies, both *ahl* and *ṭā'ifa* do matter a lot, both of which stand in opposition to the "civil" components of society, namely, class formations and the politics of the state as illegitimate violence.

When shared meanings of honor and shame are overlooked, with crimes staged like individualized acts of revenge, bypassing norms of kinship, punishments tend to be severe, usually with 3 to 10 years of penalty, once the "attenuating circumstances" kick in. In general, the Jinayat must assess each situation not only in conformity with the rule of law, but more importantly, its rulings must be "congruent" with the norms of the communities in which such crimes occurred.

[C7–1] To underscore this point further, I would like to begin with statements from a sentencing of the Idlib Jinayat in 2000.[5] When ruling over a case that involved multiple killings from the same clan in the 1990s, the Jinayat manifested its appreciation of the logic behind the honor killings in such environments. As if acknowledging the pacification strategies deployed by the belligerents themselves, the Jinayat noted that the defendants had previously, after the killing of one of their kin in the early 1990s,

> "wrongly sued the [current] plaintiffs in an attempt to push them towards a peaceful settlement. The instigators were then handed to the peace tribunal (*maḥkamat al-ṣulḥ*) at al-Dana, but a year later the then plaintiff was killed at the hands of one of the brothers of [the current] plaintiff Yusuf. The peace judge at Dana had issued a ruling to drop the case (*al-takhalli 'an al-da'wa*) because the specialized objectivity (*al-ikhtiṣāṣ al-mawḍū'ī*)[6] did not apply here, considering that the act that was the subject of the lawsuit was a crime that involved a killing. During the trial taking place in this courtroom, it became clear that a peace took place between the two parties, while the accused denied what was attributed to him."

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[3] See also Chapter 9 on land and crime.

[4] Which makes more sense in its pluralistic form of *ḥurūb ahliyya,* "civil wars," implying not *one* war, but *multiple* conflicting ones.

[5] Idlib Jinayat case #117/2000.

[6] Could be translated as the required objective context.

A statement in the final passages of the ruling added that,

> "when the member of any family has been the subject of a killing, it is understandable that **some members of his kin would succeed at retaliating on their own, while others would leave punishment to the judiciary**."

How such decisions are self-regulated is not always obvious. Suffice it to say that many of the killings, as in this situation, involve a blending of both stances: the belligerents attempt—and often succeed—at retaliating on their own, *and* seek justice through court procedures. It could well be that they reach a point where court justice would become more "economical," in particular when material compensations are sought, or when further killings would be too costly to bear at least on one of the parties; or that one or both parties have given up hope towards peaceful settlements, preferring instead, as their last ditch, to throw their case in the hands of the judiciary.

How did you do such a thing?

At interviews a narrative unfolds, which is framed as much by the questions as by the answers themselves. Not only does each question "direct" the interviewee towards a possible answer, but a single question might, in the best of circumstances, "propose" an answer, if not directly impose it. That's particularly true when the examiner is an authority figure—policeman, prosecutor, or judge—and the interviewee is a suspect in a murder trial. While the examiner in such circumstances might have his mind set as to the role of the suspect and his or her involvement in a particular crime, the interviewee-suspect is usually aware that any statement could be quoted by other authorities, increasing the risks of making him or her an even more serious suspect. More important, however, is the nature of the narrative that unfolds from interview sessions, and how its particular structure offers an alternative to traditional narratives.

[C7–2] Musa b. 'Umar Musa (b. 1977) was not yet fully 18[7] when he shot to death in 1995 a cousin of his in retaliation for the shooting of his own brother a couple of years earlier. Since such honor killings tend to be earnestly confessed, the prosecutor needs to determine whether the killing was planned beforehand, and whether there were other "participants." The interview was conducted the same day of the killing, of which the following excerpt.

> Q1. You've been accused of premeditated killing (*qatl 'amd*) against the victim 'Ali Musa with prior planning. What do you have to say? I advise you to tell the truth.
> A1. At 7:00 this Monday morning of 27 February 1995, I woke up and went to the olive garden. I had oiled the water pump and took it with me on my tractor. On my way I saw the victim 'Ali standing on the al-Dana road, close to the Bakri shop. I parked the tractor on the main road and headed towards 'Ali, and told him: "Why are you still standing there?" As he tried to run away from behind, I took my 7mm gun and started shooting at him. When he fell on the floor, I kept shooting at him. I can't remember how many shots. I then drove home with my

[7] Which is fairly common in honor killings, as a kin strategy to avoid the conviction of the Jinayat, and pass the case to a juvenile court.

> tractor. My **mother** was sitting in front of the house. She had strong objections to what I just did: "How did you do such a thing **when your brothers were not even present**?" I went inside and **waited** until the police came and arrested me. I gave myself up with the 7mm gun with which I shot the victim ʻAli.

In his reply, the accused attempted several things at once, typical of honor killings among males: 1. His first concern was to underscore that there was no premeditation, that it was an impulse of the moment. He had met his victim "accidentally" on the road without any prior knowledge that he would be there. He was offended that his victim—considering the history of feuds and killings among cousins of the same clan—did not run away *as soon* as he saw him coming in his direction. The offense soon turned into anger caused *by the circumstances of the moment itself.* It was the victim's fault since his attitude was one of pure provocation. He therefore deserved his fate. 2. The mother was out of the loop, at least officially, so were the brothers (or cousins). 3. The offender did not run away, quietly waiting *at home* for the police to come: those who commit honor killings do not run away like ordinary cowards. They're not afraid of justice; their fears are rather *internally* oriented towards their kin.

Why does the mother play a key role, whether acknowledged or denied? In the real or symbolic absence of the father, it is the mother which emerges as the protector of shared values. It is that distance between what the local customs mobilize, and what the official Law of the nation-state can impose, which guides what social actors can do (or are prohibited from doing). If "the Law" refers to the superego, it is the mother that personifies it. As soon as Musa killed his cousin ʻAli, it was towards his mother that he came for benediction. The mother, waiting at the house's porch, has that parodic image of a person which personifies both kin *and* shared values. The orientation of the mother's question, which was not one of pure consternation, Why did you do such a thing?, but, How did you do such a thing when your brothers were not even there?, signals the strength of kin cohesion, reaffirmed through murder. If the presence of the brothers should be of any concern, it is because honor killings are decided in common, between mothers and sons, hence the role of the individual actor, which here was a minor, tends to be further minimized.[8] In similar vein, the victim is targeted not as an individual, but as a member of a group, or more accurately, it is the group at large that is targeted rather than its individual members. Clearly then, the mother's attitude *was* one of an endorsement, one that encouraged transgression. But here transgression was, however, conducted vis-à-vis official state Law, not the customary laws of the locality which favored such retaliations. By receiving his mother's blessing, ʻAli only transgressed official law which frames such acts as homicides rather than honor killings, hence state law refrains from endorsing honor among men as it does with the honor killings of women. The reason is that in societies where kin plays a preponderant role in the cohesion of society, women maintain that symbolic function of exchange among groups, which in itself is violence exerted against women. In the honor killing of a woman (C6–1 & 6–2), the act of transgression, in the form of murder, only reinstitutes the routinized violence that is already there, and which serves the symbolic function of exchange. In both instances,

[8] This was the case, for example, in the case of Sabiha Dalʻun (C5–5), where the mother had allegedly a preponderant role in commanding her eldest son to finish off his brother-in-law.

therefore, that of honor killings against women *and* men, transgression retroactively becomes what it already-always was, that is, the cause of law. Transgression is that unconscious supplement that emerges retrospectively in the course of Law's gaining legitimacy, a supplement which is the source of enjoyment.[9] In the Foucauldian transformation between the classical age and modernity, the discursive formations, normalization régimes, and self-reflexivity programs, all share that power to normalize the newly emerging self-reflexive subjects: such power that individualizes docile subjects neither emanates from a particular center, nor is it located anywhere. More importantly, in the Foucauldian analysis of power the normalized subjects lose precisely their self-reflexive power as subjects, which poses the problem of transgression and resistance to power. In developing societies which are our concern here, where kin and honor are normative, the state is only attempting from afar to emulate the Foucauldian bio-power practices, for example, in providing defendants with a psychic dimension which their kin and locality would have ignored. Consequently, transgression actualizes in relation to state law through shared values; which poses the issue not of a subject docile to bio-power, but one docile to kin norms: genuine transgression therefore implies transgressing kin norms.

Are you kin affiliated?

A great deal of the violence in rural areas (the triangle of Aleppo, Bab al-Hawa and Idlib up to Jisr al-Shughur) and some of the informal neighborhoods belting Aleppo, which for the most part are clan-related conglomerations with ramifications to the countryside, consists of feuds where individuals get caught in collective incidents—what the courts refer to as "collective fights" (s. *mushājara jamā'iyya*). Land, water, status, wealth, and other resources could be at stake here. But, even if that's the case, such indicators seldom come to the forefront of a lawsuit, and are often documented as no more than background data by local and state authorities. What rather emerges as foreground are the different strategies of control and intimidation among rival clans. Violence serves as a necessary *rite of passage* to maintain or enhance the status of groups in their control of resources. If *status attribution is the result of violence,* power relations among groups and families could be upset by a sudden spike of violence and the failure to address it properly. When, for instance, a group member is shot and killed, his relatives are faced with the crucial issue of proper response. Retaliations are, however, neither necessarily immediate nor planned beforehand, and could span for decades, where a descendant acting on behalf of an offended elderly relative (who may not be there anymore) takes as target another "innocent" descendant from the opposing party (C7–4). At times collective fights ensue, leaving behind trails of bloodshed, and even if the courts manage to identify suspects, they nonetheless receive the label of "incidents with unknowable individual actors" (*jahhālat al-fi'l al-mustaqill*) from the courts, making it difficult to pin down individual suspects. Such routinized violence is, to be sure, common in both tribal and rural areas, but the novelty here is that it is addressed through a modern court system. Rather than simply check whether the law is effectively "applied" or not, a researcher's attention should focus on how the crime scene is narrated and constructed by the actors

[9] Warwick Tie, "The Psychic Life of Governmentality," *Culture, Theory & Critique* 45(2) (2004): 161–76.

themselves; how competing representations of the crime are at stake, each claiming to be in conformity with the relevant articles of the penal code. In sum, we are interested in representations of the law through the eyes of competing interpretations of various protagonists. The other interrelated *anthropological* phenomenon is the violence that unfolds within a community, which aims at honor and reputation: from the viewpoint of the state, there may be nothing criminal in all this—as long as no physical damage occurred. But for the researcher, what is unfolding is of great importance, since a crime would be incomprehensible outside an anthropological perspective.

[C7–3] Consider the following case in which the plaintiff claimed that when the defendant saw him walking nearby, he started, in response to ongoing feuds among their two families, insulting him personally, pulling a gun and shooting at him several times, wounding him gravely.[10] The defendant for his part claimed that when the plaintiff noticed him outside his own home, he followed him with a stick and started beating him. When he fell down, the offender still did not stop, so he pulled his gun and shot his opponent in self-defense. Such case is *stricto sensu* one of attempted murder, and were it not for the battery of feuds between the two groups, it would have been one of those banal acts of violence which the court would have formally processed. But in small rural communities, individuals seldom act on their own behalf, in particular when a retaliatory killing is at stake. The local and state authorities soon found themselves enmeshed in a battery of familial disputes whose relevance to the case was at times disputed. But what is deemed irrelevant and of no legal consequence by the courts may be of great significance for the researcher. In effect, the protagonists provide their investigators with an array of links which they judge to be of significance to the incident in question, hoping in the meantime to turn the sentencing in their favor.

The defense described its opponents as "a strong family who totally control and run the village, and the large number and wealth of its individuals de facto makes them the only representatives of the village and its authority (*sulṭa*) at the same time." The plaintiff and alleged offender, the memo went on to say, "is known for his domination, assaults, and an ability to turn the truth upside down in order to achieve his own evil purposes, such as his flubbing of the official doctors' consultations [requested by his investigators] and his contradictory statements." However, even though the shooting occurred on June 1989 in the village-farm of Shuyayka (in the vicinity of Jisr al-Shughur), the Idlib Jinayat only reached its verdict on December 1999. It found the defendant guilty of attempted murder and sentenced him to seven-and-half years with hard labor, which it reduced to 3 years and 9 months, in addition to a material compensation to the plaintiff amounting to SP300,000 ($6,000). Even though in those 10 years dozens of witnesses had to be interviewed on both sides, their large number would not fully account as to why that trial took that long. For one thing, the conflict clustered around two alternate scenarios of the incident: in one, the defendant pulled a gun on the plaintiff as soon as he saw him in public and shot him; in the other, the defendant acted in self-defense, and pulled his gun only after his was severely beaten by the plaintiff. For another, most witnesses did not bring alternative scenarios, and their interviews were in general straightforward, with no

[10] Idlib Jinayat 319/1999.

attempt to get more out of them. As to why it took that long, an explanation must be thought in the very nature of what the courts euphemistically label as "collective fights," which in reality are full blown clan feuds among rival factions. As the courts find themselves struggling not to aggravate such conflicts, they bet either on time factors that would promote self-regulated peaceful settlements, or else that the large number of witnesses would in itself give that opportunity for both sides to construct their *own* narratives: *the statements of witnesses are part of make-belief system, in which the views of the protagonists are expressed though third parties.* The legal fiction of the witness as representing only him(her)self would be possible only in so far as they are "unrelated" to either party. In the deposition forms filled by the prosecution, each witness *must* beforehand determine his or her "relation" to either party: either in terms of kinship and/or prior relationship (*'alāqa*) or "knowledge" (*ma'rifa*) or "enmity" (*'adāwa*). When for instance a witness states that "I know both parties, but have no kin affiliation and no enmity to either one," his statements *may* or may not carry more weight than other kin-affiliated witnesses. In short, the courts cannot under such circumstances stand as the omniscient authorities that they would like to appear: *time goes on as representations are pieced together, negotiated, and reworked out again and again.*

Let us begin with an example of how witnessing works. One of the main witnesses, a young woman (b. 1974) from the same family as the defendant, and who lived in Latakia, claimed to have witnessed the shooting. To the prosecuting judge she introduced herself as someone who "knows only the defendant Siham [the defendant's daughter], and the defendant himself accused of the shooting."[11]

> The day of the incident I was milking cows with my maternal cousin the defendant Siham at their [farm] house—the house of the defendant Ahmad [the main accused]—at the time when the latter went out with a water pot to the toilet. While we were milking a cow, soon after Ahmad [my maternal aunt's husband] went out, we heard people screaming. We looked in the direction of the sounds—considering that we were working outside the house—I saw a man **whose name became known to me later**—'Ali Zini [the plaintiff]—holding a stick, with which he started hitting Ahmad; the latter begged his opponent to stop, but he didn't. Ahmad then managed to run away towards the mountain but was followed by four persons: Ghazi Zini who had a gun, his brother who was carrying a stick, and Nasr and Faysal each with a hunting gun. 'Ali Zini then managed to catch up with him and he beat him up for a second time. It was at this instant that Ahmad pulled his gun towards his assailant and wounded him. 'Ali fell immediately down…while the other armed fellows began shooting up in the air…
>
> Q1. When I asked you at the beginning, prior to uttering your statements, whether you knew the defendant or defendants,[12] but you replied that you only knew the defendant Siham. In your witnessing you mentioned the name of Ahmad Nuri Ma'la—that he is the husband of your maternal aunt—and we asked you whether

[11] The second name, that of the main defendant, seems to have been added later, as an outcome of interviewing. Full names have been omitted, and punctuation added for convenience.

[12] The case had originally 8 defendants.

> you knew him, and you answered positively. We noted that in your deposition. And then later when you were describing **what you saw** in the field, you mentioned several other names of defendants—among them Ghazi and Faysal—so how come did you first claim that you knew no one and then you **identify all those names**?
>
> A1. I knew the defendants Ghazi, ʻAli Zini, Nasr and Faysal, **from their appearances only** (*bi-l-shakl*).
>
> Q2. Since you knew them from their appearances, why didn't you say so from the very beginning, **before** you mentioned their names?
>
> A2. You did not ask me about them.
>
> Q3. Before you took oath, I—**as a judge**—identified you all the names of those involved in the lawsuit one by one, and asked you whether you were **kin affiliated** to or had any **knowledge** of or **animosity** towards any of them, but you said 'I only know Siham.'
>
> A3. You did not mention the **names** to me.
>
> Q4. You've mentioned in your deposition two names—Nasr and Faysal—and said that they've changed their hunting guns with Russian guns. Who are Nasr and Faysal? Are they from the Zinis or the Maʻlas?
>
> A4. From the Zinis.
>
> Q5. You've said that we didn't identify to you the names of those involved in the suit, but in your statements you mentioned individuals that are not involved in the suit, any comment?
>
> A5. Nasr and Faysal were at home, and when they've heard that their uncle was hurt they went out to the scene of the incident.

The entire line of questioning centers not on the *content* of the deposition per se, but on various "affiliations" that the interviewee might have had with any of the people she was able to identify. Such "affiliations" were in fact numerous: kinship comes first to mind, but then the circle widens to people that the witness might have "known" or whose name and/or appearance is familiar, or towards whom she or her family had nurtured any animosity. If the interview, drafted in the judge's own handwriting, runs for three pages, while most other ones do not exceed the single preliminary descriptive section, it's because a "problem" emerged as to whom the witness "knew" *beforehand.* She was, however, smart enough to remind the judge that there were various types of "knowledge" at stake here, one of them was knowledge of a person from his appearance. In other words, the game is between *seeing* and *identifying:* the act of seeing is much broader and richer, if not more confusing, than the simple act of identifying by name. Or, to put it

differently, the identification process reduces the richness of seeing to some of its bare elements—that of naming people, prior to turning them into potential suspects; and the witness was precisely avoiding such juridical reductionism. If, as the common saying goes, seeing *is* believing, for the judge believing comes in conjunction with affiliation, knowledge, and animosity, all of which attached to kin. The puzzling question as to why police, prosecutors, and judges, are not more aggressive than they ought to be, generally opting for the basic minimum in an interview, has its answer in the fact that what investigators really care about is not what witnesses have to say or hide, but in how *reliable* they are: the "closer" they are to the parties in conflict, the less value their witnessing bears. Consequently, witness depositions are lined up based on their degree of "closeness" to the parties in conflict, while their content remains for the most part unchallenged: closeness takes lead over accuracy. But what judges typically refer to as "knowledge (*ma'rifa*)" is more a process of basic *understanding* based on the community's shared meanings, which are always negotiated and taken for granted as such, rather than "known." In the above interview, what makes "understanding" possible between speaker and hearer is that we, as members of the same community, "know how" to identify people by name; that is, we "understand" what we're talking about, hence we do not need to explicitly state what our assumptions are.

My dad's murderer is in prison, I'm therefore going after his brother

> **[C7–4]** When the defendant [Muhammad Taysir, b. 1985, still a minor (*ḥadath*) when he committed his crime in December 2001, and described as "illiterate" (*ummī*) in the prosecution files] was asked [by the prosecutor general] whether he committed the crime attributed to him, he responded positively. And then added, by way of an explanation, that two months ago, Mustafa Urmi killed my father Muhammad Nuh Quminasi, amid family feuds. From that time our family has been preparing its retaliation through careful arrangements and planning to kill **someone** from the family of Mustafa Urmi. Since Mustafa was serving a prison sentence, we decided to go after his brother Muhammad Urmi who worked as a minibus chauffeur for a company on the Idlib–Saraqib line. The decision was made thanks to my cousin Basil Quminasi, with others in the family, in particular the brothers and cousins Jamal, Taha 'Abdul-Qadir, Najib and Yahya Quminasi. But it was indeed Basil who had made all the **planning**, and a week ago he purchased two guns, one for me and the other for his brother Firas [also a minor]. Two days ago [6 December 2001] I came in a Hyundai van with Firas and Basil, who was doing the driving and to whom the van belongs, to Saraqib. Firas had two 9-mm guns, one for him and the other for me. Basil too had a 9-mm gun. We headed [from Faylun] to Saraqib where the victim Muhammad Urmi worked as driver, but we didn't find him. Saturday morning on 8 December 2001 at around 10:00 we headed again for Saraqib in the same van, and I got back my black 9-mm gun from Firas. Once we got near the minibus garage, we saw there the victim Muhammad Urmi cleaning the windshield of his minibus. Our driver Basil left the two of us near the garage—we were both hooded with red scarves—he told us before leaving: 'Shoot him, and then **go to the police station and surrender**.' He made a tour with his van around the garage, while I managed with

> Firas to sneak into the building. Once we saw the victim Muhammad Urmi washing his minivan's windshield, we circled him from the eastern side of the building, and I managed to shoot him several times on the head from the back. He immediately fell on the floor. When I realized that some of the garage drivers were attempting to come close to us, I shouted: 'If someone comes close, **I'll fuck his sister!** Those folks have killed my dad, and for his **memory** I'm retaliating on his behalf.' I kept shooting at the victim Muhammad on his head, but I'm not sure whether the defendant Firas had shot in the direction of the victim. I nevertheless saw him shooting in the air to disperse the crowd that was gathering. I think that I managed to shoot the victim in his head three or four times. I also heard a couple of shots coming from the west, probably from the gun of Basil Quminasi who was in his van near the garage, then managed to escape north. I then headed with Firas, as Basil had summoned us, to the Saraqib police station, but while retreating, I did shoot a couple of times in the air out of fear that someone would approach us. At the station we surrendered to the police, who took us back to the crime scene for purposes of verification. I feel sorry for what I did, and I ask your forgiveness. Saraqib, 8 December 2001.[13]

When his partner and cousin Firas (b. 1984), also a minor, and only a year older, was interviewed by the same judge, he practically reiterated word-for-word what his cousin had already stated, with little offhand variations, only substituting brother for cousin and vice versa. Which points to a careful orchestration of such crimes, not only from the perpetrators, but also to a certain extent from the police and judicial authorities. Not that any evidence would be deliberately fabricated, even though that could well happen, but more in the sense that such retaliatory acts tend to be perceived as group actions, and portrayed as such by the actors themselves and the police. "Someone" had to be killed in retaliation for a past offense—in memory of the dead—and the identity of the target did not matter much, as long as it was affiliated to enemy territory. When this "someone" is finally shot to death, every witness of the crime scene is hurdled with sexual innuendos: "I'll fuck your sister!," which places male machismo and its vulnerability at the forefront of the killing.

Retaliation is a must even if state justice has accomplished its duty, which does suggest that unless retaliation is kin based, originating from the victim's kin, it loses its meaning. State justice only runs in parallel to what custom already dictates, not on the top of it. It remains to be seen, however, how state justice "regulates" custom, and whether it forces it into new directions: more specifically, *how customary norms apropos honor killings are re-codified in legal communication within the binary legal/illegal normative division.* Decisions are made and coordinated beforehand rather than improvised. That's not only important for the planning of the act itself, but regarding its representation to the police and judicial authorities once the murder has been committed, as it has to be represented by the perpetrators themselves as a cohesive action emanating from a well thought out decision-making process. Such a cohesiveness is played on both sides, by the perpetrators themselves, and by the police and judiciary: for instance, in the two independent

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[13] Case-file from the Idlib Jinayat in 2001–02.

depositions by the two minors, they were very much *meant* as look-alike, word-for-word, but such texture could have been the outcome of the perpetrators themselves, who had decided beforehand what to say to police and prosecution, or else constructed by the latter in their "editing" of the oral statements (which are never fully recorded).

Minors are used by their elders for the act itself, while the planning goes for the elders. The use of minors is generally designed as an attempt to escape the pitfalls of justice and receive a lesser penalty. In honor killings the culprit gives himself up immediately to the police, as a way to distinguish himself from the common lot of murderers. He is not someone who would hide or conceal himself as other killers would have done under normal circumstances. The crime has to be made public as an explicit act of retaliation, not necessarily though against a particular individual, but more against the group represented via the individual. In our case here, for instance, the victim had for all purposes nothing to do with the crime perpetrated by his brother a couple of months earlier. As the killing of a singled out person de facto transforms itself as a rivalry among clans, the individual ceases to be important and is transubstantiated by the logic of family retaliation. When Muhammad Taysir, the main protagonist from the Quminasi clan, who was avenging his deceased father, addressed himself to the little crowd in the aftermath of his killing the minibus driver, he made the killing of his dad sound like a collective enterprise, unrelated to the person whom he had just murdered a moment ago: "Those people have killed my dad," seems to be equating the person he just killed with his kin group, even though the victim, for all we know, may not have even participated in the original crime.

Everyone seems to be proxy for someone else—even that murdered person who was not responsible for the crime that his brother had committed a couple of months earlier, and for which he had been serving a jail sentence. The assailants were proxies for the family and its sense of honor. Had Muhammad Taysir acted therefore on his own, without that benediction and material support from his brothers, cousins, and uncles, his act would have been perceived as a lonely murderous act of no value for his peers. In other words, it would have dishonored him completely and defeated its purpose. All the "participants" had to be declared as such from day one, as the two assailants did in their depositions to police and prosecution: without hesitation they've identified all members from their own family who were "partners." "Partnership" is a broad term which denotes all members who were either morally supportive of the perpetrators, or else those who, like Muhammad Basil, provided them with logistical and material support, and who drove them to the crime scene with clear instructions. Some were thus interrogated for being simple instigators (*muḥarriḍīn*), while Basil was the hardest to pin down, as his role was more than just an instigator. This last point would turn out the most decisive for the development and unfolding of the case, as Basil, who was under custody from day one, would deny his participation in toto. The whole case therefore centered around his effective participation—or in the legal jargon, for having been a "partner" (*sharīk*) to the two minors—while his brother and cousin were subjected as minors to different juvenile procedures.

Such representation of violence points at how much the individual matters far less than

the family to the point that even the perpetrators were first identified under their father's name: they're the sons of so-and-so. Moreover, the list of perpetrators—even though only one, possibly two, did the effective shooting—was quite long—at least in the initial stages of the investigation. Even though the referral judge's report would eventually clear off three of the six names initially accused by the victim's father, family feuds formed the center stage of the dossier. While going through such honor cases, we therefore need to take into account: (1) How does modern law come to grips with family feuds: do the two effectively "intersect" and meet somewhere in between? (2) Does modern law effectively impose itself on honor killings, or does it find itself gripped into a situation where honor has to be effectively taken into account, and hence the law must be tailored to that effect? (3) Do procedures end up different between a regular homicide and an honor killing? (4) Does family—and hence the number of "participants"—*legally* matter, or are entities like family and clan treated as if they were "individual" entities? What do legal categories like "participant," "partner," and "instigator" effectively mean in honor killings, when the list of so-called participants could be effectively quite long indeed?

Potential victims

[C7–5] Khalid Zarzur was a married law student at Aleppo University in his early twenties when he was shot to death in 1995 by cousins of his.[14] The six-page autopsy details the location of the 13 bullets that fatefully killed him. As if one bullet was not enough, the magic number of 13 was a message delivered to the opposing clan: we're after you with vengeance! Khalid was what might be called a "potential victim," someone who was targeted by his own cousins not because he did anything wrong or harmed anyone, but simply because what ought to have been the prime victim was unavailable at the time. A second victim "close" in blood relations was chosen as a replacement to the first, and that victim was Khalid. Only a year earlier, in 1994, and in the village of al-Rami (province of Idlib), a fight—one of those quasi-regular ones—occurred between Muhammad Khalid Zarzur and his cousin 'Umar Muhammad Zarzur. As 'Umar was stabbed to death, his brother Mahmud vowed revenge, even though Muhammad was arrested amid Idlib's criminal court beginning normal proceedings. The fact that in such environments state justice proves "insufficient" and is often supplemented by a pre-state type of justice, does not necessarily indicate that the apparatuses of the state are inefficient, at least in the sense of not attempting to bring the participants to the negotiating table. We're into a situation where pre-state violence[15] constitutes an integral part of the normal functioning of society,[16] so that even compensation schemes (either as *diya* or as damages arbitrated by the civil courts) matter less.

Mahmud was therefore compelled to retaliate. But against whom? The original culprit was at trial and serving his prison sentence, while his brother Mustafa was overseas and working as a teacher in Saudi Arabia. Mustafa's son Khalid, who was then a law student,

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[14] Idlib Jinayat ruling 95/1999, revised ruling on 12/20/2000, Naqd ruling on 1/22/2001.

[15] Pierre Clastres, "Archéologie de la violence. La guerre dans les sociétés primitives," *Libre,* 1(1977).

[16] Nicolas Journet, "Aux origines des guerres, " *Sciences Humaines,* 47(2005), 8–12 ; J. Haas, ed., *The Anthropology of War* (Cambridge University Press, 1990).

became the de facto *faute de mieux* target, even though he was totally unrelated to the previous killing. Since Khalid's parents were living in Saudi Arabia, his regular visits to the village were for the sake of his grandparents and in-laws. The absurdity of such artificially maintained controversies and the perseverance of a *"forme élémentaire"* of violence, is best noted in one of those strangely familiar accounts by the defense lawyer, amid charges of premeditated killing:

> [In 1994] a fight took place between Muhammad Khalid Zarzur and 'Umar Muhammad Zarzur as an outcome of a sudden controversy. The latter stabbed the former once with a knife which caused him a hemorrhage that eventually led to Khalid's death. The relatives of the victim, specifically his brother (now the defendant in this case), *instead of retaliating against the killer or one of his children or one of his brothers who work and reside in the village,* opted instead to kill the brother of the killer Mustafa (now the plaintiff), *for simply being a teacher,* and to kill also his son Khalid, *for being a university student,* while openly boasting their vendetta on several occasions. [*italics added*]
>
> Since the plaintiff Mustafa was a teacher in Saudi Arabia, the relatives of the victim, in particular the defendant (Mahmud), was determined to and planned for killing the student at Aleppo University Khalid Zarzur, the son of the plaintiff, in spite of the latter having had rented a room in Aleppo:[17] (1) The defendant had openly stated that he would kill the victim Khalid and that he was **obligated** (*mulzam*) to do so. (2) Knowing that his victim came to the village to buy some foodstuff, he began stalking him and kept him at close sight; even though some intervened and proposed to forgo his retaliation he refused to listen. (3) The morning of the big (Muslim) feast [in 1995], the victim arrived early to the al-Rami village to visit his grandparents, planning to return to Aleppo in the evening; that evening he said goodbye to his grandparents and waited for a microbus, in the company of Husam Zarzur and Ahmad al-'Umar, on the main road. (4) Once the defendant realized that his victim was in the village, he prepared his gun and rushed home to bring his minor brother Bassam with him to the crime scene, having provided the latter with a gun. When leaving home they crossed their maternal uncle Ahmad al-'Ujayni, who had just come back from Ariha, informing them that the victim was waiting for a microbus at the main road. The uncle and his brother drove the two culprits on their three-wheel motorbike to the main road close to where the victim was standing. (5) The defendant then approached his victim pointing his gun towards him, but when Ahmad al-'Umar noticed him he begged him not to shoot; he nevertheless initiated the shooting, but when the latter ran away he followed him to the home of the Husrum family, located 100 meters from the main road, he and his brother Bassam kept shooting at their victim, emptying their guns on the victim's body. (6) Since the defendant premeditatedly killed his victim he was charged by the referral judge for committing a premeditated killing (*'amd*) based on article 535

[17] Hence had voluntarily dissociated himself from his original kin-locality, what eventually became the murder scene.

> of the penal code. The criminal court followed suit and charged him in 1999 of premeditated killing with lifetime hard labor.

Generally in cases of honor killings among men the courts would not go as far as the death penalty or life imprisonment. But as the defense council noted in his address to the Idlib criminal court, the assailants chose the "wrong" victim: as there was no "valid" reason per se to target a young university student who was unrelated—except by family lineage—to the crime of the previous year, any sympathy towards the assailants would not have persevered for long. In fact, there are unspoken rules, which the courts assume are an outcome of deeply rooted customs, which regulate the logic of honor killings and govern the degree of "closeness" that the victims ought to have to assailants of previous crimes. For example, a person targeted as potential victim in crime B ought to be "close" to the assailant in crime A, in the same way that the assailant in B should be "close" to the victim in A. But the assailants in this case (one of them was a minor, and his role remained disputed), in retaliation for the death of their brother a year earlier, opted for an innocent cousin of theirs. Such acts could backfire, setting alarm bells in the community, prompting courts for tougher punishments. What the courts do under such circumstances is to pass over the "honor" element, which it usually does without much fanfare, treating the case as a regular homicide. Hence the severe punishment as stipulated under article 535 of the penal code. But under pressure from the higher cassation court in Damascus, Idlib's criminal court had to revoke a year later its initial verdict, which in itself is an indication at the unsettling nature of honor killings.

Parsing the narrative threads

The "evidence (*adilla*)" section in the 1996 referral report lists a total of 19 facts, based on police documentation of the crime scene, the postmortem, lawyers' memos, up to the examination of witnesses and other matters. The referral judge recommended that the criminal court prosecutes the defendant on article 535 of the criminal code, namely premeditated killing, which could lead either to the death penalty or life imprisonment with hard labor. To justify such recommendation, the report extensively quotes the autopsy detailing the location of the 13 bullets in the victim's body; witness accounts present at the murder scene whose testimonies underscored that the assailant was not provoked by his victim, with the former pulling his gun and shooting once he noticed the latter; while the assailant kept following his victim even when the latter sheltered himself inside the Husrum home. But there was still the lingering issue of the assailant's "original intent," considering the peculiar requirements of article 535: what are the *criteria* for establishing a premeditated killing (*qatl 'amd*)? The referral report picks up a textbook definition of premeditated killing: "Considering that a premeditated killing is a special element in homicides, it must be dealt with clearly and proven independently. It consists in the actor of the crime having thought his crime, planning all matters through a careful evaluation of possibilities, then chose the path of crime calmly, with contained emotions, independently of strained sentiments, then prepared for what he planned to do with all the needed tools at hand, prior to committing his crime calmly and thoughtfully." One can see that such a definition of what premeditation *ought to be* does not go very far, that it can be flip-flopped in any direction, which is what attorneys and their clients typically do.

Should a premeditated killing be thoughtfully planned and calmly executed? When faced with a homicide, participants document the crime scene in indexing, *from their own perspective,* the *perceived* differences between premeditated and intended killings. Such a strategy was deployed, for instance, by the defendant in his first deposition: the crime was indexed in such a way so as to lead to the conclusion that there was no deliberate planning from his part. Other witnesses, whether on the prosecution or defense side, went through similar undertakings. It was then left to the judge's own discretionary powers to go through the final selection process, and choose what fits best with the coming verdict. For the referral judge, there was not much material that would conform to the definition he provided for premeditated killings. In one instance, he quotes a witness who met the accused a month-and-a-half before the crime: the witness allegedly summoned the accused to seek a peaceful settlement with his relatives (*aqārib*) and conclude all matters peacefully, to which the accused retorted, "matters only end once my brother's killer is executed, and that's something that's imposed upon me." Such a statement, the judge concludes, "points to the fact that the defendant was indeed planning his retaliation for the killing of his brother."

But even though three years later in 1999 the criminal court endorsed the referral report, accusing the defendant of premeditated killing, condemning him to life imprisonment, with material compensations to the victim's family, while keeping the death penalty at bay, the Damascus Naqd, however, was not impressed by the verdict:

> The court in its verdict, which was appealed by both parties, knowing beforehand the principles of a premeditated killing [as described by both the referral judge and criminal court], failed nonetheless to provide adequate arguments for its ruling, since the provided evidence is insufficient in that regard. The existence of **hostility** (*'adāwa*) between the accused and his victim, and the accused's statement to one of the witnesses—that "matters only end once my brother's killer is executed"—do not prove that the killing was premeditated, considering that the victim in this case was not the killer of his brother in the previous incident. As to the defendant shooting his victim and killing him with so many bullets, even though constitutes enough evidence to indicate that the killing was deliberate (*qaṣd*), does not prove that the killing was premeditated. Which shows that the evidence that the court has accumulated is not enough, and the conclusions that it drew were flawed.

With the higher court revoking the ruling of the lower court, the Idlib court commuted in 2000 its verdict to deliberate manslaughter, with 15 years of hard labor, and a million pound ($20,000) compensation to the victim's relatives.

Relatives are always a surprise

When a polygynous husband carries three wives, each wife is referred to as the *ḍarra* of the other, and each one should keep alert for a surprise. Strictly speaking, a *ḍarra* is a fellow wife of a polygyny, or the husband's woman, and when a man is sharing more than one wife at a time, the wives are referred to in relation to one another as *ḍarra*. The

first wife is therefore her husband's wife (or woman), and she is also the *ḍarra* to the second and third wives respectively. The trouble begins when one is accused for the murder of another.

[C7–6] Insaf, the youngest of Ahmad Ziyadi's three wives, was from day one the main suspect for killing her elderly *ḍarra* in Mu'arra (province of Idlib) in 1999. Having provided the police her full and unconditional confession, she was taken into custody and incarcerated. What she left behind were repetitive accounts of the crime scene that she had reiterated with very little variations first to the police, the investigating judge on two separate occasions, and through numerous court appearances. What is therefore left of her are official documents with very little auto-biographical elements.[18] Unlike Ahmad's first wife 'Ayyush, which like her husband was born in 1961, Insaf was 17 years younger. She was therefore of another generation, and for that matter was probably closer to Ahmad's children from his first wife than to her two ḍarras.

A judge questioned her in Mu'arra, beginning with the traditional question that "You're accused of premeditatedly killing Walida Jiha based on article 525 of the penal code, what do you have to say?" Referring to the evening soirée in which her brother and his wife were invited the night of the killing, Insaf notes that,

> …at around 9:30 p.m. after I boiled the tea I went to the room of the victim Walida to get some tea cups,[19] and also to nag her regarding **all those bad things she has been saying about me in front of all people**. I knocked at her door and found her in her pistachio-colored sleep outfit. I told her 'You have no right to disseminate all that talk against me,' to which she retorted that '**if you're really honest you wouldn't have imposed yourself as ḍarra just like that**.' A word from me, and a word from her, and we found ourselves battling one another. We were both on the floor, and at some point I was on top of her, at another she was on top, until I pulled her head with her hair and hit it hard on the floor. She lost consciousness. I said to myself that **my husband, once he would know of the incident, would divorce me**. I took a look at the room next to her bedroom, and noticed a hammer [the hammer, which was used at the crime scene, was shown to her, and she did identify it], which I picked up to where Walida's body was lying. I started hitting her on the head and skull many times. I then left the room with the hammer in my hand in the direction of the toilet located in my brother's home. Then went back to my husband's home to entertain our guests that night. Before that I had washed my hands and face…When our guests left after midnight I went to bed with my husband who was angry at me after the fight we had in the afternoon. But I managed to cheer him up, as we were lying in the same bed, and we had sex: '**I came to him as a woman would to her husband**'…

In a memo addressed to the Idlib Jinayat, Insaf's counsel pressed on the issue of

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[18] On the importance or irrelevance of auto-biographical elements for the case-file and the verdict, see Chapter 4.

[19] Later statements in depositions and court hearings confirmed that alcoholic beverages, whisky and Araq, were offered at around midnight, probably an hour before all guests had left.

premeditation. Since there was that quasi-certainty that his client committed the crime, only the issue of premeditation was left lurking: Was it premeditation or a deliberate act that was "improvised" that night of February 16th? The lawyer argued that, considering that the hammer was already present in the victim's bedroom, and that Insaf went there in the first place out of necessity to bring tea cups for her guests, who had been invited that afternoon by her husband, she could not have possibly planned her act beforehand. In short, it was *la colère du dernier moment.* Premeditation, *'amd,* argues our lawyer—and here he follows the usual textbook line of reasoning among attorneys in Syria—implies that "the actor acted in cold blood, with premeditation, and outside the effects of anger." Insaf's act by contrast "was the product of its moment." The lawyer was in effect responding to a memo issued that same day by the DA's office in which it was argued that Insaf's behavior that night was the outcome of "extreme hatred and jealousy," and that the defendant was afraid that the victim who knew a lot about her and vicious habits would soon reveal her secrets to her husband. The DA's representative therefore pushed for a maximum punishment as stipulated in article 535 of the penal code, which implies at its minimum lifetime incarceration, if not the death penalty.

Murder and the dynamics of kinship

It was known that the crime must have occurred on the night, possibly morning hours, of 16–17 February 1999, and that up to the end of that year Insaf slowly matured as the only suspect. Early suspicions towards her husband Ahmad, either in terms of direct responsibility or at the very least as "partner," must have been placed at rest by mid-1999 when the prosecution exonerated him from any wrongdoing, or at least made the request that he should not stand trial.

Thus, even though the blood-type conflict between that of the victim and the stains found on the defendant's clothes, made no sense at all and found no logical explanation, everything was back then pointing towards the culpability of Insaf. When the Jinayat opened its hearings at the end of 1999 and early 2000, even Insaf herself reiterated in court her early confessions to the police, prosecution, and investigating judge. But even though, as the saying goes, confession is the master of all evidence (*al-i'tirāf sayyid al-adilla*), it bears no value unless corroborated on its own by further independent evidence, that is, evidence "outside" the confession itself. That could be anything from accounts by witnesses on either side (prosecution or defense), or forensic evidence, or other confessions by possible witnesses and suspects.

By early 2000 there was that certainty regarding Insaf, even though the blood mystery remained unresolved, and the court's burden hinged on whether the murderous act *was* premeditated. Had it not been for Insaf's sudden reversal by mid-2000—all of a sudden declaring that she didn't do it and that her husband was the master organizer—the Idlib court would surely have pushed for a guilty verdict by summer 2000, probably under article 533, avoiding the death sentence. The verdict would have been appealed, and the Damascus Naqd would have probably upheld the Idlib verdict by early 2001.

Needless to say, Insaf's sudden reversal had upset all plans, as the case rested *solely* on

the accused's initial confession—not much else. The court refrained from releasing its verdict, recommending that the case be reinvestigated. Witnesses were called again and again, and by the end of 2000 most of them went through a second round of interviews, including, of course, the two main suspects, the husband and wife.

Insaf's reversal, however, did not seem to have had much of an impact on the Idlib Jinayat, besides reappraising their investigation and summoning most witnesses for another round of interviews, which did not bring anything tangible enough for that turnaround. But what's more interesting is that the presumed reversal witnessed a split between the public prosecution office with the Jinayat over a couple of issues, delaying the conclusion of the case until the very end of 2003, only to bring it to where it stood back in 1999.

Following the prosecutor general report in summer 1999, in which the premeditated scenario was recommended, the second comprehensive report came from the referral judge in Idlib. Such reports, which push the case for the higher courts for a verdict, also provide for a preliminary synthesis as to where the investigation stands in its early stages. But in spite of the fact that the referral reports come early on in the judicial process, and may have been inaccurate on facts, they do survive remarkably well, to the point that later reports would look in hindsight as mere variations on the same theme.

The referral report follows the exact same logic as that of the prosecutor general, even though by that time (September 1999) the public prosecution office which became more certain of its handling of the case, had little doubts about the accused's guilt, hence there was no need to go through the long laundry list of "witnessed items" that would stand as "evidence" either individually or collectively. In effect, the referral report turns out to be more focused and concise, with only ten items listed as "evidence" pointing towards the accused's guilt.

The verdict came on March 2002, three years after the crime. In its attempt to avoid the death penalty or lifetime incarceration, the Idlib court argued that the elements of premeditation were missing:

> "Premeditation implies that the criminal had well thought of her crime and of every detail…then planned and executed it with a serene mind and calm spirit…But as far as this file is concerned, facts show that **the defendant was neither in a peaceful state of mind, nor well balanced**. Witnesses have pointed that Insaf had a troubled spirit, broken down nerves, and distressed emotions regarding the victim Walida, which affected the way the crime was handled as well as its timing. The crime had in effect been conducted at the same time as the evening party in such a way that each one of the invitees became suspicious that something wrong was going on. The murder had left visible scars on Insaf's face, resembling to 'I'm a killer!' banner, while it would have been wiser to postpone the execution when everyone went to bed, so that no one would become suspicious. For that very reason the court ruled that premeditation was out of question, which leads us to believe that the accused's act was deliberate (*qaṣd*),

pursuant to penal article 533."

The court's other main arguments were as follows:

1. Insaf's husband Ahmad used to occasionally beat her, because he was suspicious of her poor behavior and moral character. One such occasion was the afternoon of 16 February 1999, which may have aggravated Insaf's jealousy towards Walida, perceived as the better treated of the three wives.
2. The age difference between the second and third wife was 17 years, which at one point favored the new wife Insaf because she was the youngest. But as soon as Walida was back, and upon Ahmad's decision to equally divide his time between the two, Insaf's instability increased.
3. The blood-type incompatibility was probably caused by the fact that the clothes were not found and seized immediately. That delay prompted someone to temper with evidence and stain Insaf's clothes with blood, not realizing the blood type of the victim and that of the defendant were incompatible. There were several possible suspects here, one of them could well be Ammun, the wife of Insaf's brother, who overtly disliked the accused, and who was accused by Insaf of having entertained a relationship with her husband Ahmad.

When the court opted for a 12-year sentence with hard labor, it did so on the thesis that, first, the crime was not premeditated, and, second, that "considering that the defendant is a woman, the court decided to grant her the appreciative attenuating circumstances (*al-asbāb al-mukhaffifa al-taqdīriyya*)," [20] which reduced her sentence to 12 years from the original legal requirement of 15. She was also summoned for SP600,000 ($12,000) of compensatory damages to the victim's heirs.

Witnessing the everydayness of kin, violence, and sexuality

In the triadic institutional structure between performer–victim–witness, the performer in homicidal crimes is no one else but the killer, while the witness would act as a Third Gaze "audience" towards which the crime was oriented in the first place. In the traditional honor killings examined in a separate chapter,[21] the performer would legitimize violence as a preemptive strategy, as a way to "save" the young female victim from further dishonoring her family. The killing would therefore receive its legitimization on two complimentary grounds: to save the woman–victim, and to save the family's honor; the latter is therefore written on the female body, and protected by men (a role acknowledged by the penal code). Moreover, the woman–victim, now permanently silenced, having broken her honor, is *post hoc* represented as a perpetrator of (sexual) violence.

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[20] Apparently the notion of "attenuating circumstances" had its origins in the French penal law of 1832 regarding *"les circonstances atténuantes"* that could be granted to a criminal, see Stéphane Legrand, *Les normes chez Foucault,* Paris: Presses Universitaires de France, 2007, 252; and, Chapter 1.

[21] See, Chapter 1.

In the brief sexual encounter between Insaf and her husband, which allegedly took place in the hours following the crime, at a time when husband and wife were both implicated as suspects, the representations of sexuality would not permit that uncanny juxtaposition between sex and death. The alleged act was therefore represented in various memos as an *unlikely* one, along the vein that had it happened, as Insaf alleged, her husband could not have possibly erected because he had just murdered his second wife; and in the husband's version, his wife made him an offer that night, which he had reluctantly accepted (he was after all tired, amid a night entertaining guests, probably even managed to kill his second wife), even though he did manage to report her "unnatural behavior," an indication that she may have done it. The irony here is that what cannot be explicitly represented in court documents, is very much alive in daily practices: the association of death with sexuality, where the female's lust for sex could lead to her death by a relative.

In a society where women associate their own individual freedom with enduring silence and death, and where men live in the fear of being publicly dishonored—by women—what role is to be attributed to witnessing? What are witnesses supposed to do? In the present chapter we've addressed such questions in relation to the cases at hand, where witnesses were not "outsiders," in the sense of situated outside the kin relations of either performer or victim. In effect, what's unique in the triadic structure in honor killings is the closeness of all three parties, so that even the witnesses were kin affiliated with performer and victim. As the power of witnessing tends to be associated more with "trust" than "truthfulness," and since trust is more in sync with the persona of the witness than it is with the judicial process, what happens to that crucial element of trust when the majority of witnesses were kin affiliated? The situation proves so delicate that, notwithstanding gender roles, the mapping of kin could prove crucial: the reactions of witnesses to the violence of the killing may vary based on their location to the victims and their kin relations, a position which may affect their own views of violence, sexuality, and death.

Wouldn't it have been simpler?

One of the witnesses, identified as Amina (b. 1965), which had been re-questioned by the prosecution in 2001 upon the reopening of the trial, told the investigating judge in Mu'arra that Insaf had allegedly asked her the morning when the body was discovered, "If the government (*ḥukūma*) were present, would they have collected the fingerprints on the victim's body?" And when Amina retorted that she didn't know much about such things, Insaf pursued her questioning further, "If the government comes over, and they see all this blood pouring from the victim's head, would they still be able to collect the fingerprints on the victim's body?" Whether this story is pure fabrication or not doesn't matter much, as it stands well as an anecdotal evidence for that unique encounter. First of all, it tells us something about an infamous woman by the name of Insaf Ziyadi, which, had she not been accused of killing her second ḍarra, would have gone into oblivion. It was, indeed, that uncanny "relation" with the judiciary—which Insaf identified purely and simply as "the government"—that an unknown individual, described in the official documents as tortured, sinful, immoral and wicked, achieved—at least for her small community of villagers—an iniquitous status. As Michel Foucault would say, *power*

individualizes, hence individuals become abstracted from their communal shared meanings. The judicial apparatus steps into a small village community to investigate a murder. In a community structured on the family, where the "economy" is kin oriented, a member of the village is all of a sudden targeted by an apparatus which is a product of the modern nation-state, and which can only operate through individualization—separating the individual from his or her community, simply because in the eyes of the nation-state they *formally* all are individual citizens. When, for instance, a court finds that an individual is guilty of a criminal act, he or she would be stripped of their "civic rights." Only individuals have civil rights, not groups, families, or tribes. Which modifies the rule of the game between private and public, and we can detect that unease in the all too sudden shift in the testimonies of witnesses. As the afternoon and evening of 16 February 1999 have been recounted from myriad perspectives by witnesses, the private lives of individuals become a public matter, textualized in court documents, transmitted from police to judges and courts to various judicial authorities. The life of an unknown individual is meticulously analyzed, commented, subjected to careful judicial and medical expertise, then, at the very end, a verdict is announced. But with all that documentation, it is *as if* each case rests solely on that un-said, which mysteriously lurks in the background, beginning with the very act of murder, which is glossed over in a juridical jargon of the sole purpose of a "just" ruling; or that Third Gaze which posthumously gets hold of the crime, which pushes the crime away from its dualistic structure of perpetrator and victim to outside "audiences" pursuing their final judgments, creating a triangular assessment between perpetrator, victim, and audience.

The kin who surprise us

Property and kinship are collective systems of representation that structurally organize relations between persons. Were it not for such collective systems there would be no *relations* in the first place. The concept of property posits a social relation between holders and non-holders, while kinship posits a relation between wife-givers and wife-takers, husband and wife, parent and child.

In similar vein, crime relates persons through kinship and property. First of all, the accused in our last case, who was her husband's parallel cousin, was already related by birth to the Ziyadi clan, thus her third marriage to her cousin came as surplus to other persons from other families, beginning with her two ḍarras. The crime in question, whether in fact committed by the accused, as the court thought it was, or not, reshuffles the representations of kinship and property in this small peasant community of laborers and workers. As witnesses textually self-create representations of their community, kinship receives some of its most concrete and practical representations, while some of the daily routinized violence and sexuality is represented through the tortured and fragmented speech that witnesses routinely deliver to prosecutors, lawyers, and judges. Were it not therefore for the crime itself and the apparatuses of power that handled it, none of that would have ever existed.

As to the other crimes in this chapter they may prima facie look like senseless exercises of pure retaliation by youngsters whose eagerness for violence was less an outcome of

concern for their elders than a conduit for the development of self, masculinity, male virility and machismo, and sexuality. In other words, they look no different from homicides committed in the passionate spirit of righteous slaughter, where problems of bounding the self receive full attention, and which were examined in other chapters in this book. Even though such an assertion shares its grain of truth, it remains nonetheless that the problem of the self among youngsters is in such instances bound to the elders and kin. That is to say, the spirit of righteous slaughter is not that of a humiliated individual, atomized in an urban setting, with no links to a tradition and community, dissociated from family and clan. So what difference does it make that the righteous slaughter is *not* the outcome of an *individualized* decision-making process, but is only "representative" of a *group* mentality? What is unique in the crimes in this chapter is that the process of *individualization* of youngsters is processed through kin, not outside clan relations. There is therefore no point in pursuing the false sociological abstraction that those youngsters would either discover their subjectivity *outside* the normative values of their clans, or else remain fully integrated within the shared values of the latter. If our cases prove anything it is indeed that all elements of self-consciousness must go through the rituals of kinship, which at their extreme imply sacrificing an "innocent" life via a murderous act of self-affirmation. Such crimes, however, even if commanded by the group, they nevertheless establish the murderer as an individualized person whose fate is determined by a verdict *outside* the clan's norms. In short, the socio-symbolic order of kinship would not operate, in the *political* framework of the nation-state, on its own, as it did under the Ottomans, but within the rough boundaries concretized by the latter. On the other hand, the nation-state, in its inability to control its own territory, in the corruption of its bureaucracy, in its overt violence, cult figures and mass ceremonies, may exacerbate the socio-symbolic order of communities, towards which the judiciary would feel powerless.

Second of all, crime, like kinship and property, implies an exchange, as the murderer, through court action, exchanges material compensation—that is, property—with the victim's kin or family. Usually compensations come twofold: one which is material, specified in the verdict in terms of cash compensations in lieu of damages inflicted on souls and bodies, and parallel compensations which consist in offenders serving for public sentences (hence their presumed integration back into society, which implies repentance, or acknowledgment of the morbidity of their criminal endeavor). The amount of time in modern penal systems should in principle not be arbitrary, that is, it ought to be adequately "measured" in relation to the damage created to the victim's kin.

But as crime *in a small closed community* re-relates already related persons, this in itself constitutes a major form of exchange, placed in parallel to property: herein lies the difference with "anonymous" crimes in large urban milieus. It rearranges their relations in ways that may not be totally expected and fall outside the usual realm of doing and relating things, even though it expresses the already existing routinized violence in society, as witnessed by no one else but the witnesses themselves. A crime therefore *relates* individuals (persons already related through kin) through an event. They all have to redefine themselves—as witnesses—in relation to both victim and crime scene. They would then have to relate to one another in ways that are not just necessarily limited to kin and family. Through speech monitored by the power of the judiciary, witnesses

construct narratives that would organize their relations in time.

In the triadic structure of performer–victim–witness the performer is the one who committed a hideous crime, and whose act has de facto become public, transforming the criminal into a public persona which is scrutinized, and re-valued through an outside audience which acts as a Third Gaze, as witnesses do the work of narration, transforming crime into an element of spectacle. Yet when violence is present as spectacle it is the body and its representations in space—the territoriality of the body—that convey meaning through representations of sexuality and death.[22]

[22] Veena Das, "Sexual Violence, Discursive Formations and the State," *Economic and Political Weekly,* September 1996, 2411–23.

[Chapter 8] A danger to society: they must therefore all disappear

In one of the cases discussed in this Chapter, the prosecution, in the midst of a plea to go for the death penalty, argued that the defendant, considering all what he had done and said, does not deserve to live in society because he constitutes a "danger" to the very principles for what a "society" stands for (C8–2 *infra*). To be sure, both the notion of "society" and that of "danger to society" are new to the twentieth-century eastern Mediterranean. As Talal Asad has persuasively argued, "nationalism, with its vision of a universe of national *societies* (the state being thought of as necessary to their full articulation) in which individual humans live their worldly existence, requires the concept of the secular to make sense." And he adds: "The loyalty that the individual nationalist owes is directly and exclusively to the nation…The men and women of each national society make and *own* their history."[1] The link that Asad draws between nation-state, society, and a secularism which force individual citizens into a collective secular history of the nation, on one hand, and an individualistic history which is of their own making, on the other, goes back to the nationalisms of nineteenth-century Europe. It was, indeed, within such constellation that, in the aftermath of the French Revolution, the *subjects* of His Majesty the King became the *citizens* (*citoyens*) of the Republican nation; hence the new nationalist configuration uprooted those newly conceived citizens from their communal norms, ethnicity and religion. The notion of "society" therefore emerges—post-1789—within the bedrock of atomized individuals, extracted from all communal norms, with a presumed loyalty to the secular nation and state: it is, indeed, the latter which makes the very existence of the former possible, granting it with that aura of respectability that it fully deserves; hence the hyphen between "nation" and "state" takes a long time—and a cohort of deadly wars—to fully develop and mature. In between nation and state stands the venerable "society," now reduced to its atomized individuals, having lost their old patriarchal symbolic order, only to be drilled into novel disciplinary practices where subjects are no longer fully immersed into their old identities of region, class, and communal norms. Hence the emergence of the modern abstract individual which is *subjectivized* through the disciplinary practices of the state.

To be sure, Asad's notion of "society," framed within the nascent secular nation-state, draws heavily on Foucault's genealogy of micro-power in modern European societies and civilizations. Madmen, lepers, criminals, sexual deviants, hysterics, become "a danger to society" precisely because they fail to integrate in the newly established norms of the nation-state. In Foucauldian genealogy, the Durkheimian "organic solidarity" would actualize not through a "collective consciousness" (*conscience collective*), but by marking a margin of society "outside" its shared values, only to integrate them by means of juristic, medical, educational and military institutions. Hence the process of integration is one of a double negation: first, by marking a group of individuals as unfit, that is, outside the bounds of legal and medical reason; in a second gesture, such unreasonable individuals would only come back to society by acknowledging the very act that kept them at bay from the rest of us; in a final gesture of (Hegelian) dialectics, such

[1] Asad, *Formations of the Secular,* 193.

individuals are neither "normal" nor "abnormal," but *subjectified* as such as "non-abnormal," hence within a margin of *excess of desire* which would not be contained within traditional normalcy. In other words, the juridico-medical discourse whose aim is to control, discipline and normalize, unwittingly creates its own "excesses" *within* the psyche of that "non-abnormal" individual.

The Syrian judge who desperately pleaded for the death penalty for a young man, who had just turned 18, and who had unwittingly asphyxiated a boy for the sheer pleasure of sodomizing him, was offended that the man did not repent in the aftermath of a guilty verdict (C8–2). Thus, even though the court seems to have mastered the idea that the boy's death was not premeditated, the prosecuting judge was nonetheless more than offended that the young man never apologized, that is, he never acknowledged that his act of sexual lust was sinful, contrary to the norms of society. The offender thus looked in the eyes of a stunned court and behaved as if he wouldn't care for less for the below-expectations verdict. As the defense counsel heralded satisfaction for the much reduced non-premeditation penalty, what was lacking was that gesture of sinfulness: "What I did was wicked and immoral; I apologize to society for what I did." Rather, the provocative demure of the defendant—Is that all?—seemed not only to mock the rationale of the verdict itself, but more importantly, it did hit a chord into what the justice of punishment should be all about: that criminals must repent, whatever the verdict, and if they don't, then they're floating around—even after their execution—as persona non grata; while a repenting criminal has been re-integrated into society at large as that quirky "non-abnormal."

To be sure, such logic of repentance and punishment *was* new to the societies of the eastern Mediterranean. New in the sense that the old Ottoman Hanafi penal system, which predominated until the French mandate, would not budge on the subtleties of individual consciousness. With the nation-state now on the horizon thanks to the French tutelage, individuals were not *solely* tied anymore to their socio-symbolic communal norms. Instead, they begin to share that unique possibility to opt for personas outside their social space and mores into which they were born. What all of the cases in this book document is that kind of displacement between a role that was traditionally ascribed to the patrimonial individual and the emergence of the modern abstract individual at the mercy of the state apparatuses of the nation-state. Now crimes must be registered, investigated, and more importantly, criminals speak (and, at times, write) their crimes, document them in relation to other witnesses, experts of sorts, and judges who may or may not be *listening* to their pleas. What therefore emerges are personal histories of Fall and Redemption, where the elementary forms of socialization are at stake, simply because they are not anymore what they used to be prior to the monstrous project of the nascent nation-state and its will to dominate, archive and discipline. Maybe the Syrian nation-state would not look as impressive as the European-French one upon which it was modeled, but regardless of its perceived failures and incapacities at controlling its own territory, it acts nonetheless with that sustained illusion of a finished project, ready to assume its control over the smallest crime in *any* regional district, which, to be sure, was not how Ottomans handled crime.

From the perspective of this book, which centers on individual criminal histories, it is not enough to take aim at the transition between the old patriarchal symbolic values versus the decentering of the individual in a modern context. Rather, what should be placed into focus are the very forms of subjectivity and knowledge in individual actors. Indeed, what is deployed, once patriarchal authority cannot be sustained as the driving force within a community, is a restructuring of subjectivity indexed on modes of knowledge and perception of the self which attempt to make sense of the lifeworld in terms of what sociologists have labeled as an other-oriented personality. New forms of dependency therefore arise from the very decline of patriarchal symbolic authority, and it is precisely that kind of reinscription of sexual difference, redistribution of gender roles and (political) subjectivities that we would like to depict in our analysis of criminal cases.

This Chapter documents four very different homicidal cases, beginning with the parricidal daughter who one morning killed her mother when she was still in bed caught in a deep sleep; to the young man, mentioned above, who sodomized a kid for the sheer pleasure of becoming a man, and unwittingly asphyxiated him; or the ex-husband who was insanely jealous that his ex-wife had opted for a new lover and fiancé, murdering her with some of her family members in the sanctity of their own home; finally, in our concluding case, a wife who conspired to kill her husband, hoping to salvage that sexual lust with her lover-murderer. What all such cases have in common is that "seduction of crime" as a last unexpected resort to bypass a deadlock in the socio-symbolic order of society. The abyss of crime transgresses that order; the criminal is punished and may or may not repent; but in the meantime what remains lurking is that unresolved "non-abnormal" psyche which has defiled the very roots of social order, leaving an anonymous scar behind the murderous act.

Arson and matricide: the daughter rehabilitates the law

[C8–1] In her most sweeping statement to the Jinayat court prior to the hearings, the accused stated on 26 May 1996 that[2]

> "I confess of having committed the crime of killing my mother. The reason was that my mother kept interfering with my marital life, forbidding me from filing for a divorce from my husband. I was also aware that my mother and sisters were having sex with my husband. I reiterate all previous statements [to the police and public prosecution]."

It was in the morning of 11 August 1995 that Fatima Shawwa (b. 1963, maiden name Sari Basha), amid a fight with her husband, decided to burn her house down at the popular neighborhood of Bustan al-Qasr, prior to spending her night at her mother's home. The mother, who lived on her own, apparently refused to give her daughter any money that night, but nonetheless approved of her daughter staying over. Early in the morning, Fatima, who had always complained that her mother treated her unfairly compared to her sisters, went to her mother's bed and contemplated her in her sleep. She then cut her

[2] Aleppo Jinayat case 701/996; final ruling missing.

throat with a knife she had grabbed from the kitchen. But as her mother resisted, the daughter rushed for a pestle to finish off the mother. The beating was so strong that the skull was savagely damaged with the brain plainly visible. The accused then left her mother's home and went to her mother-in-law where she was arrested that same day.

Besides the daughter's brief description of her killing her mother while the latter was deep in her sleep, the dossier isn't that talkative, except for a personal letter that the defendant had drafted to her "paternal cousin (*ibn 'amm*)," identified as "my paternal cousin Muhammad 'Ali Shawwa Abu 'Abdo," where "Abu 'Abdo" seems to refer to the cousin's nickname, and where the "cousin" claim could have been real or fictive. In effect, considering that the addressee was no one else but the brother of Sabiha's own husband, her brother-in-law, Muhammad 'Ali Shawwa could have been a real cousin, which would make the husband another real cousin too, or else the "paternal cousin" denotation could have simply been a "form of talk," a way to address someone close.

The prison document as drafted (or dictated or commissioned) by Fatima was handwritten, but it remains uncertain whether it was *her* handwriting, not to mention her style. The undated document was drafted in a combination of official and colloquial Arabic, with occasional spelling and grammatical errors, but overall perfectly comprehensible. As with other auto-biographical documents that we've encountered (those of Buthayna Khattab [C4–1], Hallaq [C4–2], and the shepherd-who-writes [C3–1]), the stakes are twofold: first, the real purpose behind its inclusion in the dossier; and, more importantly, the purpose of drafting such a personal letter from the viewpoint of the actor herself. The first issue, regarding the legality of such documents, is not only a matter of formality, but relates to the way social norms receive their codification in the language of law. More importantly, why would the system go beyond the usual statements uttered to police and prosecution, investigating judge and court, to more personal statements, apropos documents that seem to have been "donated" by family, friends, or counsels, as expressing the accused's "state of mind" when she was on trial, prior to their incorporation in the official dossier? One thing seems certain as far as auto-biographical documents are concerned: they have been "donated" for a purpose in mind, either to enhance the prosecution side, or that of the defendant, but beyond that it all remains uncertain. In effect, such non-official documents remain for the most part outside the mainstream of legal communication: their style is personal, and they're often drafted to friends and relatives, without any intention to be circulated around—certainly not to the court. That they therefore end up at times part of the case-file remains an open question: even though judges seldom quote them, they nonetheless reach a quasi-official status that grants them an aura of their own; yet it remains uncertain whether they have even a minimal effect on the verdict. So why should we, as external observers, care about them? For one thing, they *do* generally form the most compelling element of the dossier, and the fact that their narration was neither one of police editing, nor of the austere question-and-answer format of the investigating judge, nor that of a court hearing session, individualizes them even further.

A note on the upper left identifies the source of the "donation": it was Fatima's brother, Muhammad Jamal Sari Basha (b. 1959) who delivered it to the judicial authorities on

April 1996, only few months amid the crime on August 1995, which, as we'll see, poses a problem of trust: considering that it was addressed to Fatima's cousin, and since Fatima was not friendly to her mother and brothers, why did the cousin deliver it to the brother, and what was the latter hoping in its delivery to the authorities? Was he attempting to convey his sister's insanity, her malicious character, her madness?

> In the name of God, the compassionate, the merciful
>
> After a peaceful salute,
>
> To my paternal cousin Muhammad 'Ali Shawwa Abu 'Abdo,[3] hoping that when you'll receive this missive you'll be in good health, as God wishes. In case you'd care to ask, I'm doing well, and the only thing that I miss is seeing my dear son Sami Shawwa.[4] I also want you to talk to my brothers so that they would drop their lawsuit against me, and to get me out of my prison. I can't take it anymore, as I'm on the verge of **committing another crime** inside the prison. I'm unable to live here far away from my son Sami, as I'm unable to adapt to this situation in such circumstances. Tell them that if they don't drop their lawsuit against me so that I get out of here, I'll arrange for them seas of blood—and not a sea only—and I can do that from my prison, and not only in talk.
> A very, very important remark.
> My dear Muhammad 'Ali Shawwa. I'm going to tell you something I can't hide anymore than I did, and I'm unable to wait until I hire a lawyer, because my material conditions would not allow me to afford a lawyer.
> After I tell you, I beg you to help me as much as you can.
> My dad did not die from natural death. My three brothers Muhammad Jamal, Abdul-Qadir, and Yusuf participated combined in **the killing of my dad**. My mum was the one who told me this, and my maternal aunt Sabiha Hamwi and my maternal aunt Majida Hamwi both knew about it. There will also be witnesses.
> I want you to help me by filing a lawsuit at the Ansari police section, the same place where I had been investigated,[5] because until now I haven't appeared in court,[6] so that they would know about it, and in the meantime my case would start to move. And in case my file is set in motion, there's a possibility that I would need a lawyer.
> From day one I was **suspicious of my father's death**, because it was not a natural death. It was Abu Saleh, my sister's husband, who is also the friend of your

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[3] Muhammad 'Ali was the brother of Fatima's husband, hence her brother-in-law. If, as she claims, he was her "paternal cousin," then Fatima and husband must have also been paternal cousins. There is a possibility, however, that they were "cousins" only in the figurative sense of the term, that is, not as a real blood relationship.

[4] Referring to both son and cousin by their full names has something impersonal about it, diminishing its intimacy, *as if* the letter was meant to be read not by the recipient himself, but by some anonymous judicial authority.

[5] For the killing of her mother.

[6] The referral report only came on 7 May 1996, the following month after the present letter was deposited in the case's dossier. The likelihood is therefore that the court's proceedings were set either for late 1996 or early 1997.

> brother Muhammad, and who was, first, behind Muhammad's marriage,[7] and second, supported my marriage to your brother Muhammad, [who had informed me of my father's death]. My mum and my maternal aunt Sabiha Hamwi both told me that there was a mark of a deadly stabbing on his back, as far as I know. But in the meantime I was unable to do anything, except to remain silent, because I did not know what was the reason, until the problem between me and my mother has surfaced. At the very least **I've been betrayed (*maghdūra,* victimized) for killing my mother**. She was the victim of her own evil acts, as she had slept with my [two] husbands al-'Allaf[8] and your brother Shawwa. She has abused me and abused herself, and she is now receiving her judgment (*dār al-ḥaqq*); regret doesn't help here.
>
> I beg you to take care of my son Sami,[9] your brother's son, consider him one of your kids, and you've got from my part all thanks and esteem.
>
> I've also sent a letter to my husband,[10] your brother Muhammad Shawwa.[11]

The stunning accusation against the mother, namely that she was having sex with Fatima's husband Muhammad, first showed up in a brief report dated 26 May 1996 (the same time as the above letter), during a routine interviewing of the accused:

> "I fully confess the crime attributed to me, apropos the killing of my mother, and the reason is that my mother was interfering with my marital life, not allowing me to divorce my husband, and also because **my mother and sisters were having sex with my husband**. I also reiterate what I had stated in previous interrogations."

Between the two allegations in April and May 1996, the only overlap was the (murdered) mother having sex with Fatima's (second?) husband. Thus, while the April letter contained far more allegations, in particular apropos the father's alleged killing by his three sons, and the mother having had sex with Fatima's two husbands, there was nothing about Fatima's maternal aunts having had sex with the husband. Fatima thus came with one allegation to the police, then another one to the investigating judge, and a third surfaced in her letter to her cousin-cum-brother-in-law. As all these allegations about parricide and matricide, inter-family sex, and the mother's refusal to help her daughter financially, were stated in different contexts, how should they be read and interpreted?

Let us examine those allegations in their chronological order first, beginning with the police report dated 12 August 1995.

> I testify that I'm **always in conflict** with my husband and neighbors. Yesterday Friday morning on 11 August 1995 I've burned my home and left it when the fire

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[7] Since Muhammad had two marriages, and Fatima was the second wife, who apparently coexisted with the first, it is uncertain which marriage is referred to here.

[8] In all likelihood he was Fatima's first husband.

[9] The teenage son appears as the only male hope in a world where the elderly males have all betrayed their cause and manhood, and where women have observed such callousness from a distance.

[10] This letter has no trace in the dossier I've consulted in the late 1990s.

[11] Punctuations have been modified from the original Arabic to make room for a more comprehensible text.

had completely ravaged it. I then headed towards my mother's home, with whom I was in conflict too, but refrained from telling her what I did with my home. **I've intended to kill her because she didn't give me any money, and she treated me differently from my sisters.** I've spent the night at her home and slept on a couch, while my mum slept in her own bed in her bedroom. Today early in the morning at around 7:00 I picked a knife from the kitchen, my mother was deep in her sleep, I've attempted to cut her throat, but she woke up and told me to leave her alone, and even managed to kick me with her leg, hitting me on the face. I've attempted to cut her throat for the second time, blood started to spill all over. As she fell on the floor, I've inserted my fingers in her throat so that she wouldn't scream. I've noticed that due to age she had lost all her teeth. I've fought with her until she lost consciousness, but was uncertain whether she had effectively died. I went to the kitchen in search for a hammer, then went back to the bedroom and hit her three times on the head. She died. My hand was bleeding and my clothes were patched with blood. I've then washed whatever I could of my clothes, and changed my outfit before leaving. **I had in mind killing her since last evening**. I headed towards my husband's workplace so that I could see my only child, but didn't find my husband. Then went to my mother-in-law's home, and stayed there until you came and arrested me. That's my testimony.

That same day an investigating judge from the general prosecutor office interviewed her without the presence of a lawyer. Syrian law requests that suspects, defendants, and witnesses be notified of all charges against them, with the right for a counsel when examined by the prosecution. Fatima confirmed that she did not need a lawyer.[12]

Q1. You've been accused of premeditated murder.

A1. I confess (*a'tarif*) that on 11 August 1995 I went to my mum's home the victim Hamida Hamwi, having angrily left my **husband's home**. I've spent the night at her home, and about 7:00 in the morning, while my mother the victim Hamida was asleep, with a kitchen knife I've slaughtered her from the neck. Blood spilled all over her neck; we had a fight; I've hit her three times on the head with a hammer. As to the wire that was in the room I didn't use it, as it was for the curtains, and was placed over one of the chairs. I then washed my hands and feet from the blood and changed my clothes. While fighting with my mother I scratched my right fingers with the knife. I killed her because she didn't give me the money I've requested. I'm a poor person, and live with my husband and my only son. I had burned my home on 11 August 1995 before going to my mum's house.

Addition: She added that I've killed my mother on my own without receiving help from anyone.

[12] This contradicts what she later stated in the letter where she said she wished she could have a lawyer, but unable to afford it.

> The judge decided to immediately arrest Fatima Sari Basha for the crime attributed to her, and incarcerate her in Aleppo's main prison on 12 August 1995.

There were two forensic reports signed that same day. A judge and his assistant visited the crime scene with a policeman which they've described as follows.

> Once we were inside the victim's home we saw in the living room two couches, a chair, a fine broom, a bucket of water, two small tables, with a thermos on one of them, a white towel with blood stains, a Kleenex box with blood stains, a black wallet, a white nylon bag with female clothing. There were traces of blood all over: from the living room to the bathroom, and at the toilet's door up to the kitchen. We saw a cloth in the toilet[13] with blood stains. We also saw blood stains on the kitchen door one meter from the floor. There was blood on the kitchen sink, and on a cloth that was thrown in the garbage can. We then entered the bedroom of the victim. She was laid on her back with blood all over, and so was the floor of the room. She was wearing a white robe covered with blood stains. Her right hand was damaged. On the left of the body was a white kitchen knife, and scissors close to the bed. We saw blood on the bed sheets, and on the bedroom door, roughly a meter and a half from the floor. On the right side of the body was a black compressed wire. There were two tables upside down, a female shoe, and a knife. In the living room there was a television stand, and a female black shoe. There was blood in the bathroom sink. We ordered that the body be removed from its location and taken to the forensic lab for additional tests, so that the cause of death be accurately detected. We did the necessary pictures and identified fingerprints.[14]

The medical examiner's report was signed that same day.

> *The external descriptions.* The body of a woman in her sixties, average height, thin body, black hair. Traces of hardship and violence. When the body was examined, there was a wound in the head that led to a coming out of the brain material (*mādda dimāghiyya*) on the left side. Another wound on the neck, and a large one on the face. Several wounds in different sizes on the upper side of the body and shoulders.
> *Causes of death.* Due mostly to the wound on the neck, which in itself was probably sufficient to cause the death. As to the other wounds on the body they may not have caused the death. In effect, the hard wound on the neck has opened one of the blood vessels, causing severe bleeding. She was also hit with a hard tool on the skull, creating severe damage in the bone. The death must have occurred five hours ago.

Even though all the perimeters of the investigation were set from day one, and all

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[13] In many homes the toilet, or the "Arab toilet," is separate from the bathroom where a shower and/or bathtub is located.

[14] The dossier that I've consulted did not carry any fingerprint analysis, which tends to be rare in Syrian forensics.

witnesses (sons of the victims and her neighbors) interviewed in the first week, the comprehensive report by the investigating judge was only drafted early in the following year. That's one of the cases where there was no external witness, leaving the whole case suspended on accounts provided by the killer herself. In his March 1996 report the judge argued that the victim was an "origin (*aṣl*)" in relation to her killer, meaning that the killer was a "branch (*fir*^{c})" to the victim, due to the daughter–mother relationship. In other words, since victim and killer were directly "affiliated" to one another in a biological relationship where one "originated" from the other, the killer in this instance should be subject to the death penalty pursuant to article 535/3 of the penal code. It took an additional two months for the referral judge to issue a similar report, only to reduce the crime to a deliberate act (*qaṣd*).[15]

Each case speaks on two separate registers. On one hand, what is publicly displayed is an exhibition of private crimes, lives, repressions, abuses, fears and traumas. On the other hand, all those fears are expressed in the didactic language of official reports, leaving for the most part the personal traumas within the domain of the unspeakable. What did the young matricidal woman "say" to the police, prosecution, and the court? Her tragic life was reduced to few utterances, which in their heavily "edited" version look like broken chunks from an incomprehensible whole. But what did she exactly "say"? That she torched her "husband's home" prior to finding refuge in her mother's home for the night, only to kill the poor old woman in her sleep first thing in the morning. Notice how Fatima describes her "marital home" as her "husband's home," which nevertheless resurfaces as "marital" all over. The police report contends that Fatima was "in the *process* of divorcing from her husband," leaving it uncertain whether she was seeking or filing for divorce, or whether she had effectively divorced. What is important here, however, is that in the official language of bureaucratic institutions, which tend to flatten everything to its most common denominator, the news of divorce in all its ambiguity is supposed to "explicate" the burning of the "husband's home":

> "When we were searching for the suspect, it turned out that she was in the **process** of divorcing from her husband Muhammad Shawwa, and she had burned her home down in the neighborhood of Bustan al-Qasr, due to a **conflict** (*khilāf*) between the two. He was also looking for her, having all of a sudden left without telling anyone of her relatives what she did with her home. That's why she became our prime suspect, we searched for her until we found her at 6:00 p.m. [at her mother-in-law] that same day [when she killed her mother]."

The awkwardness of the language, its platitude, its routinized allure, place the event on the side of comedy. We've come to be acquainted with expressions like "speaking the unspeakable," or the "unsaid" (or "non-said") when we think of what lies deep into someone's consciousness but cannot be formulated. But what is it that is expressed in traumatic situations like that of Fatima? Even if we were to seriously take every statement she uttered to the authorities, what she would have stated *in toto* is no more than the bare essentials: "I've torched my home due to longstanding conflicts with my

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[15] The dossier that I consulted at Aleppo's Palace of Justice in the late 1990s still did not carry the final ruling back then; which made it impossible to pursue the case any further when I inquired about it years later: once a case is sealed, and the dossier goes to the general warehouse, nothing would change its path any further.

husband; I've spent the night with my mother, woke up early in the morning and killed her while she was still in bed sleeping; she refused to give me any money, which I found unfathomable due to the fact that I'm a very poor woman with no real income, and my husband hasn't been helping me either, preferring his other wife over me." In other words, Fatima, and her authority "editors," were unable to state anything beyond the externality of the act: the concrete expressions of the self-as-agency are not there, and remain muted in the hastiness of the authorities to represent the criminal event. This matricidal woman is mute, as she's unable to say anything of value to the authorities, except for the few "facts" that will incriminate her. One of the mother's neighbors, a young woman (b. 1967) who claimed to have "heard" but not "seen" the event, was one of those minor "witnesses" who were only very marginally relevant:

> "I testify that this morning at around 7:30, when at home, I heard the voice of a mute woman (*ṣawt imra'a kharsā'*) raising her voices [voice was used in plural: *aṣwatihā*], and heard another low voice (*ṣawt khāfit*) saying 'leave my hand.' I was sleeping below the bedroom of the victimized woman, but did not leave my home, nor did I see anything with my own eyes, until this morning when the police came."

The "mute woman" must have been no one else but the victimized mother, but was she really "mute"? There was nothing else in the file that this was the case. Another detail that came up in the same police report, but went unnoticed, was the claim by one of the victim's sons, who was the first one to have discovered the body and to have alerted the police, that his mother had "mental problems (*amrāḍ 'aqliyya*)," leaving it at such an unelaborated stage without any further questions from the police, or later from the prosecution and investigating judge. The picture that therefore emerges apropos the mother, mainly through one of her sons and the daughter who murdered her, was one of an old woman in her sixties who was probably mute, with mental problems, and who was sleeping around with her son-in-law.

The violence of the mute woman and the power of speech

The image that therefore emerges of the victimized mother is one of muted violence, a violence that cannot express itself in words or even gestures, but only as direct violence—that of the daughter that kills her mother with vengeance, by slashing her throat and smashing her head with a hammer. In the universe of this broken family, where the mother-victim was possibly mute, it was indeed everyone that lacked the power of speech. As violence is not something that "erupts" from the everyday but *makes* the everydayness of the lifeworld, those who suffer the most are those women who have to interiorize the codes of honor in society in order to ensure its biological reproduction. Both mother and daughter have been subjected to male violence, but the daughter, instead of turning against her husband for not supporting her well enough, first burns down "his" home, then goes to her mother's home, kills her first thing in the morning, with the excuse that she had failed to materially support her. The failure of the husband to provide the emotional and financial support turns against the mother, who is also accused in a confidential letter to the brother-in-law of having "slept" with the husband.

What some of our cases reveal is a "reversal" of the traditional role attributed to women

in society. In the case of Sabiha Dal'un (C5–5), for example, the young and newlywed husband was possibly sacrificed by his mother-in-law for failing to properly "read" the traditional honor code; it was indeed the "strong mother"—or the Mother with a capital M—which decided to sacrifice her daughter's husband, even though it was the daughter which at face value was, in her own recognition, the one who broke all honor taboos. In other words, as both defense and court had *explicitly* stated, the husband should have been spared because he did nothing wrong; it should have been the daughter who should have *under the customary practices* of her own rural community been the one to have been punished: first for having broken her virginity as a teenager, then for marrying a university graduate like her without informing him of her past and current sexual infidelities. Sabiha was eventually sentenced to death *under the law* for killing her husband, and the act of sentencing, which dragged on for over 20 years, was more of an embarrassment than a convincing verdict. The reason is that the law is more at ease sentencing criminals who act in violation of what the Code stands for most, namely the protection of the family's honor, its values, and its contractual obligations. Code and courts thus provide ample "protection" to perpetrators of honor killings against women who had allegedly dishonored the family, for the most part through an illicit sexual liaison. I would like to suggest a parallelism with our current matricidal case of Fatima Shawwa. In both instances, women act not only in opposition to the honor codes within their own community, but also against the laws of the nation (which overtly protect common conceptions of honor, family, and sexuality), by *enacting their own law.* In the case of Sabiha Dal'un the mother decides to sacrifice her son-in-law for his so-called "weaknesses" and "effeminate" side: she (and her daughter) thus wanted to sacrifice a potential whistle blower who wouldn't even get it, namely, that the honor code requires that you keep your mouth shut on marital infidelities rather than placing them into a public narrative of the "dishonored man." In this instance, therefore, the women (mother and daughter) have acted—through murder—in order to save the family's honor from that *absent male* within the family. It was indeed the *absent male,* that male who would have protected ("washed") the family from female dishonor, who was not there. In the absence of a genuine male figure, one which *can* protect honor and family, impose a restrained sexuality, women make the law: first through a reversal of the honor codes, then through murder.

Unlike Sabiha Dal'un (C5–5), Fatima Shawwa, born and raised in Aleppo, had no university education, and may even have skipped high school. She and her (second?) husband both belonged to the popular classes, living in a neighborhood like Bustan al-Qasr, while her mother's home was in the nearby Ansari, where Fatima made her first deposition to the police. Unlike the peripheral "illegitimate" neighborhoods of the *'ashwā'iyyāt,* whose contracts are by and large regulated by the inhabitants themselves, neighborhoods like Bustan al-Qasr and Ansari are pretty much decently regulated, and are under the city's regulations, while their inhabitants stand above the proletarian level of the more peripheral neighborhoods.[16] Muhammad Jamal Sari Basha (b. 1959), the victim's son and Fatima's brother, described Fatima's husband as rather "well-off" (*maysūr*), since he owned two bakeries. In one of those terse statements that populate the

[16] Zouhair Ghazzal, "Social and Juridical Shared Meanings as Observed in an Aleppo 'Marginal' Neighborhood," in Myriam Ababsa, ed., Cairo: American University in Cairo Press, 2012.

records of investigating judges, Muhammad Jamal stated on November 1995, in the wake of his mother killing by his sister, that

> "after my mother's killing, the same day, I was told that it was my sister Fatima who did it, since she had been for some time requesting money from my mother. I used to give that money to my mother, which in turn handed it to Fatima. I therefore think that my sister did what she did as an outcome of the **pressures** that her husband and his sons had inflicted upon her, even though the husband is well-off and owns two bakeries."

The problem with such statements, which often act in court records as rationalizations of the murder, is that between Fatima's alleged non-satisfaction with her material conditions, on one hand, and her committing arson and matricide within 24 hours of her leaving her "husband's home," on the other, lies all kinds of dormant secrets, frustrated sexualities, oppressed women, unsaid things, and other things that cannot even be represented in language.

Notice, for instance, the difference in the rationalization of the *motif du crime* between brother and sister. In one more sound bite to the investigating judge several months after her crime, Fatima stated on May 1996 that

> "I confess to the crime attributed to me regarding the killing of my mother, the cause being that my mother never stopped intermingling in my marital life, forbidding me from seeking divorce from my husband. I also realized that **my mother and sisters were having sex with my husband**."

What's revealing here is that not only Fatima's "personal letter" had no place in any of the judges' memos, but even a statement like this one finds no place either. For example, in the referral report submitted on May 1996 (a couple of weeks before the earlier short confession) only the "poor material conditions" under which the accused lived with her husband and son were named, while everything else remained within the domain of the unspoken.

With her shocking allegation that her dad "did not die from natural death," Fatima did not hesitate to identify the killers: her brothers. No reason is furnished for such horrendous parricide, but only silent witnesses: the mother, two maternal aunts, and additional unnamed witnesses. The mother and her sisters were already held guilty for keeping up such a monstrous secret all those years (no precise date is given), before accusing them of another monstrosity: having sex with the husband. In effect, in the letter that was appended to the dossier, only the mother was accused of illicit sex with the husband, while on another occasion, in the presence of an investigative judge, it was the mother and her sisters.

With her mother portrayed as a complete monster that does not deserve to live anymore, Fatima can now proceed and declare herself as protective of law and order, and for that, slaughtering her mother was the right thing to do. What is revealing in her letter to her cousin is that her "silence" apropos her father's parricide was only "revealed" once her "problem" with her mother surfaced. The killing of the mother therefore not only "revealed" that deeply hidden secret, but it was also what brought justice to the household. The mother had to be sacrificed primarily for acting like an "accomplice" in

the murder of her husband by his own sons, and for being the sexual partner of Fatima's husband. When in her letter Fatima notes that her mother "is now receiving her judgment," the expression of *dār al-ḥaqq* indicates a domain of justice in an unspecified territory where justice is given back to those who deserve it. It is as if Fatima judges the earthly state of justice as too inept to be able to "see" what's going on inside the household's dirty secrets. Its radar screen is not sophisticated enough to be able to effortlessly detect all those crimes located within the confines of the family and household. Moreover, state-law is gender biased and grants too much leeway for men to get away with their crimes, as it perceives the female body as the source of all things dishonorable. Such readings of state-law and the gendered divisions in society come in conjunction with the figure of the "absent male." It is as if the assumptions of state-law, which parallel customary practices, invert reality: state-law assumes that men can protect not only their honor, but also female honor, and that of the household, but such men do not exist anymore, as they've been replaced by the "absent male," on one hand, and the "aggressive mother" on the other.[17]

By writing her own text, albeit in a letter form to a specific family addressee, the murderer becomes author of her crime *and* text. In her various depositions to police, prosecution, and investigating judges, Fatima must have felt constrained in her language. Instead of the official language of the courts, and their claims of objectivity in their handling of testimonies of witnesses and suspects, Fatima re-writes her own crime-as-destiny and now posits herself as author of both crime and text. She reclaims her "voice" in an ephemeral manner. What her own self-prescribed narrative enabled her to do was to trace her actions back to her father's parricide. Not that the latter serves as justification for her mother's matricide, but rather as leeway to textually construct the mother's monstrosity from its very beginnings: the mother maintained her silence all those years apropos her husband's parricide, as if she had been an accomplice in the very act allegedly perpetrated by her own sons.

What judges have therefore missed was "the mother-as-tyrant" figure that Fatima had attempted to portray in her truncated statements to police, prosecution, and investigating judges. The notion of "mother-as-tyrant" would have also been hard to swallow for medical experts, which would have probably been more on the side of a plea for "insanity" to rationalize that kind of behavior. Fatima's various utterances and personal letter, however, point to an image of the "mother-as-tyrant" through which the killer emerges as someone who restates law and order in a lawless society. It is revealing that Fatima explicitly requested from her cousin (the addressee) that he helps her bring forth her father's parricide to the attention of the Ansari police station, the same location where her mother was murdered and where she had furnished her first testimony. It is as if

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[17] The case of the young man who had allegedly raped his mother (C6–4) belongs to that "absent male" scenario: in this instance it was the father who was physically absent, as a worker in Lebanon, and who had remarried there without divorcing his first wife. The rape of the mother, whether real or imaginary, fills the gap that the father had left behind, providing the son with that unique opportunity to become a real man all over again. In other cases (Tirmanini [C9–1], Jummo [C9–2], rite-of-passage [C9–3]), the father was not absent, but the son, in order to publicly show his manhood, had to commit a crime to take over his father's mantle.

having broken her long silence through her mother's killing, hence having finally brought justice to the family, she felt the need to go even further in the rehabilitation of her father's memory, while denouncing her brothers' secretive parricide to the police: justice would therefore be served through murder, by denouncing the hideous crimes of others. Thus, while Fatima denounces her brothers' alleged parricide as shameful, she does not see her own murderous act in that category. It is as if for her individuals through their own volition can bring justice to earth through murder—the physical elimination of all those who do not deserve to live.

The father *was* in this case largely absent for the simple reason that he was allegedly killed by his three sons. (Even if the father was not "factually" killed by his sons, and suffered only a normal death, the fact remains that the parricidal episode *was* in Fatima's "mindset," and hence *may* have affected her *own* rationalization of the events that ultimately led to her mother's killing. The other more important aspect of her letter to her brother-in-law is that it portrays her view of the world and of family relations in particular, hence "factuality" is not the issue here.) But the father *may* have been absent for another reason as well; he may have been a "weaker" character than the mother, hence denigrated by his sons. The daughter for her part stood by her father's memory, came at his rescue, after a long tortuous silence, in the wake of her mother's murder. In other words, the daughter eliminates the mother as the person in the family who made contracts ridiculous: first, by remaining silent over her husband's murder (which she may have commissioned and witnessed), and second, by having sex with a man who happens to be her son-in-law. State law, which takes for granted that family honor must be protected by men, is blind to men's own vulnerabilities, and to the financial, economic, emotional, psychic, and sexual distresses that men and women are subject to in a developing society where old normative values are constantly challenged. A woman like Fatima (not to mention Sabiha) would herald a new era by slaughtering the mother-tyrant, or (in the case of Sabiha) by killing a husband who thinks he can invert the honor code (that is, behave like a woman) and get away with it. By killing her mother, the daughter rehabilitates her father's memory, replaces him symbolically at the head of the household, accepts her fate as a betrayed and victimized woman, and restitutes the law in domains the latter took for granted and was oblivious to. In the image of the law, women can be tyrants because they dishonor the family through illicit sex or illegitimate affairs with married or unmarried men. In Fatima's mindset, however, a woman like her mother can rise as a tyrant for the simple reason that she had instituted the law of the arbitrary, as she was unable to discern right from wrong, and made every contract impossible. At some level, Fatima's story is not unlike that of Pierre Rivière, whose case was analyzed by Michel Foucault and his team: "Never again! In my family this tyrant is my mother; she renders every contract void of meaning; she makes my father forfeit his rights and loads him with dues."[18]

In two consecutive days, and within 24 hours, Fatima managed two acts of destruction:

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[18] Jean-Pierre Peter and Jeanne Favret, "The Animal, the Madman, and Death," in *I, Pierre Rivière, having slaughtered my mother, my sister, and my brother…A Case of Parricide in the 19th century,* edited by Michel Foucault, Lincoln and London: University of Nebraska Press, 1975, 192, originally published by Gallimard (Paris) in 1973.

what she referred to as her husband's home, and her mother's life, as both—husband and mother—were forces of evil in her life. Moreover, the husband, who was having an affair with the mother (even if from our perspective and that of the judges, the affair remains an allegation, it was nevertheless a plain "reality" in Fatima's mind), was another one of those "absent males," who instead of protecting the family's honor and its wellbeing was behaving recklessly and irresponsibly: he was not strong enough to behave according to what the law dictates. Fatima was therefore suffering from the absence of a father and a husband—and a monstrous mother. Which brings us one more time to the early nineteenth-century parricidal case of Pierre Rivière, and the fact that in both instances, Fatima and Pierre, their acts were not "pathological" per se, but aimed at the social symbolic order, the order of the contract: "By killing her I am setting an example so that the law may be restored, the contract honored, and tyranny overthrown. I am thus executing the justice of God. Human contracts are monstrous, I appeal to another justice, of which I, monster in semblance, am the providential executor."[19]

For Fatima every contract in her restrained and extended families have been irrevocably breached. Her promiscuous husband not only breached the "sexual contract," but created a quasi-incestuous relationship with his mother-in-law; he also failed to adequately support his second wife, which incessantly pushed her to humiliate herself and seek material support from her mothers and brothers. The fact that in relative terms the husband was well-off makes his irreverence towards his second wife another failure in contract. As to the mother, she breached every family contract one could think of (from Fatima's perspective, of course).

The emergence of the criminal spectator

Fatima's letter to her brother-in-law involves more than a parading to justice, assuming, of course, that this was what she had in mind. This was a young woman with enormous grievances in her heart and allegations of long-term abuses. Yet, the letter does not manifest any remorse towards her mother. In the absence of an historical genre where grievances would be expressed, where a politics of denunciation is at stake, where emotions and sufferings receive private and public attention, we are left with similar auto-biographical statements from other cases and inmates that we've examined (Chapter 4). All of them manifest that urge *to pose oneself as a spectator to the crime at hand,* with letters drafted with that internal fury for a need at expressing oneself, of stating a truth that has not been yielded yet, as if nothing has been said to the judicial authorities regarding the truth of crime: it all must be stated all over again, with that personal voice—and in writing. Even though there *were* addressees, but to whom were those missives really addressed to? We have argued all along that each crime should be set within a triangular relation, rather than be limited to the simplistic duality of murderer and victim: there is always that third-party invisible addressee, which the murderer (unconsciously) had in mind, and which turns out more crucial for the killer than the victim herself. It is, indeed, that third party which refuses to accept the feeling of guilt for the crime, hence refuses to accept himself or herself as addressee. The addressee could be

[19] Jean-Pierre Peter and Jeanne Favret, "The Animal, the Madman, and Death," 192–93.

an absent father, a dominant mother, a lover, or a cousin who was your first love; but it could also be that "community" out there to which we belong and acts as the big Other.

I want to argue that whenever the culprit doubles, in the solitude of her prison cell, into a writer–narrator of the past events that led to the crime scene, there is another triangular structure at play in parallel to the one that we have detected earlier between the murderer, her victim, and the addressee; with the two triangular structures not necessary unrelated. In the case of Fatima, the crime unfolded between herself and her mother, but the addressee was no one else but that absent male which she has been longing for since her father's sudden death. It could have been the same person to which the letter was addressed, namely, the cousin-cum-brother-in-law, a male from the family that she had fully trusted. The letter poses itself as a second layer to the crime: it doubles itself as a text to the crime scene. In the two triangular structures, that of the crime and that of the letter, the addressee is the same: the brother-in-law. The fact that the latter was the one to have handed in the letter to Fatima's brother, which in turn delivered it to the judicial authorities, could be an indication that he refused his status as addressee—of both crime and letter. The question therefore amounts to the following: Why did Fatima feel that urge to textualize her crime, to double her criminal act into a letter addressed to her cousin? What does the letter exactly do? How does it function? What was its purpose?

If the first triangular structure was between culprit, victim, and addressee (spectator), when it comes to the letter the assailant disengages from her act, only to pose herself as spectator to the very murderous act that she had committed. Now the culprit, placed in the loneliness of her prison cell, watches the crime scene as a spectacle from a distance. She therefore poses herself as a spectator to the spectacle that she had created for herself. As spectator she looks at her own sufferings from the distance of her prison cell, portraying herself as having been persecuted, and that her sufferings are the outcome of such persecution. The crime itself is therefore portrayed as a process of redemption from long-term sufferings. If the mother was the persecutor, the beneficiary was no one else but the brother-in-law. In the second triangular structure therefore, the murderer now sets herself as spectator, not so much, however, of the crime that she had committed, but rather to the sufferings she had been inflicted at the hands of her mother, husband, and brothers; she identifies with the father as someone, like herself, that has endured sufferings at the hands of his wife and sons, then murdered by them. Fatima sets herself as spectator to her own sufferings and those of her father, which were inflicted by the same people. What is unusual, however, is that Fatima sets herself both as spectator and external narrator: in other words, she doubles herself as spectator and impartial narrator of her own sufferings, not to mention the crime that she had committed. As the French sociologist Luc Boltanski has persuasively argued, "suffering from a distance" assumes a "topography of interiority," which probably began to materialize in the European space in that big shift between the eighteenth-century *ancien régime,* in which trials by ordeal and public executions were fairly common, and post-revolutionary France where, with the emergence of a more open bourgeois public sphere,[20] "impartial observers" expressing

[20] Jürgen Habermas, *The Structural Transformation of the Public Sphere,* Boston: The MIT Press, 1991.

their grievances and outrage became fairly common.[21] The "impartial observer" operates within a division which assumes, on one hand, "a self that acts," and "a self that observes," on the other. But then even such division cannot operate in the real world of the public sphere in a clear cut fashion: if *you do things with words,* as J.L. Austin had famously stated,[22] then the distance between the impartial narrator and the person who acts is not that great—the two can in fact conflate into the same person. This impartial observer, which in his personal name publicly airs a grievance or an outrage, grew in Europe in the eighteenth and nineteenth centuries in a variety of forms,[23] beginning with the modern European novel constructed around a single narrator[24] (which in its later incarnations evolves as a stream-of-consciousness or multi-narrators techniques[25]), or in the essay formula as "a conversation with oneself," not to mention the opinion-editorials in newspapers and journals. In all such textual approaches, in spite of their variety and differences, the external narrator emerges as an active element struggling in a world of his own making, together with a reflexive self which observes such action. This reflexive narrator therefore constitutes the third element in the triangular structure suggested above, as he watches both spectator and spectacle (triangular structure 8–1):

spectator——————————>spectacle

↘ ↗

reflexive narrator

Figure 8–1: General theory of the modern spectator

Compared to which for a crime we get the following triangular structure 8–2, which serves as a common matrix for all the crimes in this book:

murderer——————————>victim

↘ ↗

third-party addressee

Figure 8–2: The spectator in relation to a crime scene

What is unique about all those individuals, with criminal records, and which in the solitude of their prison cell draft memos addressed to family members, relatives, friends, judges and lawyers,[26] is that they take an active primordial role in both triangular structures (Buthayna Khattab [C4–1], Hallaq [C4–2], insane shepherd [C3–1]). In structure I the actor is a criminal who murders her victim, while eying a mysterious third-

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[21] Luc Boltanski, *La souffrance à distance*, Paris: Gallimard, 1993, 2007, 92ff.

[22] J.L. Austin, *How to Do Things With Words,* Boston: Harvard University Press, 1975.

[23] Christian Ruby, *La Figure du spectateur. Éléments d'histoire culturelle européenne,* Paris: Armand Colin, 2012.

[24] The prototype here is Laurence Sterne's *Tristram Shandy*.

[25] For example, in the works of James Joyce and William Faulkner.

[26] In liberal countries with a free press (e.g. Lebanon), inmates could also grant interviews to journalists, newspapers and other media outlets. Some write memoirs and books, which could be published while still serving their sentence, or upon their release or posthumously.

party addressee, which would refuse her role as recipient with a guilt feeling. In structure II that same actor now narrates her tragic fate, posing herself as an external reflexive narrator with a consciousness sympathetic to the sufferings of others, including the victim which she had sacrificed in her criminal act. Compared to narrators which emerge in the public sphere with a voice sympathetic for the sufferings of others, the criminal narrators remain confined within the boundaries of their penitentiary world, that is, nothing circulates of their tragic fate outside the dossier that incriminates them, even though nothing excludes either that they may metamorphose into a *cause célèbre* either through their own work or the work of others (writers, filmmakers, artists, journalists, researchers in the humanities and social sciences).[27] What is unique about such criminals who metamorphose into narrators of their own crimes is that they exercise the art of auto-biography as a confessional art whose final aim is to make public the very crime that they had committed. In other words, they take the role of "the voice-over flashback narration" common in *film noir*.[28] Pending of the society in question, such auto-biographical genres might overlap with literary and artistic works in society at large, hence the privacy of the inmate and her sufferings that are echoed in the world outside the limited (and abusive) confines of the penitentiary. What is tragic about the Syrian prototype of inmates which all of a sudden, and unexpectedly, turn as confessors and/or narrators[29] of their own crimes, is the absence of connection to the outside world. Those are inmates which exercise the art of auto-biography, airing their confessions and grievances to friends and relatives in writing, posing themselves as narrators of their own crimes, yet fail to receive recognition from the world outside. There is very little in Syrian society that points to any public attention to criminals: neither crimes are not reported in the state-controlled media, or else in the scarcity of the work of arts,[30] crimes have no place at all.

Let us analyze this triangular structure more closely. The criminal writes an auto-biographical statement to a friend, relative, or judge, and in this very act is able to look at herself both in the role of spectator and spectacle—the gaze of the external impartial narrator, which in this instance is interiorized, creating a subject fully aware of her actions and misgivings. But with the conflation here of the roles of spectator and the one who does the introspection, the impartial narrator which provides a synthesis from multiple viewpoints is here the person who happens to be suffering the most, still recovering from the traumatic experience of crime. When lawyers and judges write their memos and reports, they also act like impartial narrators situated in a triangle between the spectators and the spectacle, even though in their case the "impartiality" is not so much

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[27] As exemplified in the works of Truman Capote, *In Cold Blood,* and Norman Mailer, *The Executioner's Song,* both of which narrate single criminal incidents that became quite famous in their atrocity; Capote's novel has inspired two fictional films thus far. How far a criminal persona could metamorphose into a *cause célèbre* obviously depends on the level of freedom in a particular society. What the American case shows is that there are no visible limits either to the fictionalization of criminals in the works of art, or in the more populist media outlets.

[28] Robert B. Pippin, *Fatalism in American Film Noir: Some Cinematic Philosophy*, Charlottesville: University of Virginia Press, 2012.

[29] In some cases (e.g. Buthayna Khattab, C4–1) the crime is never admitted, hence it keeps its status as an alleged crime: the alleged criminal is only a narrator, but not a confessor.

[30] Including the *musalsalāt,* the Syrian TV series, which have rivaled the Egyptian and Turkish series, and which have metamorphosed into a popular phenomenon across the Arab world.

determined by different viewpoints, as much as by the norms of justice.[31] Moreover, judges are not supposed to show their "inner views," hence their reports and verdicts are drafted in that codified and carefully mastered language of the law than impartial. By contrast, if the auto-biographical statements of culprits show anything, it would be, indeed, that internal voice, sometimes narrated as a dialogue with a real or imagined other: it is that introspectiveness, which judges typically hide, which constitutes the essence of auto-biographical statements. One can speak of "vicarious possession" of that observer which absorbs the acts of both spectator and patient (the one who suffers), which what judges want to avoid is precisely that kind of vicariousness. What we can see in Fatima is someone that would be qualified as "hysterical," in the sense that she became absorbed by the tragedies of her family, whether real or imaginary, which she addressed in her criminal act.

At this juncture, and by way of tentative conclusion, we can bring together the work of Michel Foucault on abnormality in conjunction with the politics of suffering of Luc Boltanski. Both seem to signal an historical shift between the public executions of the classical age, where the passive spectators were supposed to contemplate the aura of the execution (hence, behind it, the will of the king) without any critical self-reflexive stance (at least not one overtly delivered in public), and modern spectacles with their triangular structures, where compassion and pity for the sufferings of others become crucial for a self-reflexive observer.[32] Foucault notes a parallel between the end of public executions and the rationalization of justice, that desire to find a cause and justification for the crime; hence the persona of the criminal, that abnormal individual, became central for both the judicial and medical authorities. In the same way that Boltanski speaks of a "doubling of the spectator *(le dédoublement du spectateur),"*[33] which doubles as a self that acts and another self that observes, Foucault perceives the doubling of judges in their judiciary and medical functions, a doubling that is necessitated precisely by the requirement to understand and rationalize the behavior of that anomalous persona of the criminal; hence the panic of judges (and doctors) at those "crimes without reason *(crimes sans raison)*." In other words, in both instances, we are confronted, in the modern age, with that "topography of interiority," where a person would explode into an unlimited series of enunciative functions.

I've tempted him with some money

[C8–2] A young man who had just turned eighteen, as if to accelerate his coming of age, seduces a six-year old boy who was attending the Friday prayer at a mosque in a popular

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[31] One can add here the notion of the Lacanian blot, which, in the context of the triangular structures I and II, makes it impossible as spectator or impartial narrator to "see" the Other without distortion: one is not simply limited by knowledge (what one knows and what is not known), but more importantly, by the gaze of the Other, which I, as a perceiving subject (ego) cannot see what it sees in me, and vice versa. Moreover, the acting subject is not only a subject of knowledge, but one who acts with a lack of meaning, purpose and totality; and within the confines of a superego confronted to the big Other of justice and society.

[32] Boltanski, *La souffrance,* 66–67; Michel Foucault, *Surveiller et punir,* Paris: Gallimard, 1975.

[33] Boltanski, *La souffrance,* 92.

Aleppo neighborhood.[34] He gives the boy five liras, buys him some candy, prior to inviting him to a nearby building. Not suspecting anything in the behavior of the young man—the court ruling attributes the boy's naïve behavior to his "poverty"—the boy escorts him to the designated building a block from the mosque. Once they've reached the top floor, while both were in the stairway that connects to the roof, the young man allegedly urged the boy to take his pants off; when the boy hesitated he forced him to do so, then ripped his underwear off, put his hands on his mouth, with his face towards the floor, sodomizing him. In those couple of minutes when the boy's mouth was contained by the aggressor's hand, the boy was apparently asphyxiated and died instantly. The young man rushed outside the building, leaving the boy dead in the staircase, went home, and left the following day to Beirut. He only remained in the Lebanese capital for a couple of weeks where he found some temporary work, went back to Aleppo—to the scene of the crime!—where the police suspected and arrested him.

No one witnessed the crime itself, but a couple of witnesses claimed to have seen the young man with the boy as soon as the Friday prayers were over. The non-witnessing makes the culprit the only "witness" to his crime, which gives the case, in the absence of first-hand witnesses, and of tangible forensic evidence, a self-referential construction. The Aleppo court, the district attorney's office, and the upper court in Damascus will, however, all stumble in defining the nature of the crime. There were in fact two distinct—and, to some degree, juridically unrelated—"crimes": first the sodomy, then the act of killing. It was the latter that posed the most serious problem: Was it intended or accidental? In other words, the distinction parallels that of *qaṣd* and *'amd,* between "circumstantial" intent and deliberate planning. Clearly, to his advocates, the young man did not premeditate the killing, as his only motive was sexual. But by forcing the boy into the act, and keeping his mouth shut while the boy was in a state of panic and fear, indicate a reckless behavior at best: if the offender was unhesitatingly taking risks, seemed unconcerned, should that imply premeditation? If the case stands too thin for premeditation, the killing of a boy for sexual purposes, with the local outrage that it provoked (the official *al-Baath* national newspaper, which tends to be short on crimes, briefly took on the offender upon his arrest, and an undated clip was included in the dossier), posed problems nonetheless.

The other matter of concern, in the absence of witnesses, which pushes the structure of the case to be solely constructed by the confession of the defendant himself, is the lack of forensic evidence, so crucial for a case like this one,[35] but which is not that uncommon in Syrian court proceedings.[36] The defendant thus de facto became his own witness, which left the case caught into a single voice upon which the judicial authorities did their usual gloss. The case therefore contains very little fact finding—as all evidence has been furnished by the defendant—with albeit different interpretations of the act of killing. The

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[34] Aleppo Jinayat 725/995; final Naqḍ ruling missing.

[35] To determine, through DNA evidence, whether penetration effectively occurred, in addition to identifying the person who committed the act.

[36] Forensics is a culture all by itself, which requires the implementation of particular techniques. In Syria, therefore, the absence of such culture, in conjunction with poor financing, render forensic evidence practically inexistent.

boy's sodomizing, however, was taken for granted—as "an act beyond common decency"—and did not pose problems of interpretation: a single voice—that of the defendant—dictated its tone to narratives and rulings. Because the boy's "kidnapping" was interpreted with its sexual motivations—an explanation provided by the defendant himself—his death by suffocation did not need a specific explanation, as it naturally derived from the defendant's alleged pederasty.[37] The various judicial instances stumbled therefore on the sole act of suffocation, leaving everything else behind; they did not need that much of a background: only the intentionality behind suffocation would determine the length of the defendant's sentencing. Such cases with no clear purpose (e.g. theft, a land dispute, or an honor killing), or where the motive is perceived as sexual, soon turn into an uncanny conundrum: the explicandum, the fact that needs an explanation, the death of the boy, receives as explicans "sexual motivation"; but such obscure motivation, however, is what needs to be explained in the first place—the *personnalité* of the offender—is set aside, but remains nevertheless the hanging motive in the eyes of the general public.

When the referral judge offered his first synthesis in April 1995, he was adamant that the defendant ʿAli Jamal ʿAli committed a premeditated crime (*ʿamd*) (article 535 of the penal code) on 8 July 1994 (and arrested on 11 August 1994) against the six-year old boy Muhammad Kurāni, for having committed a sexual "act beyond decency (*al-fiʿl al-munāfi li-l-ḥishma*)" (article 493). Notice how the judge went for the maximum penalty by interpreting asphyxiation as a deliberate act of killing (*ʿamd*), rather than, say, a byproduct of the defendant's sexual lust. Considering, however, that the only recognized *motif du crime* was the sexual act itself, which the defendant himself acknowledged as having been premeditated, why should the killing of the young boy be *also* premeditated? If the defendant had planned for act A (anal sex) and in the meantime "improvised" act B (keeping the boy's mouth shut with his left hand) in order to proceed with A, would that imply that *both* A and B were deliberately planned? What is it then that justifies the court's accusation of a "deliberate act of killing by strangulation (*al-qatl al-ʿamd khanq-an*)"?

The judge begins with the Friday prayers on 8 July 1994. ʿAli Jamal ʿAli, we are told, "enticed" (*istadraja*) the six-year old boy after noticing him in a mosque in the Jabriyyeh neighborhood. He enticed him for a visit to the roof of the Barmada building opposite to the mosque (presumably for the panoramic view of the city). As the boy did not resist, ʿAli took him up the stairways leading to the roof, forcing him to take his pants off and underwear down to his knees, attempting sodomy (*fiʿl al-liwāṭ*). Once the boy screamed, the plaintiff shut his mouth by placing his hand over. When the boy's resistance diminished, the defendant inserted his penis from behind, but noticed that he was not moving and was smelling bad. In panic, ʿAli left the boy dead on the stairs, and escaped the next day to Beirut. In the meantime the police had arrested an innocent man for the crime, who was later acquitted. The defendant came back to Aleppo the following month, repeatedly revisiting the neighborhood of his crime, which raised police suspicion and led

[37] Because the *personnalité* clause does not stand on its own in the Syrian judiciary, that is, independently from the "facts," the defendant was not subjected to any medical examination, which would have determined his sexual orientation.

to his arrest.

In his early statements to the police, ‘Ali pondered on the unpremeditated aspect of the crime:

> “I saw that ten-year old [sic] kid and immediately tempted him with some money, then asked him to accompany me to one of the buildings in the Jabriyyeh neighborhood, which he did. We went up the stairs, once we reached the roof, I asked him to take off his clothes, which he did by lowering his pants and helped him to lower his shorts. But he started to scream, and **out of fear that I might be discovered**, I inserted my hand in his mouth for **barely a minute**. When he went totally mute I **panicked** at the sight of a boy that would neither speak nor budge, and ran away leaving him behind.”

No one would challenge such statements, as the others were after-the-fact witnesses: the neighbor who discovered the body, the parents and uncle, but none had witnessed the crime first hand nor seen the boy with the defendant.

With the defendant’s brief account, four irrelevant witnesses, an autopsy confirming that the boy died asphyxiated, and a memo describing the scene of the crime, the judge’s material runs thus far pretty thin. Notwithstanding the charges of the referral judge, the court had to convene on two interrelated matters: (i) the age of the culprit: even if he were one-day short of the maturity age of eighteen, his dossier should be reverted to the minors court; (ii) the *qaṣd* versus *‘amd:* the head of the palace of justice in Aleppo, known as the first attorney general, recommended the higher *‘amd* punishment, which would have categorized the defendant into life sentencing, if not for the death penalty.

As to the age of the defendant, as if by sheer fate, he was *exactly* eighteen the day of the murder. He was born on 8 July 1976 and committed his crime on 8 July 1994. The court estimated that the crime was committed roughly an hour after the noon Friday prayers, and established that his birth on 8 July 1976 must have been early that day since he was registered that same day prior to the closing of the governmental offices at 2:00: the defendant was only few hours above eighteen when he committed his indecent act and his dossier should be therefore kept within the Jinayat’s jurisdiction.

Since another man was wrongly accused in the month or so when the defendant escaped to Beirut, the dossier contains reports and interviews of two defendants, the first one having been released for lack of evidence; the defendant’s denials, and the dramatic confessions of the second defendant the month following the crime. The first defendant, which had a brother who lived in the same building of the crime scene, and who was seen in the vicinity of the mosque that same day, had only circumstantial evidence against him, the kind of evidence that would have been “tested” through fingerprinting or DNA tests (in particular if there was indeed anal penetration, as some reports claimed). Syrian forensics, however, is notorious for foregoing all kind of fingerprinting and DNA evidence: not a single case analyzed in this book contains any of the most common forensics. If evidence is therefore accumulated in the most rudimentary manner, and the interviews *are* the prime conduit for fresh evidence, what could therefore save the case from a fully-fledged judicial error is confession pure and simple, which was the case

here.

The first accused, who seems to have been arrested a couple of weeks after the murder and gave his first deposition in July 1994, and whom we will refer to as Maher, used to work in a small tailoring manufacture in the Jabriyyeh neighborhood where the crime occurred. The day of the incident he went as usual to his work early in the morning, even though Friday was his official day off:

> "We had some extra work to do that day even though Friday is our day off. We worked until 12:15 when our boss told us that it's time to leave for the mosque. We went to the mosque (right opposite to the building where the incident occurred) with our boss. I seized the opportunity, when I've noticed that my boss was not observing me, to run away back home and pray with my father rather than at the mosque. At home, my sick father was there and we began praying. We then had lunch, and around 2:15 when I was going back to the workshop I passed right in front of the building where the incident occurred. There was nothing unusual for passing by there since that's my usual road, and did not notice anything unusual, nor did I talk to anyone. I went back to the workshop and stayed there until 8:30. I went to my sister's home which happens to be in the same building where I worked. But my sister was not there and saw only her husband and their kids. I went back home at 11:00 that night, talked to my father, took my clothes off and went to bed."

From now on evidence will prove even more contradictory, as the then defendant will fine tune his preliminary statement as more witnesses poured in, leading to circumstantial evidence of a very casual nature. Maher worked in the neighborhood, came to work that day even though it was his day off, avoided the mosque for two different reasons (to accompany his son's boss, to pray with his father at home), had a sister in the same building of the crime, and provided contradictory statements that some witnesses strongly denied. In sum, he had no strong alibi for the 1:00 to 3:00 afternoon period. Not a single witness, however, saw him with the murdered kid, and he kept denying any involvement until his release. As noted earlier, careful collection and examination of evidence—primarily fingerprinting—could have made a major contribution, but the system does not work that way.

It was only with the arrest of the second accused ʻAli that Maher was finally released. In his first deposition to the police on 11 August 1994 ʻAli, even though having confessed taking the kid to the upper floor with the deliberate intent to force him into anal sex (*fiʻl al-liwāṭ*), and having unwillingly caused the boy's death by forcing his hand on his mouth for a minute, nevertheless denied anal penetration: "I did nothing [sexual], as I left him in his current condition [not emitting any sound or movement], after having lowered his pants and shorts between his legs. I simply ran away for fear of getting exposed." In the police report also dated August 11, however, ʻAli was quoted saying that "after having succeeded in keeping the boy's mouth shut with my left hand, I took my penis out with my right hand and inserted it between the boy's butts." How did he get caught? The official explanation—a mixture of factual police analysis and the defendant's own—was that, even though he held various jobs in the Midan neighborhood, he stopped regularly in Jabriyyeh where he used to buy spare parts for motorbikes, for which he boasted to

have developed an expertise. His recurrent trips to the neighborhood, even before his return from Beirut, made him a suspect, and the police had been checking his workshop in Midan since July.

There were two Jinayat verdicts. The first one, on October 1995, refrained from any final ruling, arguing that the defendant was not *legally* eighteen at the moment of the crime since he became of age only at the end of that day of 8 July 1994. The court therefore recommended that the case by transferred to the juvenile court. But in another strange twist, however, the Jinayat reversed its previous decision, and based on a new calculation, decided that when the defendant committed his crime "he already was at least seven hours into his mature age (*sinn al-rushd*)." Another element of surprise was the defendant's staunch denial, in a deposition to the court in June 1995, of any involvement in the raping and killing of the boy. By the time the court, however, went on with its final ruling on August 1996, more than two years after the crime, it took the blunt decision to abide by the defendant's prior statements to the police, which, upon his arrest, fully confessed the rape, but denied any premeditated killing. The court thus decided in its final ruling to penalize the defendant for S.P.800,000 ($16,000) to be paid to the plaintiffs-cum-heirs for material and moral damages and liabilities (they had initially requested a million pounds). Then, and in opposition to the district attorney's request, the court opted for a *qaṣd* verdict, with an initial 12 years of forced labor, and a further extension of up to 20 years (based on section 2, article 498 of the penal code).

The case was appealed to the higher Naqḍ court in Damascus by the public prosecution office, which had initially insisted on a *'amd* ruling. In a memo within the one-month appeal period, the head of the office, judge Mahmud Qujah, argued that even though the defendant had no intention to kill the child, he nevertheless behaved in such a brutal manner so as to "equate" such an act with premeditated killing. Qujah thus concluded in his three-page Naqḍ memo that the defendant is "an expert criminal with several diverse **precedents**, which shows his **criminal spirit** and his **carelessness about the values of society**, as manifested in his final words to the court when he blurted out to the chief judge in contempt: 'Only that? Why don't you go ahead with the death penalty?'" "Such a person," recapped Qujah, "fully deserves the death penalty because he is a **danger to society**."

If Qujah's plea to the Naqḍ was to go for the death penalty without compromise, which the upper court rebuffed, it nevertheless hardly adds any new element to the case, while moralizing and sensationalizing to the extreme; the limited evidence, however, which by and large relies solely on witnessing rather than forensic evidence, in conjunction with the repetitive nature of all facts and arguments from one report, memo, and verdict to another is what gives this case its special impetus. The importance of Qujah's plea, however, lies not in the fact that it was addressed to Syria's supreme court, or that the latter rebuffed it for that matter. As an experienced judge, Qujah knew all too well that the death *was* accidental, and that the prime aim for the young man who had just turned 18 was sexual gratification with a boy he had randomly picked up: it was indeed precisely the lack of premeditation and the casualness of the man's style that attracted public attention, and which the judge, professionalism aside, was echoing. A major

impetus in the judge's plea was apropos the defendant's "carelessness about the values of society," and the fact that he represented such a "danger to society." But what kind of danger exactly? And should we worry about which "values" the judge had in mind? We're here into a territory where the sociological dimension of crime, including the way courts handle witnessing and verdicts, becomes irrelevant. The judge knew very well that, professionally speaking, the Jinayat delivered a plausible verdict, that is to say, it could not have gone for the death penalty because there *was* no premeditation in the child's death. Yet, there was something deeply disturbing both in the defendant's behavior and the public opinion: the public interest, which prompted the *al-Baath* national daily to carry large extracts of the Jinayat's second ruling (which it rarely does), was probably a symptom of deep repressions regarding infantile sexuality and its relation to adult sexuality; the unacknowledged repression and violence that children go through routinely, not to mention incest, which do not receive much public exposure; and the tormented sexuality of teenage men (and women) coming of age in a repressive society, not only politically, but also socially. The age of the defendant, which fostered a debate at the Jinayat court, and which pushed it into two incompatible rulings, which is fairly unusual, should not be looked upon simply as a technical juridical problem: should the defendant receive his verdict from the Jinayat, or should the dossier be transferred to the juveniles court? In its first ruling the Jinayat was well aware that it was only attempting not to hold responsibility for a case that had already attracted too much public attention, hence its attempt to transfer it to another court for a retrial. As to the defendant, the sheer coincidence of the crime with his eighteenth birthday—day-for-day—was no coincidence at all: he was celebrating his coming of age by raping a small boy, that is, by enacting his sexual fantasies through a criminal act of transgression.

It is therefore impossible to understand such cases by limiting ourselves either to the juridical (which is what courts do), or to the sociological dimension of law. I propose to add to the juridical and sociological a third dimension regarding the psychic powers of governmentality. Unlike the Foucauldian notion of power, which we've analyzed earlier,[38] and which constructs an agency that does not require the notion of the Subject, the criminal cases under analysis cannot be only subsumed under the juridical and medical historical discourses of the "abnormal," or the *personnalité* of defendants for that matter. If, as Foucault says, the "cause" of the crime and its "rationality" implied looking at the defendant's personality retroactively (that is, a rationalization of the crime based on the defendant's life as seen in light of the criminal act), such discursive practices only highlight power relations with individualized subjects without the requirement of the notion of the Subject: there must be deeper layers in the Subject that at the same time favorably accept subjugation and repression, while at the same time approving acts of transgression as *jouissance.* There is that "excess" of energy in individualized subjects, which have been normalized through discursive and non-discursive practices, which cannot be contained within the traditional schemes of governmentality, and which lies outside the symbolic order; criminal acts could be looked upon within that surplus of transgression, which lies deep in a subject's psyche.[39] Public interest notwithstanding, the

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[38] See, Chapter 1.

[39] Warwick Tie, "The Psychic Life of Governmentality," *Culture, Theory & Critique* 45(2) (2004): 161–76.

case has stirred an excess attention from the judicial authorities themselves, as if what the profession dictated to judges—a non-premeditated ruling—was not enough.

Freud has developed the notion of the uncanny (*unheimlich*), as a "special shade of anxiety" that surrounds particular experiences, a response that is at the same time "disturbing and pleasurable," which is *jouissant* in its effect. For Freud, uncanny feelings signal the return to the subject of long repressed fears, memories, and traumas, that is, a return to the familiar (rather than the unfamiliar) that disquiets the subject: "the uncanny," says Freud, "is that class of the frightening which leads back to what is known of old and long familiar," an involuntary repetition that takes the subject back home. "Home" means, however, bringing all those involuntary memories and traumatic experiences, fears of castration and childhood sexuality, which long have been repressed. What emerges in this experience of uncanniness, is a sense of what has been concealed and kept out of sight, paradoxically delivers pleasurable and familiar feelings. The narcissistic complex which enables the child to empower itself, rather than dissolve into a plethora of contradictory feelings and fragmented selves, is one such common example of the pleasurable and familiar (the at home with one's self). But whenever such narcissistic self fails to develop into a social one, one that interacts with a given social milieu, and accepts its "self" as part of it, as seems the norm today,[40] there is always that left potential for a reactivation of the old fears, repressed memories and traumas. Animistic beliefs, which commonly circulate among individuals and collectivities, express such fears.

Some of the crimes that we've documented in this study manifest that dimension of the uncanny, which emerges from the very nature of the crime itself: a teenage girl that was raped and killed (C5–2); a young man who killed an old man, father of four, for his motorbike (C5–3); a young woman, a university graduate, who kills her husband to safeguard her sense of honor and that of her cousin-lover (C5–5); or as in this example here, a young man, who just turned 18, sodomizes a six-year old boy, who inadvertently dies asphyxiated. In all such tragic examples, what matters is more than just the decision-making process and the sociology of law, as the tragic nature of the event drips all over, and we begin to see judges having afterthoughts on their rulings, with public interest steering up, even though in Syria crime tends to be prescribed to the space of the courtroom, seldom attracting any attention, except in private. What all of a sudden emerges is that uncanny feeling in individuals and groups, which translates into an unease at accepting the common "professional" ruling, one that is dictated by the logic of the incident itself and what the law says within the homogenizing and secular framework of the nation-state.[41] All of sudden, feelings of outrage erupt, for a case that was supposed to contain no more than what it did: it is here that the uncanny comes through, as those images, childhood memories, fear of the unknown, the fear of the dissolution of the self

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[40] Christopher Lash, *The Culture of Narcissism,* New York: Norton, 1979.

[41] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity,* Stanford: Stanford University Press, 2003, 193: "Nationalism, with its vision of a universe of national *societies* (the state being thought of as necessary to their full articulation) in which individual humans live their worldly existence requires the concept or the secular to make sense. The loyalty that the individual nationalist owes is directly and exclusively to the nation…The men and women each national society make and *own* their history."

and society, that have long been repressed, and which re-emerge—as that all too familiar—in individuals and groups. It is in such rare instances, which push the law to reassert itself outside its normalized routines, that the psychic dimension of the Law as superego becomes visible the most.

Foucault's notion of "sovereign power" posits an epistemological shift between the eighteenth-century classical age, and the nineteenth-century post-revolutionary and industrial age. In that new age, to which we still belong, sovereign power interpellates subjects through discursive formations which in their core normalize the subject through a delineation of the abnormal. If crimes must be understood in their causes and the *personnalité* of the offender, it is because traditional *ancien régime* sovereign power, based as it was on the symbolic power of the king and his public executions, did not address subjects as subjects, but as collectivities that "sanctioned" sovereign power. Modern forms of governmentality address therefore that lingering issue of the subject *qua* subject, one that needs to be normalized in a network of power relations, rather than simply be "sanctioned" by sovereign power. But while Foucault manages, in the bravado that is all too well known of him, to show the intricacies of the new empowering norms over the individual subjects, the latter lose their capacity as subjects, capable of resistance to the forms of knowledge and governmentality which at the same time empower them as individuals, while ripping off their subjectivity qua subjects. Herein lies the importance of the Law as superego, and the uncanniness of law in retroactively accepting transgression while positing it as the essence of official law: it is in the psychic that the modern subject re-asserts itself as subject.

I saw my divorcée lying down with her new fiancé

[C8–3] One day in early July 1998 at the time of evening prayers 'Umar (b. 1969), who introduced himself in his depositions under the generic qualification of worker (*'āmil*), shot to death his ex-wife and some of her relatives at their residential home at the village of al-Hassaniyyah in the northern province of Idlib.[42] In one of his earliest depositions to the Idlib police on 15 July 1998 right after his arrest, he claimed that

> "ten months ago a dispute erupted between me and my wife, the victim Amira bt. 'Abdul-Salam Naji, because she refused to marry my brother Yasir who lives in our village.[43] That eventually led to our divorce, which took place in a sharia court at Jisr al-Shughur. Since we have a common child, some intermediaries attempted to reconcile us with the hope that we would reestablish our marital life, leaving the final decision to her father. Three days before the incident, some have intervened to reconcile us. The Tuesday before the incident, which occurred on Friday evening, a couple of individuals from the village of al-Mulnad came by and visited me in my home, and I urged them that they do their best and reconcile me with my ex-wife. On Friday a friend came by and informed me that my

[42] Idlib case #68/2000; man killed his ex-wife in a village at her parental home; Idlib Jinayat ruling #120 on 14 May 2000; final ruling missing, but summary in Michel Ghannum's defense revocation of the case.

[43] This statement remains unclear and does not recur in the dossier.

> divorced wife had been engaged to someone from Hama. I was also told that the fiancé's maternal aunt Maryam Asouad **knows the truth**,[44] and I made a deal with my informant at meeting her. I did meet her that day at 11:00 in the home of my informant, only to inform me that my divorcée had been officially engaged to a person from Hama over a week ago. I went back home, and then at 5:00 in the evening that same day I went to the home of the parents of my divorced wife after I picked up my 8.5-mm gun, which does not carry a permit, and which was loaded with 24 bullets. As soon as I knocked, my ex-wife's sister Najah opened the door, and I asked her whether she would let me in. I knew that my divorcée was sitting in a room with her fiancé from Hama, having been informed by the son of one of my divorcée's sisters. He had told me that they were sitting in an upper room, while her parents were in the lower room. Since the house is only composed of two rooms, I took the stairs and went upstairs, holding the gun in my hand. I found my divorcée—the victim—sitting with her fiancé whose name I ignore. Immediately, and without any previous notice, I started shooting at her, with several shots reaching her body, leading ultimately to her death. Her fiancé managed to hide in one of the corners of the room as soon as I started shooting. They were having lunch when I burst into the room. When I rolled down the stairs, my fiancée's mother, brother, and two sisters, attempted to catch me. I started shooting at them, and all of them were probably hurt. The following day I was told that my divorcée, her mother, and brother, died, while her sister Zubayda was wounded."

The strange unsupported allegation that the root of the conflict, which eventually led to divorce, was in the husband's proposal that his wife marries his brother, never resurfaced in any of the subsequent depositions, the ones made to the police, prosecutor, judges, or during the Jinayat hearings in Idlib. Nor will anyone press on that issue for that matter. Gradually, however, more details would emerge from the killer himself in subsequent depositions, while some of the previous first-day facts would be radically altered. Thus, for instance, only three days later, on 18 July 1998, now in the presence of an investigating judge at Jisr al-Shughur, the killer radically altered his previous description of the crime scene.

> As soon as I went upstairs to the upper room and reached its door, I saw my divorcée Amira lying down (*mudṭaji'a*) on the knee of a person which I realized was her fiancé. She was caressing him lying on his side while he was sleeping, his pants were down up to his knees. As soon as he saw me, he straightened his pants up and tightened himself (*tamāsaka*). When Amira approached me, my gun was already in my hand, I pushed her, but she came back to me once more. It was at that moment that I pulled the trigger several times, after which Amira fell down.

Three days earlier the killer had made the claim that his ex-wife and fiancé were having lunch when he killed her without warning. Now the implicit allegation was that both were into "oral sex," and that Amira was offering her fiancé, to whom she had apparently

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[44] Presumably regarding her niece's new engagement.

engaged only a week earlier, a blowjob. In another deposition two days earlier (16 July 1998), the killer had claimed that as soon as he reached the upper room, "I found Amira with her new fiancé together, while she was lying down on a pillow. I shouted at her: 'sit down!' and immediately afterwards started shooting at her. I can't remember how many times I shot at her." Between all those different accounts, real or imagined, which were only three days apart, what stands out was Amira's gesture at the moment her ex-husband found her with her new fiancé: Amira looked *comfortable* with her fiancé—and that seems pretty much the only thing to have stuck a chord in the mind of her disgruntled ex-husband. In his first deposition, the killer did not dare to mention that "comfort"—or, more accurately, what he probably perceived as a "sleazy" gesture, one in which Amira had "given herself up" to her new fiancé, manifesting a degree of intimacy in the very act of a blowjob (which was only revealed later). In his second revised account, Amira's lying on the pillow was mentioned for the first time, with that corrective "sit down!," as if reminding her (and himself, and audience) what a "correct" posture—to sit down properly and decently—ought to be under *any* circumstances. Finally, in his third and more detailed account, 'Umar hints at the two having oral sex. All this could have been true, or a work of imagination, or simply as part of a strategy deployed to win the hearts of his audience back then: the police, prosecutors, lawyers, and judges. After all, since the identity of the killer seems to have been certain from day one, duly endorsed by witnesses, the one thing left to the Idlib Jinayat was to nail down the crucial premeditation issue: *qaṣd* or *'amd?* Needless to say, 'Umar seems to have had been aware of that subtle judicial distinction right from the beginning: as soon as the trepidation of the killings went by, he began, in statement after statement, to argue that nothing was fully premeditated, that he behaved in rage like a jealous ex-husband, one who was promised that his ex-wife would return to him, but that he was surprised and shocked to learn from friends and relatives that his ex-wife got engaged—from someone that he even did not know. In his July 18 deposition to the prosecutor, 'Umar claimed that in the hours preceding the killings, depressed as he was on the news that his ex-wife got engaged, he got intoxicated by excessively drinking Araq. With such claims, whether true or false, the defendant, following probably a strategy advised by his counsels, was accumulating indications that he wasn't at the time in his right mind: depression, anger, and humiliation. Having thus confessed the killings, he nonetheless refused the scenario of a cold-blooded and heartless murderer who fully premeditated his crime.

The defendant's counsel in Jisr al-Shughur went further into that effect, drawing a list of witnesses which he divided into four categories, and which from his standpoint would be enough evidence that his defendant acted foolishly rather than premeditatedly. The defense thus divided the period—close to a year—before the killings into four interrelated "events" (*wāqi'a,* pl. *waqā'i'*), each one with its own set of witnesses. The witnesses, in particular those blood-related to the victims, were not that talkative beyond the few facts related to the incident.

1. First event. The defendant would have been delighted to get back to his wife in the wake of a divorce against his will. He is now in prison amid a conflict with his ex-wife's parents. She in turn does not mind getting back to him, and there were persons who worked as intermediaries between the two; some of which made a

deal with her parents for a new dowry, the *mahr.* (Four witnesses are identified from the village of al-Hassaniyyah.)
2. Second event. The defendant was informed that his ex-wife became engaged to another person, and she *was* set to marry that same day the incident occurred. (Names of four witnesses from al-Hassaniyyah and al-Mulnad.)
3. Third event. What the defendant did was an outcome of stern anger (*ghaḍab shadīd*), but without consciousness, knowledge, or premeditation. He was neither aware of what he was doing, nor of the outcome of his acts. (Names of four witnesses: one was imprisoned in Aleppo, and three others from the above two villages.)
4. Fourth event. The defendant had been carrying a gun for several years prior to the incident. (Three witnesses from the above villages.)

In sum, the defense's strategy focused on "improvisation" to spare the defendant a *'amd* ruling. That strategy, however, did not seem to have paid off. Less than two years after the crime, the Idlib Jinayat issued a severe sentencing. It commanded that the defendant be incarcerated for life with hard labor, and that he compensates the plaintiffs (Amira's father and sister) for each one of the three victims: SP500,000 for the death of Amira's mother, SP600,000 for Amira's teenaged brother, and SP600,000 for the death of Amira herself. It remains unclear how the court made such assessments: Why had the highest price tag been set on the brother? Why did Amira get the same price as her brother, but less than the mother? Could it be that the court reasoned in terms of a mother responsible for a family and household versus a woman that was still nominally single, and was engaged and soon to be married (the same day of her killing; while her wounded sister claimed that the wedding took place just the day before in their own parental home), but wasn't given that chance? Did the court reason that younger relatives are more "valuable" than older ones? In short, the court opted for a *qaṣd* ruling based on article 534/6 of the penal code. For their part the plaintiffs opted for an appeal.

The classic example of the lover who feels possessed by his beloved, and where the feeling of loss is precipitated once the beloved went for another lover. The gap between the subject and the socio-symbolic order precipitates into a death drive. The socio-symbolic order is reinforced by the beloved's kin informants who were feeding the lover with the whereabouts of his beloved, providing an active imagery of what she was doing with "this other man." Like the honor killings which target women, the killer was here constantly fed via the kin informants with words that translated into images of betrayal and loss in his mind. Since desire is the desire of the other, is the other here the woman who betrayed her ex-lover, urged for a rupture, only to go for another lover? Or is the lover-killer manifesting to the community at large the precedence that he attributes to the beloved Other over the socio-symbolic order of the community? In a milieu where men have to repress their feelings of love and affection, the ultimate act of killing for a woman—or killing the woman that revealed *my* subjectivity—is the ultimate gesture of sacrifice against the very prohibitions of that community. In the routinized honor killings, the killer operates at least within a *social* excuse against a female who allegedly betrayed the honor values of kin. But in this instance, the beloved wife opted for divorce, then chose another lover, hence was perfectly safe in terms of the honor code: what she did in

the aftermath of divorce was her own business, and her ex-husband and in-laws should have had no concerns. What is strange, however, was that the victim's future kin were the ones who fed the killer with everything that he wanted to know but should not have known (or cared about) in the first place, as if they did not want that woman, the ultimate *femme fatale,* to be "one of them," and the ex-husband was dispatched to get rid of her. Perhaps there is a link between the routinized honor killings and the killing of a woman who seems to be a force of her own, which can seduce one man after the other, which can take obsessively hold of a man's imagination, which can become like a witch the obsession of a man to the point of a morbid death. Here the lover turns against society manifesting his deep love for a woman—through sacrifice.

Shameful sex in the vicinity of the husband's corpse

[C8–4] Amina Muhyi al-Din Bakhit (b. 1974, mother Turkish) got married in 1993 to ʻAbdul-Hamid ʻAllun as his second wife.[45] The referral judge in his report on 26 January 1994 noted that her husband had provided her with a separate house from his first wife and their children in the town of Khan Shaykhun (province of Idlib). With his second marriage, ʻAbdul-Hamid apparently became closer to his cousins, which the referral judge hastened to report, "were in an age category closer to the wife," meaning in their twenties, while the husband was much older.[46] The judge described the husband as someone "who drank excessively, and who used to ask his wife not to be formal with his cousins…and not to be formal either in her attire." Eventually, a "love relationship" (*ʻalāqa gharāmiyya*) allegedly evolved between one of the cousins, Milad ʻAbdul-Majid ʻAllun (b. 1967), and Amina, with a possible liaison with another cousin who at the time was serving in the military (hence the inclusion of a report from a military judge in the dossier). The final Idlib Jinayat report claimed that "letters were exchanged, in which the accused [Amina] expressed her love to the accused [Milad], and her non satisfaction with her husband. She repeatedly asked him to release her from her sufferings…" The Jinayat added that the love relationship "then grew from having sex into *zinā.*" Throughout the 8-month period, between the wedding in 1993 and the husband's murder, Milad and ʻAbdul-Hamid became close friends, while Milad kept a close watch on his cousin, "seizing every opportunity to kill him," which he finally did on the night of 2 April 1993.

He had "borrowed" that night a 9mm gun from a policeman, and went ahead to ʻAbdul-Hamid's home, with Amina's prior knowledge, to kill him in his sleep. Apparently the victim woke up seconds before Milad pointed the gun at him, attempted to run away, but Milad nonetheless followed him and shot him in the back. He then went to his brother's home, gave him the gun, after replacing the used bullet, and summoned him to deliver it to its owner on the basis that he was in a rush and had to pick up a bus to Damascus. But he instead came back to Amina, whose husband's body was now lying on the floor in one of the rooms, and had sex with her twice that same night. He wanted to get rid of the body, but apparently Amina had a better idea. She would fabricate a story whereby a stranger with a foreign accent came to their home and had a fight with her husband

[45] Idlib Jinayat 136/1994; only ihala and final sentencing available.

[46] The date of birth and age of victims remains for the most part undisclosed.

regarding a debt, only to kill him. Milad eventually traveled to Damascus, with a dead body behind. Amina for her part went the following day to her in-laws with her faked story. Stunned with disbelief, they alerted the police who arrested her immediately, and few days later Milad was in turn arrested while hiding in Hims.

Obviously, the structure of the main narrative, which was adopted by the Jinayat in its sentencing on 26 November 1994 which recommended the death sentence for both defendants, varied from one deposition to another, while the two main protagonists kept altering their narratives in the 7-month period prior to the ruling. The day following her husband killing, Amina was interrogated by the police, acknowledging her affair with Milad, which began 5 months into her marriage and 3 months prior to the murder. In an effort to avoid a *'amd* sentencing, Amina claimed in her police deposition that the killing just happened accidentally, with no prior planning and premeditation. When her husband went to sleep that night, Milad, who was waiting up on the roof of their home, came down to her, and while they were having sex, her husband woke up and saw them the two together naked in bed.

In psychoanalytic Lacanian terms, the much older husband takes the role of the symbolic "big Other" who obstructs the *jouissance* of his much younger wife and her lover; they therefore needed to get rid of him to pursue their illicit sexual love affair. The husband, however, was not simply obstructing the sexuality of his voluptuous wife, as he did not seem to adopt that moral stance representing the socio-symbolic order of the community. In effect, from what transpires in early reports he was quite the contrary enjoying his role of a voyeur watching his wife flirting around with his younger cousins, and even inflicting on his wife the superego command of "Forget about me, and enjoy!" Rather than obstructing her with the usual motto that "You're my wife, and you should therefore be faithful to me no matter what, irrespective of the age difference or otherwise," or rather than simply play the honor game ("You'll dishonor us if you flirt around"), he was much more pervert than the simple faithful husband, as attested by the first referral judge report:

> After the wedding, the victim engaged with closer relations with his kin, in particular [the killer] Milad Abdul-Majid and his two brothers, one of whom is an officer in the army, despite the age difference between them, even though his cousins were much closer to his wife's age than his. The victim was known to be a heavy consumer of alcohol which he consummated at home with Milad. He openly summoned his wife not to be tight (*'adam al-taḥaffuẓ*) with his paternal cousins. It was indeed within such atmosphere that a love relationship matured between his wife Amina and his paternal cousins Milad and Anmar. Amina for her part used to trade love letters with both cousins each one separately.

Here the husband was not portrayed as the jealous husband who was summoning his wife to abide by the honor codes, a portrayal that was dropped few months later in the verdict. On the contrary, the husband was having fun watching his playful wife with his two cousins. In her first deposition to the police upon her arrest, Amina reiterated her husband's liberal attitude, namely that he continuously asked her "not to be conformist in

her attire (*'adam al-taḥaffuẓ bi-libāsihā*), encouraging her to consume alcohol, even though she refused; he also used to provide her with intoxicating pills so that she would be submerged with a strange feeling, not knowing with whom she was sleeping." With the husband's tacit watchful eye the two (or three) lovers could have pursued their sexual liaison as long as they had wished, but they opted instead to kill the husband. Moreover, the night of the killing, they had sex once before the husband was killed (in one version, the husband caught them off guard in the act itself), and twice after the killing while the husband's body was still there. It was as if the husband's erroneous comprehending gaze became for the two lovers the very problem of their sexual enjoyment, hence they opted for annihilating that paternal gaze altogether. Had the husband opted for the traditional attitude of honor and sin, the lovers would have probably felt more at ease in their sexual lust. The urge therefore to go that same night for another round of sex—twice in a row—after the killing of the husband, while his body was still laying around, points to that urge to do it one more time *outside his paternal gaze.* Which implies that illusion of a sexuality outside the gaze of the big Other. But the husband, however, at least as portrayed in the early reports (which were later repressed in the final ones in preparation for the final verdict), was extremely sympathetic: not only did he expect that his wife would soon become fond of his two cousins, he even encouraged her to do so. In effect, the husband was portrayed as someone who was in incessant provocation towards the socio-symbolic order: he openly consumed alcohol at home,[47] while encouraging his wife to do the same *and* feel at ease with his cousins. However, once such affectionate paternal gaze was done with, the lovers in their sexual haste to copulate twice may have felt a bit disappointed. They may have realized that *jouissance* comes at a price—when the husband was there, and now that he is permanently absent, there was no point in pursuing what became normative for them in the five-month period. In other words, the husband, by not caring about the socio-symbolic order, had unconsciously activated that death drive subjectivity into him. He sought for his own death at the hands of his wife's lover. He knew all too well that he was acting as the Third Gaze as the ultimate guarantee of the sexual relationship between his wife and her lover: "it is the very presence of the silent witness who listens to the couple making love that transubstantiates what is ultimately an encounter between [a wife and her lover] into an encounter that transcends its material conditions."[48] The husband therefore acted as a silent witness, without ever intruding, which transforms a banal situation between two lovers, one of which is the witness' own wife, into something mythical, charged with Eros and Thanatos. It is as if the lovers became overburdened with the mythological encounter that they had created for themselves thanks to their silent partner. Getting rid of that partner therefore seemed the logical conclusion: unable to assume the burden of an intensely charged situation, they opted for murder as a way out—to the death row.

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[47] The smallness and conservatism of Khan Shaykhun would not have permitted a public consumption of alcoholic beverages in cafés and the like.

[48] Slavoj Žižek, *The Ticklish Subject. The absent centre of political ontology,* New York: Verso, 1999. The French filmmaker Catherine Breillat notes apropos one of her latest films, *Une vieille maîtresse* (2007), that "abstraction" operates necessarily behind a sexual relation: "Je considère que la relation sexuelle est un langage, et non une mécanique. Elle permet de se projeter dans un être. Je ne suis pas du tout hédoniste: le plaisir n'a aucune importance. La jouissance, c'est de se projeter dans quelque chose de très abstrait: c'est « Je pense, donc je suis ». On ne peut pas jouir sans penser." See, "Entretien avec Catherine Breillat: On doit brûler pour l'art," *Positif,* 556 (June 2007), 21–25.

The referral judge undermines the complexity of the case by limiting it to a lover who commits a crime only to efface the traces of another crime, that of illicit sex (*zinā*), forgetting his earlier remarks that the murdered husband seems to have been enjoying himself as a Third Gaze, to the point that the two lovers felt trapped into such triangular situation. In strict legal terms, the verdict amounted to taking for granted the wife's account: "What pushed the defendant Milad to shoot her husband is that the latter saw the two of them in the same bed, hence Milad's desire to drop the curtain on their *zinā* crime which he was engaging with Amina, which renders the killing a crime pursuant to article 534–2 of the penal code." The judge adds as a final remark, as if he was puzzled by the audacity of the lovers after the killing: "The killing did not happen accidentally, but was fully premeditated, which is corroborated by the fact that they had sex twice while the victim's corpse was lying around in an adjacent room. Such sexual acts were only an overt expression (*ta'bīr ṣārikh*) for Amina's satisfaction with the outcome and its desire to do what she did." Notice how only the female *jouissance* (enjoyment) *was* accounted for, while the man was reduced to an agent of killing, that is, to make the woman's enjoyment possible, even though in the later final verdict the court recommended for both the death penalty by hanging. In that same verdict, the court made the point repeatedly that Milad had sex twice with the wife's full "consent" (*bi-riḍāhā*), as if the wife's sexual consent, after her husband's death, was an indication of her consent for the killing, hence the death penalty for both. The judge's assessment, however, simple as it may first seem, was not far away from truth: the female uncanny *jouissance* achieves its peak on the top of the husband's corpse, as if, to paraphrase the good old Freud, sexual fulfillment and death would come only hand in hand. Indeed, the *interpretation* of sex *after* the murder would become the primordial contentious issue between prosecution and defense, as if sex was the only element that indicated full consent of the killing: "Amina's having sex after the killing is no indication of a prior consent for the killing [performed by her lover], considering that she had never indulged in any positive act that would lead to her husband's killing," claimed the counsel in its defense of Amina. So why would the sex in the aftermath of the killing be an indication of consent for the killing per se? To be sure, neither prosecution nor defense were off the mark from common sense perception of sexuality and death: "I've killed my husband because he was prohibiting my full sexual fulfillment," goes the common norm, "therefore once I got rid of him, I'm back to my self as a person." But what if sexual satisfaction is possible only through a Third Gaze—that of the husband? By short-circuiting the Third Gaze the court shunned the unexplainable, while reducing the logic of the crime to the mere act of the killing and to the *zinā* crime which both preceded it and tragically concluded it—in two separate violent acts. Moreover, the defense of *flagrante delicto* has been acceptable for centuries in many societies.[49] The fact therefore that the two lovers were allegedly caught "in the act itself" by the husband, prior to his sacrifice, only strengthens the theory that the victim had every right to protect himself and feel offended against the audacities of the lovers. The death penalty for the lovers, in the eyes of the prosecution, was therefore fully justified on the ground that the victim had in hand *at the very moment of his sacrifice by the lover* (and with the wife's alleged endorsement) full evidence of his wife's

[49] Jack Katz, *Seductions of Crime. Moral and Sensual Attractions in Doing Evil,* New York: Basic Books, 1988, 15.

infidelities, hence his humiliation *in his last moments* should be fully accounted for and justified in the verdict. The death penalty acts like a spectacle for society at large: as the victim witnessed in *flagrante delicto* his wife's infidelities prior to his sacrifice, such final gaze ought to be brought to justice on his own behalf. The gaze of the absent victim transposes into that of society at large in need of a retribution for the wrongdoings of the wife and her lover.

Tales of sexual jouissance

What is there in common between a woman who killed her mother, a young man who unwittingly asphyxiated a boy for the sole pleasure of sodomy, a man who killed his ex-wife and some of her relatives in retaliation for a new fiancé, and a wife and her lover who plotted to kill her husband so that they would freely pursue their love affair?

Not much at first sight. In the common perception of communities into which those offenders were embedded, all such persons were criminal murderers who deserved their fate. For our part, we bundled such cases together under the grand rubric of "family and sexuality": Does such a topoi bring into light the disparate cases randomly picked up from the archives of the criminal court records (which were offered to the researcher as revealing social reality in their own right), justifying the line of analysis proposed in this chapter? What kind of justification can we offer for our choice of such random selection of cases?

Once the old patriarchal order is destabilized, loses its significance in the socio-symbolic order, parenthood and the family are no longer tied to the substantial notions of authority and honor. Instead, they receive their value from external sources tied to the project of the nascent nation-state: in other words, they become in a way politicized, subject to the intrusion of the judicial and medical authorities, which can now freely intrude into family dysfunctions, sexual mores, distraught daughters, husbands, homosexuals, and lovers who are constructing their own gendered identities in a world no more bound with traditional values. Instead of the family which is bound to its own substantial values, judges, doctors, and other professionals, now assume that dubious role of the "big Other": in other words, it is the world at large which assumes the uncanny role of paternal authority. Once the mother or father fail to provide their children with the modicum of the social order that ought to be maintained, it is judges, doctors, educators, or the mass-media at large that assume such dubious role. When a young man was accused of raping his mother, which in this instance acted on her own behalf as plaintiff, in the absence of the male authority of the husband who was allegedly pursuing other lover affairs in Lebanon (C6–4), it was the judge who took the role of a surrogate father, as if it was his own family, declaring the "monstrous" act as "unnatural." In similar vein, the judge who handled the sodomy case detailed in this chapter (C8–2) was offended that the young man did not repent for the death of the child: in this instance, both offender and victim were at bay in the anonymity of a big city to pursue their own pleasures, as if institutions which were supposed to act as the guarantors of moral values were not there anymore; hence the judiciary, clumsy as it may seem, takes over, becoming all of a sudden a surrogate family. As Slavoj Žižek notes with his usual touch of humor, as long as "I am never

really compelled to 'grow up,' …all the institutions which follow the family function as *ersatz* families, providing caring surrounding for my Narcissistic endeavors…"[50] The detailed narratives of criminal acts provide us with an essential aspect of modernity which tends to be obscured by sociologists and criminologists alike, namely, how much of the subject's fundamental mode of subjectivity is at stake.

Fatima Shawwa who sacrificed her mother because, as she claimed to the prosecution, she was treating her poorly and was having an affair with her husband, was acting on behalf of a double humiliation: that of a husband who was allegedly unfaithful—with her own mother—and that of a mother who also was allegedly pursuing an affair with her husband. Add to this the fact that Fatima was already ill at ease with husband and mother, both for treating her like a renegade—in her own interpretation of the events—and for not caring about her and supporting her materially. In other words, she felt humiliated on all counts, as if her persona did not exist in the eyes of others. The killing of her mother, in the aftermath of torching her own marital home the morning before, as documented within the gruesome details of the Jinayat records, was meant to set the record straight: no more will my mother and my husband-cum-mother's lover humiliate me! Now I'm free on my own, waiting to be punished by the justice system. Some of the details provided in Fatima's testimony make sense *together* only if taken, first, in their chronological order, and second, in their blatant attempt to explicate the ruthlessness of Fatima's act and the dire condition of the body, in particular the skull. Fatima spends that fateful night at her mother's house, hence was in no rush to perform the killing, as if contemplating her mother's death in the silence of the night. Even in the early morning of the murder, she still gave her mother one last chance, contemplating her in her sleep. Once the narrative kicks on the murder itself, it does seem savage to its extreme, portraying a mother ruthlessly killed by her daughter while defenseless in her sleep. Such gruesome details, however, come with a twist, showing a mother that was able to resist in spite of her old age, and a surprised sluggish daughter unable to impose the fatal blow. In short, the narrative was attempting to come to terms with the monstrosity of the act of matricide, finding an excuse for the *excessive* damage to the mother's body and skull. Hence the details.

By contrast in the case of 'Ali who was accused of forcing a boy into "anal sex," the act of sodomy was documented in a single sentence as "taking my penis in my right hand and inserting it between the boy's butts." Here the shameful act needed no other explanation, as the description itself was self-evident. As many offenders, however, 'Ali's act was not without conscience, as he kept visiting the crime scene until he was caught. The difference with the other cases in this chapter is fairly obvious, namely, that in this instance there was neither premeditation nor an intent to kill. Yet, the boy's age and death, not to mention 'Ali's refusal to repent, turned the verdict into the most contentious ruling, as it was the only one to have fostered a moral outrage with appeals for the death penalty, even though it was fairly clear that this homicide was not a crime. It was indeed one of the judges who interpellated: "Such a person deserves the death penalty because he is a danger to society." In the line of reasoning we have investigated in this book, the

[50] Žižek, *The Ticklish Subject,* 343.

offender is acting with a public in mind, an external gaze which places primacy on an audience rather than on the victim him(her)self. In other words, the feeling of guilt is transmuted to a third party individual or audience, obfuscating the relationship between offender and victim. Such a setting works well for our protagonist ‘Ali: his real interest was not in the act of sexual gratification through sodomy, but the very defilement of the mores of society in desecrating the innocence of a six-year old boy in the meanest way possible. ‘Ali’s demeaning attitude at trial therefore matched the ambition of his negative project.

Our next protagonist ‘Umar shot his ex-wife and some of her relatives at their own home in a gesture of vengeful righteousness. He reasoned that he had every right to trespass over her moments of happiness with her new lover. ‘Umar may have been humiliated in the settlement of divorce, to which was appended another extravagant humiliation, that of the ex-wife’s enjoyment with her new fiancé. ‘Umar’s own portrayal of various scenes, whether real or imagined, between his ex-wife and new lover, which were delivered in piecemeal variations from one investigator to another, as if he was embarrassed to reveal to his audience what did hurt most his sense of honor, namely, that the couple was in a blowjob position, which he may have perceived as one of intimacy and submission where the woman was “lying down” and offering pleasure. The defense at the time did not have much to brag for, except perhaps episodes likes these which touched on the righteousness of the act of murder, some kind of an impoverished *flagrante delicto.* Which is the element that connects this male protagonist to the next one through its loose end, namely, the Third Gaze. The *flagrante delicto* is a scene that is staged through the presumed presence of an external viewer—the Third Gaze—which could be a real person (Amina’s husband) or a non-defined audience. Counsels, whether on the prosecution or defense, typically play on that obscure relation between the real person who allegedly caught the culprits “in the act itself,” on one hand, and the presumed audience outside, which could be anything from the courtroom or the judges, or the mass-media (“public opinion”) on the other. The shame of the real observer, who has been humiliated, possibly victimized, carrying that burden for righteous vengeance, is, so to speak, shared by that outside audience, which now carries the burden of the absent victim’s gaze.[51] Both prosecution and defense structure their narratives with that Third Gaze in mind, the real and imagined. All crimes would be incomprehensible is they were to be limited to the relationship between assailant and victim, without taking into consideration how that would be externally perceived. It is such an analysis that we have defended in this work.

[51] To be fair, the he predominates the she in cases of righteous vengeance in Syrian courts, as there are very few instances where it is the woman who has crossed the borderline of honor, humiliation, and crime.

[Chapter 9] The place of third parties in land crimes

Research on land and property has been limited to tropes cherished by social historians: ownership (or lack thereof), class struggle between peasants and their landlords, the Baathist agrarian reforms of the 1960s, and the redistribution of ownership that followed. What we don't see in all this are the concrete power relations within a community, the day-to-day activity that centers around quotidian hurdles and rituals, episodes of violence, and how contractual obligations are negotiated. A criminal case, where the crime scene was set in a rural community, or at the very least associated to it through kin networks, but which was nonetheless processed in an urban environment where courts are located, may or may not carry some of the elements that we are aspiring for, and which by definition are hard to document. Think, for instance, of how much un-documented violence is left behind: but can violence be really documented, in the sense of receiving textual evidence, reports, and judicial review? And which authority would document violence, and for what purposes exactly?[1] In this Chapter, which associates crime with land, even though violence is all over the place (crime is by definition a violent act), we will be concerned, as in previous Chapters, in how the crime scene was narrated. Even though land is a more celebrated topos than, say, the network of family and sexuality, and for that matter, is taken more seriously, as it is situated at the core of political economy, our purpose here is not to add anything to the conventions of the political economy of land (even though readers may feel free to do so), but to focus, once more, on narration. Indeed, it is through narration that the totality of the "social fact" comes into existence, primarily through an institution like witnessing.

Property has invariably been a major source of conflict in Syrian society, which is not to be limited to the hurdles that the state has imposed on the transfer of private property since the 1960s. What criminal court records clearly show is that there *is* a great deal of violence that is displayed among individuals or groups for various purposes: honor, women, property, family and kin, not to mention the power relations within a community. In such instances state power through its judiciary apparatus only intervenes to "remedy"

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[1] Timothy Mitchell, *Rule of Experts*, Berkeley: University of California Press, 2002, raises such questions for contemporary rural Egypt: "The failure to examine the question of political violence against the poor in American academic writing on rural Egypt was not merely one of oversight or neglect. Rather,…the literature generally constructed its object of study in such a way that any evidence of such violence, given its elusive nature, was inevitably discounted, or translated into something else." (161) Typically, Mitchell argues, the peasant personality is portrayed in psychological traits as an unstable mixture of violence and submissiveness, which the American visitor experiences as the peasant's "excessive" politeness and generosity. State bureaucrats, therefore, construct their mobilization schemes on the peasant's inbred desire for authority, who expects the superior to be strict and firm. In pre-1952 Egypt, the much venerated class of "feudalists" abused of its authority vis-à-vis a depoliticized peasantry that lacked representation and protection at a national level. In revolutionary Nasserite Egypt, with the impossibility to find a replacement for the defunct "feudal" class, the state took over the abusive role towards the peasantry. The political mobilization was therefore not overtly intended of "freeing" the peasantry from abuse, but to monopolize power relations at a national level, at a time when the power local base of the feudalists had collapsed, only to be replaced by a new landowning class that lacked the moral cachet of the previous one (the limits imposed on property size by various agrarian reforms were quickly circumvented in various ways, as would be expected).

a situation, and it is precisely such an intrusion in the private lives of infamous individuals which is of great interest: to be able to document how those lives come to light through a myriad of narratives. Once we consider that law is a total social phenomenon, not to be limited to its internal rules and regulations, and not to be seen as a mere epiphenomenon of the social, then all kinds of social relations begin to emerge from what the social actors narrate in relation to the crime scene.

Honor, kin, land, and modernity

A number of crime cases are related to land issues, either directly or indirectly, even though many would fall into the latter category, among them the four cases detailed in this Chapter. In fact, crimes directly related to the "possession" of property are less common than cases where honor (or the sense of honor) seem to predominate. Honor would in this instance be attributed either to the status of the family or clan, or else to male or female honor (hence a sexuality-cum-honor conundrum). Another problem in linking property to crime and honor is that for a number of women who are killed for an allegedly "honorable purpose" it remains to be determined whether it was an "honor crime" stricto sensu, or whether the woman was eliminated as a potential heir, that is, her killing would have contributed at reducing the number of potential heirs. (Islamic rules of succession make it mandatory that a woman inherits half of the male's share, rules that are applied by and large even to minorities like Christians and Jews. However, for agrarian properties, which are still formally classified, since the French Mandate land laws of 1930–32, as *miri* lands, the inheritance of a woman would be *equal* to the male's share; since many urban properties are still classified as *miri* rather than strict *milk*, they would hence follow in principle the same non-sharia rule of equal inheritance.)[2]

For several reasons the connection that we are proposing in our analysis of crime, land and honor, poses a host of problems, in particular when it comes to the association of economic interests (land ownership and its possession) with honor. For one thing, should honor be looked upon, in line with kinship, as symbolic strategies that would regulate—and conceal—real economic interests? In other words, do social actors have to go through the various strategies of honor in terms of bluffing, threatening, killing, mourning, male domination, and all the rest, in order to protect their core economic interests, which for the most part, unlike honor, would remain hidden? Does the socio-symbolic order, which

[2] By maintaining the old Ottoman category of *milk,* which in Ottoman centuries simply delineated the majority of the Empire's agrarian lands as state owned, the French mandate has maintained a confusion, which unfortunately is very active today, which could have been avoided. Thus, a typical contemporary *ṭābū* cadastral register would classify a *miri* property as *al-milk li-l-mālik wa-l-ghirās li-l-musta'jir,* "the ownership is for the owner-landlord, and the plantations go for the tenant," a statement which is to be found in many of the Hanafi classical fiqh texts, but within a totally different context, which in contemporary modern terms—that of the Syrian nation-state—is *stricto sensu* meaningless, bringing much confusion if taken literally. The reason is that *miri* today is simply a *private* property in the full sense of the term, that is, *milk,* but whose rules of inheritance would *not* abide to the precepts of the sharia (the woman would inherit half of the male's share). In today's *miri,* the woman inherits an *equal* share. To elaborate, the French mandate, and the Syrian legislators working under its auspices, in their eagerness to "subtract" agrarian properties from the common fate of sharia law, kept the old moribund connotation of *miri* alive, only to subvert it to a totally different meaning. The alternative would have been to simply classify *miri* as "public" property, whenever the property was state-owned, or as "private" if owned by an individual or family.

carries ideological meanings, obfuscate the real economic interests? And is crime, which is a quintessential imaginary act, constitute a "return of the repressed," namely the real economic interests that are lurking beneath the symbolic representations? Moreover, is there a dichotomy between what actors do in public, and what they believe in at the personal level? Or, in other words, in societies where kin predominates as symbolic exchange, how much of the "personal," such as a criminal act, would be attributed to factors "outside" the pressures of kin strategies?

There is that prowling danger for developing societies, where the nation-state is historically weak, to be perceived as divided between a traditional mode of life that is self-sustaining and coherent, on the one hand, and a modernization that is going awry on many grounds, and proves incompatible with traditional values, on the other.[3] With that kind of division, honor would be perceived as the engine that would sustain traditional normative values. On the other hand, the integration of a society and culture into a capitalist world-economy would damage the balance fostered by honor and tradition through, for instance, the primacy accorded to the commercialization of land and the injection of monetary, financial and fiscal policies into the economy. In short, modernity would in general not be perceived as compatible with the traditional networks of kin and honor, while crime would be looked upon as an effect of the slow breakdown of tradition: the more the symbolic values of tradition are displaced by modernity, the more social actors are pushed towards imaginary bonds of cohesion, for which crime would serve as a vehicle. At the level of the actor–subject, using the familiar Lacanian psychoanalytic jargon of symbolic–imaginary–real, the symbolic would be represented by the normative values of society, while crime would foster an imagined community that the offenders would have worked out in their imaginary, and finally the real would be what the actors experience through their body (the lived experience, sexuality, economic practices).

I will argue, however, that the above presumed core division between tradition and modernity is too schematic and does not account well for the historical realities of developing societies with weak to violent nation-state formations. In the case of the societies and cultures on the eastern Mediterranean, the insertion of monetary practices and the commercialization of land go back to the late Ottomans. Not only have such practices not fragmented the kin and honor strategies, but they even have tended to reinforce them while realigning them to new economic strategies. In many cases, the more a family succeeds in the monetary economy, the more it contributes at reinforcing the indigenous order. The new strategies have been assimilated through tradition, and problems tend to erupt only when under financial stress a family is unable to maintain its supremacy through the combination of kin and honor. It is well known that under such conditions large families (based traditionally on landowning), tribal shaykhs, assemblies of elders, attempt to consolidate their power, while adding new functions, in a monetarist economy.

Where do honor strategies fall in all this? The exchanges of honor would be analyzed as strategies (or procedures and processes) in which the objective would be to maximize

[3] Such criticism has been addressed to the "Algerian" work of Pierre Bourdieu by Enrique Martin–Criado, *Les deux Algéries de Pierre Bourdieu,* Éditions du Croquant, 2008.

honor through risk taking: economic capital is valuable only as long as it maximizes honor. Hence the grammar of honor exchange would be played within two parallel registers. One that would be explicitly experienced as the register of honor, and a second one that would reveal the economic interests behind the honor strategies. Honor would thus serve as a dissimulated and denied strategy behind the more "real" economic interests. If, however, honor would dissimulate the economic and monetary interests, it is not because the corresponding economic institutions for the accumulation of capital would be inexistent, but because in such societies such institutions would require a heavy investment and legitimation in honor, for instance, in strategies of gift-exchange. Which social groups would benefit the most from honor?[4]

The landed aristocracy

Under Ottoman rule the Syrian provinces of the Empire had the bulk of their lands granted to urban notables. Those were state-owned *miri* lands that were offered to the highest bidder as part of the tax-farming iltizām system. This *aristocratie foncière,* devoid of any real political power, even though did not formally "own" the lands that were received as grants, or which had been blocked from circulation under the waqf system, nevertheless informally "owned" much of these rural properties, which gave them substantial rent control. The 1858 land code inadvertently placed even more power into the hands of a nobility whose main resources stemmed either from leasing "its" lands to the élites among the peasantry, or else had its peasants work under corvée labor.[5]

The colonial and postcolonial periods both witnessed major uplifts in land ownership. To begin with, the venerable iltizām system broke down completely and was gradually replaced—as a direct outcome to the 1858 land code—by direct ownership. The large amount of waqf properties either de facto became state properties, or else their management was relegated to the ministry of awqāf. By the 1940s and 1950s the majority of the Arab states had abolished the private family waqf system (Syria did so in 1949, under the brief but eventful military interlude of Husni al-Za'im), which eventually led to public sales of hitherto blocked properties, or their "restitution" to their original private beneficiaries (assuming, of course, that they did bother to reclaim them), or else their de facto assimilation into state-owned public domains. The land reforms of the 1960s inaugurated the transfer of small- to mid-sized properties to the peasantry, granting them full ownership rights, while at the same time considerably reducing large-sized

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[4] On the difficulties of writing a history and sociology of land and labor for a region like Akkar, located in the north of Lebanon and bordering Syria, see Michael Gilsenan, "A Modern Feudality? Land and Labour in North Lebanon, 1858–1950," in Tarif Khalidi, ed., *Land Tenure and Social Transformation in the Middle East,* Beirut: American University of Beirut, 1984, 449–463.

[5] Timur Kuran. *The Long Divergence. How Islamic Law Held Back the Middle East,* Princeton: Princeton University Press, 2011, 79, notes that "In contrast to Europe, no aristocracy developed in Turkey, or the Arab world, or Iran. Although the prevailing inheritance system was not the only factor at work—expropriations and opportunistic taxation played important roles—what matters is that it contributed to wealth fragmentation." In contrast to Greater Syria, and the bulk of the empire, Lebanon did, however. develop an aristocracy, thanks to a multitude of social and political conditions, hence the thesis, propounded by some historians (e.g. Iliya Harik), on Lebanon's presumed "feudalism," which at its core assumes the existence of an aristocratic group.

properties—particularly in the northern-eastern Jazira region, which produces three-fourth of the Syrian grains, and which has been living under dire drought conditions in the last decade. With all that, large land ownership has nevertheless managed to persist, albeit with varied proportions across the Syrian territory. For instance, in the region of concern to us in this study, that of Aleppo, Bab al-Hawa, and Idlib, large ownership could not be as extensive as that in the Jazira region, due to the nature of crops, resources, and the proximity of cities to rural territories.

The land reforms and the subsequent "socialist" policies of the Baath did not prevent, however, frictions from erupting on both sides—from landowners and peasants. In fact, one of the most poorly documented chapters in Syrian economic rural history are the strategies that both sides have deployed since the 1960s to safeguard their rights. Thus, while peasants pressed for more ownership and better control over their resources, landowners for their part attempted to stick to what was left of their properties after the reforms. At times confrontations turned nasty, if not bloody. In the mid-1990s, during a summer visit to Aleppo's Palace of Justice, I was informed by a descendant of the Jabiri family, which were among Aleppo's most prominent notables under the Ottomans, distinguished with the Kawakibis for their long line of muftis, that some of their peasants, with the hope of getting better deals from them (including, presumably, more properties), had set their crops on fire. The Jabiri in question, having filed a lawsuit, was that day in court to follow up his grievance: "Such cases have become way too common, and the legal system is too slow, too cumbersome, and so corrupt to be totally inefficient on such matters." How common are such cases of peasants acting on their own behalf against their landlords remains unknown. What is more certain, however, is that in the triangle of Aleppo, Bab al-Hawa (along the Turkish border), and Idlib, incidents of violence between landlords and their peasants did accelerate, albeit at an irregular pace. In such regions of high fertility, and unlike the grain-dominated areas of the Jazira region where properties are large but, as a result of intense mechanization, do not require much manpower, the labor of peasants proves more than necessary on lands where olive trees and various vegetables and fruits are cultivated. Manual labor would always be needed whatever the status of technology. Moreover, the lands, in addition to being much smaller than the grain-dominated areas of the Jazira, need constant irrigation and labor. Some landlords, instead of adopting an "arrogant" attitude, have settled for less, meaning that specific arrangements were worked out with their peasants: for instance, the sharing of crops, or the allocation of parcels of lands whose produce would be fully at the disposal of the peasant laborers, without proceeding, however, with any transfer of property to the latter. A descendant of the Kikhiya family (also among Aleppo's ex-Ottoman notables), maps in hand, explained to me how in the 1990s he worked out several successive deals with his peasants in their lands close to the Turkish border. He had marked on his large detailed maps each kind of plantation with a different color, highlighting the shared produce between himself and his laborers: "I had to do it that way in order not to mix things up. Now my son would pick up from where I've left without any problem."

Anatomy of a murder scene

[C9–1] Muhammad Saleh Tirmanini was an accomplished lawyer and landowner. The

Tirmaninis, who originate from Tirmanin along the Syrian–Turkish border, were under Ottoman rule a family of notables living from the rents of their iltizām. Along their landowning duties, they contributed in a number of muftis, lawyers, and judges. Landowning was thus to them, as for a number of the upper urban middle class, a source of rent which provided them with a more or less stable income in parallel to their embracing some of the liberal professions. Muhammad Saleh was apparently sure of himself that day of 24 May 1995 when he picked up in his car a policeman from the small town of Muslimiyyah, in the vicinity of Aleppo, where the main prison is located, having already secured the loyalty of two witnesses.[6] For decades he suffered from bad relationships with his tenant farmers, using both the civil and penal courts in Aleppo to chastise them. As a professional lawyer he was well aware of the vicissitudes of the court system. A court convocation for a witness to show up at a hearing on a particular date could take forever to materialize: either the recipient would allege that it was lost in the mail, or that it came too late to its destination, or else the witness would manage to rebuff it. To speed up the process Muhammad Saleh decided that he would personally deliver to its destination the court injunction regarding a truck that was seized from the defendants and whose sale date was now set. But was he aware of the risks he was taking, and how inflammatory his attitude was? To begin with, the defendant Rahhal al-Hamd (b. 1931) had already been imprisoned in relation to a previous dispute with his landlord Tirmanini. To add insult to injury, when Rahhal, who at the time was a tenant farmer to Tirmanini, saw the policeman with the court order in his hand, he hadn't been out of prison that long, barely enjoying few nights in the comfort of his own home. He was furious at what he imminently perceived as another unjust provocation and tore apart the court order: "Only two days had passed since I came out of prison, due to a complaint from the same lawyer [Tirmanini] regarding the **usurpation**[7] (*ghaṣb*) of a property and a previous dispute between us. There were lots of suits regarding the lands on which we labor, and from which the lawyer [and landlord] had been attempting to force us out." That was stated by Rahhal to a prosecutor a couple of weeks in the aftermath of Tirmanini's murder at the hands of Rahhal's own son. Even though the land issue serves only as a backdrop for the murder, and is for all purposes useless when it comes to determining who the killer is and how the murder was executed, it is indeed the only element that places the case in the framework of the class struggle over land ownership. For those who interpret law and the judiciary apparatus within a structuralist model where the dominant "bourgeois" class would exercise its hegemony over the rest of society, they would undoubtedly look at this case in terms of a peasantry receiving additional chastisements from a subdued judiciary apparatus. Thus, in addition to their de facto domination by capital and the commercialization of land, laborers and tenant farmers are disciplined by the judiciary whenever they attempt to "appropriate" some of their masters' capital—for instance, in claiming a land as their own. However, the judicial process, even if biased towards landlords, is not that simple, as its logic defies class struggle.

For over 20 years Tirmanini fought his opponents by bringing them to justice. At a time

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[6] The following account is solely based on the report drafted by the referral judge in Aleppo in 1996 (case 478/1/1996), when the investigation was in its early stages, and on an incomplete file, which lacks subsequent developments, including the final ruling.

[7] Emphasis is mine.

when his opponents felt that he was trespassing his limits, they went after him. Were it not for the lands, the killing would certainly have not occurred. In itself the land conflicts, having spanned over two decades, are irrelevant to describe a crime that did not seem prima facie premeditated and was planned and executed in a state of fury within less than an hour. On the other, were it not for all those past and present conflicts, the crime would certainly not have occurred. We have noted earlier what the defendant Rahhal (the father) said to the prosecution, and that's one side of the story. The other side was narrated by the victim's son Ghalib to the prosecution (27 August 1995): "20 years ago my deceased father purchased land in Handarat from the Jabiris, and there was an agreement with the peasants that they would have their own parcels in lieu of their labor. Among them was the defendant Rahhal [the father], who was not related to the land purchased by my father, but who managed an exchange (*tabādul*) with some of the peasants working on that land, and then claimed that he enjoyed a right (*ḥaqq*) over my father's land. He started usurping (*ightiṣāb*) with his sons parts of our lands, which incited my father to initiate several lawsuits, some of which led to court rulings in 1994 for the crime of **usurpation**. As a result, the defendant Hasan b. Rahhal [the second son] broke my father's arm and was incarcerated for two years for having done this." We roughly understand that (i) Tirmanini, instead of paying his peasants for their labor, allocated them with parcels of lands for their own use in what looks like sharecropping contracts, even though it does seem that the property rights remained his own; (ii) some of Tirmanini's peasants unlawfully "exchanged" their rights with the Rahhals, which (iii) impelled a series of suits against the latter.

The referral judge, in his preliminary 21-page report of the case on August 1996, over a year after the killing, played on two stances. On one hand, he was eager to situate the crime within a *longue durée* perspective, one punctuated by long feuds and suits between the two parties, while, on the other, he was convinced that "**the killing was the outcome of its moment** (*walīdat sā'atu-ha*), and wasn't prepared beforehand, because the **intention to kill** (*niyyat al-qatl*) grew up in the defendant 'Abdul-Hamid [Rahhal's son, b. 1964] once he realized from his father that the victim has dispatched a policeman to inform him of the date of delivery and sale of their seized truck for the benefit of the victim. That eventually fostered hate and anger in his spirit, pushing him immediately towards his criminal act. All that points to an **intended *qaṣd* killing**, punishable under article 533 of the penal code." The judge argued that the crime was neither planned beforehand nor premeditated, but intended: "the defendant used a gun, which is a tool of killing in its very nature, and then pointed it towards the victim's head, which is a vulnerable location (*makān qātil*) in the body, then fired several shots on the victim's head until he realized that he was dead." In sum, the broader 20-year perspective of intense rivalries seem to have been dismissed altogether in favor of the "moment" of the killing itself. The referral judge for his part defined *'amd* as "a special category of killing, which should be proven independently, and discussed clearly. *'Amd* occurs only when the criminal premeditates what he intends to do, attempts to foresee the consequences, insists upon committing his act, **plans its causes while having plenty of time to release the tension and anger in him**. He then comes and commits his act **calmly**, with a clean mind, so that if someone commits a crime without that ability to plan and think beforehand, with all that anger and excitement into him, that is **definitely not *'amd***."

Consider how for his part the killer ʿAbdul-Hamid (b. 1964) formulated his case during his police deposition on June 1995, the day of his arrest in Aleppo, a week after his father Rahhal had given himself up to the police and "confessed" for "his" killing Tirmanini out of rage, and how such a documentation of the crime scene "matches" its non-premeditated aspect, as elaborated by the referral judge. The police eventually dismissed Rahhal's "confessions" since they did not match those of witnesses present at Tirmanini's farm. The son's account begins with his father's anger and rage upon receiving the court order from the policeman, feelings which he then alleged soon got into him: "When I saw how distressed and angered my father was, I've gotten very much affected by the incident, and **the anger and stress were now into me**. I went into my room and seized my 9mm gun which I normally keep under my mattress. I got out of the house…in the direction of the camp (*mukhayyam*) with the sole purpose of looking for Muhammad Saleh Tirmanini and kill him as soon as I'll run into him. The reason behind my anger, and which fuelled my intention (*niyya*) to kill, was the number of lawsuits that Tirmanini had against me, my father, brothers, and family, which only left troubles (*irbāk-āt*) behind. I wanted to convince him to **negotiate** with us regarding the suits on the land. When I reached the camp, I was in this strong emotional state of anger, and with the intent to get rid of Tirmanini, because I was convinced that once I would kill him and get rid of him, I'll then put an end to these suits and formalities." Statements like this are read by the referral judge as a sign of non-premeditation, of an act that was "improvised" "on the spot," without much thinking and planning. In other words, the abstractness of the penal code, which clearly cannot come to terms with a *concrete* definition of premeditation, finds its illustration in statements like these, which are uttered by the protagonists, picked up by judges in their reports to the court in order to frame the case in one way or another, which in this instance was non-premeditation.

The return of the repressed

In a way similar to our second crime below (C9–2), the son would take his father's mantle, an act which he realized he could only fulfill by killing Tirmanini. Between the father and Tirmanini, between landlord and farmer, was a long line of hostility, which in juridical terms was acknowledged as "usurpation." The tenant-farmer was repeatedly accused of "trespassing" over and "usurping" the lands of Tirmanini. Landlord and farmer were both located in an area with strong kin bonds, and with kin goes honor and shame, values that both parties ascribe to. Hierarchies in rural areas are even stronger than in cities, and whenever political relations are not there per se, relations of domination take precedence: the inferior status of women, the subordination of youth to elders, and the development of a class of landowners, which have for the most part inherited their status from Ottoman times, and which are not an hereditary aristocracy per se (since no political role is assigned to them). Moreover, in a society where politics is hijacked through the one-party system, what translates on the ground as "politics" are anti-Baath underground affiliations with "nationalist" ambitions; for example, Kurdish separatist movements located in northern Syria (see the fourth case below, C–X).

Tirmanini's behavior did not seem much concerned with appearances; but it remains

uncertain whether such behavior was part of his own personal idiosyncrasies, or the community, exacerbated by decades of Baathist agrarian reforms and one-party politics, was at the bottom of its social relations. Tirmanini's behavior couldn't have been worse, or at the very least could not have come at a worse moment. First, he continuously provoked his laborers by bringing them to justice. Such a recourse to justice, which in the case of Tirmanini seems to have been systematic, looks indeed strange in the context of a small rural community tied together by kin and honor, and by the intricacies of class hierarchies between landowners and their laborers or tenant-farmers; all of which was kept by a façade of proper appearance, which primarily implied respecting the codes of honor. In short, even if kin, religion, land, labor and the (capitalist) market all share their infrastructural material basis, they would crucially need that façade of an appearance in order to come to term with the deep economic inequalities that they continuously engender—and it is precisely honor that plays that supreme role of grand arbitrator—Lacan's Master–Signifier—the big Other, the individual and collective superego, which regulate ideology's superstructural role.

It was as if, therefore, Tirmanini's behavior, by continuously harassing his tenant-workers through court action, consciously intended to break with that veneer of proper appearance and honor codes that regulate society's ideological superstructure. But why would he do it that way? Tirmanini behaved as if he was situated in a bourgeois liberal society, split between a formal-legal equality sustained by judicial and political institutions, on the one hand, and class distinctions enforced by the economic system on the other. In other words, he behaved like an anonymous bourgeois landowner faced with an anonymous tenant-farmer whom he knew only by name, and to solve his grievances with the latter he repeatedly subjected him to anonymous court injunctions. One of the witnesses who happened to be in Tirmanini's car the day he was murdered, and whom Tirmanini hoped that he would "witness" Rahhal's "reception" of the injunction, recounted the following to the police: "After we dropped the policeman, Tirmanini went on to check farmers on his lands, and we reached the junction where a pharmaceutical factory is located. He there met with Abdullah Adib with whom he had fostered a friendship. He saluted him and asked him, What are you doing here?, to which the other replied, I'm working on the crops. Tirmanini then notified him that 'You shouldn't work on the second parcel of land, because **I've got a ruling that states that the crops are all mine**.'" What is even stranger in Tirmanini's anonymous motto is his insistence upon a hand-delivery of the injunction, a gesture that in itself already breaks all the rules of "anonymity": in this instance, the injunction, instead of being delivered by a policeman on behalf of a court authority, was delivered by Tirmanini himself accompanied by a policeman whom he personally picked up, in the company of two "witnesses," in his car. The "witnesses," we are told, both of which were personally hand-picked, freaked out at the last moment, out of fear of clan reprisals, realizing that all honor étiquettes have already been irreversibly damaged: "**When we were asked to act as witnesses, we refused, because we did not see a thing**." At the very least, therefore, Tirmanini's behavior (which, based on witness accounts, was across the board, hence not limited to that fateful day only) belonged to two worlds: one that is bourgeois and impersonal, where people behave as if they don't know one another, and where in case of a grievance the matter would be expedited to the official institutions (e.g. the courts) rather than

personally handled; and on the other, as if to add insult to injury, he decides to deliver the injunction in person, pick up his "own" "witnesses," both of which, it seems, belong to rival clans to the perpetrators. Conscious of all the honor codes, Tirmanini therefore opts for breaking them one by one: first, instead of personally handling matters of property with his tenant-farmers, he opts for the impersonality of the courts, a step that in itself breaks all honor codes: "I'll not confront you directly, because you're not worth it (you're unworthy of such a gesture); I'll therefore leave it to the state courts." Besides breaking the traditional honor codes, the big shift here was not only from personal to anonymous, but more importantly, from personal (family) to state. Second, and in spite of the big shift—depersonalization—Tirmanini insisted on a mark of personalization: he wanted to hand-deliver the injunction; pick himself the policeman who would deliver it—and the two "witnesses" who would witness on his behalf the delivery event—all of which betray the conventions of bourgeois impersonal behavior. Even his choice of two "witnesses" from a clan rival to the Rahhals seems a bit odd: Did he really think that they would take the risk, certify that Rahhal did receive the injunction (and that they saw him with their own eyes tearing it and refusing to admit it), without the fear of retaliation and counter-retaliation? In sum, in such milieu, the whole idea of "solving" a conflict through the official institution of the judiciary seems out of place; it was as if Tirmanini, himself a no stranger from the locale, lost touch with his own background; or else it could well be that with the nation-state attempting its hegemony over rural areas, beginning with the land reforms of the 1960s, it became normative to let (the impersonal) state institutions mediate conflicts. But does the mediation of state institutions imply impersonality and fairness?

On Rahhal's side, his overall behavior reflected that the sense of honor must be publicly displayed to receive recognition. It was not simply a question of retaliating against Tirmanini, but rather of building a public consensus against his misdeeds, his mistreatment of the peasantry, and his usurpation of their lands and sharecropping rights. Rahhal therefore vaunts that he would take care of all that, even though he won't be able to do it on his own, first due to his age, his piety as a pilgrim, and because his has two sons who should be entitled for the task. His alleged boasting, *publicly* at a wedding, that "his girls" would do it (the claim was allegedly made on two separate occasions), because the males are not real men and are not up to the task, is a further indication that honor needs to be displayed through well articulated strategies: Rahhal had to find an excuse why the retaliation against Tirmanini had to be constantly "delayed" and kept on the margins with all the setbacks that he had suffered with his two sons (all three were repeatedly imprisoned for usurpation of property, their pick-up truck seized, and their control over "their" properties was scaled down in the aftermath of failed lawsuits). When Tirmanini's killing was finally over, Rahhal acknowledges it immediately, first by giving himself up to the police, and then, upon his son's arrest and confession in Aleppo, by admitting that it was indeed his son who did it: honor killings must be acknowledged by the protagonists themselves in order to be "honored" from non-honor killings. As to Rahhal's son, having seen his father pledging a public persona against Tirmanini, he was left but with that one option to act in the way he did that fateful day—the way his father nurtured him to act as a man; otherwise, he would have dishonored himself. When the symbolic ideological order fails to provide that veneer of a façade to deeply entrenched

social hierarchies, murder as an imaginary act temporarily restitutes that order.

The mantle of the father

[C9–2] Violence in such societies does not come all too unexpectedly. In our second case, both assailant and victim were well armed and ready for a fight, but neither one would have known beforehand who *specifically* his opponent would be.[8] The assailant's family had allegedly suspected that one or more persons were stealing green plum (*janirek*) from their lands located between Idlib and Armanaz. On a Friday night 6 May 1988, after the Ramadan supper, the assailant decided to check up on his own the veracity of such allegations. He said to have driven alone that night towards his family's properties, and turned off his lousy motorcycle prior to reaching destination. He even took his shoes off to make less noise. There he saw, still according to his own story, an unidentifiable person collecting plums from one of their properties. As soon as he hid in an adjacent land to observe the scene, he shouted towards the unidentified person "Who are you?," to which the other replied with gunshots. When he realized that his opponent was armed, he in turn shot a couple of times "up in the air" as a warning sign. But when nothing came from the other side, he panicked and left, returned home and *informed his parents*. He then went back to the scene with *family members* and flashlights, and when they all saw the dead body (there was confusion as to whether the victim was identified prior to the coming of the police), he decided, accompanied by his father, to inform the Armanaz police. He was arrested and taken to court for voluntary (*qasd*) homicide. An Idlib court ruling surprisingly cleared him from any wrongdoing, a sentencing that was later revoked by the Damascus Naqd, only for procedural matters.

The defense lawyer Michel Ghannum noted on behalf of his client Fasih b. Tawfiq Jummo (b. 1966), that "the defendant is not one of those who seek harm or even quarrel with people, since he is **a student at Aleppo University**, and fateful contingencies had him shoot critically someone he did not even know, **without intention**, while attempting to **defend himself** in the first place, and protecting his belongings (*māl*)." The defense's *modus operandi* was already set within a three-pronged démarche that would develop throughout the trial:

(i) The defendant was a young university student in his early twenties, with no criminal background. His college education was also underscored by the prosecution judge who had trusted him for drawing a map in lieu of an on-scene reenactment of the murder. College education is therefore paramount to trust.

The prosecution judge who was investigating the murder in 1988 in the Armanaz region, part of the county of Idlib, gave further credibility to the education thesis. Keep in mind that the crime occurred in labored terrains outside Armanaz, and that the area is mostly composed of small towns and villages with strong kin bonds. The judge at Kafartkharim,

[8] Based on an Idlib Jinayat file #18/1990, Jinayat ruling #70 on 1 December 1990, and the Naqḍ ruling which revoked that of the Jinayat, #78/96/1992 dated 3 March 1992; follow up to the Naqḍ ruling unavailable; the defense lawyer died in 2001, and according to his assistant their office dropped the case by then, before the Jinayat may have revised its ruling.

fully aware of the geography of the area and the importance of kin and family in such a milieu, overtly stated that it would be unsafe for the presumed defendant, who had fully confessed his crime from day one, to perform an on-the-scene reenactment of his "murder." In the handwritten examination log with the defendant, the judge notes that,

> I demanded from the defendant to draw an explanatory map (*mukhaṭṭaṭ tawḍiḥī*) of the event (*ḥādith*), because in the examination dated 7 May 1988 [a day after the murder], he manifested his readiness to reenact the murder. But considering the necessity of safety (*ḍarūrat al-amn*), and to keep the defendant [safe] from the parents [*ahl*] of the victim, in addition to the inability to go to Armanaz [where the crime occurred a couple of days earlier], we have therefore summoned the defendant to draw an explanatory map of the event, considering that he is a mid-level college student. He also felt that he should draw such a map, and spontaneously noted that my average is 42 out of 50 in drawing at the college. He went on and produced an explanatory map of the event, then signed it in our presence.

The judge also noted that during the investigation screaming noises were heard from the outside, whose source could either have been an adjacent room or the garden, and to which the defendant overreacted by standing up, quickly peeping through the window, and then hiding himself behind the wall: "I'm afraid for myself," he said to the judge who was puzzled by his behavior. If by their own admittance neither police nor prosecution felt safe enough to accompany the defendant to the murder scene, fearing the pernicious effect of the victim's kin, in an operation that should have been pure routine, they must have also felt pressured all along their investigation for the kind of "truth" that was to emerge. And so was probably the Jinayat throughout its hearings. Everyone knew that the murder had to be reenacted, that an on-scene visit was necessary and could provide essential clues, yet everyone was simultaneously aware of risks and perils. What the judge cautiously dubbed as "the necessity for the safety" of law and order, all of which implying a community regulated by *"amn,"* are in effect normative values that are self-regulated by community bonds. Such communities, composed of *ahl* groupings, have self-regulated their modes of violence through shame and honor.

(ii) Victim and assailant did not know one another, hence, neither one could possibly have developed a personal grudge against the other. Consequently, the defendant could not have premeditatedly shot someone he did not know, and whose identity he could not detect in the dark.

(iii) The maximum punishment for a non-premeditated killing (*qaṣd*) should be no more than 15 years. The defense would play with that maximum and then argue from there that even a *qasd* killing would be too much a punishment, considering that the defendant was in a position of pure self-defense.

(iv) Having committed neither a *'amd* (premeditated) nor *qaṣd* (manslaughter) killing, the defendant should not therefore be convicted of voluntary manslaughter and freed immediately. In sum, the defense's strategy did pay well, as the Idlib Jinayat vindicated

the defendant of any wrongdoing on December 1990, a year and a half after the killing.

The defense would proceed through a juxtaposition of several elements in the Penal Code, to which were added a line of interpretations from major Egyptian, Lebanese, and Syrian scholars and jurists. Article 187 is a classical beginning for lawyers as it defines "intention (*niyya*)": "Intention is the will (*irāda*) for committing a crime as defined by the law." The key term of *irāda* should be taken strongly here as "will" or "volition," rather as simply "wish" or "desire." In effect, the section on *"niyya"* is part of the second chapter on "the moral element of crime (*'unṣur al-jarīma al-ma'nawī*)," and hence the interest here is in the moral, incorporeal, or immaterial and abstract elements in crime. In other words, following a long European tradition, crime ought to be looked upon in terms of its various "causes." Article 188 identifies an "intended crime (*jarīma maqṣūda*)" as an act that the doer intended, in the sense that "in case the doer had anticipated its happening, he assumed the risk." Even though the penal code proceeds at explicating in several subsequent sections the implications of *qaṣd,* those articles remain among the most controversial and have been subject since the code's inception in 1949 to numerous professional and scholarly interpretations. The defense quotes several Lebanese and Egyptian authorities, among them Hammud Najib Husni's *Sharḥ* of the Lebanese Penal Code, which differentiates between a "general motive (*qaṣd 'āmm*)," where the "material" (external) conditions would be accounted for, in conjunction with the "private (internal) motive (*qaṣd khāṣṣ*)," which must focus on "the will to kill the victim." A similar argument is articulated in the more authoritative five-volume *Mawsū'a Jinā'iyya* of the Egyptian Jundi Abdel-Malek: "a private intentional killing implies the will of the assailant to kill his victim and finish off his soul." (5:697) In the defense's bold strategy the original argument was that the defendant could not have developed such a "will" towards someone he had never met, and whom he did not even see while firing his precautionary shots. The defense therefore urged that his client be exonerated under article 536: "A person who is responsible for the death of another without an intent to kill, either through hitting, or the use of violence or force, or any other act that is intended, should be punished with forced labor for a minimum of five years."

Interestingly, the plaintiff's advocate, representing the victim's son, not only argued that the killing was a premeditated *'amd,* hence subject to the death penalty, but, in a surprising move, he broadened the list of accused to nine, all of them from the Jummo family, including the defendant's own mother. The strategy aimed at pointing out that even if the main defendant may have acted solo, he nevertheless came back to the murder scene *in the company of relatives* for no other purpose but to temper with evidence. The plaintiff's argument therefore aimed at a general accusation: that the murder was planned beforehand by the Jummos, executed by the assailant, finally the Jummos went to the murder scene in a final gesture of support towards their assailant-savior, and tempered with evidence in order to make it look as if the victim was hiding his alleged theft. Even though the plaintiff's reframing of the case would only encounter deaf ears at the Jinayat, the tribal (*'ashāyir*) ethos that the plaintiff attempted to inject merits closer inspection. Even if the plaintiff's advocate strategy was to reverse that of the defense and show how each one of the nine "accused" were implicated in one way or another, the arguments, at least for our purposes here, are not that crucial. In fact, whether we follow the

prosecution strategy, and argue that the victim (a retired policeman) only went hunting that night, after his Ramadan supper, or go for the alternative defense's view, that the retired policeman went to steal green plums from the defendant's property, what is important is to see how one such view, that of the prosecution, framed the conflict as a "family dispute," while the alternative view placed it as one between two individuals, where a banal theft led to a bona fide shooting: had the victim properly identified himself in good faith, the shooting would had been averted.

But even if the prosecution arguments did not stand that well upon the scrutiny of the Jinayat, they still do have that merit, however, at pointing to the concealed inter-family feuds, which are not only characteristic of the rural regions and small townships, but of the peripheral neighborhoods in major cities like Aleppo and Damascus as well, which act as de facto go-between between city and countryside. In such conditions, the judiciary would act preemptively, attempting to limit the number of defendants as much as possible. The larger the number of defendants, the harder for the case to come to a close.[9]

In this instance, the Jinayat shunned the dubious cycle of multiple defendants, limiting its strategy to two individuals, one on each side, as the allegation that the defendant's family may have tampered with the murder scene only few hours after the assailant shot his victim, were deemed unfounded. The defendant, who at the time was a student at Aleppo University, and who came over the weekends (from Thursday evening to Saturday morning) to visit his family in Armanaz, was notified *by family members* that an incognito person, maybe more than one, was (were) stealing fruits from their lands. Even though the defendant only visited over the weekends, he immediately decided to take action. One would suspect that the Jummo family knew their opponents (the Dasuqi clan) all too well, nurtured suspicions towards them, identified possible "thieves," but no one in Armanaz dared for that extra mile. (It remains unknown whether the two families, Dasuqi and Jummo, had previous feuds on record, and whether the killing was part of an ongoing feud. A Dasuqi witness, upon his interrogation, pointed to at least one inter-marriage between the two families.) As with our previous case, it was up to the son to take over his father's mantle, choosing to test his opponents by upping the ante. It was, indeed, a classical rivalry between father and son, what René Girard[10] has labeled as a

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[9] Thus, for example, in a late afternoon fight (*mushājara*) on 13 May 1998 in the village of Umm al-Karamil, in Jabal Sam'an, between the tribes (*'ashāyir*) of al-Turshan and al-Khawalidah, machineguns and automatic firearms were used, which led to "more than one person intentionally killed." A case was finally opened in Aleppo in 2002 (#346/1) with no less than 81 defendants, and obviously it would be long before it ever comes to an end (assuming there is an end in sight). It is important to note that the Jinayat cannot try its 81 defendants all in one row in a quasi-class-action lawsuit, but only individually as part of a single prosecution case. It therefore begins to define its case as follows: "The crime is one of intentional killing (*qasd*) for more than two persons, with no knowledge of the individual doer (*ma' jahhālat al-fā'il al-mustaqill*)." And its adds by way of clarification: "The case is one of total participation in intentional killing (*qasd*) involving more than one person, as part of a collective fight (*mushājara jamā'iyya*), in which they participated." The most obscure part is the expression "with no knowledge of the individual doer," which could either mean that those who participated in the fight and killings did not target anyone specifically, but shot on the basis of harming the opposing clan as-a-whole, or else, that the prosecution has been unable—or is unwilling—to identify individual killers, because it is faced with a clan-like group killings, where even *participation* (*mushāraka*) in the fight counts.

[10] *Le Bouc émissaire,* Paris: Le Livre de Poche, 1986.

"crise mimétique," where the son knew all too well that there's a price to be paid to assume his father's role. Thus, even though the defendant had several brothers (possibly four, but it's unclear who was the oldest), he was the one, for reasons that remain unclear, to assume the fate of a family rivalry that would soon end in violence. But if the father's mantle was adopted in a violent murderous act,[11] the son has set himself in a different path than his father. First, at least in the eyes of the state, he has been labeled as suspect and then as murderer, even though the charges against him were minimal. Second, the young generation, which opts for the city to find work, enroll in college, or simply to live there, is less subject to their parents' gaze than even those of the same age category, but already living with their parents in the city. We've already seen how in the case of another college graduate, Sabiha Dal'un, the movement from a rural milieu to the city and back has also triggered a murderous desire—to get rid of a husband she found too provincial—even though in her case the verdict was no less than the death penalty. However, what the two Jummo and Dal'un cases have in common is that parallelism of the *"crise mimétique,"* namely that both had to commit a murder to assume first the father's or mother's mantle—that is, to accept their elders' gaze first—then go through the process of punishment by means of the state's judiciary, and in the case of Jummo, who survived the ordeal, the mimetic act enables him to assume his father's mantle—but with a difference: the norms are different, and the society that he's into now is much more differentiated and stratified as an outcome of its integration within a broader (capitalist) economy. That is to say, Jummo is into a much more individualized and privatized society, where the one-party system and the authoritarian state only keep a formal lock on the process of differentiation, hence the norms of honor and kin are at least partially obsolete.[12] In the case of Sabiha Dal'un she "came back to society" through the death penalty (C5–5). In both instances, therefore, the acceptance of a new normative order comes through murder and the mediation of a third party—the state.

Fasih came to Armanaz on a Thursday evening, just in time for the Ramadan supper with his family, and the following day, right after the nightly *Tarāwīḥ* Ramadan prayers (a point underscored more than once by the defense as an indication of the defendant's *taqwa*), he picked up a gun (an unauthorized 7mm) from his family's home and drove on a motorcycle towards their properties. (In subsequent versions the defendant corrected picking up the motorcycle from his parents' home, claiming that he found it on another location while heading towards his family's lands.) All along he had that hunch that someone would be there calmly stealing the plums from their own lands. He expected that person to be armed, so he too brought a gun, and prior to reaching his final

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[11] Foucault's idea apropos Pierre Rivière that the latter had to commit patricide *first* in order to *then* perform the act of writing—the crime of writing—where he would in all safety—and from the distance of his prison cell—document his parricidal act. Which in itself is a Hegelian–Lacanian idea on language as the death representation of the real, which in its essence is limitless. Every word is like a coffin on reality.

[12] The current revolts in 2011–13 have originated and maintained a strong presence in peripheral rural areas and their affiliated cities (Dar'a, Hims, Hama and Idlib). Which may indicate that the youth in those regions, trailing behind in individualization, have to revolt first—against the state as an anonymous third-party (the big Other)—to accept the normative changes in their society by negating them through violence. Hence, *en dernière instance,* the revolts are set against the socio-symbolic normative order of their elders rather than against the state per se.

destination, it crossed his mind that, with the motorcycle's odd noise, the thief might hear him coming. So he turned off his noisy bike, and did the last few meters barefooted. In a way he was lucky, since he found what he had already suspected: someone was stealing their plums. He hid and summoned the other to identify himself. But as soon as the unidentified other started shooting, he swiftly replied, specifying to the investigative judge at Kafartkharim a day after the incident, that he did so by "shooting with my right hand up in the air while lying on the floor." He intended it only as a warning sign, but as he realized when revisiting the crime scene a couple of hours later *with his family,* the "thief" was dead. Again, the defendant straddled over several versions. In his first deposition he claimed that he fired his shots up in the air, left the place immediately with no knowledge as to what happened to the other person, went home, and his family summoned him to immediately give himself up, which he did. But when interrogated by an investigative judge a couple of days later, he recreated the whole episode of *family members accompanying him to the incident scene*, where, using flashlights, they all realized that the other person was lying dead. But he fell short of specifying to the judge whether he or his entourage were able to identify the body, and strangely, the judge did not press him on that issue either. (The judge did not press him either as to whether anyone among his family members encouraged him for his tough stance.) In his earlier shorter version, he claimed that after firing in the air, he panicked and ran away, not knowing whether the other person was dead or alive, or whether he was "a foreigner (outsider) or someone close (*gharīb am qarīb).*" But surely the identity of the victim must have been the most crucial issue to have preoccupied the defendant and his family. Had the victim been an "outsider," meaning someone poorly integrated into the local community and with no strong kin bonds, the defendant would have surely felt much safer. The defense, however, kept playing on the notion that the identity of the victim remained unknown to the defendant, which helped at underscoring that right from the beginning there was nothing premeditated. There was therefore a division of labor operating between the young Jummo and his family: he commits the murder, but they all come together for the body's identification—for the certainty of death. The pieces of the puzzle now come together like this: (1) The young Jummo committed the act, but without knowledge as to who "the stranger" on the other side might be; there's that uncanny uncertainty as to whether he *was* coached by his family to do what he did; (2) The death of "the stranger"—if not his identity—was confirmed in the presence of members of the Jummo family; (3) Which amounts to a crime for which the young Jummo was not fully "responsible," looks like a shared experience, and where the main protagonist is redeemed while taking over his father's mantle; (4) Such a takeover is, however, more a sign of independence than subjection to family values, as the cultural norms of society are shifting in another direction: that of anonymous individualism, of a bourgeois society integrated into a global market economy, and a universal legal and political order which buffers the deep economic inequalities.

In his final revised version, which the Jinayat seems to have endorsed, the defendant claimed that, *accompanied by his father,* he gave himself up to the Armanaz police. In all the detailed accounts to the police, prosecution, investigating judge, defense, and finally the Jinayat, it remains a mystery how much of the young man's decisions *were* his own and which ones were collectively decided. Did he decide *"on his own"* to pick up a fight

with the "thieves" next door? Did he decide *"on his own"* to give himself up? Interestingly, the investigative judge quoted him as saying, "my father took me to the police station in Armanaz at night with my gun, and I told the police what happened." "My father took me," which stands in sharp contrast to the "I," could be literally taken as implying an action summoned (or at the very least proposed) by the father, to which the son finally dutifully caved. In any case, that "spontaneous surrender," as soon as the victim had been identified, de facto transformed the murder into a quasi-honor-killing. For one thing, the purpose was to show that there was no malicious intent, but only a rightful self-defense. For another, in a way similar to an honor-killing, the real purpose was to craft an action that would save the family from the shame imposed by an opposing clan. The defendant seems to have had deployed his best efforts to underscore the fact that there was neither a premeditated crime (total lack of knowledge of his opponent), nor did he (or his relatives) fool around with evidence at the scene of the incident. And as the investigating judge noted, he even came to the interview barefooted with only his socks on, claiming that "he took his shoes off so that they wouldn't make any sound at the contact of the earth, and left them over there." There couldn't be a better evidence in support of the defense's claim that "as soon as the defendant fired his shots, he ran away without ever coming near or approaching one step towards the thief." He could have added that "the defendant had even no time to pick up his shoes."

The Jinayat therefore opted not to endorse the prosecution (which urged the Naqḍ to revoke the Jinayat's ruling), clearing the defendant of any wrongdoing based on article 209 of the penal code: "No one shall be punished unless he performed his act consciously and willfully." (We need not go here into the technical details regarding the two guns, how they were used, and the kinds of shots that experts thought were fired based on the empty bullets.) In an ironic twist, the original conflict, which was between the two patriarchs of the respective families, soon got transferred—*through the killing of the opposing family's head*—to their sons: one of them was the assailant–defendant, while the other metamorphosed into plaintiff. In other words, the young men, who were anxiously awaiting for their lifetime chance to hold the mantle of their elders, did so thanks to a non-premeditated killing. Men have to display a sense of worthiness towards their elders to indicate to their kin that they *are* into the honor game, which might often entail, like in youth gangs, a recourse to violence—even if that implies only symbolic violence. In effect, violence is often ritualized, invoking a *rite of passage* from youth to manhood. So that, as in our case here, when the symbolic violence self-exceeds into a real killing, the judiciary steps in and does no more than reallocate social actors to their previous status in an effort to reduce further escalations of an unwanted violence. By the time of the defendant's vindication, however, the two young men had already established themselves as their families' new patriarchs.

Under such circumstances, police, prosecution, and Jinayat, all share a delicate task of social engineering, whereby ongoing negotiations between social actors have to be readjusted and brought back to their pre-violence status. That's why investigations have to be thorough and fair enough—at least in the eyes of their beholders—which partly explains why in small communities the judiciary has more work to do than in a big agglomeration like Aleppo. Interestingly, even though the Damascus Naqḍ revoked the

ruling of the Idlib Jinayat on March 1992, it did so only based on procedural matters: two of the three judges on the panel at the moment of the sentencing were not present throughout the trial and hearings. The Naqḍ noted that when two or more of the judges on the panel have changed, the procedures must begin all over again. The Naqḍ thus did not touch upon the core content of the Jinayat ruling.[13] Considering the number of years over which cases typically drag (two in this case, plus two more years for the Naqḍ ruling), it is not that uncommon for panel judges to be dropped from a case, and move to another, which creates the problem of judges approving a sentencing without having had the opportunity to listen to witnesses.

Right-of-passage

[C9–3] A crime took place on 18 March 1990 in the village of Qadiran, part of the Bab district of the Aleppo province.[14] At eight in the evening that day some of the accused in addition to other witnesses furnished their first depositions at the Bab police station. The police claimed that it received a phone call from a hospital in the Bab neighborhood informing them that a person by the name of ʻAbdul-Munʻim Muhammad Qasim with two bullets in his body is being hospitalized. The report added that a couple of persons had been accused for the crime from the same village as the victim: ʻUmar Mahmud Qasim (b. 1963) and his brothers Jamal (b. 1960) and ʻAbdul-Salam (b. 1961), all of which were the victim's nephews. It does seem, however, that it was the hospitalized victim that provided the police with their names. As soon as the police headed to the village, they contacted its mukhtar who accompanied them to the home of the accused, but found no one there. In their search for the alleged culprits, they realized that a certain ʻAqil al-Saʻdu possessed the weapon of the crime.

Since the location of the accused was unknown, the first witness to deliver a deposition was the aforementioned ʻAqil al-Saʻdu (b. 1955) who introduced himself as a peasant and head of the village organization. He claimed that at five, the same day he was interrogated, and while he was plowing his land, which was adjacent to that of the plaintiff, the latter attempted to cross over with his sheep the land of his brother Mahmud al-Qasim, the father of the accused. The accused ʻUmar and his two brothers Jamal and ʻAbdul-Salam came by and began antagonizing their uncle (the plaintiff). The witness further claimed that he then attempted, together with another uncle of the accused, ʻAbdul-Jawad al-Qasim, to mediate between the two parties, to no avail. ʻAbdul-Jawad even proposed to his brother that he uses his own land if he wishes to do so, and promised him to open a passage to him once the current season was over. But the plaintiff insisted upon crossing over his brother's property: "They've been crossing over my land, and I'll do the same with theirs." That was followed by verbal insults between the two parties, which evolved into a fight. Suddenly the accused ʻUmar (and nephew to the plaintiff) allegedly brandished a gun and shot his uncle twice. ʻAqil then claimed to have been able to dispossess ʻUmar of his gun, which he had kept for a couple of hours until the police came by. The other two brothers did not have guns, according to the witness,

[13] Follow up to Naqḍ ruling unavailable.

[14] Aleppo Jinayat case file 217/2/1994.

nor did the plaintiff have any. Once ‘Umar fired his shots they all ran away in an unknown direction, but ‘Aqil refrained from following them because he was busy whisking the plaintiff to the hospital. He then suggested to the police a couple of possible hideouts in nearby villages where the accused might have sought refuge. The police appended, however, in their report that they were able at nine that same night to catch all three of the accused and brought them for interrogation at the police station.

The details of the case look simple enough so as to promise an early deliberation. In effect, neither the victim was killed, nor was there any suspicion that the crime might have been a premeditated *‘amd.* So why did the case drag on for over six years? Was it because of the bodily injuries of the plaintiff that had to be assessed by medical teams over the years? Or was it because of the number of people involved?

Even the earliest assessment of the case by the third investigating judge came no less than a year after the crime on November 1991. The judge, who did not add much to the known facts, besides underscoring that the intent was to kill, recommended to pursue the accused ‘Umar in court and charge him with attempted deliberate *qaṣd* murder based on article 533/200 of the penal code. The judge noted that ‘Umar was arrested the night of the crime on 18 March 1990, and then released five months later on August 23 (possibly on bail). His two brothers, Jamal and ‘Abdul-Salam, even though present on the crime scene, did not participate in the shooting, and should therefore be vindicated.

But considering that ‘Umar was a runaway since his early release on August 23 (unclear circumstances), all subsequent Jinayat rulings were conducted in absentia, and that was probably the main reason why the case dragged on for six long years. While deliberating on the nature of the punishment in two different rulings, the Jinayat had to clarify a couple of issues. First, even though it had been ruled out from the beginning that the crime had been premeditated (*‘amd*), it had nevertheless to be decided whether there was any legitimate self-defense in ‘Umar’s behavior. The Jinayat prima facie ruled out such possibility, noting in its final ruling that by picking up a motorbike, then going home to fetch his gun, ‘Umar had plenty of time to rethink his behavior, and had a clear intention to hurt his uncle, if not kill him. But the Jinayat also ruled out the killing possibility, noting that after hitting his uncle twice on the shoulder and leg, and once his uncle fell on the ground, he refrained from doing more. The prosecution for its part noted that it was thanks to the brother-in-law ‘Aqil, who grabbed ‘Umar and dispossessed him from his gun, which in the final analysis prevented the killing. That alternative, however, was not approved by the Jinayat, which simultaneously ruled out self-defense, since the plaintiff’s brandishing a hatchet while several meters from ‘Umar did not constitute enough of a physical threat to the latter. To the Jinayat, therefore, ‘Umar was not acting in self-defense; nor did he have any intent to kill, but only intimidate, hoping probably that his uncle will not trespass in the future.

The first Jinayat ruling, which goes back to July 1994, summoned, based on article 533/200 of the penal code, that the accused be incarcerated for seven years with forced labor. Since the ruling relies extensively on previous recommendations and reports, it did not add anything new either in terms of factual evidence or judicial reasoning. Moreover,

having been conducted in absentia, the accused ‘Umar was not cross-examined by the court, hence he gave no new deposition since his release back in August 1990.

It was only in the third hearing session in February 1996 that something new finally surfaced. The accused was asked whether he was willing to compensate for the expenses of his victim’s medical checkup. In case he would answer positively, he would cover the 3,000 liras ($60) bills of the medical preliminary expenses. But if he refrains from doing so, the court would request a reevaluation of the official medical report that was released back on June 1990, so that the “ambiguity” (*ghumūḍ*) surrounding the status of the victim be clarified: did the wounds leave a permanent damage or not? The defendant opted for the first alternative, and the amount of 3,000 liras was deposited via his lawyer.

But even though a new medical report had been completed by March 1996 by a team of experts, the Jinayat in its final ruling the following month did not give much weight to the medical issue: “the penal question (*al-mas’ala al-jazā’iyya*) should be concerned only with the act itself (*al-fi‘l*) and its outcome, even if there has been several wounds. We therefore disagree with the way the accused and public prosecution office framed the issue.” In other words, the Jinayat was not motivated in going through the medical history of the plaintiff to assess the damage to his body, because the court should only be concerned with the act of shooting and its general outcome: Was there, for instance, an intent to simply harm, intimidate, or kill, or to do more than what had been done? The court, in short, was only concerned with motive: “**When the purpose of a crime (*al-qaṣd al-ijrāmī*) remains unclear for the accused,** it’s up to the court to interpret it (*tastakhliṣu-hu*) based on the settings of the events (*ẓurūf al-ḥādith*) and the way things were handled.” In that respect the court revoked its previous in absentia ruling, agreeing to convict the accused for three years, to be reduced to one only, with forced labor. It therefore did not propose any compensation for the plaintiff.

The wager in this last ruling is that it *was*, indeed, the external gaze of the big Other (the Jinayat) which did the final work of *interpretation,* that of telling the assailant, who was “unclear”—clueless—on “the purpose of his crime,” what the essence of his criminal act meant. That is to say, it was the Jinayat court which “supplemented” the convict—acting on his own behalf—with the interpretation of the meaning of his own act, which he was unable to do *on his own.* The convict-as-subject is therefore that void-of-nothingness, incapable *on his own* to be self-transparent, and whose self-reflexivity must be supplemented by the work of the big Other, a myriad of juristic and medical discourses. But isn’t that “padding” of the convict’s “consciousness” precisely what the courts do all the time, and that this case is no exception? As we have seen in numerous other cases (Chapter 3), courts and judges seem to be taken aback when the convict has “nothing to say” on his or her crime; medical committees are therefore dispatched with the hope that they would fill that unbearable void in the convict’s “consciousness” to establish his or her “legal responsibility”: are they “fit” to stand trial? Are they morally responsible? But whether doctors or psychiatrists come at the rescue of clueless judges or not, the court rulings must fill that void, which is invariably done through the all too familiar arcane juridical language which places its wager on *form* over content. Hence the deadlock that courts encounter when attempting to formulate the meaning of an action, is rescued, in

the final instance, by wrapping it up in a language that only satisfies the basic juridical requirements. Such requirements, however, are not to be limited to the verdict, as they show up in every memo, report or interview. When, for example, a woman who was allegedly raped would not indulge at describing that hideous Thing she had been subjected to, the unnamable is obfuscated by a judge's memo (or a doctor, or a court expert) that would "assimilate" the woman's "voice" on her own behalf, "saying" *in writing* what she did not dare "say." More generally, deadlocks encountered in the lived experience of witnesses and convicts, which manifest themselves in an inability to "say" what happened, or to "say" what they have "heard" or "seen," are "sublated" in the *formal* language of the law, a formalization which enables to juristically formulate the unnamable.

Typology of a police report regarding the relatedness of the assailants: how local relations of power are interpreted and processed

The trespassing event unfolded in two parallel directions. The first would indicate how kin members relate to land, while the second would point at how kin members relate to one another through the process of possessing land and maintaining that possession. Identities are created not only through naming, marriage, household, custom and habit, but also through a process of identification to the land, and representations of property. Those two processes could be detected singlehandedly in the police report, which as usual inaugurates the case-file, beginning with ʻAqil's deposition, the first witness, which had bluntly stated, "*We're all connected because we're all cousins.*" As with the two cases above, the direct emphasis on kin by the actors themselves implies a de facto recognition of all honor codes in relation to violence and land. In this instance, economic inequalities were situated within family members, with brothers and their sons and cousins, hence honor symbolisms must create that veneer of an appearance of "equality"; violence come at the rescue whenever such appearances miserably fail.

It was late at night that same day when the police caught the alleged assailant ʻUmar together with his brothers. (Compare below with the investigating judge's interview of the same ʻUmar.)

> I testify that this evening around 5:00 I was at home when my younger brother dropped by and informed us that our uncle ʻAbdul-Munʻim had trespassed over our land with his sheep. I therefore headed towards the land with my brother ʻAbdul-Salam where I found my uncle and his son ʻAdnan, with many others from the village. A verbal exchange was going on when my second uncle ʻAbdul-Jawad dropped by. The latter attempted to convince the former not to trespass over our land, to no avail. All we got back were insults, and people separated us. I noticed a motorbike that is owned by ʻAqil, who happens to be my sister's husband. I picked the bike and drove to the village with no direction in particular in order not to give the impression that I would be heading home to fetch my gun, but I finally reached home where I found my brother Jamal. I took the gun from him, and having informed him of the incident, I went back driving the same bike, while my brother followed me with another bike belonging to a neighbor. When

> we got there our uncle was holding a hatchet in his hand, attempting at one point to hit me. I shot twice with the gun in his direction and hit him on the shoulder and leg, and he fell on the ground. I did it in **self-defense**, because I was afraid that he would harm me. Yes, I did shoot him from my own 10.5-mm gun. During the first fight, I had a 9-mm gun, which was taken from me by ʻAqil, known as Abu Ziyad. I therefore drove the motorbike that was there towards the village, went to his home, and picked up his 10.5-mm gun, already knowing where it was located. I then came back to the fight for a second time, and when my uncle attempted to harm me with his hatchet, I shot him twice with ʻAqil's 10.5-mm pistol, then ran away on foot towards a friend's home, where I was finally caught. I don't know why ʻAqil handed in to you only my 9-mm gun, and not his own 10.5-mm, which I had used at the shooting. I regret what I did, and I'm not complaining against anyone. The whole event was an outcome of **nervousness and tension**. My brothers do not own guns.

A note in the report clarifies that the incompatible views of ʻUmar and his brother-in-law ʻAqil were confronted to one another. Thus, while ʻUmar insisted that he used ʻAqil's 10.5-mm gun, ʻAqil for his part alleged that only one gun was used: ʻUmar's 9-mm, the same one that he seized from the offender and surrendered to the police.

The police report then moves to ʻUmar's brothers, as each one who was thought to have been related to the crime scene—even remotely—was interrogated. A typology that relates individuals to space configurations and corresponding power relations begins to unravel.

1. Kin relations receive their "connecting points" through a police investigation over a crime that was allegedly committed by at least one kin member.
2. The typology of kin relations is mapped through the power relations laid out within the crime investigation: the crime itself brings together and re-maps kin relations.
3. Kin relations are mapped through the documentation that the participant "informers" would provide of the crime scene.
4. In many ways the judiciary apparatus is alien to kin relations, its strategies and languages, as it comes with its own modes of reasoning, strategies, and discourses. The two may overlap though, in particular in small communities where the police and judiciary would not dissociate themselves from local actors.
5. There is therefore an entire pedagogical process of justification that is deployed, and an intermingling of cultures, with appropriations that would go both ways.
6. The judiciary apparatus could not be looked upon singlehandedly, with one strategy and discourse. However, the "uniformity" of the system makes sense and is not totally inappropriate as a notion. For instance, in the way the reports, beginning with the referral report, provide a matrix to force uniformity among all forthcoming reports.

Keying into the kinship database

When the police report moves from one brother/cousin to the next, or from one kin member or witness to another, a process whereby the kin members "recognize" one another through a documentation of the crime scene, relations would soon begin to unravel. What is here "recognized" is not simply the allegiance (or lack thereof) towards family, clan, or tribe—the traditional social order that members of the community are accustomed to—but also to space-time typologies and topographies (not to mention thematic "tropes" of all kinds): things and beings that would normally receive consensual recognition are incessantly redefined and constructed in order to be consensually recognized. Since the police delivers the transcripts of its interrogation sessions fully "edited," processes of "keying" and "recognizing" happen both ways: that is, not only do the kin members themselves and "their" witnesses have to go through this pedagogical process, but also police, judges, lawyers, medical and legal experts.

Mitigated (cross-)examinations

If interrogations look very much like they're well staged, leaving little room for the witnesses' own "voice," it's because from day one the investigation has been geared towards a set of parameters that would serve as clues for police, investigators and judges:

1. I was at home, not knowing what was going on outside when I was informed that our uncle trespassed and a fight ensued.
2. I was taking care of our sheep or I was on my way for a visit when I noticed a gathering, and decided to inquire all by myself.
3. I saw my uncle and brothers fighting.
4. 'Umar pulled his gun and shot towards our uncle.
5. Number of shots: one, two, or more?
6. The gun of the crime: 9- or 10.5-mm? Possibility of two guns.
7. Did 'Umar use a gun he already had, or did he run home on a motorbike to fetch a gun that could have been his, or possibly was someone's else?
8. Who else had a pistol?
9. How did 'Aqil get hold of the gun used by 'Umar? Was it 'Aqil's or 'Umar's gun?
10. What happened after the uncle was shot? Why and where did they all run away?
11. Relationships of people to the crime scene, whether kin or otherwise.

There is no need to go through all the testimonies as they're all variations on the above points, and on the early ones by 'Aqil and 'Umar. It is worth noting, however, 'Umar's second deposition that same night in which he reworked out his story so as to fit with the one-gun theory:

> "I must confess here for the second time, because earlier I freaked out when I had stated that the gun that I had used when shooting at my uncle was a 10.5-mm belonging to 'Aqil, but that's incorrect, as there's no such gun. The truth is that the gun in your custody is mine and was the only one used when I shot my uncle.

> It's a 9-mm Browning that I had myself purchased when I was serving in the army over three years ago. I took it from home, and as soon as I reached our land my uncle attacked me with a hatchet, so I reacted solely in self-defense. I shot him only twice until he fell on the ground. The named ʻAqil was the one who pulled the gun out of my hands, and that's the same gun that's now under your custody. None of my brothers, uncles, cousins, nor ʻAqil, have guns in their possession. I do not intend to press for a lawsuit against anyone."

Whether it's a testimony—some of which are interpreted by judges and magistrates as "confessions" (*iʻtirāf*)—or an interview—such forms of witnessing are not clearly delineated due to the weakness of (cross-)examination in civil-law systems—what is at stake are the *assertions* emanating from witnesses. The complexity of witnessing, a quintessentially *total social fact,* which cannot be reduced to juridical rules, becomes limited to a small *répertoire of events,* that is, to a bulleted list of events, like the one above, that investigators and judges keep close at hand in order not to lose track of what's at stake at the crime scene. It is therefore such extreme reductionism that establishes the power relation between the local actors sense of place as something that they inhabit, and the homogenizing power of the judiciary. Consider, for instance, how the alleged main culprit was examined soon after his arrest, and how the question-and-answer format would not necessarily lead to a more elaborate form of investigation than the more straightforward testimonies above. The defendant was then interrogated by an investigating judge in Aleppo on 24 March 1990.

> Q1. You've been accused of an attempt to kill someone?
>
> A1. The day of the incident that led to this lawsuit I went to our agricultural land where I found my younger brothers ʻAbdul-Munʻim and ʻAbdul-Wahab. I was told that my uncle ʻAbdul-Munʻim had trespassed with his sheep over our land cultivated with wheat, barley, and beans, even though he could have avoided the situation through a slightly longer détour. A verbal exchange ensued between him and me, but he soon **threatened** me with a hatchet that was on his side. People from the village started gathering such as x, y, and z, and I attempted to escape the situation by moving towards the water well, but my uncle followed me with his axe and verbal insults. I took my 9-mm gun and shot once up in the air, but he kept following me, until the distance that separated us was no more than 30 meters, which forced me to go for another shot. I then ran away walking as fast as I could. My brothers Jamal and ʻAbdul-Salam dropped by only when it was all over. I have no idea which parts of my uncle's body were hurt as a result of the [second] shot, because I was in a state of **non-consciousness** [*ḥālat lā-waʻī*].[15]
>
> Q2. You mentioned in your statements to the police upon your arrest that you've first used your 9-mm gun, then went back to the village[16] and brought with you a 10.5-mm pistol that belonged to your brother Jamal?
>
> A2. I don't know what the policemen who interrogated me had written down in their memos, because they had beaten me up.[17] What I know is that I've only used a 9-mm, which the witness

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[15] Non-consciousness implies non-responsibility.

[16] Going back to the village implies a more deliberate process of harm, which also defies claims of non-consciousness and non-responsibility.

[17] Allegations of violence by the police are quite frequent, providing witnesses with that unique opportunity to demarcate their current statements to the investigative judge from the earlier ones to the

> ‘Aqil had eventually taken from me. I was subject to beating from the police and a doctor examined me and wrote a report on this.
>
> Q3. How many bullets were there in your gun prior to shooting at your uncle ‘Abdul-Mun‘im?
>
> A3. There were only three bullets. I shot one in the air, and two at my uncle ‘Abdul-Mun‘im after having warned him not to get close to me.
>
> Q4. You’ve mentioned earlier that you had shot once in the air and once in the direction of your uncle, and now you’re telling us that you’ve shot once in the air and twice in the direction of your uncle—a total of three shots—so which version is the right one?
>
> A4. I shot once in the air as a **warning**, and then twice in the direction of my uncle.

This follows a classic question-and-answer format that very much seems perfectly staged, so as to give both sides the opportunity to frame their views *in relation to the other* in the shortest space possible. That’s why such formats do not constitute *genuine* (cross-)examinations, where the defendant would be cornered with an aggressive line of questioning. It’s essentially therefore about maintaining that façade of appearances, which magically moves from the lifeworld of the actors to the domain of the judiciary. Thus, while the prosecution marshals the possibility of killing, the back-and-forth on a motorbike between the village and its periphery (which may indicate a thoughtful action), and the two-gun theory, ‘Umar rebuffs such claims with an emphasis on self-defense, that he was effectively threatened, that he did issue warnings to avoid catastrophe, and that he was for a while in a state of non-consciousness.

Following the two earlier cases, where in both the protagonists took over their father’s mantle, salvaging a de facto leadership of their family, the protagonists in this case, ‘Umar and his brothers, were operating within a similar mindset, even though the target here was set *within* the family rather than from a rival clan. ‘Umar directly challenges his uncle, in response to the latter’s trespassing, in an act that was intended to harm rather than kill. ‘Umar’s action was therefore situated on a couple of encounters: first, he acted on behalf of his own father, who was unable to directly confront his brother; second, his action was intergenerational: his own generation versus that of his father and uncles; third, it was also inter-clan: his father–brothers faction versus his uncle–cousins. His violent action reinstituted the symbolic equilibrium in his favor: he was done with the elderly generation of father–uncle, and among his own generation, he established himself as the badass to be reckoned with—until someone else takes the helm.

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police, just few days before, as they were *stated in writing* in the police reports, which transforms the question-and-answer format of the investigative judge into a rite-of-passage denial, even though the upper courts would seldom request an investigation that would question the allegedly brutal police behavior towards suspects and witnesses, unless of course the brutality would have lead to the death of suspect or witness. The upper courts would generally handle such statements of denial quite “textually,” that is, judges would simply compare and contrast various contradictory statements, arguing which ones would make “more sense” under certain conditions. In sum, cross-examinations by investigative judges would typically help the witness–suspect–defendant downplay earlier statements attributed to them by the police report, which inaugurates the case-file.

The political economy of land and crime

[C9–4] In the morning of 9 July 1990 the lawyer ʻAdil Kitkani (b. 1951) left his home located in the Sabil neighborhood in Aleppo, and headed towards his nearby parked car. As he would normally do every morning, he was preparing himself for a 20–30 minute ride that would had taken him to the Palace of Justice, where he was serving as an attorney on civil matters. But as soon as he reached his car that fateful morning, two young men, speeding on their scooter, approached him, got down to the pavement, and managed to shoot him a couple of times. Even though he fell bleeding, he felt strong enough to point his gun towards his assailants, hurting one as his pal pushed him on the back seat of the scooter before running away.[18]

That a young lawyer would be (legally) carrying a gun while on his way to work, a gun that presumably saved his life from the assault of two anonymous gunmen, may seem awkward, in particular in a city where lawyers and judges are pretty safe and are not harassed by gangs or unruly mafias. The truth of the matter is that ʻAdil was expecting something, an assault on his life, like the ones that were conducted several months earlier against his father and cousin—both survived. Apparently, someone had come to him days earlier, and told him, "Be careful, ʻAdil, you know what happened to your father and cousin." Cases of assaults on judges and lawyers, not to mention state officials, are well known in the likes of Italy and Latin American countries. But those tend to be related to judicial matters, as the aim would be to intimidate the judiciary for its actions against mafias, gangs, drug lords and crack dealers. In the Kitkani case, however, the authorities were persuaded right from the start that the crime was "private," in the sense that its aim would not touch upon the judicial apparatus per se, or any other governmental agency for that matter. Nor was it related to ʻAdil's work as an attorney, nor to any of the cases he was handling at the time. At least those were some of the persuasions of the investigating and referral judges: to them, the matter was *prima facie* related to ʻAdil's *Kurdish* kin alliances, even though, at face value, they had no desire to highlight "the Kurdish matter."

ʻAdil was born and raised in the northern-central region of ʻAyn al-ʻArab, a mixed area shared between Arabs and Kurds, where the latter have for some time constituted a hefty majority, and where kin alliances matter even more than other Kurdish areas. In contradistinction to the other big Kurdish region of ʻIfrin, located in Syria's north-west along the Turkish border, composed of 366 towns and villages, structured along family groupings (*ʻiyal*) rather than the traditional clans (*ʻashāyir*), in ʻAyn al-ʻArab the predominance goes to the *ʻashāyir,* whether Arab or Kurdish. Thus, even though, in his depositions to police and prosecution, ʻAdil introduced himself as "an Arab Syrian," which is what he ought to do legally—since the Syrian state classifies all its citizens as "Arab Syrians"—the Kurds generally do not perceive themselves that way, and prefer the epithet of "Kurdish" to "Arab." In the riots that broke in March 2004, and which originated in an insane football match that went wrong in Qamishli (Qamishlo, to the Kurds), the ʻAyn al-ʻArab region shared its own toll of the events, as schools and official

[18] Aleppo's Jinayat, case #320/1994, had previous numbers since the inauguration of the case in 1990; final ruling missing.

buildings were looted, damaged, or burned; so did Aleppo's northern Kurdish neighborhoods. The riots were widely perceived—at least by various Kurdish websites operating from Turkey and Europe—as signaling a Kurdish reawakening on their rights, language and heritage. But, the Kurdish–Arab tensions notwithstanding, what the riots have also pointed at are the Kurdish internal rivalries, structured for the most part along clan and regional alliances on one hand, and their corresponding political innuendoes on the other. The Kitkani case points at such divided loyalties. Thus, while the plaintiff himself claimed that his assailants were "Kurdish separatists"[19] who were affiliated to unauthorized parties disloyal to the state, he reminded the police and prosecution that for a long time he held membership at the Baath party, making him a target from his own clan. But while 'Adil politicized his case right from the beginning, and offered the prosecution a list of possible suspects, all of which Kurdish and clan related, one of the defendants saw otherwise. Claiming that plaintiff and defendants were from the same clan (*'ashīra*) of Kitkan, even though from different villages miles away, the defendant in question alleged that there was a conflict between the plaintiff's father and his own family over a land, whose size was 12 million square meters, in the village of Kirdah. But police and prosecution seemed, however, less concerned about either land or political issues, and more about the ever growing number of defendants: once we're into tribal territory, the number of defendants could rapidly swell; and by the time I've reexamined the case-file in 2004, it was not yet fully closed, as it was still a work-in-progress. One of the Jinayat's employees, weary of the ups and downs of the Kitkani case, told me that "such cases keep growing and growing, simply because every time one of the runaways suddenly shows up, we'll have to append more papers to a folder that is already big."

A couple of months before the stab on Adil's own life outside his Aleppo home on April 1990, there was an attempt on the life of the plaintiff's cousin, judge Fathi Kitkani, and head of the appellate court in Aleppo, upon which a case-file was opened at the Aleppo Jinayat.[20] Then three days later, there was another take, this time on the plaintiff's father, with another case still under investigation back then.[21] Both attempts took place in the plaintiff's home region of 'Ayn al-'Arab. Considering that the assault on 'Adil was the third in a row, it must have all been more than a personal matter. Inter-clan feuds obviously come to mind first, and most defendants and witnesses documented the case to the prosecution as long-standing feuds straddling between the realities of clan and landownership (more specifically, usurpation), even though the plaintiff himself had underscored the political overtones of all three attempts: "The conflict between our family, the Kitkanis, and those of our defendants, the Shaykhos, Lalos, Shaykhs, and their associates, is due to the fact that **we are not exclusively committed to the Kurdish parties**, and in effect we don't even relate to them—and that's precisely what was at the root of the attempt against the life of my cousin Fathi Kitkani, and the one against me." The plaintiff neither mentioned in this deposition to the prosecution the attempt against his own father, nor any possible land disputes. It remains unclear, however, whether he

[19] For the most part Kurdish "nationalists" (or "separatists") have failed to develop their own "Syrian" parties, opting instead, in terms of political alliances, either for the predominant "Turkish" PKK, which operates under the imprisoned Abdullah Öcalan, or else for the "Iraqi" Talbani versus Barazani split.

[20] #300/1992.

[21] #191/1992.

ruled out the land problem altogether.

The Kitkanis were therefore a Kurdish family of big landowners, whose expertise in law affiliated them to the state judiciary, and, at least to some, made them politically close to the "national" and pan-Arab Baath rather than the ethnically oriented (and illegal) Kurdish parties whether Syrian (extremely rare), Iraqi, or Turkish (the majority). In the preliminary assessments between plaintiff, defendants, and their witnesses, the claims have grosso modo centered on three levels whose links remain rather loose: (i) the political rifts between the Kitkanis (Baath) and their clan foes (Kurdish nationalists); (ii) land disputes between the two parties; and (iii) more broadly, clan and kin rivalries, which might have affected both (i) and (ii). Obviously, since the judiciary's main concern was to find the assailant(s), going through tribal and clan divisions and their politics and land feuds was not, *stricto sensu,* its business. Moreover, Syrian governmental institutions would typically avoid mentioning nationalist aspirations of some ethnic groups by name—in particular the Kurds. For such reasons, the memos, reports, and rulings, only contain scant evidence to the clan-political-land background, which comes to evidence only sporadically through the utterances of some disputants and their witnesses. In sum, even the referral judge recommendations and Jinayat ruling do not attempt a synthesis based on various social backgrounds, limiting themselves instead to the logic of sentencing.

From the very beginning the defendants were numerous. To begin with, the plaintiff, while still in treatment in his hospital bed, named the two persons who had pointed their guns at him, claiming that there were additional ones standing by, not to mention three others from the Shaykh family who had been following the assassination attempt from a nearby parked car, and against which he had alleged that they were the real masterminds. A couple of months later, on November 1990 when the general prosecution office had made known its list of suspects, it already had 16: only 3 participated directly in the failed attempt, while the others were either only "involved" or "participated" from a distance, or else were carrying guns without permits. In a memo addressed to the investigative judge by the plaintiff's attorneys the following year on 25 May 1991, the latter had limited their suspects to 10 only, and were more precise in their claims. Reminding the judge that their client survived even though he had received 8 bullets in his body, the two attorneys acting on behalf of the claimant managed to identify the first two assailants on the scooter; an additional two who apparently stepped up from a car that was parked nearby; a fifth person who was allegedly protecting from a distance; and three others which allegedly played the role of instigators (*muḥarriḍ-un*) by accompanying all assailants to Aleppo, and by being present at the scene watching from a distance; finally, the remaining ones had allegedly beaten up the plaintiff after he was hit by gunshots from the first two assailants. One has only to wonder, with all those people around, how Kitkani managed to survive with 8 bullets in his body. Direct witnesses all confirmed the two-assailant on a scooter story; most noticed that one of them was shot, but he did run away bleeding, amid 'Adil Kitkani's aggressive stance; but no one noticed anything beyond those two assailants.

In his first police deposition, while still in his hospital bed recovering from his wounds,

ʻAdil was quick to identify and name his two assailants, in addition to three others whom he claimed were overseeing the shootings sitting in a taxi. But even though he named all five, he fell short—at least based on the police summary of his statements—at explicating his relationship to them, how he got to know them, and possible motivations. He finally narrowed it down to political motivations. The police, even though could not arrest any of the alleged five assailants, checked their names up and found that all of them came from villages in the ʻAyn al-ʻArab region, ages 25 to 60, all kin related. The police in that region, however, found three of the five identified by Kitkani, among eight men and women it suspected of "participation." They were therefore all arrested "customarily" (*ʻurf-iyyan*) since there's no evidence yet to support any of the claims against them.

All three that were allegedly in a taxicab at the moment of the incident were interrogated, and all were from the same family. The first one (b. 1922), while reminding of his kin affiliation to the Kitkanis, denied any participation, and claimed to have heard of the shooting incident while in his village. He nonetheless acknowledged a land dispute with the plaintiff's father. The second (b. 1927) also denied any participation, alleged to have been in his village all day when the plaintiff was shot: "for three months now, elements that keep order (*ʻanāṣir ḥifẓ al-niẓām*) have been present in our area, and they would surely witness that I was there all day long." Those "elements," however, whose presence had been noted by other suspects and witnesses, had neither been defined, nor their role identified for that matter: was their presence related in any way to previous assassination attempts against the Kitkanis? The third one, of a much younger generation (b. 1974), also denied any participation, and claimed not to know ʻAdil Kitkani or any of his relatives. The other ones that were also detained, most of them land laborers or owners from various generations, but which were not named by the plaintiff in his first deposition, all denied any wrongdoing, and prima facie there did not seem anything against them beyond the fact that they were from a rival kin branch to the Kitkanis. One of them, a shepherd (b. 1972), alleged never to have visited Aleppo in his lifetime.

The following month (August 1990) the alleged assailants were all arrested in Aleppo, and since some of them were serving in the army, a parallel army tribunal, whose findings were included in the case's dossier, performed its own examinations of the suspects. The first suspect (b. 1956) claimed that he was arrested as soon as he came to visit a relative of his in the main Aleppo jailhouse at Muslimiyyah. The convict was his uncle who was arrested in relation to Kitkani's incident. A 7mm gun was found with the visitor-suspect, whom he alleged he had been carrying around for some time "because of feuds (*ʻadāwa*) between us [the Shaykhos] and the Kitkanis." His brother was the first to have informed him of the assassination attempt, and suspected that two of their cousins might be directly involved. He further denied being himself involved in any way, since, having been in the army for three years, he didn't have much chance to see his relatives. The other suspect (b. 1957) was arrested under similar conditions, and he too denied any participation, claimed to have heard of the crime while in his village at ʻAyn al-ʻArab.

By the time the referral judge drafted his report on March 1993, which is usually the first piece of synthesis to come with a preliminary overview and a set of recommendations, and which is generally adopted without much fuss by the Jinayat, the number of accused

had now shrunk to three, while the judge recommended that the remaining eleven suspects be set free for lack of evidence. The overall problem, however, was that even for the three accused, which the referral judge thought could be nailed down on firm grounds, evidence remained very much circumstantial, and with the lack of blood and fingerprints tests, even the material basis of the investigation was kept on hold. One of the witnesses, for instance, whose shop was located right where Kitkani had dropped wounded, alleged that one of the assailants, who was shot by Kitkani, left a trail of blood on the pavement where the shop was located. But, to my knowledge, no tests were concluded—at least the dossier that I examined contained none. The only report that was available of the crime scene had a detailed description of the guns that were allegedly used, in addition to photographs of Kitkani's car and the pavement where the shooting took place. Such mishaps are, to be sure, quite common during investigations, and they reflect at the same time poor technical standards, lack of adequate equipment and training, and no sense of professional consciousness. With no firm material evidence, and with no *thorough* examinations conducted at any level (police, prosecution, and Jinayat), not to mention allegations of torture that kept surfacing from the defendants and witnesses, the referral judge was left with scant and unreliable evidence. That did not prevent him, however, from recommending that the three defendants be accused of a premeditated attempt to kill (*'amd*), which could be punishable either by death penalty or life incarceration. In the report's section citing evidence, the judge detailed eleven pieces of evidence, which for the most part consisted of statements uttered by the accused and witnesses. Considering that whenever anyone of the accused who may have "confessed" any wrongdoing when interrogated by the police at 'Ayn al-Arab and/or Aleppo, and then would have denied few weeks later all those statements in the presence of an Aleppo prosecution judge, with an allegation of torture, there wasn't any single suspect—whether the three core ones, or their eleven pals—that did effectively openly confess. As to the witnesses, none of them was able to identify any of the suspects, so that the latter were only identified by no one else but the plaintiff.

By 1994 the number of defendants was reduced to three only, while the other eleven were set free. At the end the year, just before the holidays' break, the defendants' council drafted a 19-page memo to the Jinayat, attempting to point how little reliable evidence the prosecution was able to collect against his three clients. Consider, for instance, the deposition of one of the accused (b. 1958), as recorded by the 'Ayn al-'Arab police on 29 September 1991.

> There has been problems between our family and the Kitkanis after they've been able to **usurp** (*istilā'*) some of our agricultural lands at the village of Saftak. We've been through lawsuits which in the final analysis led nowhere. During that period, I was surprised with the rest of my kin when policemen came to our village, once I realized that unknown people had attempted to kill judge Fathi Kitkani. **My mother and the mother of [my cousin] Fawzi Ahmad Shaykho had accused us of being involved in the assassination plot**, which got us arrested and imprisoned at the 'Ayn al-'Arab prison. With all such pressures, I left roughly a month after the assassination attempt and lived in Aleppo in the [predominantly Kurdish] Shaykh Sa'id neighborhood. My brother Nayif used to

> drop by frequently, expressing his outrage towards the Fathi kin. He soon began to plan an assassination against the lawyer ʻAdil who is considered a cousin to judge Fathi. Nayif then set up a date to kill. I did my best to stop him, to no avail. He did demand that I participate, but after some hesitation I accepted. That was a day before the assassination attempt, when we agreed that I would wait for him at the al-Hajj bridge, so that he would show up at 7:00 a.m. the day of the execution; he would then give me a ride to the place of the execution where the house of the lawyer was located. I had a 9mm Browning, and headed to the location we agreed upon. My brother Nayif came with his Honda black scooter to pick me up. We reached the aforementioned house in the neighborhood where the lawyer lived. We saw the lawyer's car in front the entrance of the building. I saw there Ahmad Muhammad Hasan, Amin Lalo b. Khalil, and Khidr Shaykh Daban. My brother Nayif was holding his gun, and my job was to cover up the killing. When my brother got wounded, I hurried to save him, and it was at this point that my gun dropped…

As is common to many suspects, this preliminary deposition was denied in toto in the presence of an Aleppo investigating judge barely a week later: "What was attributed to me in my statements to the police is completely false, because they were the outcome of beating and torture. I'm not aware what the policemen had drafted on my behalf during my interrogation at ʻAyn al-ʻArab. The father of the lawyer ʻAdil Kitkani was dictating to them [such statements]. I don't know anything about the incident." But what is unusual here is the mother accusing her son of wrongdoing, which could be attributed to the mother's allegiance to the rival Kitkani clan, hence her loyalties were for her own rather than her husband's clan.

They had abused of their relationship to society

The referral judge narrowed down the number of defendants from a dozen to three. In spite of repeated commands from the upper courts in Damascus not to take for granted original statements, criminal courts would generally stick with what a suspect, defendant, or witness had *originally* stated no matter how many times they and their counsels denied it later. Consider for instance what the alleged main culprit, Husayn Shaykho (b. 1958), had originally stated to the ʻAyn al-ʻArab police as soon as he was arrested on September 1990.

> When I was living in Aleppo in the neighborhood of Shaykh Saʻid, my brother Nayif used to drop by at home and relieve his **hatred** (*ḥiqd*) towards the relatives (*aqārib*) of [judge] Fathi [Kitkani]. He soon started to plan for the killing of the lawyer Adel [Kitkani], who is considered the paternal cousin of judge Fathi,[22] until Nayif had set a date. I attempted to stop him, to no avail. He then urged me to participate, and after some hesitation I accepted. That was a day before the attempt. We agreed to meet at the al-Hajj bridge around 7:00 a.m., where he would pick me up and take me to Adel Kitkani's home. I had a 9-mm Browning

[22] The "who is considered" gives the impression that the "paternal cousin" (*ibn al-ʻamm*) relationship is only "imaginary," which may not be the case here.

> in my possession, and as promised he showed up and picked me up. When we were by Kitkani's home my brother Nayif came by on his black Honda motorbike, but I'm uncertain as to the name of the neighborhood we've set into. I there saw Kitkani's car parked at his home's entrance, and met Ahmad b. Muhammad Hasan (mother Khudah, 20 years old), Amin Lalo b. Khalil (mother Amina), and Khodr Shaykh b. Daban (mother Halima). While my brother Nayif was carrying a gun, my role was to insure the protection for the killing, together with Amin Lalo and Khodr, so that Nayif and Ahmad would begin the assault. Soon after I saw the lawyer leaving his apartment building, heading towards his car. As soon as he entered his car, Nayif and Ahmad began shooting at him, and the lawyer responded soon afterward. The lawyer was hurt, placated himself between two cars, and was shooting towards us. As my brother received a direct shot, I immediately went to help him, but Ahmad already had him on the motorbike. It was then that my gun was dropped, while my brother lost his close to the lawyer's car. I withdrew with Amin and Khodr and each one of us went in a separate direction and we never met. I consider that the crimes committed against the aforementioned [Fathi and Adel Kitkani] were an outcome of direct **instigation** (*taḥrīḍ*) from Amin Hasan. As to Daban b. Muhammad he was the indirect instigator (*muḥarriḍ*), having summoned us to regain our rights through all the available means, including the legal. I was not hit during the operation, and the suspicious marks on my knee were the outcome of my regular day work. I regret what I did.

The same suspect was a year later examined by an investigating judge, where he totally denied his earlier statements.

> Q1. You've been accused of premeditated killing.
>
> A1. There is no truth in what has been attributed to me, which was an outcome of beating, violence, and humiliation. I don't know what the policemen had noted down regarding my oral statements. I should mention that during the investigation at the ʻAyn al-ʻArab police department [September 1990] the father of the lawyer Adel Kitkani was present all the time and was dictating his orders to the police.
>
> Q2. You had stated that you and your brother Nayif headed on a motorbike the day the crime towards the home of the lawyer Adel Kitkani, and there you met with Ahmad b. Muhammad Hasan, Amin Lalo, and Khodr Daban. Your role with Amin Lalo was to cover up on the killing, when your brother Nayif and Ahmad b. Hasan attacked the lawyer. When your brother was shot you helped him escape on a motorbike, and in the meantime you dropped your 9-mm Browning.
>
> A2. The truth is that I haven't seen my brother Nayif for two years because he was escaping from his military service.

The second suspect to have been interrogated by the ʻAyn al-ʻArab police was Muhammad Amin Lalo b. Khalil and Amina.

> I testify that there were **agricultural conflicts** (*khilāfāt zirāʻiyya*) between us and the clan of Adel Kitkani. Members of his family or relatives (*aqārib*) were able to **trespass** over our lands and to **usurp** (*ightiṣāb*) other parts of those lands—a total

> of 20 hectares. We've attempted to get back what we've lost, to no avail. The lawsuits between us are still in process. After the attempted assassination of judge Fathi Kitkani in Aleppo, I was told that Barkal 'Usso was responsible, but I know nothing of his partners, not to mention that my brothers Murad and Ahmad are both suspects.
>
> As to the attempted killing of the lawyer Adel Kitkani the deal was sealed between Nayif Shaykho and Ahmad b. Muhammad Hasan to kill the lawyer Adel. I've refused to go through this, but the mounting pressures pushed me to participate by simply being present close to the home of Adel Kitkani with Khodr and Waban, while Nayif and Ahmad did the shooting. I had no gun and didn't shoot at anyone.

The third suspect was Murad Lalo b. Khalil to the same 'Ayn al-'Arab police.

> I testify that there were conflicts between us and the clan of judge Fathi Kitkani who had **abused of their relationship to society**, pushing them to usurp part of our agricultural lands. Faced with such conditions I went with Amin 'Iso, his brothers Barkal and Bakri, Ismail Shaykho b. Fawzi, and my brother Ahmad Lalo, to the home of Fathi Kitkani in Aleppo to force him towards an agreement. When we were a hundred meters from the house, Barkal went to Fathi's home to **forge an understanding** (*tafāhum*), as we stood by the bridge waiting. I wasn't armed, and as I was standing by I heard gunshots and saw Barkal running, and then realized that he had stabbed Fathi without even our knowledge of it: we didn't know whether he was dead or alive. The problem behind such conflict was the **usurpation** (*ightiṣāb*) of our lands. As to the defendant Daban, there are ongoing conflicts between him and the Kitkanis—which is looked upon as familial. I think all this was behind the attempts against judge Fathi and the lawyer Adel Kitkani. I personally do not own a gun…

The attorney on behalf of the plaintiff Adel Kitkani argued that the "commencement in killing (*al-shurū' bi-l-qatl*)" ought to be punishable under article 535 of the penal code on the same level as a premeditated act. In his view, knowledge (*'ilm*) and will (*irādah*) are the main factors that would determine the intentionality of the act: whether the victim was effectively killed or simply managed the assault does not matter, because what matters is criminal intentionality per se (*al-qaṣd al-jinā'i*). Moreover, and considering that there were several accomplices and partners in this attempted killing, the lawyer urged to reconsider the notion of "partnership": "as there was no simple intervention (*tadakhkhul*) in premeditated killing (*al-qatl al-'amd*), **all participants are partners** (*shurakā'*)." For his part, the referral judge argued that "the defendants did all what they could within their material disposal to murder the lawyer Adel Kitkani, but due to circumstances outside their will the death did not occur, which renders the acts of all defendants guilty for **commencing an act of killing** based on premeditated planning and execution which ought to be punishable under article 535 of the penal code." Three of the accused were sentenced in 1998 for 15 years with a million liras as compensation for the victim: Husayn Shaykho, Muhammad Amin Lalo, and

Muhammad Shaykh Muhammad.

Murder always implies a third party

The fact that "murder always implies a third party," hence a reference to a third person-audience,[23] goes well with the four cases in this Chapter. That the murderer would kill *for* the sake of a third person, whether real or imaginary; that his or her act is inscribed in the framework of a symbolic exchange with the addressee-audience; that by means of this act, the murderer realizes his or her repressed desires, can be variously detected in each one of the cases. When Rahhal's son murdered Tirmanini, he did it *for* his father, to the point that the father was the one to declare full responsibility first—*before* his son got caught and confessed. When Fasih Jummo (non-intendedly) killed his *incognito* opponent-victim in a dark night (hence he was unable to *see* what he did), it was in the company of his father that he later discovered the dead body, and possibly the identity of his opponent: in that very act, he took over his father's mantle. In our third case, the battle was at the same time generational and inter-generational. When the main protagonist 'Umar purposely injured his paternal uncle, he did it *on behalf* of his father, precisely because the latter would not do it (Rahhal was in the same situation vis-à-vis Tirmanini: he was *unable* to do it). Finally, the clan rivalries in 'Ayn al-'Arab, where the Kitkanis as landowners maintained a statutory role, pushed the three defendants to act *on behalf* of their own clans, hence the clans acted as addressees to the murder. For this reason, the third person acting as audience would find themselves implicated in guilt, and generally neither know how they were implicated nor acknowledge the implication for that matter. But what marks our cases as unique for their own sake *was* the milieu itself, which was very much kin and clan oriented, hence the third persons or groups were all kin symbolized, acting as that uncanny big Other Third Gaze of patrimonial norms. In other words, the murders were interconnected in that they all involved, between murderer, victim, and third-party-audience, a murderous triad where kin symbolizations did compete for a paramount role. This is true of closely knit societies where "the elementary forms of kinship" (in homage to Claude Lévi-Strauss)—that is, noneconomic relations—structure the economic, inscribing them into a murderous triad within the cycle of symbolic exchange. Slavoj Žižek, who strongly argued in favor of a third-party addressee in murder, argues that "the third person himself [is] charged with guilt, although he does not know anything or, more precisely, refuses to know anything of the way he is implicated in the affair."[24] We should cautiously add here that this is true as long as "the three parties"—murderer, victim, and audience—are *not* kin related, that is, are autonomous, on their own, and differentiated as such as bourgeois anonymous characters. In fact, once we are into a rural milieu where kin plays a preponderant role, it is impossible for the third-person addressee to act as an "anonymous" entity not knowing what was at stake, or to think that they were not implicated. On the contrary, the kin–clan setting considerably modifies the dynamics of crime. What transforms the dynamics is the fact that the three parties are kin related, either as partners or foes; hence the third party, which acts as recipient to the murder, must know that he *is* implicated, and even

[23] Slavoj Žižek, *Looking Awry. An Introduction to Jacques Lacan through Popular Culture,* Cambridge, Mass.: The MIT Press, 1991, 74.

[24] Ibid., 74.

act—towards police and judges—that he *is* aware and implicated. (Is it always men who are implicated rather than women?) In other words, the kin–clan setting, which centers a land crime on a murder triangle between assailant, victim and addressee, the real relationship is between assailant and addressee, which in such setting, are always kin related within the symbolized norms of the community. This goes hand-in-hand with our earlier interpretation that the assailant has a repressed desire in him to take over his father's mantle, which he must actualize in murder (or as in case 2, what comes close to it). Even our fourth case would fit within that scenario, since the assailants in the failed killing of Kitkani were from rival clans which had to act symbolically, through murder, to "adjust" themselves to the Kitkanis land domination. Once the murder comes through (or the failed murder), the two parties, that of the offender and his victim, would follow étiquette rules and condemn the killing; but all stakes are with that "invisible addressee," whose implication in the act cannot even be addressed by the juridical process. Indeed, while the investigation must center on the duo assailant–victim, and on possible instigators and participants, it misses the third party as the real addressee. That is to say, it misses the gaze—that invisible eye, which looks at the crime scene from an invisible location, and which does not want to see itself as implicated, aborting feelings of guilt and redemption.

Among the four cases pursued in this Chapter, the second one comes the closest as the purest prototype to our analysis of murder as a triadic structure between perpetrator, victim, and addressee-as-audience. The addressee here was Fasih's father, who accompanied his son to the murder scene *and* the police station, as if the act of acknowledgment of the killing had to come *jointly* from father and son. The father-as-third-person was obviously preoccupied with guilt, not because he did anything wrong to his son (at least there was no evidence of that in the dossier), but for the sheer burden of recognizing the Other. We should in effect think such guilt in terms of the son wanting *recognition* from his father, hence targeted him as the third-party addressee, while the second party—the murdered victim—did not count much, and in this instance, he was allegedly neither seen nor known by the perpetrator—the perfect murder triangle. As pointed earlier, the third party, even though charged with guilt, refuses to know anything of the way he is implicated in the affair; but in communities where kinship heavily matters, the third party cannot act as if he is not implicated, at least not in the way an addressee would have behaved in a bourgeois society of strangers. The gesture of Fasih's father the night of the murder must therefore be reread as one of deep feeling of guilt *and* involvement in what just happened: the father must have felt that the criminal act did all of a sudden reverse the generational order, with his son taking over the family's helm. From Fasih's perspective, it was a violent gesture which at the same time gave him self-recognition through the Other *and* inaugurated the much needed *distance* between himself and his family—a distance that Fasih had already nurtured by becoming a student at Aleppo University. Modernity and the politics of the nation-state, and the violence that they both entail, give the youth more opportunities to distance themselves from their elders. Besides school and college education, which have become a requirement for all classes, the nation-state, in its desire to rule through homogenization, provides a plethora of institutions, from its civil and military bureaucracies, to the one and only Party, cooperatives, and intelligence services, which are joined by the youth, and which

constitute conduits for the young to become independent. Thus, with the nation-state, its schools and educational programs, labor market, bureaucracy, military and intelligence apparatuses, growth of the city, and internal and external immigration, there is room for the mobility of the youth, even if they find themselves under tight resources. Such mobility produces intergenerational distance that needs to be acknowledged: the youth seek *recognition* rather than abandonment.

To come back to our second case, which acts as an ideal-type to all four, Fasih had his father as addressee, had left the small rural community for the big city and college life, but nevertheless was seeking recognition from the very family he had left behind and abandoned, by honoring them in what they honor most—their landed properties. It was, indeed, the crime itself which connected the dots together: to receive that recognition from the family he had left behind, he had to act as protector towards their properties, hence the act of killing an alleged trespasser, which he was not even interested at meeting in person. The murderous act itself has less to do with Fasih's psychic interior (the possibility of a troubled psyche), and more with the unexpected changes in the symbolic texture of intersubjective relations: for example, the intergenerational changes produced by education, the labor market, and city life, in which the subject may lose his place—or lose face—in the socio-symbolic order, as maintained by the rules of honor and kin.

The other murder (Tirmanini), the assault on the uncle by his nephew, and Kitkani's attempted murder, only represent variations of the ideal type. The first one is the closest in this respect, due to the fact that the addressee-audience, which happened to be the father, gave himself up to the police, declaring himself the "true" murderer, which was a genuine acceptance of guilt, as if he could not bear "it" anymore and wanted to be punished for "it"—that unnamable Thing. But even though in this instance the victim Tirmanini was well "known" (as an adversarial landlord from a rival clan) by both father and son, having nurtured against him a long relation of hatred, he represented only a *bouc émissaire* for the father–son relationship. In other words, the son found himself in a world whose symbolic order, which managed the façade of politeness between landlords and their laborers, all of a sudden broken thanks to Tirmanini's harsh manners and his use of the courts—a world outside the norms of kin and honor—and which he could only restitute by murdering Tirmanini's. There is even evidence in the dossier of the crime that Rahhal kept coaching his son to go down that murderous route, on the wrong side of the law, hence the feeling of guilt. In other words, rather than solely look for the deep motivations in the murderer's psyche (which courts often indulge into by appointing medical committees that would assess the culprit's "sanity"), our attention should also concentrate on the external network of intersubjective relations which provides a symbolic texture for communal norms.

By the same token, the addressee in the third case was also the father, even though he was totally absent from the events. To take his father's mantle, 'Umar accuses his uncle of trespassing, and harms him in an act that may or may not look like an attempt to kill. Finally, in our fourth case, which involved collectivities, the symbolic order was broken, as in the first case, once the Kitkanis pushed too far their loyalty to state institutions (over Kurdish nationalism), whilst abusing of their dominance as landowners. Thus, the three

successive attempted murders, which spanned over several months, did not have as goal to physically eliminate three obtrusive and influential Kitkanis, but to restitute the symbolic order of intersubjective relations through a murderous act. In such communities, land itself is part of this external network of symbolic order, hence less of an economic asset per se, than a noneconomic symbol that makes economic relations possible.

It is generally assumed that land and labor are part of the infrastructure of an economy, while the legal (or legalized) aspects of contracts and exchange are epiphenomenal. That is to say, the legal is, in the last instance, subjected to the infrastructural power of the economy. There are realities imposed by land and labor which be definition only the law regulates: primarily when it comes to contracts and obligations. In other words, the law is set within the symbolic, while its use value is the imaginary, and its exchange value is inscribed within the realities of the market. In the symbolic world of the law, law is part of the broader culture, and is fully inscribed within the normative values of society. As such it is determined by cultural values: not only codes and procedures, but as we have repeatedly argued, an institution like witnessing cannot be grasped without the norms that bind individuals together. In societies where kin is strong, and where the sense of honor is no less strong, kin and honor are inscribed, like law itself, within the networks of symbolic exchange. That is to say, unlike the reality of the economy of the market, kin, honor and law, are all within symbolic exchange, and even though they may "regulate" the market, they nonetheless act autonomously on their own. We can integrate here the argument of Marshall Sahlins apropos "primitive societies," namely, that in such societies where kin and honor matter, and where, as far as the "economy" goes, gift primes the process of exchange, "the noneconomic conditions are the very organization of the economy."[25] What here stands as the noneconomic conditions includes gift exchange, kin and honor, law and crime, all of which help the organization of the economy.

[25] Marshall Sahlins, *Stone Age Economics,* New York: Aldine Publishing Company, 1972, Chapter 1: "The Original Affluent Society."

[Chapter 10] Photoshopping the president:
Men at work in the age of socialism

A crook should know how and when to quit

Syria has long been plagued by a rarity of commodities. When the Baath came to power in the mid-1960s it abruptly put an end to a then nascent urban modern bourgeois culture, which, among other things, was enjoying the benefits of consumerism. The nationalization of key industrial units and banks has led to an ineffective statist economy. For one thing, the state monopoly over labor and capital has reduced competitiveness and produced shortages in commodities, even the most crucial ones, such as bread, milk, and sugar. Moreover, in order to allocate the flux of hard currencies, beginning with the dollar and the various European currencies (later the Euro), the state had to considerably reduce free trade, while raising its import taxes on precious commodities like cars and electronics. On the other hand, the state banned exporting many food commodities, like olive oil, on the basis that they're locally needed. In addition to all such shortages, the freeze in salaries—or, more accurately, the fact that salaries were not routinely pegged to inflation—considerably reduced the purchasing power of consumers, most of which receive their monthly stipends from the state, as employees in the large civil bureaucracy, factories, or the army and the intelligence services. Remarkably, though, the Syrian Pound (S.P., or lira) managed from the late 1960s to the early 1980s to keep its value vis-à-vis the dollar at roughly SP3 for a dollar. But, with Perestroika looming in the horizon of the ex-Soviet Union, the new leaders of the now defunct U.S.S.R. suddenly summoned their Syrian visitors to pay it all in cash, instead of the customary debt procedures that had survived for a couple decades. The Syrian state suddenly found itself in the unexpected position of losing some of its hard currencies reserves simply to keep up with its moribund bureaucracy, factories, schools, and army, to survive at their bare minimum. Such an uncomfortable situation forced the lira to lose a great deal of its value, until it was pegged in the mid-1990s at SP50 to the dollar (the price would fluctuate by 5 percent between the winter and summer seasons). Ironically, the Syrian middle class, which had trouble in the 1970s finding on the market some of the most basic commodities (anything from food to closing and electronics), even though it could have afforded them, lost by the end of the 1980s a great deal of its bank and gold savings with the unexpected devaluation of the SP. The nationalization of banks and private financial services, not to mention that of private schools and colleges, has made Syria totally unprepared to cope with a financial crisis like the one it faced at the moment of the Soviet Perestroika. Those of the middle class that could afford, or had enough experience, opened bank accounts in Lebanon, attempting to reduce the damage that the state controlled Syrian banks were creating.

In sum, the rarity of commodities had a single culprit: the total state control over production, capital, and education. The centralization of decision making has limited personal initiative and transformed any small bureaucratic paperwork into a Kafkaesque nightmare. The state monopoly creates all kinds of intermediaries, the kind of persons and institutions, some legal, others illegal, that would propose their services to circumvent bureaucratic routine, or else to receive the benevolence of high-ranking

bureaucrats and army officers. Various state "cooperatives" (*ta'āwuniyyā-t*), particularly in housing, agriculture, and food provisioning, were created to help low-income people from the vagaries of the market. Small and mid-sized supermarkets, selling all kinds of home commodities, were state subsidized. More important, however, were the state-sponsored housing projects. Constructed for the most part on confiscated lands at the peripheries of cities, or at times, only few miles from a city's perimeter, the housing projects were primarily aimed at the professional units that formed the core of the nation's most trusted adherents: doctors, engineers, lawyers, teachers, army, security and intelligence officers, and Baath party members—a list that combines professional skills and ideologues. Housing projects, known as *jam'iyyāt sakaniyya* (housing cooperatives), were state subsidized, and their prices were set below market value; enrolling in one meant enduring that patience that would entail following the construction project over many years with no end in sight. Hence the crucial role of intermediaries who act like Shamans, healing the consumer's traumatic experiences, posing themselves as intermediaries for all kinds of transactions with a moribund state bureaucracy. Some of those intermediaries, such as the notorious Muhammad Kallās and associates in the 1990s, provided hungry investors with all kinds of basic services, primarily financial ones, which should have been left to banks, but there were none that could properly handle them.[1] In a remarkable sequence of "illegal" operations, mostly based in Aleppo, which benefited from Investment Law number 10 (1991), Kallās was able to provide much needed financial services via buggy portfolios similar to risky "hedge funds." He and his associates would thus provide small middle class investors, who were hungry for appropriate investment channels, with financial investments with lucrative returns, averaging at times between 50 to 100 percent. The Kallās enterprises in Aleppo would thus purchase apartments and lands far above their market prices, but rather than return cash to their owners, the fictitious prices became investments in hedge funds appropriated by Kallās. But even though Kallas and associates had some capital invested in "real" production, such as textiles and jeans factories, most of the capital was pure speculation. Thousands of people had invested their life savings and properties in such fictitious funds, and when rumors spread in 1997 that there was no "real" capital to sustain such financial operations, Aleppo panicked to the point that people lined by the thousands in front of the offices of Kallās enterprises hoping for their money back. Needless to say, the capitals were not there, and Kallās had to file for bankruptcy, jailed, brought to trial, prior to a late controversial acquittal.

In five decades of Baathist rule, with its moribund socialist ideology, which initially might have had some popular appeal (including among the old Ottoman aristocracy, which had lost a great deal of its economic benefits with the emergence of a well to do middle class during the French Mandate and after), Syria landed on an economic standstill, thanks to an arcane bureaucracy. A class of intermediaries therefore rose to power, whose only function was to provide services that should in principle have been those of the state bureaucracy. But with the latter's gross inefficiency and incompetence, the intermediaries offered various services that people would receive from the state only if they had at their disposal enough time and patience. Receiving a land phone line, for

[1] See Chapter 1 on the Kallas affair and its aftermath.

instance, would require, until recently, an application whose approval might take up to five years, if it would ever get done. Many families got into the habit of applying to numerous phone lines at a time, in the name of their teenaged children, for example. But even though intermediaries would offer their services within more reasonable time limits, they would have to rely on the state bureaucracy and its infrastructure, hence all what the intermediaries create in the final analysis is a parasitic layer that parallels that of the arcane official bureaucracy. From phone lines, their functions have considerably expanded to bill payments, to providing "family" leaves for the young men serving in the army, to selling electrical and electronic equipment unavailable in local markets, to accessing housing cooperatives (which in principle are limited to syndicates), to foreign visas (in particular Saudi Arabia and the Gulf States), college degrees, and many other services. The strategies deployed to provide such services to a hungry and weary public at reasonable cost, hinge for the most part on the borderline between the legal and illegal. It is not illegal, for instance, to help someone receiving a visa in a foreign embassy and consulate, but it is illegal, however, to bribe an embassy's employee to facilitate that process. Other things are known to be illegal: conscripts know that they can go home for short vacations only at specific times of the year, or else for family or health emergencies; it is therefore illegal to either create false excuses or to bribe one's supervisor for unauthorized vacations.

The industry of intermediaries and forgers is therefore very different in authoritarian and bureaucratically dominated societies from their western liberal counterparts. There are, of course, plenty of people in the U.S. who would offer faked green cards, passports, social security numbers, résumés and driver licenses for those who are willing to take the risk and afford the price. But besides the fact that such services are normally offered to illegal aliens, the intermediaries in question are not acting as facilitators to bureaucratic paperwork: they're illegally normalizing the status of thousands of aliens. In Syria, by contrast, most intermediaries work as facilitators of bureaucratic paperwork, which in principle should not be illegal: if it takes a month of my time to register my new car, it makes sense that I relegate the work to an experienced professional who normally spends his time in such transactions; I'll reward him for doing the job for me in fifteen days. The "legality" of such proxy transactions, however, could be easily trespassed into less familiar territories. Helping in car registration could soon become illegal registration of cars that did not do it through the regular channels; or helping in the purchase of a subsidized apartment in one of the housing cooperatives might soon entail giving property titles to people who in principle should not be entitled. Since state employees benefit from the services of intermediaries, the borderline between the legal and illegal is hard to draw, on one hand, and the shutdown of such an industry would draw lots of people and their families to the jobless market on the other.

Intermediaries in Syrian society are therefore a class of their own, who are usually, though not always, remote from the clandestine networks of smugglers, forgers, and counterfeiters, in Syria and elsewhere, and who at times are respected because of alleged links to VIPs in government, the army and intelligence community, and the party. Such alleged links, which could be true or false, weak or strong, are always informal and personal; both sides benefit, however, at sharing the cash that pours in from clients who

either would like to speed up their transactions, or else have no other way to legalize an illegal transaction.

This Chapter carries two unrelated crimes, one on forged identities for the sake of positing oneself as a better intermediary in transactions with the moribund institutions of the Baathist state, while in the other, drug possession and trafficking implied constructing a network of men-at-work, which is also what was implicitly at stake in the first case. Intermediaries were therefore incriminated for having trespassed their limits, hence made it to the Jinayat, instead of going back to the comfort of their homes with their illegal practices. In the first case the accused fabricated for himself a false identity, forging in the meantime documents and seals, while providing goods and services for which he had no legal right. The fabrication of a public faked identity, as an alternate to the private, which would enable its bearer to move along into social circles and accumulate clients, wealth, prestige, and status, stands here as the crux for each of the two cases under scrutiny.

[C10–1] A grotesquerie comes to light, as this case attests,[2] when the "artist"-cum-forger in question had for all purposes faked all identities: from his public persona—claiming, among others, a "closeness" to the late Syrian president Hafiz al-Asad and his two sons (Basil, the accidental martyr, and Bashshār, the president-as-heir)—to documents, college degrees, signatures, and seals, from various ministries, governmental agencies, and syndicated cooperatives. In sum, our protagonist crafted for himself the kind of public persona that Syrian society craves for: an all-to-do intermediary with alleged close links at all levels of the governmental hierarchy, up to the president's office.

As soon as Muhammad Kāmil Kamāl (b. 1959, resident of Aleppo's middle-class Jamiliyyeh neighborhood) was arrested in November 1996 for forgery for creating faked official documents, out of which he had allegedly extorted lots of money from his clients (see Table 10–2 *infra*), his case was soon transferred to the Jinayat a couple of months later, which incited a memo to the court from his defense counsel.

> My client the accused Muhammad Kāmil Kamāl is a **talented artist** in drawing, planning, coloring, and photography. He loves so much Mr. president and leader Hafiz al-Asad to the point of adoring him, wishing to be all the time at his side, **like a son**. This idea has so much taken hold of him that it made him feel that his social status would have indeed improved had he in fact been **close to the president**, considering that the latter is loved by the people and the symbol of its struggle.
>
> He thus began to declare himself as an officer [attached to] the presidential palace, and that he is an **important personality in the state and party**. He also arranged some photographs that made him stand side-by-side to the president and his son the martyr Basil. He also claimed to be able to guarantee subscriptions at

[2] Case #222/4/1997, Aleppo Jinayat ruling on 26 January 1998; sustained by the Damascus Naqḍ on 17 May 1998.

> the party's housing cooperative, and to help all those who wanted to find a housing at the party's cooperative. He used to make receipts in the name of the party's housing cooperative, passing them on to anyone who wished to subscribe. He was that way able to cheat on a number of people, pushing them to pay illusory subscriptions that have no validity in them. He was also able to delude some people into providing them with scientific certificates, using his artistic talents to prepare such receipts and certificates, stamping them with seals that were supposed to be those of the country (*qiṭr*) and party, while in fact **they were neither identical nor a forgery of the original**. As soon as he was exposed, he was arrested, and **confessed** for doing all that, giving the money back to its people in apology. He regretted what he did, and confessed in detail. He **reiterated** those confessions at every stage of the investigation. Moreover, all the tools that were used and found in his possession were drawing tools which he used when he planned the seals that he claimed were those of the party's cooperative or presidential palace or other official directories. In reality, however, **they are neither identical [to the real ones] nor an imitation to them**. (Extracts from a memo addressed by the defense lawyer 'Ali Ahmad al-Zakkur to the Jinayat, 16 December 1997)

With the overwhelming evidence that the accused had forged hundreds of faked documents, claiming membership to institutions for which he had no legitimate status, the defense was left with only two unrelated strategies. On the one hand, the defense advanced the claim that his client's manifest love for the president made him fall into delusions: excessive love for a persona that everyone in the country admires and respects presumably creates in some the desire for reciprocation. Even though the defense never made the claim that his client became psychotic as an outcome of that excessive love, the allusion to insanity is nevertheless implied.[3] On the other hand, the defense was adamant, at least in its initial plea to the Jinayat, at rebuffing the prosecution's accusations of forgery and counterfeiting. In the above passage, the defense was careful when choosing its words: for instance, "arrange" was used on several occasions instead of the verb "fake," as there was an insistence that all seals and other materials were not identical to the originals; meaning that their incompatibility was presumably an indication that the accused was using his "artistic" talents for his own pleasure—or to feel closer to the president—with no intention to harm anyone. The two claims would thus go hand-in-hand only if the incompatible seals and signs were perceived as a product of the defendant's delusions, which in turn were an outcome of excessive love. In sum, the accused had an artistic penchant for things, a love for the president and the country—qualities that were incongruent with an alleged criminal forging the emblems of the state and its institutions. According to the defense, therefore, his client had created his *own* "emblems," which had nothing to do with those of the state.

> In order to reply to the questions [posed by the prosecution] we need to understand the meaning of the word 'imitation' (*taqlīd*). **Imitation** means the creation of something **false** (*kādhib*) as identical (*muṭābiq*) to the original (*aṣl*),

[3] On the treatment of insanity in Syrian courts, see, Chapter 3.

> which is genuine (*saḥīḥ*) and firm (*thābit*). It means coming up with that genuine thing, and placing the [faked] thing in front of it, or placing its image right in front, so that people are deluded by the resemblance. If my client the accused Muhammad Kāmil Kamāl had placed the seal of the [presidential] palace and a picture (*ṣūra*) of it, or the seal of the party and its picture, and made similar or identical seals, then his act would have surely fallen under rule 427 of the penal code, as suggested by the referral judge and general prosecution. (Zakkur, *idem.*)

The defense went on in its conclusion claiming that "the drawing of those seals was the product of [our client's] ideas, which are **not identical** to the state's seals[4] in any way." In sum, to the defense, the defendant did not commit a crime (*jarīma*), but only a felony or misdemeanor (*junḥa*), hence should not be tried under the harsh sections of the criminal code.

Figure 10–1: Faked document of a membership to a housing cooperative (*jam'iyyat al-rā'id*) in Aleppo in 1996 allegedly forged—or, in the language of the defense, "artistically drawn"—by the defendant.

[4] A mistyping amusingly modified *akhtām* (seals) for *aḥkām* (rulings/laws), which could, of course, have originally been not a typist's error, but a Freudian slip of the tongue from the defense.

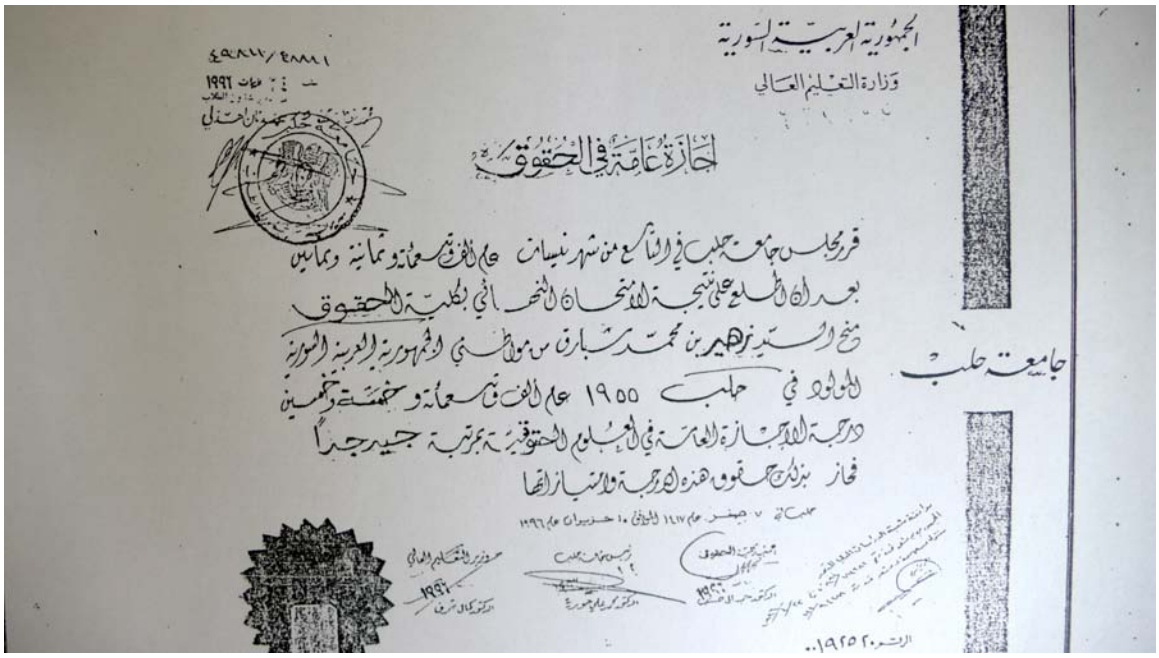

Figure 10–2: Forged law degree, allegedly prepared by the defendant in 1996, granting a diploma from Aleppo University.

To the prosecution, however, forgery was not merely an artistic phenomenon, since it primarily implied big money. The defendant was, among others, accused of amassing the sum of SP680,000 ($13,600) from a single plaintiff on innumerable fraudulent matters, not to mention the cash he had received from dozens of others of his "clients." In his memo to the Aleppo prosecution judge, the plaintiff in question divided the fraudulent money into two categories. The first, amounting to SP418,000, included down payments to various housing projects in Aleppo, fees for residency permits in Saudi Arabia, subscription fees to housing compounds in Saudi Arabia, visa fees for Germany and various Schengen states (a consortium of eight European states), translation fees of certificates issued by the ministry of education, medical insurance fees for the U.S., AIDS tests, fees for requesting land phone lines, and tax-forms fees. A second category, amounting to SP262,000, mostly involved various fees for the purchase of a car. All such documents were subsequently certified as fraudulent by the Jinayat. In sum, the defendant was providing his clients with *any* kind of documentation that they wished, and apparently nothing was beyond his artistic reach. What the list of items above reflects are the typical needs of the middle class, all kinds of utilities, services, and consumers objects, which have become household necessities in most of the world, but for which the majority of Syrians have to pay dire prices—and a lot of patience. Besides the cash, time is a big social factor for such services and utilities: as waiting becomes an important tool for success, intermediaries typically intervene in offering their services to shorten the time framework as much as possible. Besides services and utilities destined for internal use, shortages within the labor market, a stagnating economy, and low salaries, have all contributed, among other social factors, at encouraging young and middle-aged Syrians to seek external job markets. Saudi Arabia and the Gulf States soon became prime targets since the 1970s, and the Syrian communities in various parts of the Arabian Peninsula grew considerably, to the point of managing their own lobby groups within the Syrian

government and bureaucracy: they succeeded for instance at convincing the government to create a special *badal*—a $5,000 fee in lieu of military service—for the young immigrants to Saudi Arabia and the Gulf States, while such a *badal* was unavailable for immigrants to Europe and the Americas, until a presidential decree in 2001 regularized the *badal* across the board.

What intermediaries therefore do is propose their services to users which have become impatient with bureaucratic restrictions, and which, in order to improve their status of living decided to bypass common routine. Such impatient users became the victims of intermediaries like the defendant in our case here. The original complaint against the defendant came through the secretary general of the Baath party in Aleppo who drafted a memo to the police chief on 5 November 1996. The latter in turn drafted a memo urging the Jinayat to take action, in which he listed a total of 12 persons who allegedly had paid various cash dues to the defendant for services and fees. The fact that complaints surfaced at the party level rather than in a police station is a bit strange, but it could be an indication of the defendant's use of various party identities while promoting himself in public. Such faked party identities notwithstanding, it remains unclear why complaints did not surface earlier, and on what basis the list of 12 was compiled: Did they come on their own, one after the other, until the party's secretary general realized that it was getting serious? Or did they complain as a group? In any case, the initial accusations of all 12 were detailed in a handwritten 20-page police report on November 12, right after the accused was arrested.

'Ala' al-Din Hamami (b. 1964), a cabdriver from the popular Aleppo Kallaseh neighborhood, was allegedly robbed by the defendant, and as such represented a typical victim. When 'Ala' had met the defendant a year earlier in a shop in the old city, the latter introduced himself as an accountant in a housing cooperative. He allegedly claimed that he would be able to guarantee a housing unit to the plaintiff, on the basis that he was a "party comrade," and that he simultaneously maintained a position of colonel at the presidential palace. Having introduced himself as an influential person, the defendant allegedly claimed from 'Ala' SP12,000 to register him in two apartments in a single housing unit: "I used to pay him gradually, and when I urged him on several occasions that we go together for a visit to the housing units and their cooperative, he declined. When asking several persons close to the party on the cooperative, I realized that it's **illusory** (*wahmiyya*) and has no reality at all. I came to the conclusion that he's a **fraudulent person**, and we drafted a petition to the secretary general of the party. I request that an investigation be open, and I declare myself as an individual plaintiff against MKK, requesting my money back."

The rest of the depositions proceed the same way. The plaintiff accidentally met the defendant in a downtown shop, and the latter introduced himself as an important personality with lots of power in his hands, proposing his services in the interim. The plaintiff became a client, paid cash for faked services and utilities, prior to addressing a complaint to the party's boss. Once we get the moral behind one story, the rest is déjà vu, and while moving from housing cooperatives, to Saudi visas, and car purchases, we're all over into a single territory.

Bashir Khawwam (b. 1966), who at the time was a textile merchant in the old city, had known MKK for a long time as a neighbor. But the latter suddenly vanished for ten years, prior to resurfacing again in 1995. MKK had allegedly initiated regular visits to Bashir's shop, introducing himself as a colonel at the presidential palace, and a top-ranking party member, in addition to serving in various housing projects. He even showed Bashir a facsimile of a photograph where he was standing side-by-side with president Asad in person. Bashir allegedly paid MKK SP41,000 in several installments for various services ranging, as usual, from housing projects, to travel visas to Saudi Arabia, and residency permits abroad. Bashir finally complained to the party when he was told that MKK was nothing but an ordinary person masquerading as someone influential.

The other plaintiffs were no different, most of them middle-aged men and women in their thirties and forties—of the defendant's generation—all of which, even though doing well by middle-class standards, were impatient with what their own society had to offer, and impatient mostly of a bureaucratic routine eaten by party affiliations. Since the defendant had already fully confessed to the investigating judge on November 26, soon after his arrest, leaving his lawyer with the only option to play with the meaning of the word "fake" and its various linguistic uses (and abuses), the Jinayat ruling came rather rapidly, within a year of the arrest.

In many ways, the defendant was no different from his victims. They all lived for the most part within affluent areas of Aleppo (Jamiliyyeh, Sabil, and Khaldiyyeh), and might have held similar aspirations. As members of the middle class—even though more lower than upper middle class—they all felt the economic hardships of a society where material woes could easily translate into loss of status. Being from the same generation, and having known his pals-cum-victims for the most part in high school, the defendant was a cloth merchant too, when his father went bankrupt and their only downtown shop was sold in public auction. Having become unemployed with some savings, he felt uneasy about his new social status, cutting himself from his old pals for ten years. But he only came back to them one-by-one as a fraudulent persona with claims of party membership and close links to the presidency. He quickly became acquainted with the idea of forging documents and selling faked services. He developed that expertise in less than two years, and nothing stopped him except the clumsy suspicions of his old pals, which eventually led to his arrest. Having delivered nothing but faked papers and receipts, the plaintiffs saw none of the apartments, visas, residency permits, insurances, and cars that they had been promised.

In its final sentencing, the Jinayat rebuffed claims by the defense that "forgery" implied a product that would be "identical" with the original, and pursuant to articles 427, 444, and 448 of the penal code, sentenced the defendant to seven years in prison with hard labor. When the case was appealed to the Damascus Naqḍ court, the appeal was overruled, and the case was finally closed.

A crook who went too far

The protagonist unduly took himself as the son of the president. The relation father-son emboldens a preoedipal link whereby the son finds himself at home protected in his mother's womb, under the benevolent and affectionate father's gaze, free to unravel his artistic creation, which amounted at fabricating relations and documents without limit. It is as if, as is common in authoritarian régimes, where the leader, as the big Other of Law and Order, achieves the cult status of a gigantic paternalistic symbolic figure, is here taken literally by becoming the (actual) father of the protagonist himself. By actualizing the president as *his* father, and by becoming *his* son, this imaginary relationship *was* what concretized the protagonist's freedom towards his artistic endeavors. The protagonist was here seduced by the phallic power of the president (statutes planted all over the country have such phallic power), which by extension became his, enabling him to issue documents, subscriptions, claim a status, in-the-name-of-the-father (Lacan's *au-nom-du-père*). In the absence of the mother, the Oedipal rivalry between father and son resolves itself by the son at home into a preoedipal status: there is no rivalry with the mother over the father because the son protects himself in his mother's womb. Empowered by his status as the father-leader's son, he went ahead with all the social relations that he desired. Here we need to analyze the fetishism at two interrelated levels. First, there was the fetishism of economic class struggle, whereby the protagonist found himself caught in dire economic conditions (the closing of the family shop in downtown Aleppo), which were transcended through the process of identification with the father, enabling him to do what he did. On a second level, the sexual deadlock manifested in turn a level of mythical fetishism which found its salvation through the identification of leader-father-son. What appeared as symptom here was the practice of forgery, which was portrayed as a derivative of the leader-father, and which in turn was what caused the legal anomaly in question, namely, that the protagonist *transgresses* the Law to actualize the leader-father relation (which should be a nightmare from the viewpoint of the authoritarian state, as it takes for granted a general attitude of cynical distance). The breaking of the (civil) Law was, however, portrayed by the protagonist's counsel as one of pure artistic endeavor, if not love: the protagonist was, indeed, a "culprit" not for breaking the Law but only for the manifested excessive love towards the leader-father, transmuting him as *his* father, while becoming *his* son. In other words, our protagonist was only "guilty," assuming there was any "guilt," for having applied the leader's formula *à la lettre,* namely for actualizing deeply into himself, like a modern sufi, what was only taken at face value: that the leader is not only a political leader, but also the father of every citizen of the nation. Our protagonist was therefore guilty for having behaved like an *idiot savant,* that is, for having believed *deeply into himself* what others only take at face value. Like the medieval sufis who object to the very idea of taking God nominally at face value as an all empowering Being, they want to "feel" God deep in their *own* selves; hence the sufi's "path to knowledge," the *tariqa.* In similar vein, our protagonist's assimilation of the leader's image as a father figure deeply into himself pushed him towards artistic recovery, which from the standpoint of the Law meant something else: counterfeiting documents and posing as someone else from what he really was, hence faking social relations. Our protagonist, in line with those deeply psychotic and neurotic persons that populate the case histories of psychoanalysis, constructed an image of the world, society,

and *his* place in that order, which placed him in a unique position, having internalized the leader-father-son identification, of someone who could help others in society by limiting their sufferings in the routinized bureaucratic ordeals that constitute the essence of Syrian daily life.

Even the police report, which is usually the first available document in each criminal case, is in this particular file much longer than expected: over twenty pages drafted in a tiny but legible handwriting. It all began, based on the report, when a couple of mid-aged individuals complained against a man who promised them various services but never delivered. They paid him cash—and, occasionally, he dared demanding hefty sums—but never got anything in return. Even though the initial complaints seem to have surfaced via party officials, bureaucrats, or security agents, it was the police who finally went with the suspect's arrest, subsequent detention and trial. Plaintiffs came by, one after the other, detailing how the defendant's actions were fraudulent, and how much they had to pay beyond their means, hoping to receive promised services that they never got. Here is the first account, which in some respects was quite typical and fairly representative of the rest to come.

> My name is 'Ala' al-Din Hamami b. Mustafa, my mother is Balqis, and was born in 1964 in Aleppo where my personal status records number X are located. I now live in the neighborhood of Kallaseh, close to the mill known as X, and the mosque of Abu al-Raja, in building X, etc. I'm married and received education, and my job is a driver. I'm an Arab Syrian.
>
> Roughly a year ago, while I was present in the city, in Suq al-Wazir, for reasons related to my work, I met Muhammad Kāmil Kamāl b. Bashir in the shop of Bashir Khayyam. I was told that he was working as an accountant at the Hananu building cooperative, and that he had the power to make available apartments in the party's cooperative, since he was a party's companion (*rafīq hizbī*), with everything in his hands. Moreover, he had the rank of colonel at the presidential palace. I therefore paid him the sum of SP12,000, so that he would book for me two apartments in the same building [in Hananu]. I've paid him the sum in installments, requesting in the meantime, and on several occasions, that we go together and visit the cooperative's site and check on the building activity. But he always managed to escape my demands. When I finally inquired about the cooperative to party members, I was told that it was fictitious (*wahmiyya*) and had no existence, and that this person is a fraud. I did complain to the party's officer in one of the branches. I request a full investigation on the matter, and pose myself as plaintiff against MKK, in order to receive my money back.

The above deposition, which goes back to November 1996, was typical not only in respect to the other dozen ones to come, but more importantly, in relation to the social realities and anxieties of an entire population strata in a city like Aleppo. In a society dominated by *the* Party, named simply *al-ḥizb,* without its Baathist qualification, as if it's not needed, and the party's affiliates, such as the notorious cooperatives, which are supposed to serve all those disfavored among the general populace, the boundaries

between what's supposed to be "legal" and the "illegal" are quite often hard to maintain. For one thing, the proliferation of all kinds of syndicated cooperatives, in particular since the "reformation" of the second Baath in the early 1970s, has led to all kinds of middlemen that would facilitate, or speed up, the process of potential beneficiaries. Suppose that a person works as a full-time cab driver, badly needs a home for his family, and doesn't have enough income to buy one at a reasonable price, would he then be eligible to an apartment at a cooperative at a reduced price? Would the process ease a bit if the driver was party affiliated? Considering that drivers in general tend not to be syndicated (unlike more respected professionals like teachers, doctors, and engineers), or are at best affiliated to workers' syndicates (*naqābāt al-'ummāl*), would they be eligible for the special state-sponsored subvented apartments? It is indeed the ambiguity of such questions that prompts the services of all kinds of mercenaries and blurs the thin line between the legal and illegal. For instance, in the case of our first plaintiff above, his lawsuit hinges on the ambiguity of his eligibility for an apartment at the Hananu complex: if he was eligible, then why did he opt for the services of a person who posed himself as a high-rank official at various institutions, paying him all that money, rather than go directly for the thing? Was it a question of simple bureaucratic routine? What was therefore left unquestioned in the police memo—which was more like a direct deposition rather than a thorough examination—which applies to the other plaintiffs as well—was precisely the "eligibility" of the plaintiff to go for two apartments in the Hananu compound in the first place. And even if he were (as a member, say, of "the working class"), then would he be eligible for two apartments in one acquisition? We need to look more carefully later as to why such questions were not raised, and why all plaintiffs were left without a thorough examination on such issues. In other words, we're left with that uncanny feeling as to who *was* "straight" in all those lawsuits: were the plaintiffs "cleaner" than their sole defendant?

On the other hand, and when it came to our protagonist as a person, he defied the typical intermediaries of sorts, whether real of fictitious, which were needed to sort out the bureaucratic labyrinth, and whose real or fictitious statutory connections did constitute their main capital—"a party companion," "with everything in hand," "a rank of colonel at the presidential palace"—by *forging* his qualities, hence *transgressing* the values of "normal" intermediaries, as if willingly betraying the rules of their corporation. Since in an undemocratic society party affiliations, and links to the ruling clan, become predominant in major business circles and national and regional affairs, to be fraudulent de facto implies constructing faked links to such upper circles. It is as if there is no "successful" business but through such links to influential *political* circles, whether the presidency itself, the intelligence services, or the Party for that matter. MKK, therefore, assuming all allegations against him were to be true, was no more nor less guilty for illegal violations than all his plaintiffs combined. In effect, plaintiffs and defendant were all drawn together into the same circle of hell, as both sides needed one another to survive the economic hardships through illegal procedures. Such a confusing reality, however, was certainly *not* what did transpire fully from the documents at hand, as the plaintiffs were all portrayed as having been duped by a ruthless and greedy defendant. That may be certainly true, but a plaintiff who in the first place sought an "illegal" procedure of some sort from the defendant ought to be as much "guilty" as the defendant

himself. What is therefore remarkable here is how the case was constructed *in toto* around a neatly cut dividing line: plaintiffs that were at the mercy of a counterfeit defendant with a faked public identity.

Another aspect of all the scummy loans and faked identities was the financial crisis in the credit and loan system in Syria. Based for the most part on public institutions, the banking system did not aspire much trustworthiness into the general populace, due mostly to corruption, slowness in transactions, and sheer incompetence when it comes to up-to-date banking techniques. Thus, compared to neighboring countries, whether Turkey, Lebanon, Jordan, or Israel, the banking system in Syria neither attracts enough cash reserves from individual savers, nor does it provide the necessary loans at reasonable rates to stir the economy. In effect, most loans originate in parallel banking institutions, such as the various *taslīf* banks (agrarian, commercial, and real estate), which, more appropriately, ought to be referred to as state-sponsored institutions. To this shortage of credit must be added all kinds of financial hurdles that would prove frustrating to anyone with even a bare minimum of business operations. Thus, all kinds of limits have been imposed since the 1960s on various financial transactions, ranging from the illegality of foreign bank accounts, an artificial pegging of the Syrian Pound to the U.S. dollar and other major European and world currencies, which led to a simulated exchange rate and an inflated pound far beyond its real value, and finally high tariffs on imported consumer commodities, beginning with cars and electronics, not to mention a ban on specific commodities (in particular foodstuff) for export purposes. Needless to say, users in most circumstances would only bypass such hurdles through illegal transactions, hence the role of suspicious intermediaries like our defendant in this case. Which raises the crucial issue of "legality" of such matters, as legality and illegality would mix so ubiquitously that the borderline is unclear. As is the case with contractual settlements in so-called "illicit neighborhoods," the "illegal" contracts need the "legality" of the state courts to circulate properly, which implies that the state's "legal" apparatus, once it becomes saturated, cannot but accept the other "illegal" procedures, while de facto endorsing them through its court system.

Whether the issue of legality and illegality ought to be at the center of our case here is another matter. What needs to be done, however, is to see how the users themselves document the case: is the issue of legality what matters most to users? How is it portrayed? And under which circumstances?

The second plaintiff-witness is very similar to the first, to the point that what strikes in all those depositions is indeed their repetitive nature, as if it's *repetition,* rather than, say, a systematic investigation, that would bring truth to the forefront.

Bashir Khawwam (b. 1966) sells textiles in Suq al-Wazir located in downtown Aleppo.

> I've known the defendant MMK very well as neighbor, but I haven't seen him in 10 years. In this last year, however, he started visiting me in my shop quasi-regularly. He told me that he was a colonel at the presidential palace, associated to the party, and responsible of housing cooperatives in Aleppo such as Hananu and

> Ghazali, and that it was in his power to do everything that's needed in this province (*muḥāfaẓa*). He then showed me several facsimiled pictures of himself standing side-by-side to the president [Hafiz al-Asad]. When I realized that he was an accountant at a housing cooperative, and considering that I badly needed an apartment, I paid him cash SP41,000 in installments. In return he gave me a receipt sealed, stamped, and signed by the president of the Hananu corporative for those working at the party. [The implication here *seems* to be that the Hananu housing corporative was only open—or limited—to those "working" at—or affiliated to—the party, even though it remains unclear whether the plaintiff himself was at the time a party member, which would have given him that unique privilege to apply for a housing unit—even though applying, and going through the tedious procedures, would not necessarily grant delivery of the requested unit.] He then informed me that he could facilitate a visa for and a residency permit in Saudi Arabia. But when I questioned party members about MMK's status, they told me that he was a complete fraud (*muḥtāl*) and a fake (*muzawwir*). I therefore directly complained to the secretary-general of the party. I request a full investigation, and pose myself plaintiff in this lawsuit. I also want my money back in full.

As in the first testimony the epicenter of the credit-loan system is the Party. Note that the Party itself, or its various affiliated institutions for that matter, were not the agencies that would provide grants and loans to its members, but rather some kind of "affiliation" to the party itself—or at best an "affiliation" to a "prominent" member—that would do the trick. In other words, it was indeed the *ideologizing* and *politicization* of the credit-loan process, and the lack of transparency in banking and financial matters, that pushed users towards intermediaries and faked loan or deposit agencies. Once the credit-loan system is patrimonially run, lacking any *professional* credibility in public eyes, the role of intermediary sponsors verges on the fraudulent, while users, scattered all across the social spectrum, would also be willing to sacrifice some cash for a better life through fraudulent promises.

But that's precisely what the judicial system did not want to get into, that is, it had no intention of putting the credit-loan system on trial. What it did best was to create, right from the first testimonies, a template through which to construct testimonies where plaintiffs and defendant were filtered as good-evil types: a defendant which criminalized himself through faked identities, and plaintiffs who fell prey to his delusions. A first level of reading such documents reveals, therefore, that kind of good versus evil construction, and we could be satisfied at interpreting such a construction and see how it concretely operates throughout the trial. But then the whole case would be incomprehensible without its extra-legal context, namely the fact that the credit-loan system was segregated into exclusivist membership affiliations, and that one needs to get into such circles of hell, or close to them, or fake his belonging to them, for any chance of success.

When analyzing the totality of the case, we therefore need to ask at every juncture whether the documents themselves prove to be self-sufficient, or whether we'll have to re-contextualize them within broader socio-economic parameters. Reading a document,

and subjecting it to interpretation, on one hand, while contextualizing it into broader parameters on the other, may be two different operations that would require alternative techniques of reading and contextualizing, but in the final analysis they are both part of the operation that would give meaning to a process.

Civil-law systems are not known for the thorough cross-examinations to be found in their common-law counterparts, as proceedings tend to be tightly controlled by the court and its chief judge, leaving little room for lawyers and other users to directly interact with one another. In the Syrian system, both civil and penal, such limitations are pushed to their extreme, as, in many instances, cross-examinations would barely exist. In most instances, depositions come as quasi-avowals, set in packs of short sentences, with no clear indication as to how they had originated: Was the utterance a response to a question? Or was it a direct statement in the form of an "avowal" or "confession"? More importantly for our purposes here, how would the orally uttered statement in colloquial Arabic "relate" to the written statement, as drafted and "edited" in the police report?

The above two testimonies are fairly typical in that they leave little room for an even rudimentary examination. The short sentences come in the form of "avowals," probably instigated by a question from a police officer. They were then edited and put together in official Arabic in a single paragraph that would point to a minimal "coherence": a "coherence," however, that seems more an outcome of the "editing" of the police report than an emanation from the speaker himself. Each testimony was therefore crafted as a *direct* quasi-coherent statement, as if there's no "gap" between the oral utterances and the written deposition (and the issue was not even raised in the first place), as if each statement on its own did not require further examination. In sum, both statements were crafted as models of clarity and conciseness: the task was completed, and the defendant was burdened with more and more evidence set against him. In sum, it all has to do with *evidence as repetition,* rather than, say, an outcome of examination. It is, indeed, the repetitive nature of those evidences *from one witness to the other* that confirms their status as evidence. A statement X—say, on the defendant posing himself as an accountant in the Hananu corporative—establishes itself as genuine evidence through the repetition of the same from one witness to the other. Which poses the issue of content versus situated encounter. The "same" statement, with an identical content, could have been uttered in widely different circumstances, and more importantly, there is no prima facie reason to presuppose that the two statements, uttered by two persons in different situated encounters, are a priori identical—even if they say the same thing.

For every statement that the police report claims on behalf of a witness we should therefore ask, How did it come into existence, and under which circumstances? In other words, we're underscoring the importance of situated encounters over pure content, or at least we're attempting to bring content in relation to situated encounter. But in the absence of the original question-and-answer format, is it possible to question a statement in relation to its situated encounter?

For example, in the above two depositions, one wonders what gave the two witnesses enough confidence in the defendant, so as to proceed with a preliminary down payment

without even a single visit to the apartment(s) they were supposed to purchase! Did the police in its examination press them on the ambiguity of their decisions? Did they proceed with some background checks on the identity of the defendant prior to going forward with the proposed investments in the housing units? As the testimonies above eschew that line of reasoning, one wonders whether in the initial *oral* interviews—which are absent in the *memo* at our disposal (and were hence absent to the court)—raised such concerns. The level of "confidence" looks indeed as the most intriguing part of this case: Why was there so much confidence in the defendant in the first place? Did everything turn against him simply because he failed to deliver, or was it something else? What is so stunning is the ease with which the defendant managed to fool a large amount of people, requesting enormous cash sums from them, while not delivering much.

With the first two depositions completed, the police memo shifts all too unexpectedly to the arrest of the accused, and to a plethora of illegal items that were seized from him, prior to moving back to other witnesses and additional testimonies. It remains unclear, however, whether events unfolded specifically in that order: was the arrest of the accused come in light of the first two testimonies, and only then further witnesses were summoned amid the incriminating documents that were found in the defendant's apartment? Either things happened in that order, or else they were reordered during the "editing" process of the police deposition.

[Table 10–1] Sample list out of 100 illicit items found in the possession of the defendant at the moment of his arrest

1	SP30,000 found in the defendant's pocket at the moment of his arrest in downtown Aleppo
2	$320 in the defendant's pocket
3	faked ID in defendant's name found in his apartment, identifying him as colonel in the presidential palace, with the seal and signature of president Hafiz al-Asad
4	faked ID in defendant's name, identifying him as member of the intelligence services (*mukhābarāt*), with all the required signatures and seals, and a serial number
5	faked ID identifying the defendant as a member of the intelligence services at the presidential palace
6	facsimiles (*photocopie*) of photos of the defendant with president Asad, and his son Bashshār (the actual president)
7	faked driver license
8	faked car license of a Mitsubishi
9	faked law degree from Aleppo University in the name of one of the defendant's clients, in addition to other forged degrees in various faculties from the same university
10	several faked visas to Saudi Arabia in the name of some of the defendant's clients
11	faked visa to Germany
12	several faked receipts from the finance ministry, one of them indicating the transfer of SP112,000
13	several faked checks from local and regional banks, such as the British Bank of the Middle East
14	faked documents from housing cooperatives in Aleppo showing apartment plans, projects, and various receipts in the name of the defendant's clients
15	various faked seals, tools, and stationeries used in the production of the forged

	documents

Note that each one of the items above is provided in a detailed form with the serial number on each document, signatures, seals, and issue and expiration dates. In toto we're close to 100 items of forged IDs, university degrees, checks, visas, and documents from housing cooperatives. The defendant's activity, in the few years prior to his arrest, was therefore massive, as it mostly targeted lower middle-class people eager to risk some of their savings in the hope of improving their financial situation and social status.

The list of 100 or so forged and other items were the most empirical side of the document. In their variety such items displayed what essentially amounted as the bottleneck of consumerism in Syrian society of the 1990s and later. Any society moves faster than its state, and that's even more true of Syria in the last couple decades. Having gone through the so-called "rectification movement" of the 1970s, which de facto led to the occupation of neighboring Lebanon and its highly consumerist society (and which served as conduit to Syrian consumerism), the bulk of the middle class was eager to move forward beyond the constraints imposed by a moribund bureaucracy. Genuine reform was, however, slow to come, and the lower and upper middle classes only moved forward by bypassing all kinds of rules and regulations. This implied anything from relying on intermediaries, to bribing one's way through the bureaucratic labyrinth. The list of fraudulent items that are listed here represent only a sample of the needed gadgetry for social success: when you can't have such items by regular means, the alternative would be illegal transactions.

MMK's genius—his great talent as "artist," according to his lawyer—resided at creating duplicates of everything at hand: a massive operation of Xeroxing and Photoshopping of the Syrian bureaucracy. He knew exactly the aspirations and frustrations of his own middle class: its desire for college degrees, visas towards the wealthy oil-producing Arab states, the need for apartments and cars, and various consumerist gadgetry. Most important of all, the middle class looked for status and influence, which in this case implied closing one's ranks with influential people in the party, the parliament, the intelligence services and army, and the president's office. MMK did well simply because he thought of wealth in conjunction with status and bureaucracy.

The next two depositions by the Khaznah brothers would sum up well that kind of mentality.

Muwaffaq Khaznah (b. 1962) had a small shop that sold buttons and zippers in downtown Aleppo:

> I've known MMK very well and for some time for business purposes, due to the fact that he used to sell textiles with his father. But I haven't seen him in the last eight years, and all of a sudden eight months ago he came to our shop, and from a discussion we've had in the presence of my brother Hassan, who at present is outside the country on a business trip, he had told us that he works as accountant at the Ghazali housing cooperative, and that he had the power to enroll (*tansīb*)

> people at the corporative and allocate (*takhṣīṣ*) to them apartments, considering that he's important over there, as he claimed. I paid him in cash SP10,400 in order to subscribe me (*iktitāb*) to the Hananu housing cooperative, which is exclusive to those working (*'āmilīn*) at the party, in the presence of my brother Hassan Khaznah and [my brother?] Hazim on 3/8/1996. On 3/19/1996 the sum of SP25,000 was paid to subscribe in the Rā'id corporative project. In his visits to our shop he informed us that he was a colonel at the presidential palace, and that his office was close to that of president Hafiz al-Asad. He showed me Xeroxed photos of him with the president, and another one with doctor Bashshār al-Asad standing on an honorary podium. He then passed approval papers for the Rā'id, Hananu, and Ghazali cooperatives. He also promised me a Mercedes car via the presidential palace, in addition to a visa to Saudi Arabia and the Gulf countries. Of the SP140,000 that I've paid him, my brother Hassan had managed to receive back SP30,000 a month ago prior to his trip abroad. I then got back from you [the police] SP110,000, which means that we've been refunded the totality of what had been initially paid [to MKK]. This sum [SP140,000] is partly mine, while the other part is for my brothers Hassam and Hazim, and my brother-in-law Nizar. I request a full investigation on the matter, while posing myself plaintiff in the case.

In addition to the already familiar tropes we've encountered earlier, what's interesting here are the family bonds that make such fraudulent practices even more opaque. The shop—rather than the home—was the nexus through which such operations would unfold. In effect, the shop, being a quasi-collective family investment, was the space, however small and cranky, that would represent the business interests of the family and its affiliated members, as it would normally act as a template to the outside world. As with earlier witnesses, MMK knew the shop owners since the late 1980s, vanished all of a sudden, only to resurface with business projects and promises for a better life. The shop was therefore his golden opportunity to connect at once with the three Khaznah brothers and their brother-in-law, sweeping the hefty sum of SP140,000 from all three within months of his sudden return. The brothers, for their part, had suspected the fraudulent activity rather rapidly, requesting their money back.

The two dozen or so remaining depositions were all variations on the same theme: knowledge of MMK goes back to the 1980s; the vanishing and reappearance with all kinds of business projects; positing himself as accountant in various housing cooperatives; offering apartments in those cooperatives; claiming to be a colonel at the presidential palace; showing Xeroxed pictures of himself with the president and his son; offering the sale of cars through special channels (e.g. offers to civil and army bureaucrats at lucrative prices); promoting land phone lines (which, back then, were hard to get), high-school and college degrees, and visas to some Arab oil-producing countries and some of the European states. In sum, MMK did manage to run a complete virtual business enterprise of sorts, completely on his own, and for a year-long period managed to fool all his clients apropos his true identity and the fraudulent nature of his business.

Accounts, reflexivity, and indexical expressions

When we're looking at the "black box" that constitutes the inner proceedings of the judiciary, we're de facto tempted to bypass the formal analysis of law that focuses solely on codes and procedures.

The alternative is to look at the judiciary in terms of the multitude of discursive and non-discursive levels that would make a "case" possible. What initially, and in the confusion of an individual act (or acts), begins as a regular felony, misdemeanor, crime, or homicide, is soon open to police investigation, prior to its transformation into an *objective artifact*—or a "case-file" that could be accessed, construed, and documented by its users. It is, indeed, that kind of transformation from an initially banal and confusing act, towards which police and public prosecution office (DA) would become liable, to an objectified artifact in the form of a case-file which in principle would be "publicly" available, where lies the core of judicial labor.

In this—quite often, long—process, professionals in the law business (lawyers and judges) mix with ordinary laymen (plaintiffs, defendants, and their witnesses), and with other professionals as well (e.g. doctors and psychiatrists summoned to testify in court). The outcome, which constitutes the case-file, mixes law with non-law, professional language with vernacular jargon, professionals of sorts with laymen, and actors across the social spectrum. They're all, of course, supposed to "abide" by the law and respect codes and rulings, but what remains unquestioned and "missing" from the bulk of studies on law (even from the minority of studies on courtroom proceedings) is one of the most obscure aspects of such proceedings: namely, how the acts of such diverse group of users are "coordinated" in order to come up with a case-file and a final verdict. In other words, how does that broad spectrum of users metamorphose into what becomes the members[5] of the case-file? Simply put, the movement from *users* to *members* of a case-file constitutes *the* essential aspect of the inner workings of the judicial "black box." Unlike, say, an orchestra where members could train on their own and then perform *collectively* (either for the sake of informal rehearsals or public performances), the members of a case-file do *not* perform collectively, as their performances are usually limited to situated encounters with a judicial authority on a one-to-one basis: witness and policeman, witness and judge, and witness and the court. In other words, users perform on a one-to-one basis where at least one of them represents a judicial authority that should in

[5] We are using "members" rather than "subjects" or "individuals," as we want to limit our analysis to how individual subjects interact in the context of a specific situated encounter, which in this instance is the court system, and which in itself establishes a "membership" to a certain milieu, at least for the duration of the case-file. Obviously, those same individuals could be members of other situated encounters, for example, the family or school, or their professional milieu. Looked at in Foucauldian terms, the apparatus of justice objectivizes itself as a *dispositif,* which imposes itself on the subjectivities of individuals, hence it subjectivizes in specific ways, for instance, in the experience of "witnessing," which imposes particular ways of talking and responding to questions. Let us note here, *en passant,* that whereby the Foucauldian *dispositif* imposes itself as an outside force to the subject, de facto subjectivizing him or her, the Lacanian big Other *is* a creation of the subject. In other words, it is part of the complex operation of creating a super-ego and an idealized ego, both of which are initiated by the subject rather than imposed from the outside as an alien *dispositif.*

principle be in control of the encounter.

Why is such a metamorphosis important?

In the flux of interviews, statements, confessions, acknowledgments, refutations, denials, reports and memos, appeals and counter-appeals, up to the verdict which seals the case, the case-file cannot be *constructed as artifact* unless the movement of words, images, thoughts, and feelings are transcribed on paper, so that they could be circulated around and subjected to verification and approval.

Let us look at the court hearings as an illustration of "artifact construction," which amounted to no more than 12-page notes, spanning from March 1997 to January 1998.

The first session was held on March 31.

> Muhammad Kāmil Kamāl, who is under arrest, was brought to the criminal court in the presence of his lawyer ʻAli Zakkūr.
> Plaintiff X is absent from the court.
> The court has begun its public hearing.
> The accused and his defense were informed of articles 279 and 280 of the penal code.
> The accusations against the defendant have been made public.
> The public prosecution office has expanded on the lawsuit (*sharḥ al-daʻwa*), bringing forth all sustained evidence against the accused, which was originally the cause of arrest and court hearings.
> [MMK is accused of the crime (*jināyat*) of reproducing (*taṣnīʻ*) the seals of the state, and the fraudulent criminal reproduction of high school college degrees.]
> When the defendant was questioned on this matter, he responded: "I repeat my previous statements, which I had stated during my interrogation on 2/22/1997, and in the original ones [to the police] on 11/26/1996. The seals (*akhtām*) that I was accused of reproducing (*taqlīd*) have no origin (*aṣl*) in reality,[6] and whose forms (*ashkāl*) and signs (*kitābāt*) were **the product of my thoughts** (*afkār*). I did not initially intend to **imitate those seals** (*taqlīd al-akhtām*).
> The court decided unanimously to adjourn to Monday, 5/19/1997.

Notice that the accusations were concise and limited only to the fraudulent and criminal activity of reproducing faked seals and college degrees. Maybe the other charges were dropped for the simple reason that all plaintiffs had already been refunded. The defense was then left with two options: 1. Argue that his client was an "artist" who was imagining seals and college degrees in his head rather than reproducing them from original real ones for the purpose of deceiving people and making money from fraudulent activities. 2. That whatever his client did wrong, his actions were not criminal, but ought to be considered as mere felonies.

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[6] Or: "Do not originate from reality," *laysa lahā aṣl fī-l-wāqiʻ*.

Regarding the court hearings per se they tend to share few common characteristics. 1. They're extremely short because no full session (on average three continuous hours, between 11:00 a.m. to 2:00 p.m.) is devoted to a single "case." It is indeed common to partially "manage" on average 25 to 35 cases in a single session. Moreover, follow-ups for a case are slow to come, and are usually paced at one- to three-month intervals, as managing the appearance of witnesses in court on time turns out the biggest logistic hurdle. 2. Cross-examination is limited, because everything has to go through the chief judge, and the court seldom takes an aggressive stance. 3. It is common for witnesses, plaintiffs, defendants, lawyers, and judges to refer to earlier statements that they had themselves or other users delivered on earlier occasions, in particular the police depositions and the direct-examinations in the office of the investigative judge. Such *references* to earlier statements constitute the very core of the hearings, as they constantly act as *barriers* to a genuine and aggressive cross-examination by *indexing* all actual statements to ones stated earlier under different circumstances. 4. Hearings add little to our knowledge of the case. 5. A large gap exists between the hearings themselves and the written version dictated in public in small regular installments by the chief judge to the court scribe. 6. All of the above makes it extremely difficult for the researcher to follow a single case from beginning to end, based on the hearings themselves, in order to compare notes between the hearings and their truncated written version.

Nearly two months would have passed by the time the case came back to the court for a second consecutive time. The session on 5/19/1997 proceeded as follows.

> Plaintiff X, b. 1964, was present in court, and is not kin related to the defendant.[7] He said that I **reiterate** the statements I had made to the investigating judge on 12/8/1996. He added that I knew the accused for some time, since he had worked for us in the making of textiles, then left the job, then came back and told us that he was on a **secret mission** that he did not identify, and that was ordered to him by the president of the republic himself. He then proposed to enroll us in the housing corporative of the party, and took some cash. He showed us some paperwork as evidence that he had effectively enrolled us. But we then came to realize that he did not effectively do so, we complained, and we got our money back. I know nothing of the faked seals that he was accused of fabricating. That's my testimony.
> The accused responded that I do not accept his statements.
> Plaintiff and witness Y, b. 1929, was present in court, and after taking oath stated that I do not know anything about fraudulent official documents. I only know that the accused had mortgaged my son's home, when we realized that it was all fraud, we demanded our money back and it was given to us.
> The court unanimously decides to call the rest of the witnesses and adjourn to Monday, 6/23/1997.

If there's so little to learn from such sessions, it's because they're mostly indexed on previous statements. Such process of indexation either operates directly—I reiterate my

[7] Being "not kin related" could establish a status of independency.

previous statements to the investigative judge on date X—or indirectly—the accused claimed to be on a special mission at the presidential palace. In either case, the purpose is to limit as much as possible further examination through an air of familiarity, of the kind "We know what we're talking about." If such sessions are therefore replete with indexicals it's because their main purpose is to *reiterate previous statements* rather than to examine thoroughly. There is in effect that desire to lock the totality of the case within its early statements, those initially delivered by witnesses to police and investigating judge, which in turn were limited in scope to their bare minimum. Even though the use of indexicals is common to speech in general, and no communication would be possible without such implicit sets of references, the high level of indexed references could be an indication of a low degree of competitiveness among users, combined with an unwillingness to question statements and examine thoroughly. Moreover, that rigidity is even more visible in the way court hearings are transcribed, their elimination of the judge's questions, and the way users' utterances are transcribed as direct statements in an official Arabic that avoids repetitions, silences, ambiguities, and confusing or circular claims. Assuming there is always a gap in the texts, between that original trace, sign, sound, or utterance, and its final inscription on paper—the act of "writing"—under such conditions the gap would achieve its full paroxysm.

The reduction of a complex embodied experience into *disengaged and disembodied documents* that are transmittable from one judicial instance to another takes place at three interrelated levels: 1. The police recording of the event through the viewpoints of prime witnesses, plaintiff(s) and accused, assuming the latter are available in the aftermath of the crime. 2. The investigating judge's interviews of those same witnesses, or additional ones, if necessary. 3. The report of the referral judge which "integrates" statements uttered in 1. and 2., providing them with additional authority, making them "available" for the criminal court. 4. In their last metamorphosis, statements uttered in 1. and 2., sanctioned in 3., now receive their final benediction through the *public* hearings of the criminal court. As noted earlier, the process here is one of *itérabilité* rather than of proposing alternate interpretations of the same.

The same statement, therefore, originally uttered by a witness in 1., is magically *iterated* in 1. to 4., as if iteration serves as further sanctification of the same, even though all those judicial instances, and the conditions under which statements are uttered, are all different from one another: from the noisy police station still under the shock of the incident, to the privacy of the investigating judge's office few days or weeks later, to the referral judge who drafts the first synthesis, and the public hearings of the criminal court. One would have expected a wide array of confusing and incompatible statements, but the very opposite happens: namely, that from step 1. a "method" for delivering utterances *and* writing them down on paper is established. Sociologists see that social "facts" tend to be in their very essence chaotic, confusing, and lack the coherence and meaning of, say, a formal text. Thus, while the "facts" themselves, as engendered by users in their daily routines, lack coherence and meaning, the overall meaning of such facts typically resides, in traditional sociology, in the institutional frameworks that make their very existence possible. In short, while institutional frameworks add "structure" to "facts," giving them the "coherence" they lack, the researcher does no more than provide a scientific

metalanguage of sorts to the presumed institutional structures. What such an approach fails to perceive, however, is that *the localized situated encounters themselves provide users with the "methods" they need to interact, understand, and create meaning.*

A common parallel sociological problem consists in limiting users' utterances to their formal linguistic—semiotic—meanings. Hence a criminal or civil case would be perceived at best as a *bricolage of texts* out of which the researcher would create his or her own text. What such an approach misses, however, is that the stability of sense, relevance, and meaning do not arise from the forms of propositions but from the *circumstances of their use.* At each one of the four levels above, the same witness is uttering a similar content from one instance to the other, but under different circumstances. Ironically, the sociological–linguistic démarche which focuses solely on the meaning of statements operates within similar reductionist parameters of the courts themselves: that is, the circumstances of each utterance, in its original oral and imperfect mode, prior to its written inscription by an official authority, are bracketed off as of no use for the purposes of the trial. By limiting therefore all uttered statements to their official written inscriptions, the initial unbridgeable gap is "solved" for both the court and the researcher.

One way to rehabilitate the circumstances of the *use* of utterances rather than reducing them to grammatical forms, is the tracking down of indexical expressions in the process of statement delivery. The power of indexical expressions typically resides in that ability of speaker and listener in a situated encounter to interact with that uncanny notion of "we know what we're talking about": the "this" and "that" of encounters where what remains unnamed and taken-for-granted proves as the most essential aspect of speech. For each of the above four levels, statements of the like "I fully reiterate my earlier statements as delivered on date X" are your typical indexical expressions. An aggressive judge would play on such assumptions with questions of the type, "What did you effectively *mean* when you stated such and such in your earlier police deposition?," or "What is *that* supposed to mean?." But even under such an aggressive line of questioning, there *is* a moment where the "that" has simply to be referred to as "that"—and nothing more. The honor killings that we've analyzed earlier (Chapter 6) probably constitute the most blatant aspect of this process of proceeding from day one in a trial with all kinds of "this" and "that" assumptions: the victim who allegedly had "affairs," who was "all the time out in public with boys," and who had "dishonored" her family. Trials of honor killings proceed so smoothly thanks to such indexical expressions which are seldom questioned, if at all. One can even perceive a "borderline"—or "demarcation line"—between the courts and users (or society at large) in terms of leaving all kinds of indexical expressions taken for granted: that is, it is *as if* a situation of compromise is at work and constantly negotiated between the judiciary and laymen users on the status of indexical expressions—the less they're questioned, and the more they're taken for granted, the better.

Even if we assume, however, that facts are constructed, it is essential not to reduce facts to language and discourse alone and look for the circumstances of use of propositions. That kind of approach proves essential not only for a sociology of science, laboratories,

schools and education, bureaucracies and institutions, but also for the procedures of the courts as well. The object of the study of court procedures should therefore center on the discursive and interpretive practices through which "objective" accounts are produced, transmitted, and manipulated by various judicial instances. Such a discursive–analytic démarche, which assumes at its very core an actor-network theory, should not reduce texts and utterances to their formal meanings, but rather consider the latter within their embodied situated experiences. Thus, neither semiotics nor hermeneutics prove sufficient on their own without the contextualization of texts and utterances into their embodied situated encounters. The purpose would be to conduct a philosophical investigation and an empirical field of study under the same roof, one that examine the cognitive content of texts and utterances in conjunction with their social context, as embodied in situated encounters of sorts.

Within such a semiotic and hermeneutic enterprise, a "case" metamorphoses into a "textual signifier," or an *objective artifact* that is referred to, objectified, and transmitted among users, what Lacan would call a Master-Signifier that would give meaning out of a surplus enjoyment (*jouis-sens*) to other signifiers. The apparent coherence of the case-file masks in effect the heterogeneous network of entities and agencies. Moreover, what is important for the researcher is to upgrade the textual analysis of the case-files—or the semiotic "actant" "case-file"—into a substantive narrative about the judiciary's historical actions. In other words, we're asking the trivial yet crucial question, Where does the contemporary Syrian judiciary—or its apparatus of justice—fit into the more global historical narrative of that institution? How can we read history from the case-files themselves? How does the historical operation unfold under such circumstances? Is history important for the case-file itself? Is there anything historical *in* the case-file itself?

"Actors" refers to both nonhuman and human entities and forces. On one hand, "actors" are those "members" conducting their affairs, producing arguments, and "analyzing" one another's conduct. On the other, "actors" refer to impersonal agencies, like the equipment of a laboratory, or the warehouse of the palace of justice where case-files are archived and accumulated for future use. Such "actors" become "autonomous" entities—or agencies—on their own, as they "act" like other "actors" on the scene. For instance, the warehouse of the palace of justice is that real and imaginary space which houses thousands of documents that tie together and separate the lives of millions of people. The warehouse is therefore a life-world of practices, and the way documents are kept, taken care of, fetishized, transmitted, hidden, loaned, stolen, lost, photocopied, scanned, shredded, destroyed or send for recycling, are all essential elements of such practices. The warehouse becomes an "actor" through which all such practices unfold, a space that other users refer to with admiration, derision, or sheer helplessness.

In short, what we're looking at is a genealogy—or archeology—of the *lebenswelt,* but in lieu of a Husserilan transcendental foundation of the lived experience of the life-world, we're aiming at postphenomenological investigations that would focus on how "members" conduct their affairs, produce arguments, and "analyze" one another's conduct—a construction built up over time in a life-world of practices.

The practices of the courts, and the judicial apparatus in its totality, are prototypes of *local organization.* The notion of local production implies the impossibility of assimilating various practices into one set of discourses, norms, rules, values, structures, or a general cultural matrix that would absorb them all and act as a global signifier. What needs to be done is to investigate a patchwork of "orderlinesses" without assuming that any single orderly arrangement reflects or exemplifies a determinate set of organizational laws, historical stages, norms, or paradigmatic orders of meaning: to investigate the varieties of the courts' practices without linking them to one overall master plan.

In a way similar to laboratory practices, court practices obey to a *structure of accountability.* Users are held accountable for—and account for—their actions. The heart of the structure of accountability is the drafting of reports and memos within the parameters of the four levels outlined above. It is indeed the report, as a written text that documents oral utterances and observations, which constitutes itself as the core of the structure of accountability. The report is what makes possible the very existence of the case-file: as a set of documents that could be transmitted, exchanged, evaluated and criticized; it is also the mechanism through which the case-file is transmitted from one judicial instance to one of higher rank, and vice versa, for instance, from a local criminal or civil court to the Damascus Naqḍ court and back to its court of origin. It is therefore the *written* document—rather than the original oral utterances—which structures the chain of accountability. In other words, users are held accountable for what they've stated in writing—or for what was stated on their behalf in a document—rather than for what they had allegedly stated in an oral examination. Indeed, traces of the latter vanishes forever in the presence of the written word.

As in laboratory practices, the structure of accountability goes through three interrelated steps: 1. observation; 2. the report, or the adequate description of the observation process; and 3. replication—"anyone" could redo the experiments. Translated into the court procedures, replication implies that the users can reiterate statements that were originally held under circumstances and whose iterativeness makes the proceedings of the case. More concretely, reiteration implies in light of the four steps outlined above—from the police report to the court hearings—that the same—or similar—statements are smoothly upgraded from one stage to another. It is indeed the iterative nature of statements that is at the core of accountability in court procedures. In themselves statements uttered by witnesses are *in their original oral form* vernacular accounts of the crime scene, which the documented text transforms into adequate vernacular accounts of legal method: they can now be endlessly quoted and accounted for in reports and memos. If in a scientific laboratory replication implies that "anyone" could redo the experiments, in the court system it is the replication of the same statement from different sources that plays the accountability trick. In Syrian courts that "sameness" of statements is played unfairly, if not a bit harshly, since the original oral utterances are not recorded, while only their manipulated edited alter-statements are textualized and circulated.

If the structure of accountability rests mainly on the transcriptions of direct- and cross-examinations and observations into written documents which their bearers—and the original witnesses, even though they did not participate in the act of writing itself—are

held accountable for, it is the construction of the "case" as an objectified artifact that finally sets the complex machinery of the case-file. Where it not for that process of objectification into an artifact that serves as reference for users, there would be no "case" in the first place, but only an agglomeration of diverse "facts" without any real heart to them.

An artifact is an object made up of words, images, things, gestures, feelings and settings that is *constructed* for the purposes of the trial—that is, the case-file itself. Like the graphs, descriptions, equations, equipment, and the combination of vernacular and scientific languages in a laboratory, the use of a combination of vernacular and legal languages in the space of the courtroom would lead to the construction of the case-file as an objectified artifact over which elements of the trial would slowly crystallize, giving users that uncanny feeling of "we finally know what we're talking about."[8] Artifacts play therefore on the gap between the case-file as a global "textual signifier" and reality itself and its messy whereabouts. As such they act as uncanny replacements to reality. It is the metamorphosis of the case-file into an objective artifact that enables scattered users across the social spectrum to gradually become *members of an investigative process that unfolds around a case,* collaborating together, as professionals of law (lawyers and judges), and as common laymen, to construct a case. Since the professional language of the law cannot operate without the vernaculars of everyday life, the case-file is constructed around acts of back-and-forth translations, associating one language to another.

Since social facts are local accomplishments, they are expressed in that stable, constraining, recognizable, rational, and orderly language that would be comprehensible to users within their own local community. Such collective practices reflexively use local–historical understandings of the life-worlds. The relevant mode of practical and local–historical "reflection" is not a matter of an individual's insight into his or her own achievements and relationships. Rather, it has to do with how any single account, utterance, claim, or material product acquires its historical significance by being placed in a collective and potentially contentious order of accounts, claims and products.

[Table 10–2] Sample of defendant's clients and his alleged fraudulent services

plaintiff	**born**	**residence**	**profession**	**cash amount (SP)**	**services**
1. 'Ala' al-Din Hamami	1964	Kallaseh, Aleppo	driver	SP12,000	housing: 2 apartments
2. Bashir Khawwam	1966	Isma'iliyyah, Aleppo	textile merchant, shop in the old city, Suq al-Wazir	41,000	housing corporative; Saudi visas; Saudi residency permits.

[8] The pioneering work of Bruno Latour for both scientific laboratory work and legal practices is unique at providing an in-depth look into such heterogeneous milieus, yet at the same time operating under similar assumptions. [references: science-in-action + Conseil d'État]

3. Muwaffaq Khaznah	1962	Sabil, Aleppo	couturier shop that sells buttons in Sab‘ Bahrat	140,000 30,000 were given back from defendant to plaintiff’s brother; 110,000 given back by the police upon the defendant’s arrest.	various housing cooperatives; Mercedes car; Saudi visa and visas to the Gulf
4. Hazim Khaznah	1964	Sabil, Aleppo	idem	idem	idem
5. Nizar Amaneh	1946	Khaldiyyeh, Nil Street, Aleppo	furniture store in Jabriyyeh	15,000	housing corporative
6. ‘Abdul-Qadir Wali	1977	Bustan Al-Qasr, Aleppo	works with Bashir Khawwam (2)	15,000	housing corporative
7. Muhammad Subhi Masri	1977	Zubaydiyyah, Aleppo	works with Bashir Khawwam (2)	7,000 sum given back by police	housing corporative
8. Ghassan Kayyali	1959	Latakia; parents live in Sabil, Aleppo	itinerant clothing merchant	17,000	housing corporative
9. ‘Ala’ Al-Din Wa‘iz	1968	Jamiliyyeh, Aleppo	shop that sells beauty utilities	8,000	4 apartments in housing corporative
10. Hamid Shabariq	1962	Sayf al-Dawla, Aleppo	clothing shop, Tilal	36,000	housing cooperatives; residence permit in Saudi Arabia; car insurance
11. Mazin Shabariq	1960	Khaldiyyeh, Nil Street	tricot artisan	20,000	housing cooperatives
12. Muhammad Zuhayr Shabariq	1955	Meridian, Aleppo	clothing shop, Tilal	25,000	housing cooperatives; various visas
13. Mahmud Riyad Shabariq	1953	Meridian, Aleppo	textile merchant	55,000 33,000 returned by the police	housing cooperatives; phone line
14. Waddah Shabariq	1957	Faysal Street, Aleppo	surgeon	680,000	housing projects; phone

					lines; visas; residency permits; car
15. Rashid ‘Abdul-Majid	1929	Tishrine Street, Aleppo	real estate office, Siryan	mortgaged his home to MKK for 275,000, which he annulled in order to compensate his dues for Waddah Shabariq (14)	

Petty thefts and pernicious crack habits

[C10–2] It all began with a banal theft investigation, but soon expanded into a drug-trafficking and drug-consuming “gang” of ten which were prima facie unrelated to one another, which simply happened to be sharing the same product.[9] One name led to another, until the group of ten was seized; some were later released for lack of evidence. Because the case grew from a small theft into drug consumption and pederasty, the influence of social norms predominates law, with the legal language mixing with its broader social connotations.

A memo from the police station of the predominantly Christian middle class neighborhood of ‘Aziziyyeh in Aleppo in June 1989 indicated that Suhayl Antoine Birdaqji (b. 1957) was arrested for theft and for storing drugs. In the affidavit to the police upon his arrest, the suspect stated that he earned his living as a painter and was accused of and arrested in May 1989 for theft at a house in Sulaymaniyyeh he was painting. The alleged theft of jewelry at his employer’s house eventually led to nine other suspects unrelated to the theft per se, but who were all accused for consuming and/or storing narcotics. This small ring of narcotics consumers and/or dealers were allegedly all known to our protagonist, through his own confession as drug user, which, once arrested for theft, provided in his first deposition the names of the nine others. Apparently, in order to justify his theft he dropped names to whom he owed money, which led to more names, and eventually to the group of ten. Upon further investigation, however, the prosecution argued that for seven of the ten there wasn’t enough evidence for either consuming or storing drugs, consequently demanded for their immediate release. The case brings to our attention the drug problem in Syrian society, and drug use among the popular and lower middle classes. The case shows how a group of unrelated individuals, living in different neighborhoods, from different generations, cultural and religious backgrounds and professions, nonetheless managed to connect for the sake of sharing drugs. It also professes how the workings of the group, over a period of roughly ten years, was never fully cohesive: if at times it deteriorated, at other times things looked in brighter light, the overall picture was one of piecemeal fragmentation, with new members

[9] Aleppo Jinayat 358/1989; general prosecution report of 17 pages missing; defense memo missing; case completed, with final Naqd ruling.

joining in while others dropping out and suddenly vanishing. As with the above MKK case (C10–1), this one also traces a process of "men-at-work," old buddies, known or unknown to one another, who joined circles to do something together. But if in the previous one, MKK's "patrons" were unaware of his fraudulent mind, the drug addicts here were perfectly conscious of what they were doing. Still, what brings the two cases together, is that awareness of transgressing the law and enjoying the transgression. Thus, even in our first case, MKK's patrons were not that innocent in their willingness to take the risk and let someone do the dirty legal-illegal work for them; they knew all too well that they were trespassing boundaries, looking for goods and services that they could have acquired through legal means, but opted for illegality instead. If the court did not punish them, it was because MKK's crime dwarfed their own petty crimes by a high margin: what saved them was therefore the massive machinery of someone who was willing to take all risks to reproduce the emblems of Syrian bureaucracy.

When it comes at understanding the level of consciousness of the ten offenders in our second case, whether the three main protagonists who were penalized or those who were acquitted, what is at stake is the sprawling culture of individualism and the problem of crafting a self-identity in an urban milieu, within a space where kin matters but at the same time has been moving in other directions, no more providing the conventional secure place for identity and cohesion. It is within such culture of kin affiliation, where actors have gained that potential to craft a (narcissistic) self-identity, that material possessions gain importance as the façade through which actors present themselves in daily situations. Within such analytical framework it would be erroneous to simply perceive felons of burglary and drug addiction (as labeled in court and medical reports) as textbook "anomalies" of "losers" who took refuge in drugs because of personal failures. Against the temptation to see in drugs the substance that enslaves manic depressive characters in pursuit of personal salvation outside the socio-symbolic order, the main assumption of this study is that criminal offenders ought to be placed in the context of the very act they had perpetrated: committing a criminal act represents all by itself the secret defilement of the values of a culture. Desecration touches here on the very fundamentals of material culture (Fernand Braudel's *civilisation matérielle*), namely the objects of daily life, their symbolisms, the status and magic that they provide to users, and the fact that we as consumers of commodities are caught in what Marx dubbed as "the fetishism of commodities," that is, the commodity which is not to be restricted to its use-value but, once it circulates, is already something else, where the materiality of the object touches on the sublime.

Consider for example theft, which inaugurates our case here. Acts of theft target "property," perceived as the ownership of the other which is neither to be violated nor to be trespassed upon. An intruder desecrates therefore my very rights of ownership and the sanctity of that property which belongs to me, protected by law, while the criminal act of intruding constitutes for the offender an unmatched thrill, whereby the sanctity of the boundaries of privacy have been broken. When our main protagonist Suhayl "stole" the jewelry of his employer, he was probably thinking of a theft along the lines of a barter economy: "He employed me to paint his house, but never paid me my full dues as promised, I therefore felt *free* to compensate on my own." What is important here,

however, is that perceived air of "freedom," which is not to be limited to an urge to acquire material possessions. Indeed, Suhayl's persona, even through the lens of the rigid and legalistic framework of the Jinayat, perceived both theft and drug use as trespassing over the ominous rights of others. He connected with his other pals, encountered piecemeal from one theft to another, with that kind of thrill, of individuals who were humiliated and offended by the power of others, hence they had to desecrate their properties. Everything that is unauthorized is now subject to my scrutiny! Power relations receive a dose of shakeup through burglary and drug use.

The case was originally triggered by a theft that allegedly occurred in May 1989 at the house of the plaintiff Ilyas Jirjis Nahhas, who complained that the defendant Suhayl, whom he hired to paint his Sulaymaniyyeh house, stole in his absence a dozen of jewelry items. Since upon Suhayl's immediate arrest, some of the jewelry was recovered, the plaintiff pleaded that the police would collect the remaining items, otherwise he would seek compensation in a civil lawsuit. It was upon Suhayl's arrest for the alleged theft that half a gram of hashish was found in his pocket, which he claimed had purchased for his personal use from Ismail Maghribi, an itinerary merchant of diesel fuel. Moreover, he pointed that the stolen jewelry was sold to a jeweler in downtown Aleppo for S.P.5,110 ($102), which the police eventually managed to seize and gave back to its owner.

In his second deposition Suhayl denied that the drug purchase was from Ismail Maghribi as he had initially stated barely a week earlier: "The truth of the matter is that I made such [false] accusation because I knew him beforehand and he doesn't have a known place to live, and he owes me S.P.1,600 ($32) for the price of diesel fuel, which he never refunded, nor did he give me my money back. For that reason I [falsely] declared that I bought the hashish from him, which I've been consuming, of which the 'Aziziyyeh [police] section had seized half a gram, which I had bought from Khalid 'Attar Qushaqji from the Kallaseh neighborhood, and who works as a barber…"

Moreover: "I had purchased from him before, roughly a month ago, fifty grams of hashish. When I gave him the money he absented for few minutes, came back with the hashish and gave it to me. I then left. I had bought that substance of hashish before from Muhammad 'Ali Muhammad from the Sukkari neighborhood. He is nicknamed as Abu 'Ali, and I had purchased from him for a period of roughly six years continuously, the last time before he was arrested a year ago. I also consumed this substance of the hashish with a drug effect with [the barber] Khalid 'Attar Qushaqji, Ahmad Khawajiki, and Jack Hajjar. As to Muhammad 'Ali Muhammad I used to consume with and buy from him…"

At this early stage of investigation, Suhayl's lie, falsely accusing someone for an illegal purchase that happened with someone else, matched his metaphoric view of exchange: Someone owned me money but defaulted and did not keep his promise, I therefore feel *free* to recuperate the owed sum *on my own*—which meant desecrating the property and reputation of others. By the standards of neighboring, and economically more successful, countries like Lebanon, Turkey, and Jordan, $32 may seem like a petty sum for such a fuss in the first place. Such a remark, however, misses the point, as it places the burden of theft on the materiality of the object, that is, its circulation value as a commodity, rather

than on the *symbolic* value of the transaction from the viewpoint of the offender. In effect, for offenders like Suhayl it was the very mystical nature of the offense which perpetrated his network of relations not only with other offenders, but also with "normal" people. It was indeed such acts that did relieve his common burdens to another more sensual and mystical chain of events. In other words, the socio-symbolic order of society was here transgressed through petty acts of theft and narcotics, not for their material value, but for their transgressive symbols. It is for this very reason that such transgressive acts are not necessarily bound to income, status, location or gender for that matter, even though all such variables may play a role, as in this instance, the group of ten was all male; but such restriction, however, is only formal, as women who consume drugs tend to do it more discretely, behind closed doors, using their gender status to protect themselves from public interference.

Eventually most of those named by Suhayl were arrested: Khalid Qushaqji had in his possession 1.5 grams of hashish; Ahmad Khawajiki confessed for having purchased the drug from Hassan Shaar, who in turn was arrested with 10 grams of hashish in his possession; finally, Jack Hajjar and Muhammad 'Ali Muhammad both confessed for what was attributed to them. At this turn of the events, it was the very *possession* of narcotics that was looked upon as a felony, which was willy-nilly the only offense that was maintained against the remaining protagonists within the five-year period of brokering.

Muhammad 'Ali Muhammad (b. 1931) was a resident of Sukkari, which is further south from Kallaseh where some of the other drug dealers were located. But while the popular Kallaseh neighborhood is a mixture of residential housing combined with small- to medium-sized manufacturing (mostly textiles), Sukkari is even more popular, and more residential. In areas like Kallaseh and Sukkari two- to three-bedroom apartments would sell on average for S.P.500,000 ($10,000), which is fairly expensive considering that landlords usually receive their prices in full cash, occasionally selling homes that are not officially registered within the city's "planned" areas, which is currently the status of at least one-third of the built zones. Muhammad, who was a generation or two older than the others, introduced himself as an illiterate married man, and was probably more experienced than his pals when it came to drugs. He worked as a baker in Bab Qinsrin, part of the old city, and further north from his residential area. In his deposition he confessed for having consumed hashish for twenty years, stopped a year ago, at a time when he recalled selling it to Suhayl for the last time for S.P.3,000 ($60).

Jack Hajjar (b. 1962) lived in the lower middle class and predominantly Christian-Armenian neighborhood of Sulaymaniyyeh, in the north-east of Aleppo. In his deposition Jack explained how three months earlier he had met Suhayl, who in his own words was an old friend, at his Kallaseh home, where he saw some of the other accused smoking pot, was offered one, noticing afterwards how "my head turned heavy, because that [roll] had the drug-effect of hashish. I went back home. I never had hashish before, nor did I deal with it."

Ahmad Khawajiki (b. 1964) also lived in the same Sulaymaniyyeh neighborhood. He began consuming hashish with the accused Suhayl a year earlier. Suhayl was the one who

organized the show, offering hashish to his friends at his own home. At times he used to be paid for such services, while on other occasions he would consider it as "entertainment." Eventually Ahmad relied more on the services of his maternal cousin Hassan Shaar who came back from Germany and was himself a drug addict. Hassan did not receive money for his services either, since he too considered it as entertainment.

Hassan Shaar (b. 1952) used to sell sandwiches and lived in the middle class neighborhood of Jamiliyyeh. Hassan began experimenting with hashish ten years prior to his arrest at a time when he had immigrated to Germany. As soon as he came back to Syria a year before his arrest he searched for crack dealers, eventually found Muhammad Khalil Shaaban, a resident of Bustan al-Qasr, only to purchase hashish from him on several occasions in cash. In his last visit to him, a month earlier, he paid cash his 300-gram hashish for S.P.2,100 ($42), from which only 20 grams were seized upon his arrest. When the police raided Shaaban's home, it turned out that he had been imprisoned for the past year for having participated in a "group fight."

Khalid ʻAttar Qushaqji (b. 1950) introduced himself as a married illiterate who worked as a hairdresser in Kallaseh. He began consuming hashish a year and a half earlier, which he had been regularly purchasing from Muhammad Jumʻa Intakli (b. 1946), an owner of a plastic shop in Kallaseh. Khalid worked as a hairdresser in a shop belonging to Muhammad's brother, which eventually led to their common interest in crack. Khalid was the one who had sold the main defendant Suhayl drugs on several occasions, each time for 50 grams and valued at S.P.550 ($11). The 20-gram hashish that was seized in his shop upon his arrest had been purchased from a certain Muhammad Jumʻa Intakli Hardan who since then had left to Damascus.

Some had precedents, such as Khalid ʻAttar Qushaqji who had a record of nine felonies including theft, homosexuality, and "intercourse against nature,"[10] or Muhammad ʻAli who was arrested on several occasions between 1966 and 1988 for storing and consuming drugs. (The storing of drugs becomes synonymous with dealing with it, even though in most instances the quantities were minimal at the moment of arrest, as there was no evidence that they were used for other purposes than individual consumption.) Among the six that were arrested within the first 48 hours (see *infra* Table 10–3, first six names) three were accused of consuming drugs while the other three were accused of storing, dealing, and consuming crack.

All defendants denied to the investigating judge the initial allegations that were drafted in the police reports only a week earlier. They all denied selling and/or using drugs, while some demanded a doctor's examination to sustain their claims. As to the main protagonist Suhayl, he complained for the use of the term "theft" to describe his act, claiming that, after working for a month as a painter at the house of the plaintiff Ilyas, his employer did not compensate him for his work, overtly suggesting to him to sell some of the jewelry in

[10] In the Syrian penal code (as is common in other codes on the eastern Mediterranean), "sexual deviancy" is generically prohibited in article 520 under the broad acronym of "intercourse against nature," without any specific connotation, which could include, inter alia, homosexuality (male or female), sex with animals, sex with a corpse, or sex with minors.

his possession, which was precisely what Suhayl did "on his own initiative": "There was that quid pro quo that I'll take the jewelry as a way to pay my debts [that is, his debts to me]. After Ilyas left his home, I picked up the golden jewelry and put it in my pocket, then sold it." What is staggering here is that none of the defendants' prosecutorial narratives even remotely matches the earlier ones drafted by the police. They simply reverse them by bringing the case right from where it started, back to square one. What is more strange, however, is that the prosecution did not press for more questions. A typical prosecution log would go on as follows:

> —Question: It has been attributed to you the crime of consuming and marketing drugs?
> —Answer: Such claim is invalid, I accept any evidence (*dalīl*) that would show any wrongdoing. Those are my statements.
> They were read to him, and he confirmed, and signed. [Defendants, plaintiffs, witnesses, and others involved in the case usually use their right thumb in lieu of a signature; they seldom sign.] End of the document.

Some had appended notices that they were tortured while interrogated, while others had requested a doctor's examination to substantiate their non-drug use, demands that were strangely never met, and which in the French system would have been routinely conducted within the *personnalité* chapter of the prosecution. But that's practically as far as prosecution can go. It is as if it is typically expected *beforehand* that all defendants and witnesses would deny to the prosecution what the police had already attributed to them. The prosecution seldom bothers to push its investigations further, by aggressively pounding with more questions and answers, looking for discrepancies, comparing accounts, claims and counter-claims, pointing to inconsistencies, demanding medical tests and adequate forensic evidence. Indeed, a distribution of roles operated between police and prosecution, one that was even colored by space. The police was supposed to be dirty and brutal, a mirror image of the people it took care of. Such a myth goes almost unforeseen to the point that when defendants and witnesses deny all allegations to the prosecution, the alleged police brutality is neither questioned, nor is it shocking to learn that some defendants were brutalized. By contrast, investigating judges conduct their interviews in the palace of justice, and as judges they're supposed to be knowledgeable of the law and shrewd, but not use torture or duress. Defendants therefore routinely accuse the police of torture, while denying acts attributed to them to the prosecution, while judges remain soft in their interviews, calmly recording all the witnesses' rebuttals, as if assuming that there must be something true in what the police stated. That difference in style, however, is even more deeply seated, since, as we'll see later, everyone generally assumes that, in spite of all claims to the contrary, there must be something true in the police reports, maybe not the whole truth, but at least an essential aspect of it. Police reports constitute therefore in their freshness the essential guidelines to the narrative at large, the one that guides the dossier, without which judges and lawyers would be completely lost, and without which no case would unfold into a trial and come to a happy end; in spite of continuous warnings from the Damascus Naqḍ not to trust or solely rely on police records, since, the Naqḍ is adamant at reminding everyone, every statement uttered in front of the police is invalid unless repeated verbatim in the presence of a

judge, and later, at a court's *public* hearing. Such a disturbing reminder, however, is rarely taken into account.

So what was it that brought all those people together? Was it social status, preoccupation, income, manhood, crack, or simply the fun of it? Notice the broad societal differences among the group of ten, which renders it far more heterogeneous and much poorer than MKK's 100 or so patrons in the first case above: literates and illiterates, experienced and casual crack users, manual workers and unemployed, straight men and homosexuals, Christians and Muslims; add to this the usual generational gap, the immigration experience, and the past record of convictions of some members; finally, some were convicted, while others were set free. At the very least, then, the societal ground did not matter per se, as it was transcended in the mystic experience of trespassing norms, asserting manhood, homosexuality, group fight, and the thrill of desecrating values without being caught. There was also that shared experience, organized every once and a while in the coziness of a private home (Suhayl was good at this), for consuming crack—an "entertainment," as one of the protagonists aptly put it. So what brought such men together was the transgression of norms, be it sexual, drug related or otherwise. The problems of self-identity versus the socio-symbolic order therefore asserted itself in a crafting of an identity that was transgressive of norms. Here all offenses look minimal once compared to homicides committed in the passionate spirit of righteous slaughter, but that should not deter us to go for parallelisms, namely, that urge for crossing boundaries, which in itself was the outcome of deep humiliation. The offenders created their own network, enjoying the spirit of transgression, a bond irrespective of the common marks that separate individuals into social categories.

From there on the case did not evolve much. One would expect, upon the plaintiffs' denials, that the investigation would resume more aggressively. Instead it died down all of a sudden, as the old facts remained unchallenged, while prosecution and judges kept rotating the same bits of data in their reports. In hindsight the framework of the case was already set in police reports, within the first forty-eight hours. What then followed was a routinized denial of all allegations, which placed the prosecution at the level of an agency that simply collected denials rather than cared to push the investigation further. Yet, from the time the alleged theft occurred in the final days of May 1989 until the dossier was closed in May 1994, thanks to a final ruling by the Naqḍ, in all those five long years not much has been added to the file, which is the most troubling aspect of the case, even though not unique to it.

The court hearings did not begin until mid-December 1994. But it's not clear why after five years of delays, the Jinayat was suddenly ready, considering that none of the accused was present at the first hearing in December 1994, when the court scribe jotted down that Suhayl "had left to an unknown destination for over a year." Nor was Khalid present, even though a convocation had been issued on his behalf in November 1994; nor was Hassan for that matter. Nor was anyone present for the following sessions. Only by January 1995 did Khalid show up with his lawyers, while the presence of the other two had to wait for the following month. (It could be that there were behind-the-scenes negotiations between prosecution and councils that the trial would open on the proviso

that the defendants would show up by January in what may have been like a plea-bargain.) By that time the defendants had apparently decided to attend the court hearings to confess their wrongdoings, which Suhayl and Hassan did in two separate affidavits to the Jinayat, retreating previous statements to the prosecution years earlier. By then the court closed its hearings of the case on April 1995, when finally—it was about time!—it was ready to divulge its ruling. The hearings logs, being summaries dictated by judges to their scribes, are generally, like the prosecution records, disappointing: they add nothing in substance, and that was not surprising. As defendants continuously referred to previous affidavits, insisting that they had nothing to add, the court for its part kept a low profile, and did not seem interested in bringing more light to the case. It rather seemed convinced that all previous statements, by public officials and defendants alike, were enough to proceed with the sentencing. The first sentencing penalized all three to three years and S.P.5,000 ($100) each, while the second one addressed the cases of only Suhayl and Hassan. The two were charged of wrongdoings for drug use, and the former was also accused of theft. The court sentenced them both for three years of incarceration and S.P.5,000 ($100) each. The affidavits that they both had signed after the second ruling, and in which they had confessed possessing drugs for the sole purpose of consumption, apparently gives the court for more leniency towards them.

The reason why Khalid was not included in the sentencing is that he did not make any new confessions between the two rulings. He had appealed the section in the referral judge report apropos the "enough evidence" for drug use. In May 1994 the Naqḍ overruled his appeal: "The referral judge took on the facts of this case and discussed its evidence in a legal way, based on his own internal convictions. So he ended up accusing the appellant Khalid Qushaqji for the crime of using hashish, and his decision was well grounded and based on **good reasoning** (*istidlāl*) and evaluation, and what sustains it is the file of the case, in particular **the seizure of hashish**." So, here we are, after five years, the only "evidence" that satisfied all judges and courts—including the Naqḍ—was the "material evidence" of the hashish that was seized with the defendants at the moment of their capture. Nothing in the reports, investigations, hearings, and cross-examinations, however, even remotely points to a certainty regarding such material evidence. In effect, even though all defendants in their statements to the prosecution rejected the accusation that they had any drugs in their possession, the question was never asked, how did the drugs get there in the first place? One would have expected the defense to ponder the police on how the drugs were seized and the possibility of planted evidence. But that did not happen.

How dangerous were they?

In the narcotics case in this Chapter, time, as in other cases we've encountered, was the main factor that brought the case to a closure. It had ultimately to be nailed down to the possession of narcotics, and considering the time framework for the case to unravel, the punishments were minimal. The wager here is to ask the naïve question, why would the state bother at all in such mundane matters? After all, it was fairly obvious from the beginning that the accused were no more than a small group of consumers, which at times acted as traffickers, only to cover their own costs, and which were unrelated to one

another except for the very circumstances of consuming small amounts of pot for personal gratification. They all looked and behaved like textbook examples of individuals divorced from their urban milieus, trapped into a personal crisis that pushed them to find salvation in drug use. The detention of drug users is well documented even in the most advanced liberal societies, with variations of tolerance from one country to another. The US, for example, is well known for its harsh policies on drug use and trafficking, with billions of dollars at stake simply to arrest, bring to trial, and incarcerate users in the tens of thousands, not to mention the famous drug wars across borders and within sovereign countries receiving funds and military aid from US agencies. All that said and done, it does not prevent the US from being the largest drug consumer society in the world. More importantly, nothing seems to work in that respect: while drug use has not been curtailed, the inmate population has been growing steadily, half of which is Afro-American (even though it stands at 10 percent population wise), with a large proportion in relation to drug felonies. So why then such unwavering persistence at waging wars on drug use and trafficking, whether inside or outside the territorial borders of sovereign nations? And why other countries would follow suit, in particular ones with the lowest per-capita incomes in the developed world?

In both instances, between developed wealthy societies and the much less economically performative, the wager is on that notion of the "dangerous individual." An individual would become "dangerous" if he or she turns into a sexual pervert (e.g. homosexuality), a criminal, a deviant, a homeless, a drug addict, a terrorist, an insane, or even one who is medically incapacitated. As Foucault and others have pointed out, such stigmatizing practices of segregation-cum-internment have become normative in nineteenth-century Europe, only to be picked up by the colonial and postcolonial nation-states in their attempt to create "societies" and "nations" of their own. In other words, what is crucial here is the very notion of "society" which at its core implies a group of well-integrated disciplined individuals. To begin with, strategies of discipline and control come through institutionalized practices, which vary from the juridical, medical, educational, to the military and political. Even though they prove quite uneven in their efficiency, their very purpose is to interpellate individuals deep down into their inner subjectivities. It is as if an individual is subjectified once interpellated by some higher agency that would pose itself as the "big Other."

Social actors are therefore caught in a web of discursive practices, so that, for example, a delinquent is not simply chastised for doing wrong, but punished within a constructed legal and medical discourse on "delinquency," which in turn would frame the juridical and medical institutionalized practices. But then, for the researcher, knowledge of what pushed an individual *subject* towards a delinquent act, whether that individual was caught in a personal history of delinquency or was simply a first-time novice, is an entirely different matter from the web of discursive practices that would set an individual as delinquent in the eyes of law or medicine. In effect, knowing "what goes on" in the mind of a delinquent, based on concrete facts of his or her, which has been the orientation of this study, proves quasi-independent from the discursive practices that frame a delinquent act as a crime to be pursued by the legal and medical authorities. The latter démarche only proves useful at explicating the conditions that would set the process of detention in

motion, but once we're into *individualized* acts, something that goes deep down into the *interiority* of a psyche, it's the phenomenology of consciousness and the struggling *decentered* self in their deadlock vis-à-vis the socio-symbolic order which are at stake here. If the Foucauldian perspective is set within the parameters of power relations and the schemes of resistance deployed by subjects in their daily struggles, it is, indeed, the latter that prove the most problematic and obscure. What were the schemes of resistance of our main protagonist Suhayl, a petty thief and drug addict, whose sole enjoyment consisted at connecting with his other pals to gain small benefits which were more symbolic than material? This Chapter, like the other ones in this book, struggled between a micro-sociology of the acts of a small delinquent like Suhayl, on one hand, and the practices of apparatuses that had to contain his delinquency on the other. But the two levels of analysis, however, would *not* go hand-in-hand. If, as Jack Katz asserts, the "seductions of crime" are bound to "moral and sensual attractions in doing evil,"[11] which imply magic and sacrifice, then the researcher's task is to explicate that kind of "attraction" to crime, which stands as autonomous from the discourses on criminality and the judicial procedures for narrating crime, as the latter only frame "crime" as a set of deviant practices to be handled through legal and medical expertise.[12] We are here into "subjectivity" proper which remains the undisclosed core in the human and social sciences.[13]

Our interpretation of Suhayl's experience nailed down how he was symbolically transcending the social reality into which he was embedded. He created a world of his own, to which he invited others, which found satisfaction in the trespassing on the properties of others, people who employed him in minor tasks, and towards which he indulged in exercises of "freedom" to get what they owed him. Such transgressions, however, had nothing grandiose about them, as they were small in scale of little material value beyond the symbolic excitement of transgressing the sanctity of the other. MKK by contrast had a much larger network of middle-class people who were attempting to move fast in the social ladder, at least faster than what the moribund state bureaucracy would permit. Yet, what brings all those networked people together, Suhayl's and MKK's pals, was precisely their transgression of the law, in spite of the fact that MKK's pals were not subject to judicial pursuit and punishment; even though everything they did and said betrayed the fundamentals of contract and property: everyone of them *knew* all too well that they were in that gray area of the law where "bribing," speeding up transactions, signing up for contracts in cooperatives for which they were ineligible, were *stricto sensu* "illegal." If Suhayl and his pals found themselves in the frenzy of drug addiction and theft, MKK and his pals were caught in that *virtual* act of faking and borrowing, even if they were not perfectly aware of what they were doing: "taking ourselves to be X," makes us act like X. MKK *took himself* to be an important member of the presidential palace, a "friend" of the president and his two influential sons; he imagined himself running cooperatives, car dealerships, travel agencies; and, above all, he imagined

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[11] Jack Katz, *Seductions of Crime,* New York: Basic Books, 1988.

[12] See Chapter 1 on how in the European nineteenth-century medical practices came at the rescue of legal ones, prompted by the inability of judges to reason within the juridical mode of reasoning alone.

[13] Lisa Wedeen's work on Syria and Yemen shows a concern for the subjectivity of actors, that is, in how actors integrate schemes of belief when faced with authoritarian representations of power.

himself an "artist" in the role of "recreating"—rather than simply "reproducing"—the emblems of the Baathist state. In similar vein, MKK's pals imagined themselves within a "reality" were bureaucratic norms could be easily bypassed. It is, indeed, such acts of the imagination, which transgress the socio-symbolic order, which prove fundamental at depicting "the criminal mind."

Throughout this study, however, the discursive practices and the phenomenology of crime were not kept at bay from one another. In effect, what binds the latter to the former are the court documents that are at the core of this study. In other words, the phenomenology of crime is constructed based on an interpretation of utterances that the felons furnished to prosecutors, judges, and their own counsels. As such utterances did not necessarily catch the eye of judicial authorities, as they were looked upon as superfluous and not worth quoting, from our perspective they constituted the bedrock of the case-files which at times were ignored. At other times, they were used towards ends that may have been incompatible with the approach defended in this book. To be sure, some may perceive the utterances of convicts delivered in the process of an investigation to state authorities as a gross limitation to the sociology of crime. Such a criticism, however, misses the purpose that we have been aiming at, namely, that convicts *were* caught in a *double bind:* a situation in which they were confronted with two irreconcilable demands, one from the judicial authorities, and another stemming from their own consciousness. It is therefore the researcher's task to filter the two, look for discrepancies, and for opportunities to see the culprit's mind at work between two incompatible courses of action.

[Table 10–3] The drug ring of old pals (May–June 1989)

name	born	neighborhood	profession	felony/crime	contact person	precedents	current status	observations
1. Suhayl Birdaqji	1957	‘Aziziyyeh	painter	1. jewelry theft from a private home; 2. drug use	Ismail Maghribi		arrested within first 48 hours; claimed to prosecution judge that his employer did not pay him for a one-month work painting his home, hence his excuse for stealing some of his employer’s jewelry. Was among a group of three who were found guilty until the very end (1993–5) for storing and using drugs.	main defendant who initiated the whole case through his theft and drug habits.
2. Hassan Shaar	1952	Jamiliyyeh	lived in Germany as an immigrant; settled upon his return in selling sandwiches	possession of drugs, 20g			arrested within first 48 hours; denied all charges to prosecution judge; he had been imprisoned for the past year for having participated in a “group fight.” Was among a group of three who were found guilty until the very end (1993–5) for possessing and using drugs.	
3. Khalid ‘Attar Qushaqji	1950		married illiterate who worked as a hairdresser	possession and use of drugs, 2g	Suhayl Birdaqji	theft, homosexuality, “intercourse against nature.”	arrested within the first 48 hours; denied all allegations.	

			in Kallaseh				Was among a group of three who were found guilty until the very end (1993–5) for storing and using drugs; had a record of nine felonies including theft, homosexuality	
4. Muhammad ‘Ali Muhammad	1931	Sukkari	illiterate married man; baker in the old city	drug use	Suhayl Birdaqji	several arrests from 1966 to 1988: consumption and sale of drugs.	arrested within the first 48 hours; confessed for past drug use, but denied all allegations to prosecution.	
5. Jack Hajjar	1962	Sulaymaniyyeh		drug use	Suhayl Birdaqji		arrested within the first 48 hours; denied any drug use, and requested a doctor’s examination that would substantiate his claims.	
6. Ahmad Khawajiki	1964	Sulaymaniyyeh			Suhayl Birdaqji		arrested within the first 48 hours; denied all allegations.	
7. Muhammad Khalil Shaaban	1937			drug possession and use		already in prison for a public group fight	denied all allegations to prosecution judge.	
8. Muhammad Jum‘a Intakli	1947	Kallaseh	owner of a plastic shop in Kallaseh	drug use			denied all allegations to prosecution judge.	was in Damascus in May–June 1989; telegram forwarded to Damascus police.
9. Mahmud Habbal				purchase of stolen jewelry				the only one of the ten not to be accused of any drug felony.
10. Ismail Maghribi	1935			drug possession and use	Suhayl Birdaqji		denied all allegations to prosecution.	

[Chapter 11] Le moment de conclure

In one of the cases discussed earlier (C5–4), a mid-aged man who was under investigation for drug trafficking died unexpectedly at the police station where he was brutally interrogated and tortured. What was probably left unveiled was that the police would have felt more at home brutalizing people in popular murky neighborhoods where state control is left to rival families, as is the case in Bab al-Nayrab in Aleppo, where the alleged trafficker was caught and tortured, which in Ottoman times served as an economic conduit between city and countryside. It is as if police brutality comes in parallel to the violence of rival kin groups who operate in areas of the city which are problematic for the state. Police brutality, however, is *not* part of a concerted effort deployed by the state as a machinery to replace kin violence; it rather acts as a supplement to the latter, imposing its will not necessarily for institutional purposes, but for the personal benefit of members of the police force. In this instance, there may have been attempts of embezzlement at the hands of the police task force who was investigating drug trafficking in the area, allegations which were left out of the scope of the dossier under consideration; but even such possibility, which was raised in media outlets outside Syria (see *supra* the *al-Ḥayāt* blurb in C5–4), would not show up in the thorough investigation which limited itself to allegations of manslaughter. In other words, even when the Jinayat would go for an unexpected vendetta against the policemen who may have contributed in an unpremeditated killing, it left out the real corruption at the heart of the police system, namely, schemes of racketeering and embezzlement common to the police force. Thus, even if such investigation of torture may have set a precedent (though no evidence would indicate that torture is being routinely investigated), notwithstanding a moral backlash with the public at large, its very purpose may well have been to cover up for what stands as systemic corruption within the police force. Such acts of torture, not to mention generalized corruption, are fairly common in many liberal democratic societies, but they do run the chance to be open to public scrutiny and investigation, thanks to the liberal mass media or to routine departmental institutional procedures. In authoritarian or totalitarian countries by contrast, the bad news achieves its mark only incrementally: torture for the sake of extracting confessions is fairly common in the Syrian police force, even tacitly admitted by the courts (*inter alia,* C3–1), but invariably taken as a "useful" fait accompli, hence requires no investigation of any kind; so when is it that torture finally exceeds its limits? Which benchmark should be crossed for a matter to become public?

The venerable Bab al-Nayrab neighborhood came unexpectedly to the forefront of local and world news in late July 2012 when its two main rival clans, the Barris and the Hamidahs, which have been "sharing" it for decades, have been accused of divided loyalties towards the Free Syrian Army (FSA), which took control of parts of the city, in particular its popular south-western and eastern neighborhoods, thanks to an influx of poorly equipped combatants from the rural areas of Aleppo and Idlib. Newspapers on August 1, 2012, globally carried on their front pages the same photograph of two "thugs" (the allegedly state-endorsed *shabbiḥa*) from the Barri clan, carried on the shoulders of rebel combatants who had beaten them up to death, with their white galabias stained in

blood.[1] Apparently the executions took place moments after the photo was shot by a photographer working for an international news agency, staining the credibility of the nascent and internationally-endorsed FSA for its claims for a democratic Syria. The news reports indicated that *'ashirat* Āl-Barri had sided with the Asad régime, providing help for the 20,000 or so special and regular armed forces that were stationed on the south-west of the city.

In summer 2004 a parliamentarian by the name of Ahmad Sha'ban Barri was shot to death by allegedly members of the rival Hamidah clan.[2] Barri was shot at the gate of the al-Haydariyyeh mosque in the vicinity of his Bab al-Nayrab home, while his 16-year old son and 50-year old cousin were wounded and rushed to the hospital; Barri's body was delivered dead at the same hospital. The son was able to identify by name all 7 assailants from the Hamidah clan. Four years earlier members of the Barri clan had attacked the Medical Surgical Hospital in Aleppo, firing sporadic shots all over, killing three and wounding six patients, some of which were unrelated to the longstanding feuds between the two families; one of the patients was the ex-head of the military intelligence services in the city; the shooting was in retaliation to a previous incident years earlier. In return, members of the Hamidah clan shot to death in 2002 Mahmud Barri, the brother of the parliamentarian who in turn was shot to death two years later. Because Ahmad Sha'ban Barri was already at the time serving in parliament, the ministry of justice demanded twice that his parliamentary immunity be withdrawn amid the ongoing investigation for the attack that members of his clan had pursued against a public property (*al-māl al-ᶜāmm*), the state-owned hospital; but the parliament refused to endorse the request. Barri was never brought to trial for alleged "instigation" in the crime, successfully running for a second term in parliament; the Hamidahs took therefore justice in their own hands, opting for his execution.

We have encountered cases of this sort in Chapter 7, even though they lacked the luster politics of the Barri–Hamidah feuds. This should not deter us, however, from looking at similarities between the politicized and non-politicized feuds, as the latter would generally serve as the bedrock to the former, providing for the logistics of retaliation and counter-retaliation. The non-political cases in Chapter 7 point to the fact that in such retaliatory killings, the outcome of longstanding feuds that would span over several generations (hence the importance of the *time* factor), judges would invariably opt for manslaughter over first-degree murder. Yet, if premeditation means anything in homicidal killings, then the deadly clan rivalries would be the first to fit in such categorization: everything points to a crime that was staged beforehand, with the prior knowledge of all "influential" persons, men and women (the mother could be the leading personality), which act either as "instigators" or else as "indirect participants." As to the choice of the potential assailant, he could be either a minor (as a preemptive measure to bypass the Jinayat in favor of a Juvenile Court) or else an adult, but in both instances,

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[1] The photo was on the front page, among others, of *an-Nahār,* Beirut, and *al-Ḥayāt,* Beirut, August 1, 2012; both newspapers did not have reporters on the ground in Aleppo, compiling instead the Syrian Revolt from newswires from around the world; the reported incident took place on July 31.

[2] *Akhbār al-Sharq,* London (online), 12 July 2004; the official news agency *Sānā* had reported the death as an "unfortunate accident" with no further details, while the state-owned *Tishrīn* reported it in full.

they may be unrelated not only to their victims, but even more so to the dead person whose memory they are honoring in their retaliatory act. Which permeates the killing, in the very choice of the assailant, with that aura of distance and externality—group feeling primes over the individuality and responsibility of the actor. Yet, the courts have a hard time pinning down the group, even though select members may be subject to investigations and interviews, at times charged with "instigation," opting instead for the individual actor and charging him for manslaughter if he is above 18, or else transferring him to a Juvenile Court if he is a minor. Clan violence, perpetrated thanks to a logic which is alien to the modern nation-state and is located "outside" it, now has to come to terms with the juridical logic of the latter. That is to say, it all proceeds both ways: as the juridical institutions of the state have to find words and notions that would "fit" such violence within its "civil"—as opposed to *ahlī*—modern codes on one hand; on the other hand, the actors themselves must in turn account their violence within the narrative of the modern civil state. But does such forced *mariage de raison* lead to an "absorption" of clan violence into the peace settlements of the state? Do the actors themselves manifest a willingness to surrender their never-ending feuds to state authorities?

There is a hovering uncertainty as to what the state can do and to its willingness at containing clan violence. If the Barri–Hamidah rivalries point to anything in this regard, it is, indeed, that the state has exacerbated their violence rather than undermined it. Clan rivalries get politicized whenever members of one or more clan join as members of various state institutions. Thus, for example, the Barris have benefited from the Baath by becoming parliamentarians, or intelligence or army officers, scoring over their rivals, which in turn did not shy away from civil and military official positions. When the London-based "Syrian Observatory for Human Rights"[3] bemoaned the events that led to the execution of two of the Barris "thugs" on July 31, 2012, at the hands of the FSA, as a desperate attempt by the Asad régime "to thrust the Arab clans into the bloody conflict,"[4] such claim obfuscates the fact that such clans have "voluntarily" joined ranks with the Baathist state a long time ago, sharing the vulnerabilities of the apparatuses of the state. In such situations the state capitalizes on clan violence, turning it to its benefit whenever it can afford to. In other words, once the configuration of society is structured on the *ahl* components, all other economic, political, and state components are de facto infected by the latter. There is therefore more of a *mujtamaᶜ ahlī* (clan-based society) in conjunction with a *dawla ahliyya* (clan-based state), with each one exacerbating the power of the other, than a "civil society" or a "civil state." For that very reason the term "*civil* war" would be meaningless for clan-based states and societies, as *ḥarb ahliyya* would be more appropriate.

Which raises the issue as to why clan violence exists in the first place: What role does it serve? What is its political or economic logic, if any? In Chapter 9 we've debated the relationship that land ownership nurtured with crime: whenever a land conflict arises, which would lead to a criminal indictment (which could be homicidal), would that indicate that the "exchange" of goods and services failed to work properly? Is violence an

[3] The *Marṣad* is run by Rami Abdul-Rahman who has indefatigably chronicled on a daily basis the Syrian Revolt in 2011–13.

[4] As reported by the likes of *an-Nahār* and *al-Ḥayāt* on August 1, 2012, both published in Beirut.

inherent aspect of exchange to the point that the two would only work together? Speaking of "primitive societies," which are organized on the one hand on an *internal* system of pacification through exchange (gifts, signs, property, and women), and, on the other hand, on an *external* system of warfare, whereby exchange is hostile simply because it occurs with the outside of the clan, hence is exogamic, Claude Lévi-Strauss notes that war is contingent on exchange: when the exchange is not successful, war becomes its immanent partner.[5] In contemporary Syria clans do matter a lot, and in this book we've underscored the relationships that clans nurture with crime, for instance, when it comes to honor killings or the exchange of property, as symbols of violence and exchange, which cannot be separated. But what distinguishes, however, Lévi-Strauss' "primitive societies" from the ones in contemporary Syria is that while the former are endowed with an "autonomous totality" and a "homogeneous unity" *within* each clan formation, the latter belong to complex societies, hence are *also* stratified along class and ethnic antagonisms *within* the clans themselves. If primitive societies are based on the internal coherence of the clan, so that the division of labor and wealth would not affect their homogeneous unity, war and (unequal) exchange are the outcome of coercive relations *between* clans. To wit, what happens between clans in primitive societies takes place *within* clans in Syria: violence within clans is an outcome of unequal exchange due to class stratification and tense rural–urban relations. We've encountered such scenario with the Kitkanis (C9–4), a Kurdish clan from the northern-central region of 'Ayn al-'Arab, which unlike the Kurds of 'Ifrin are not "family" based, as it is the larger unit of the clan that stipulates the rules of exchange among families. Attempts to assassinate members of the Kitkanis who at the time were serving as lawyers and judges in Aleppo, have pointed to land conflicts—the Kitkanis' hegemonic status in land possession—in parallel to political rivalries between Baathist nationalists versus Kurdish nationalists; in addition to rural–urban tensions, whereby the big landowners abandoned their rural life behind in favor of lucrative liberal professions in the city: no clan would therefore afford acting as a coherent unit in a modern nation-state.

But before we indulge further at discussing the role of the state in relation to clan violence, we need a little détour regarding primitive societies: Is violence contingent primarily on exchange? That is to say, in Lévi-Strauss' theoretical representation, war would be absent once exchange is successful: considering that the autarchic clan community lives in economic independency and self-sufficiency, both exogamic exchange and war are external necessities, while the presence of war is a formula of failure of exchange. Pierre Clastres challenged precisely such assumptions.[6] The crux of Clastres' argument amounts at politicizing violence in primitive societies: joint ownership, common identity, economic autarchy, instead of acting as indicators of the non-political nature of primitive societies, point, on the contrary, to their fundamental *political* formations.[7] Politics *within* the mechanically cohesive clan means that society organizes itself on a structure of non-domination, that is to say, on the absence of any

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[5] Claude Lévi-Strauss, "Guerre et commerce chez les Indiens de l'Amérique du Sud," *Renaissance,* vol. 1, New York, 1943.

[6] Pierre Clastres, *Archéologie de la violence. La guerre dans les sociétés primitives,* Paris: Éditions de l'Aube, 1997.

[7] Clastres, *Archéologie,* 55: "l'indivision est fondamentalement politique."

domination, including that of the state. War is therefore only with an external clan-enemy, which strangely overlaps with Carl Schmitt's concept of the political (hence of the state) as one of division between an *external* friend–enemy di-vision, that is, one where the nation-state is internally cohesive thanks to an external foe, otherwise we're into civil war.[8] The logic of primitive societies is therefore one of difference, among clans who are at war with one another for no other reason but to preserve their internal ideals of harmony, while the logic of generalized exchange is one of identity among groups.[9] Thus, while Lévi-Strauss looks at violence as "failed exchange," hence has no value in itself, Clastres politicizes war, separating it from the contingency of exchange. Which leads Clastres to a reversal of the Hobbesian Leviathan: instead of the state as the agency that monopolizes violence, hence is against war, in primitive societies *war is against the state.*[10] That is to say, primitive societies avoid at all cost the presence of the state, as a political institution that would monopolize violence, opting instead for war among clans, preserving their internal *political* integration and harmony.

Can we conceive in Syrian society the violence *within* and *between* clans, as depicted in some of the cases in this book, as a war against the state? Set within such theoretical perspective, clan violence seems like an old internal mechanism that would preserve a takeover of society by the state. The outcome is more of a double bind, which remains unresolved, one in which the state exacerbates the violence among clans, for example, by recruiting clan members into the civil and military apparatuses of the state on the one hand, and on the other hand, where groups use the state institutions, among them the court system, to externally monitor their internal violence.

In the transformation of Europe from the classical age whereby the Sovereign's whim was all what mattered, where public executions in all their cruelty were at the heart of Sovereign power, towards the nineteenth-century disciplinary penitentiary, whereby punishment had to be adjusted and calculated through institutionalized legal and medical practices, torture was in principle transformed into an affair of the state for the protection of territory against its enemies, and which had to be secretly practiced, outside the public eye. Hence it had to be kept secretive, as its unwanted revelation was only a matter of embarrassment for liberal democracies. For its part, police brutality was a necessary "excess," something that had to be acknowledged and fought on moral grounds. In the Foucauldian scheme of power that subjectivizes, invariably creating sources of normativity and resistance, the state would not act in broad concerted strokes, as it did under the *ancien régime* of divine power. In societies under the predominance of kin, it is the very notion of subjectivity that is at stake: as the socio-symbolic value of kin primes over other institutions, be it justice, the law, or the state, or even the market economy, the destabilization of the old patriarchal structure brings unexpected consequences. Within such destabilization the state attempts to promote itself as the sole Master-Signifier providing meaning for the fractured "societies" that would make the "nation" possible. In lieu of the Foucauldian scheme of power that brings forth subjectivities, only to subjugate

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[8] *The Concept of the Political,* Chicago: University of Chicago Press, 2007.

[9] Clastres, *Archéologie,* 60.

[10] Clastres, *Archéologie,* 90.

them to the various disciplinary medical, juridical, educational, and military drill, the state in non-disciplinary societies (still based on remnant sovereignties) does not have that kind of luxury; it rather accommodates itself by various means: public ceremonies, cult of the only leader, the colonial and imperialistic enemy, torture, recruitment of influential clan members, and police and intelligence apparatuses which suspect everyone and could potentially arrest anyone. In other words, the ideological apparatuses of the state interpellate subjects without the vernacular culture of subjectivism that would create the texture of "society" under the banner of a common nationalism.

The wager in many of the rulings in this book is that it *was*, indeed, the external gaze of the big Other (the Jinayat) which did the final work of *interpretation,* that of telling the assailant, who was "unclear"—clueless—on "the purpose of his crime," what the essence of his criminal act meant. That is to say, it was the Jinayat court which "supplemented" the convict—acting on his or her own behalf—with the interpretation of the meaning of his or her own act, which they were unable to do *on their own.* The convict-as-subject is therefore that void-of-nothingness, incapable *on his own* to be self-transparent, and whose self-reflexivity must be supplemented by the work of the big Other, a myriad of juristic and medical discourses. But isn't that "padding" of the convict's "consciousness" precisely what the courts do all the time, and that our cases are no exception? As we have seen in Chapter 3, courts and judges seem to be taken aback when a convict has "nothing to say" on his or her crime; medical committees are therefore dispatched with the hope that they would fill that unbearable void in the convict's "consciousness" to establish his or her "legal responsibility": are they "fit" to stand trial? Are they morally responsible? But whether doctors or psychiatrists come at the rescue of clueless judges or not, the court rulings must fill that void, which is invariably done through the all too familiar arcane juridical language which places its wager on *form* over content. Hence the deadlock that courts encounter when attempting to formulate the meaning of an action, is rescued, in the final instance, by wrapping it up in a language that would only meet basic juridical requirements. Such requirements, however, are not to be limited to the verdict, as they show up in every memo, report or interview. When, for example, a woman who was allegedly raped would not indulge at describing that hideous Thing she had been subjected to, the unnamable is obfuscated by a judge's memo (or a doctor, or a court expert) that would "absorb" the woman's "voice" on her own behalf, "saying" *in writing* what she did not dare "say." More generally, deadlocks encountered in the lived experience of witnesses and convicts, which manifest themselves in an inability to "say" what happened, or to "say" what they have "heard" or "seen," are "sublated" in the *formal* language of the law, a formalization which enables to juristically formulate the unnamable.

There are two schools of thought when it comes to law: either law stands as autonomous on its own, or else it is part of society. What does the autonomy of law mean, and is it possible to envisage law "without" society? The autonomy implies that the law as a homogeneous corpus (or at least aims at homogeneity and for being systematic) primarily purposes at maintaining its internal *modus operandi* in terms of the logic of its operations (validation of facts and the finding of appropriate articles and codes). Even though the construction of the narrative of the crime scene is primarily based on witnessing (without

which there would be no case), which in turn is based on the common sense knowledge of witnesses, the processes that involve validating facts through witnessing and forensic evidence are internal to the law, hence independent of any societal becoming. That law is therefore primarily busy at validating itself from *any* external environment, be it social, economic, political or scientific constituted our point of departure for this study. It goes without saying that such a view has even more implications for contemporary Syria, a quintessentially undemocratic country with an authoritarian régime. Even under undemocratic circumstances, however, the law primarily struggles with itself, that is, it is primarily busy at finding the rules for its own validity and acceptability: how to transform the statements of witnesses into facts that could be validated; how to construct a narrative out of the facts, which would lead to the final verdict; and how to find the appropriate coded articles for the corroborated facts. Even though the legal enterprise is very much different from the scientific, what they share in common is their internal autonomy and the logic of the juristic or scientific enterprise. When it comes to law, it has a form of life of its own, which consists at constructing a "case" as an artifact, that is, as a dossier that could be objectively disseminated through the work of multiple actors, independently from one another, embedded as it is within a grand narrative based on fact with the appropriate coded articles. For that very reason, what is crucial from our perspective is how a single case unfolds, primarily in the enterprise of witnessing itself; the association of common sense statements delivered by witnesses into validated facts ready to be used in memos, reports and the final verdict; the juxtaposition of witnessing with forensic evidence, both of which end up as validated statements approved as such in the verdict; finally, the association of all those facts with the coded articles which prove more general than the case itself. Various claims of "corruption" into the Syrian judiciary, whatever their merits, would not touch upon the "integrity" of the system itself, namely, that, like any other legal system, the Syrian judiciary only survives through its internal rules of proof and persuasion, whatever the level of corruption and political pressures. Even if we know for fact that police brutality is at times excessive, that judges are remunerated by private parties, that some of the judgments may reflect a political standoff, the autonomy of the law still holds under such circumstances. Thus, even when allegations of "corruption" circulate, the assumption of common laymen is that law and the judiciary should not be under the mercy of social and political pressures, which, in our language, raises the issue of autonomy and integrity not simply apropos possible corruptions, but more importantly, in relation to the internal logic of the decision making process. To put it bluntly, the more the researcher "socializes" the law, looking for social clues behind the drafting of codes and in judicial decision making, the less rewarding the research experience will be, as it would fail to see how *internal* such processes effectively are. Law is therefore autonomous the way the natural sciences are, except that in the latter the logic of verification of facts is entirely different, beginning with what constitutes a "fact" in science.[11]

There is that lurking danger for developing societies, where the nation-state is historically weak, to be perceived as divided between a traditional mode of life that is self-sustaining and coherent, on the one hand, and a modernization that is going awry on many grounds,

[11] Such views are handily expressed in Bruno Latour, *La fabrique du droit: une ethnographie du Conseil d'État*, Paris: Éditions La Découverte et Syros, 2002.

which proves incompatible with traditional values, on the other.[12] With that kind of division, honor would be perceived as the engine that would sustain traditional normative values. On the other hand, the integration of a society and culture into a capitalist world-economy would damage the balance fostered by honor and tradition through, for instance, the primacy accorded to the commercialization of land and the injection of monetary, financial and fiscal policies into the economy. In short, modernity would in general not be perceived in favor of the traditional networks of kin and honor, while crime could be looked upon as an effect of the slow breakdown of tradition: the more the symbolic values of tradition are displaced by modernity, the more social actors are pushed towards imaginary bonds of cohesion, for which crime would serve as a vehicle for integration. At the level of the actor–subject, using the familiar Lacanian psychoanalytic jargon of symbolic–imaginary–real, the symbolic would be represented by the normative values of society, while crime would foster an imagined community that the actor would have worked out in their imaginary, and finally where the real would be what the actors experience through their body (sexuality).

I would argue, however, that the above presumed core division between tradition and modernity is too schematic and does not account well for the historical realities of developing societies with weak or violent nation-state infrastructures. In the case of the societies and cultures on the eastern Mediterranean, the insertion of monetary practices and the commercialization of land go back to the late Ottomans. Not only did such practices not fragment the kin and honor strategies, but they even have tended to reinforce them while realigning them to new economic strategies. In many cases, the more a family succeeds in the monetary economy, the more it contributes at reinforcing the indigenous order. The new strategies have been assimilated through tradition, while problems tend to erupt only when a family under financial stress is unable to maintain its supremacy through the combination of kin and honor. It is well known that under such conditions, in a monetarist economy, large families (based traditionally on landowning), tribal shaykhs, assemblies of elders, attempt to consolidate their power, while adding new functions.

Where do honor strategies fall in all this? The exchanges of honor would be analyzed as strategies (or procedures or processes) in which the objective would be to maximize honor through risk taking: economic capital is valuable only as long as it maximizes honor. Hence the grammar of honor exchange would be deployed within two parallel registers. One that would be explicitly played as the register of honor, and a second one that would reveal the economic interests behind the honor strategies. Honor would thus serve as a dissimulated and denied strategy behind the more "real" economic interests. If, however, honor would dissimulate the economic and monetary interests, it is not because the corresponding economic institutions for the accumulation of capital would be inexistent, but because in such societies institutions would require a heavy investment and legitimation in honor, for instance, in strategies of gift-exchange, even though social groups would benefit unequally.[13]

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[12] Such criticism has been addressed to the "Algerian" work of Pierre Bourdieu by Enrique Martin–Criado, *Les deux Algéries de Pierre Bourdieu,* Éditions du Croquant, 2008.

[13] On the difficulties of writing a history and sociology of land and labor for a region like Akkar,

As Pierre Bourdieu argued, the grammar of honor should not only be acknowledged as legitimate for its own sake, but should also be incorporated as *lex inscrita* in the habitus of all the subjects that form the integrated society. Which poses the following question: How much of the grammar of honor is rooted in the objective conditions of the integrated society, serving among its processes of integration in the same way that kinship rules codify the choices of marriage, and how much would be based on an internal subjectified emotion? The analyses of Bourdieu often point to the fact that actors carry in their actions the burden of public opinion, hence are pushed by external motivations with no traceable internal subjective strategies (or intimate convictions). Hence the compromising character of such honor games, which reflect an eye to public opinion, manhood, bluffing, an outward game among families and clans, and double games. Herein lies the importance of criminal dossiers, in that they could reveal more intimate convictions than the ones anthropologists trace to public opinion and custom.

For the moment we'll have to acknowledge that as far as honor and kinship go there are two levels of analysis. One that takes into account the objective externality of customary rules, and another more obscure level that would document the various strategies of individual actors. It remains unclear, however, whether economic strategies would remain *dissimulated* under the umbrella of kin and honor, or whether such an opposition is infertile.

Which amounts to the narrative approach adopted in this book. In spite of a narrative's complexity, and its multiple locations and protagonists, the court would usually only be interested in identifying the criminal, and in determining whether the act ought to be classified as *'amd* (premeditated first-degree murder) or *qaṣd* (unpremeditated manslaughter). Suffice it to say that it would be useful to organize the crime scene for analytical purposes into its smaller narrative components, which in turn would be based on location. The advantage would be to allocate a separate narrative for each episode, and document how witnesses construct—*through police and prosecution investigations*—*local* criminal episodes within the context-driven process of *the production of locality*.[14] Through such labor, a process of intense *negotiation* is going on: first, between the various state agencies and the social actors on the ground, but also within each family and clan, acting as individualized collectivities, for example, in the Tirmanini land case (C9–1), between the son who killed and the father who allegedly instigated, and who initially claimed the murder on his own behalf.

There are two levels of power relations in each case-file, one from the judicial apparatus, and the other from the local actors themselves, most of which act as witnesses to the crime scene. The judicial apparatus is a homogenizing force to the never-ending project of the nation-state, a project fraught with violence, due to the fact that the state attempts

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located in the north of Lebanon and bordering Syria, see Michael Gilsenan, "A Modern Feudality? Land and Labour in North Lebanon, 1858–1950," in Tarif Khalidi, ed., *Land Tenure and Social Transformation in the Middle East,* Beirut: American University of Beirut, 1984, 449–463.

[14] I borrow this concept from Arjun Appadurai, *Modernity at Large. Cultural Dimensions of Globalization,* Minnesota University Press, 1996, Chapter 9.

to "normalize" individuals through various educational, legal, medical, and disciplinary techniques. To do so, institutions and apparatuses are not enough per se, as the techniques of normalization must get to the bottom of individual lives. Michel de Certeau has long argued that the transformation of spaces into *places* requires a conscious moment.[15] In other words, social actors anticipate first of all a "local knowledge" that they themselves contribute in producing, the kind of knowledge that would let them go on with their daily routinized lives, classify things, know other individuals and groups, ascribe names to people and places, all of which establish the context of a local political economy, where land would play a predominant role (Chapter 9). Such locally produced knowledge establishes itself within a contextual framework, which finds itself competing with other contexts, predominantly that of the nation-state.[16] Indeed, local actors, with their sense of an intimate place tailored to their needs—the political economy of kin, honor and land—are increasingly challenged by the context-producing activities of the nation-state, which seeks for the control of the territory as a homogeneous entity, receiving its naming from bureaucrats, civil servants, and the military. When, for instance, a crime occurs, state institutions like the police and judiciary immediately intervene, and an investigation soon begins to unravel, with all kinds of local actors, situations and places associated to it. What is at stake here is the very modernity of the nation-state, whereby a crime becomes a "public" concern, subject to the scrutiny of the *niyāba 'āmma,* or the public prosecution office, which acts like a Durkheimian "collective consciousness" to society at large. This is a far cry from the now defunct Ottoman system, whereby a crime would remain "private," situated within the "next-of-kin" (*walī al-damm*) domain, namely, those directly blood-related to the victim. Even when in rare occasions the latter would opt for a court settlement, and seek the authority of a sharia judge, we're stricto sensu in "private" domain, as the judge would neither push for an investigation, nor consider the dispute anything more than private.[17]

As "the nation-state relies for its legitimacy on the intensity of its meaningful presence in a continuous body of bounded territory,"[18] it establishes all kinds of techniques of power for the nationalization of space. The new penal régime, which in Syria saw its official emancipation in the 1949 code (even though the modernization efforts go back to the Ottoman Tanzimat), attempts to control the lives of people through new technologies of power, in form similar to the ones that marked the transition between the old absolutist feudal régimes of old Europe towards their modern counterparts, where the power of the nation-station does not rest anymore on the power of the sovereign. The individual lives of people—through language and discourse—become all of a sudden important: they have to be accounted for and rationalized, through a language that combines the juridical

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[15] Michel de Certeau, *L'invention du quotidien: 1/Arts de faire,* Paris: Union Générale d'Éditions: 10/18, 1980.

[16] I borrow this notion of "context" from Appadurai, which he associates with the concrete experience of a "neighborhood," in the sense of a living community, which produces its own local knowledge and sense of place, and whose knowledge is not limited to the textual, and where the non-discursive would play a predominant role besides the discursive.

[17] See my *Grammars of Adjudication,* Beirut: Institut Français du Proche–Orient, 2007, Chapter 11.

[18] Appadurai, *Modernity,* 189.

with the medical (psychiatric power). Crimes are not without reason, and they have a causality associated to them, in the sense that once motivation is explained, that of the subject who committed the act, the totality of the act becomes explainable. In what seems on the surface like a myriad of interrogation techniques, memos, court sessions, psychiatric and medical assessments, all of which aimed at discovering the true culprit, are in the final analysis no more than attempts to normalize the lives of ordinary people. In what Michel Foucault has called *"la normalisation des conduites,"* which in this instance unfolded in 19th-century France under the industrial revolution, and which involves a "gearing" (*engrenage*) of various powers, in particular the juridical and psychiatric, what was indeed at stake was the "abnormal" behavior, hence all that was not normalized.[19] It is as if the postcolonial state, while lacking the industrial and financial resources of its progenitor, finds it necessary the pursue similar strategies of normalization, hence the necessity to look at crime as a public concern, and the criminal as someone who acted with a motivation, and whose act needs to be understood, thoroughly analyzed, through a combination of judicial and psychiatric techniques, so that its reasons would be unveiled for the sake of the public good. Hence the new penal economy, which in the case of Greater Syria was inaugurated by the Ottoman penal code of 1858, develops a keen interest towards crime, its rationality, and the presumed reasons that make the crime intelligible, in addition to the rationality of the subject that needs to be punished for the sake of the common good—the individual "coming back" to society through punishment.

With the luxury of individual case-files, what we've analyzed in detail is how local terrains as *individualized places* are mapped in terms of habitation, production, and moral security. In this confrontation between local actors and state agents from the police and judiciary, some of which recruited from the same local environment, what gets narrated are those micro representations of space, production, kin and family relations. The inscription of locality is therefore inscribed in the body and habitus, and actors represent it in what they do and say—or the un-said. We've tracked such representations of locality, as expressed by "witnesses" in their encounters with state authorities: *how* they were examined, their statements delivered, and local relations represented. Perhaps the crux of the matter comes to this: When it comes to witnessing, what is it that stands as a truthful statement or confession, and how are such decisions made by judges and magistrates?

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[19] Michel Foucault, *Les Anormaux. Cours au Collège de France, 1974–1975,* Paris: Gallimard–Le Seuil, 1999, pp. 124ff.

Relevant penal code articles

article	case	text
183		Articles 182–186 fall within a section on "the causes of vindication (*tabrīr*)," which are the causes that would justify the validity of an action as non-criminal. One such cause is the right to stop an intrusion or trespassing to protect one's self or property or another self and property. What could be subject to protection is either a real natural person or what stands as a legal person (*shakhṣ i'tibārī,* juristic person, body corporate).
187	C9–2	Intention (*niyya*) implies the will (*irādah*) to commit a crime as defined by the law.
188	C9–2	A crime is considered intended (*maqṣūd*), even it goes beyond the original criminal intent set by the act or non-act of the actor, and if he had expected its happening he then accepted the risk.
192	C6–1 C6–2	Article 192 severely limits the scope of article 533 by establishing "honor" as a special category to be dealt with separately and with much reduced punishments (one year only in the majority of cases). If the judge realizes that the motive (*dāfi'*) was honorable (*sharīf*), he should rule according to the following directives: - permanent internment instead of capital punishment (*i'dām*); - permanent or fifteen-year internment instead of permanent hard labor; - temporary internment instead of temporary hard labor; - simple imprisonment (*ḥabs basīṭ*) instead of imprisonment with labor; The judge could also protect the accused by refraining from the publication and dissemination of the ruling, procedures normally required as part of the punishment.
199	C6–4	Each attempt to commit a crime, which begins with acts that would directly indicate its doing, would be considered like a crime, unless it has been obstructed by circumstances outside the will of the doer.
209	C9–2	"No one shall be punished unless he performed his act consciously and willfully."
216	C3–2	An instigator (*muḥarriḍ*) is someone who pushes or attempts to push someone else to commit a crime.
230	Chapter 3	"A person is exonerated from punishment if he was in a state of madness (*yu'fa mina al-'iqāb man kāna fi ḥālat al-junūn*)" This follows the concept of *démence* in French

		Napoleonic law.
232	C3–2	A person who upon committing an act had a mental problem which could have been inherited or acquired, which affects his mental capabilities of consciousness or choice in his acts must benefit from art. 241 which reduces or replaces punishment.
241	C3–2	The law approves attenuating circumstances whenever the punishment for the criminal act is the death penalty or a life sentence with hard labor; the punishment could then be mitigated to at least one year. For other crimes the punishment is from six months to two years. For misdemeanors the punishment should not exceed the six months.
247–248		Punishments could be elevated whenever the convict has committed an additional crime in the aftermath of the verdict: for example a convict serving for life could become eligible for the death penalty if he committed another crime that would necessitate the same life sentence; or a convict serving a jail sentence and who commits another offense less than 15 years from the end of the sentencing, would see his punishment raised to the maximum.
271–273		A section of the penal code devoted to "spying" and the theft of public documents that were kept safe for the sake of public safety; the punishment for theft is one year minimum, with a possible conviction to a life sentence if spying is involved.
274		Articles 273 and 274 of the penal code require that defendants be interrogated prior to the hearings in order to check whether they abide by their previous declarations to the police.
279		Punish all those who use the Syrian territory in order to throw by force the constitution of the state of another sovereign nation-state.
280		In conjunction with 279 no one is allowed to use the Syrian territory as a ground to military fight another sovereign nation-state.
366	C10–1	It is against the law that civil servants use their office to promote their own affairs, a felony punishable from one month to three years.
367	C10–1	Pursuant to 366 civil servants who behave abnormally, either as instigators or participants in a crime, must be punished based on 247.
473		In article 473, the first one in the series devoted to "illicit sex" (as *zinā* or *sifāḥ*), an adulteress should be punished from three months to two years of internment (§1). Her

		partner (*sharīk*), in case he was married, is subject to the same prison sentence, but if he was not, the period is mitigated from one month to a year (§2). As to evidence (*bayyina*) which establishes that a person was engaged in "illicit sex," §3 of the same article surprisingly limits "legal evidence" on the "partner": "Besides the legal acknowledgment (*iqrār qaḍā'ī*) and the misdemeanor which has been witnessed (*al-junḥa al-mashhūda*), only the letters and written documents drafted by the partner are adduced as evidence (*adillat al-thubūt*)." But article 473 says nothing on how to determine that a woman *was* an adulteress: besides her confessing to the court, or direct witnessing of her in a *jamā'* with her "partner," what would be enough evidence in this (or any) case?
474		When we come to men, "The husband is punished from one month to a year of internment whenever he commits the *zinā* in his marital home or when he overtly manages a place (*khilya:* "cell") [for fornication] wherever that may be" (§1). The same punishment applies for the "partner" (§2). Thus, besides the fact that punishments differ between men and women, article 474, unlike its predecessor (473), leaves a blank page as how to determine that a woman *was* the "sexual partner" of a man she was not married to. And article 475 makes things worse by limiting the right to file a lawsuit to the husband only (§1).
475		Limits the right to file a lawsuit for marital infidelity to the husband only (§1).
476	C6–2	This article broadens incestuous sex (*sifāḥ*) to the "origin" (*aṣl*) and branch (*fir^{c}*), that is, the mother, father, daughters and sons, the brother/sister-in-law and the son/daughter-in-law, whether legally acknowledged as such (*shar'iyyīn*) or not (out-of-wedlock offspring); the punishment goes from one to three years.
477	C6–2 C6–4	Articles 473–477 of the Syrian Penal Code severely punish adultery, fornication, and incest, with prison sentences of three months to two years; and article 476 in particular considers the status of *aṣhira,* that is, the brother/sister-in-law and the son/daughter-in-law categories, as in parallel, from a legal point of view, to the categories of mother-father and brother-sister: that is, sex *between* these categories is considered "legally" incestuous and hence illegal (subject from one- to three-year incarceration).
489	C6–4	Rape (*ightiṣāb*) is whenever the offender threatens *or* forces someone other than the legal spouse into a forced

		copulation (*jamāᶜ*), must be punished for a minimum of 15 years with hard labor, or to 21 if the victim is a minor younger than 15. Notice that the threat of force is all by itself illegal, even if no copulation took place. Moreover, the article does *not* seem to take into consideration a forced sexual intercourse—"rape"—among married couples. Finally, all the articles that fall under the rubric of rape (489–492) are not gender specific, which means that offenders or victims could *simultaneously* be male or female.
492	C6–4	Still within the topoi of rape (*ightiṣāb*), when a 15- to 18-old minor is forced into a sexual intercourse by a legal or illegal "parent" or brother/sister-in-law, father/mother-in-law, or anyone who legally acted as "parent" (*sulṭa shar'iyya*), the offender must be punished for 9 years with hard labor.
493	C6–4 C8–2	Article 493 inaugurates the section on "adultery" (*faḥshā'*), which is framed in similar terms to "rape," except that in this instance the illegitimate sexual act which is described as "beyond decency" or simply indecent (*fiᶜl munāfī li-l-ḥishma*), is subject to a minimum of 12 years with hard labor.
497	C6–4	Offenders who committed adultery or rape will see their punishments raised if the offender is a "parent" as indicated in art. 492.
498		Offenders who committed adultery or rape will see their punishments raised if more than one person was involved in the indecent sexual act, or if the victim had been inflicted with a sexually transmitted disease, or lost her virginity.
506		Those who indulge at encouraging a minor below 15, or a girl or woman above 15, for indecent acts, or addressed them in an indecent way, is subject to 3 days of detention or a penalty of 75 liras or both.
520	C6–4	Each coitus against nature (*mujāmaᶜa ᶜala khilāf al-ṭabīᶜa*) is punishable up to three years in prison.
533	C3–1 C4–1	The conviction for manslaughter (*qaṣd*) is 15 to 20 years with hard labor. Notice that *qaṣd* as an act is not defined. Most killings either fall under 533 or 535.
534	C3–1 C5–4	This article comes close at defining manslaughter (*qaṣd*), which is a lesser crime than premeditated killing (535), even though it does so only by providing examples of manslaughter. For example, is considered *qaṣd* an act which is villain (*sāfil*); or which prepares, encourages or instigates for a misdemeanor (*junḥa*); or to benefit from a misdemeanor; or when the assailant harasses a public

		servant; or when the act is committed against a juvenile below 15; or when the assailant commits acts of torture or duress against others.
535	C3–2 C5–1 C5–2 C5–5	This article tackles Syria's supreme punishment: the death penalty or life sentence with hard labor. Whenever a criminal *qaṣd* act was committed in the spirit of premeditation, *'amd,* it would then be eligible for the supreme punishment, which includes instigation or prior knowledge of the crime in terms of preparation, encouragement, and so on.
536	C5–4	"A person who is responsible for the death of another without an intent to kill, either through hitting, or the use of violence or force, or any other act that is intended, should be punished with forced labor for a minimum of five years."
540	C3–1	*Qaṣd* is expanded for acts of harming, for instance, hitting someone on purpose with an intent to harm, leading to a disability that would force the victim to stop working for at least 10 days, which is punishable for a maximum of 6 months in prison.
541		When the harm as defined in 540 exceeds the 10 days, then the punishment should not exceed the year.
555	C4–2	When the someone limits the freedom of someone else, whatever the means, then the punishment is from 6 months to 2 years.
556	C4–2	Articles 555 and 556 inaugurate the second chapter on "crimes that affect freedom and honor," and are bundled under the same heading, "forbidding freedom (*ḥurmān al-ḥurriya*)." Article 555–1 states that "a person who forbids another of his personal freedom in whatever way would be punished in prison for six months to two years." The second section of the same article states that "the punishment on the criminal would be reduced, as stated in article 241 section 3, in case there is a voluntary release of the kidnapped person within 48 hours, without having any other crime being perpetrated, be it a crime or a felony." On the other hand, the criminal would be punished for incarceration with hard labor in case: "(a) the period of forbidding [freedom] went for more than a month; (b) the person who has been forbidden freedom has been subjected to physical or mental torture; (c) the crime has been committed on an employee when performing his duty."

Glossary

Arabic	**English**
adilla (s. *dalīl*)	evidence
adillat al-thubūt	evidence which has been adduced from other evidence
ʻafū riʼāsī	presidential pardon that would lesser the punishment of the convict
ahl	relatives
aḥwāl shakhṣiyya	a modern term for personal status matters such as marriage, divorce, alimony, and inheritance
ʻamd	first-degree murder, premeditated killing, which could lead to the death penalty or permanent incarceration
ʻashāyir (s. *ʻashīra*)	clans and tribal fractions
ʻashwāʼiyyāt; manāṭiq al-mukhālafāt al-jamāʻiyya	illegitimate and unregulated neighborhoods in a city (e.g. Aleppo and Damascus)
aṣl	origin; substance
aʻtarif	I confess
ʻayn	tangible object
al-bāʻith fi-l-qatl	what caused the killing
bāṭin	hidden introvert cause (of crime) which cannot be easily detected objectively as in an overt cause
bayyina	evidence
bidāya	first-instance court; a system of secular courts that became prominent during the second Ottoman Tanẓīmāt
bint ʻamm	maternal cousin
dāfiʻ	motive
dāfiʻ sharīf	honorable motive; a term usually applied for an honor killing
dalīl (pl. *adilla*)	evidence
dalīl mādī	tangible evidence
diya	blood money to be paid by the family of the offender to that of the victim in lieu of a peaceful settlement
gharīm	foe, opponent, debtor
faḥshāʼ	adultery, fornication, whoredom
faqīh (pl. *fuqahāʼ*)	jurist of Islamic law
farāʼiḍ	the branch in the Hanafi fiqh that deals with matters of marriage, divorce, alimony, and inheritance, referred to in modern civil codes as “personal status” matters
fiʻl munāfi li-l-ḥishma	an act that is contrary to decency

fiqh	Islamic jurisprudence
fir^{c}	"lineage"; if the killer was a "branch (*fir^{c}*)" to the victim, due to the kin relationship, for example, mother-daughter, the court may opt for the death penalty
ghaṣb	usurpation
Gülhane edict	Ottoman edict that inaugurated the Tanẓīmāt in 1839
ḥaqq	right
ḥukm	verdict; ruling
ibn ʻamm	paternal cousin
iʻdām	death penalty
ightiṣāb	rape is defined as threatening *or* forcing someone other than the legal spouse into coitus (art. 489).
iltizām	Ottoman tax-farming system
iqrār	acknowledgment
iqrār qaḍāʼī	legal acknowledgment
irāda	volition; will
ʻirḍ	honor
istidlāl	good reasoning based on logic
iʻtirāf	confession
iʻtirāf ḍimnī	an implicit confession
jamāᶜ; mujāmaᶜa	coitus; copulation; sexual intercourse which could be legal among spouses or illegal, in particular if rape is forced (art. 489)
jamāʻa	group of people
jamʻiyya sakaniyya	housing cooperative
jamʻiyya taʻāwuniyya	cooperative, co-op
jarīma	crime
jarīma maqṣūda	intended crime; manslaughter
jināyat	crime
Jināyāt; Jināʼiyyāt	department of crime at the Palace of Justice
junḥa	misdemeanor
al-junḥa al-mashhūda	the misdemeanor which has been witnessed
jurm iqtiṣādī	economic crime
madhāhib (s. *madhhab*)	Islamic law schools of the *fiqh*
maḥkama	court; tribunal
maḥkamat al-Naqḍ	Cassation Court, Damascus, known as *tamyīz* in some Arab countries such as Lebanon
maḥkamat al-ṣulḥ	peace tribunal managed by a peace judge, the lowest in the hierarchy of tribunals in civil-law systems
mahr	dowry
al-maghdūr (f. *al-maghdūra*)	the betrayed; common term for a crime victim
maḥḍar istijwāb	interrogation memo

Majalla; Majalle	Ottoman civil law system, based on the Hanafi fiqh, instituted in 1877
māl	*res in commercio;* exchangeable commodity; money in contemporary usage
al-mas'ūliyya al-ma'nawiyya	moral responsibility (e.g. for a crime)
milk; mulk; mülk	private property
mina al-warīd ila al-warīd	from one vein to another; a common designation for an honor killing against a woman
mīrī; miri; arāḍī amīriyya	in the Ottoman centuries, *miri* land stood for state-owned (mostly) agrarian lands which were allocated to individuals or families as prebends; in Syria today, *miri* is a property whose inheritance rules would not abide by the sharia, hence men and women would inherit in full equality
mudda'i shakhṣī	individual plaintiff who acts in parallel (and independently) to the complaint instigated by the public prosecution office
muḥāfaẓa	the province as an administrative unit (e.g. Aleppo, Idlib)
muḥarriḍ	instigator; an instigator (*muḥarriḍ*) is someone who pushes or attempts to push someone else to commit a crime (art. 216).
mu'akhkhar	late dowry; to be paid to the wife in case the husband divorces or dies
muḥāmi	lawyer; counsel
al-muḥāmi al-'āmm al-awwal	the advocate general
mukhtall	unbalanced; insane; retarded
muqaddam	premium dowry
niyāba 'āmma	public prosecution office, district attorney, DA
niyya	intention, motive
al-niyya hiya mina al-umūr al-bāṭiniyya	intention is an internal hidden matter
niyyat qatl	intention to kill
qāḍī	judge
qāḍī al-iḥāla	referral judge; the judge who hands over the case to the Jinayat upon a preliminary firsthand synthesis
qāḍī al-ṣulḥ	peace judge, replicated along the French model of *juge de paix*
qāḍī al-taḥqīq	investigating judge, *juge d'instruction*
qānūn	law
qānūn madanī	civil law
qānūn al-'uqūbāt	penal law
qānūnnāme	Ottoman regional codes, whose authority stood in parallel to sharia Ḥanafī law (the *fiqh*)
qarār	decision

qaṣd	manslaughter, non-premeditated killing; a lesser charge than the *ʻamd*
al-qaṣd al-ijrāmī	the purpose of the criminal act
Qaṣr al-ʻadl	Palace of Justice
qatl bi-dāfiʻ sharīf	killing for an honorable purpose; the labeling of the Jinayat for an honor killing that would not be classified as premeditated
rujūʻ ʻan iʻtirāf	the denial of a confession
sabab (pl. *asbāb*)	cause
shakhṣ iʻtibārī	legal person, juristic person, body corporate
sharḥ al-daʻwa	explication of the lawsuit; action taken by the prosecution office (DA) during the hearing proceedings which consists at presenting the lawsuit to the court
sharaf	honor
sharīk	partner (in the crime)
sifāḥ	adultery and fornication
taʻāwuniyya	cooperative, co-op
tabādul	exchange
tabrīr	justification
taḥrīḍ	instigation (for a murder)
ṭāʼifa (pl. *ṭawāʼif/ ṭawāyif*)	a religious–confessional–sectarian milieu; the old Ottoman *millet* system with its connotations of political autonomy
tajassus	spying
al-takhalli ʻan al-daʻwa	dropping (abandoning) a case; or when a case would not fit the common juridical denominators to be handled by a Jinayat court, hence it must abandoned
tamyīz	appellate court; a system originally instituted by the Ottoman Tanzimat, based on the Napoleonic civil court system of 1810, and which was implemented in Greater Syria in the 1870s
ṭaʻn; ṭaʻana	appeal of a court's verdict, which would normally lead to the transfer of the case from the local Jinayat court to the upper Damascus Naqḍ
Tanẓīmāt (s. *tanẓīm*)	Ottoman reforms of 1839 and 1856
ʻunṣur al-jarīma al-maʻnawī	the moral element in crime
ʻuqūbāt (s. *ʻuqūba*)	punishments
ʻuqūbat al-iʻdām	death penalty
walīdat al-sāʻa	a crime that was the outcome of its moment, that is, was not premeditated, *ʻamd*
waqf (pl. *awqāf*)	Islamic mortmain properties, blocked from circulation and free exchange
ẓāhir	the external and objective causes (of a crime)

ẓanīn	suspect
zinā	adultery and fornication

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