

The (ir)relevance of avowals in the interpretation of criminal evidence

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In the Syrian penal system, which loosely follows the French model of evidence, a judge constructs evidence based on forensic data, such as interviews of and statements delivered by suspects and witnesses, and memos drafted by judges, lawyers, doctors, and other professionals appointed by the court in the course of the investigation; all of which constitute truth claims, *as constructed by judges from the vintage viewpoint of their own narratives*. Thus, valid statements taken individually would be problematic if limited to forensic evidence. If they do not stand on their own, it is because their validity would only be established through the judge's narrative. The narrative itself, as evidenced in the verdict and related documents, gives clues as to how judges *interpret* evidence, in particular in what constitutes an "acknowledgment" delivered by suspects or witnesses. In fact, quite often the latter would deliver statements to the court which are not intended to "acknowledge" anything, but simply to state a truth within a routinized question-and-answer format. Only a judge's interpretation (or an equivalent judicial authority) would transform a regular statement into an acknowledgment with what could become corroding implications for the case file at hand. On the other hand, suspects and witnesses could deliver frank and direct "avowals" which generally are of a different nature than the usual statements that courts are accustomed to. Moreover, as avowals come in different sorts and are delivered differently (say, in a courtroom or the privacy of a judge's office; or in a written statement addressed to a friend or relative or legal authority), their interpretation may pose all kinds of methodological problems to judges or researchers alike. In this paper, we will examine the ambiguity of biographical statements, in particular those that were delivered by inmates in the aftermath of their conviction, without any official request from a judicial authority. But we will not be concerned with the adverse effects that a confession might have on the suspect who delivered it in the proceedings of an investigation. What we want to examine, however, is the moral significance (not to mention necessity) of self-incrimination, even if it plays little or no role at all in the construction of evidence and the delivery of the final verdict.

There is, however, another twist to the matter, as judges would be unable—or at the very least, feel embarrassed—to deliver their verdict without the accused openly making an avowal, that is, without the accused delivering their own truth about themselves: I did what you have suspected me of doing, and that is the truth of the matter. That kind of avowal (or confession), in its religious Christian underpinnings, becomes normative in the secular

European penal systems of the nineteenth century.¹ The avowal opens that unavoidable gap in our understanding of the act and the subject behind the act, an attitude that led to the outsourcing of juridical opinions in the direction of doctors and psychiatrists. Tell me who you are, and why you did it, became the motto of judges toward their suspects and accused. Because such calls to truth could not be answered once and for all, judges had to give up some of their authority in favor of opinions delivered by doctors and psychiatrists. The latter were supposed to know better whether a suspect would fit for trial: What if she is insane? What if she cannot understand what she is accused of? And who is the authority that would deliver with certainty that the accused is unfit to stand trial? A declaration of insanity by a psychiatrist could be good enough to halt a verdict, as required by law (again, following precepts adopted by the French *Code pénal* since 1832), whereby the accused would be repatriated to a psychiatric institution rather than incarcerated in a prison cell. The Syrian penal system has problems of its own acknowledging the ability of judges to deliver verdicts with the certainty of forensic evidence alone, hence placing itself at the mercy of presidential pardons and mitigating penalties. It thus accepts the French notion of *circonstances atténuantes*, or the extenuating circumstances that would normally reduce the penalty of incarceration, which in itself represents an admission that judges have difficulties going for the maximum penalty.² All such uncertainties are enough to explain why it has become normative for judges to seek outside expertise, in particular that of doctors and psychiatrists, and, second, why judges tend to avoid maximum penalties, opting in its stead frank and open confessions of culprits who tell the court that they did what they have been suspected of doing all along, and that they feel sorry for what they did. What we need to understand is why such open confessions, even if they remain *explicitly* unacknowledged by the judicial authorities, are nonetheless of prime importance for the proceedings of the case file.

One could argue, by tracing the discursive archeology and genealogy of the penitentiary to its European nineteenth-century roots, that the transformation of the avowal as the sine qua non of evidence prior to verdict was probably related to the association of penance (as opposed to pure incarceration) to the prison system. It was not enough to incarcerate suspects for wrongdoing, as the prison experience must carry with it the freight of surveillance and rehabilitation: we have to know the subject, who he is, for the rehabilitation process to be successful. Penance, in its Christian medieval underpinnings, assumes a process of voluntary self-punishment inflicted as an outward expression of repentance for having done wrong: the prison would then become that *public* arena for rehabilitation. But it was not enough, however, for “society,” as represented by the judge, to know who did commit the hideous act: the avowal of the culprit became normative across the penal system. In sum, practices of self-incrimination have less to do with who did what—or what exactly happened—than with the

¹ Anglo–American common law systems tend to place stringent limits on self-incriminating statements, even if delivered in a courtroom, in particular if they are not supported by enough forensic evidence.

² In the Syrian system, *circonstances atténuantes* is referred to as *al-asbāb al-mukhaffifa al-taqdīriyya*, denoting the reasons that would lead to extenuating circumstances.

incorporation of penance with punishment and redemption.

What is striking in such instances is the parallelism between the juridical and the medical. “The hideous act that I committed is an outcome of my insanity”: the avowal becomes the key component of the psychiatric process, without which there would be no contract between the patient and medical authorities. Hence the patient must himself negotiate the conditions of his incarceration in a medical institution. In similar vein, a suspect, prior to becoming an accused, must (ideally) declare that “I did commit the crime that I was accused of.” In both instances, the act creates the contract, while in civil law the contract only establishes an obligation that is consensual.

Behind such exigencies, from both the juridical and medical instances, lies a long history of avowal, one that is associated with “telling the truth” (*dire vrai*), and, more importantly, “telling the truth about oneself” (*dire vrai sur soi-même*), both of which could be traced back to their Greek, Roman, and Christian origins. With all the exigencies toward “objectivism” to be found in both the juridical and medical discourses, what brings them together is that strange requirement of the discourse of the culprit/patient on him(her)self. Hence between the judge and the culprit lies what the culprit has to reveal about herself, her inner in-depth knowledge. Similarly, between doctor and patient lies the truth that the patient would reveal on herself. The self-incriminating declaration could be understood as *speech act*, but it exceeds it in the sense that, at least in penal proceedings, it could constitute the tragic climax of court hearings, or that crucially missing element from conventional forensic evidence. Avowal is by definition associated with “telling the truth,” as it would not make much sense to declare that what I’m telling you is not the truth. The question then becomes to understand the implications behind such practice of telling the truth, and how it paves the way toward the penitentiary, as opposed to the mere experience of incarceration and the prison. The broader implication is that of governmentality, understood as the political control of society in its micro relations of power and knowledge in relation to the penitentiary.

To wit, an avowal is a “total” contractual obligation between speaker and hearer, in the sense that it is the entire “culture” of a society that is at stake. How people speak to one another, how they make a confession, how they deny a previous statement, are not simply a product of a “situated encounter,” but transcend it to what the archeology of knowledge in a certain culture has produced over its long history.

In Arabic, avowal usually stands for *i’tirāf*, whose root is the verb *i’tarafa*, to avow, or to confess (which tends to be the former in a secular setting like a court hearing). The alternate parallel term is that of *iqrār*, from the root verb of *aqarra*, to acknowledge, to declare. However, even though the two terms of *i’tirāf* and *iqrār* seem to be (wrongly) used interchangeably in the court literature, even by judges themselves, they should not be confused. In fact, *i’tirāf* carries that strong sense of “telling the truth” in an exercise of self-revelation; *iqrār* by contrast is an act of acknowledging a fact through a statement which

could be “read” or “interpreted” as such by a judge from a series of statements delivered by a suspect or witness, as transcribed in writing by a legal authority (e.g. policeman, scribe, judge, or doctor). It hence lacks that direct self-avowal.

This paper examines how such notions operate in the context of contemporary Syrian courts, and how they have been transplanted, adopted, and assimilated in order to understand their juridical and political connotations in a developing country like Syria. Practices of self-examination, which are internalized and acknowledged by an external authority, or a “hermeneutics of the self” for that matter tend to be problematic in societies where kinship matters and where disciplinary practices are historically not predominant. In this regard, contemporary practices where the discipline of the self is at stake manifest a demanding learning curve.

Let us begin with how a judge in the city of Idlib (north of Syria) commented on the notion of “avowal” (*i’tirāf*) in a memo he drafted regarding a young woman who was accused of killing her husband (allegedly helped by her brother) in the late 1980s, problematizing “avowal” into six broad categories.

1. A judicial avowal must be descriptive, personal, frank, and emanating from a **free will**, while at the same time *in accordance with reality*.³
2. When there is denial to an original avowal, as was the case here with both prime suspects, having denied in the presence of a military prosecutor⁴ most of what they had stated earlier, the earlier avowal could still stand as valid, in particular *if the denial would create an implausible reality*, that is, a “view contrary to the accepted reality (*khilāfli-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. An avowal 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. An avowal 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

³ Emphasis in bold and italics is mine. Punctuation from Arabic has been slightly altered for purposes of clarification.

⁴ Cases where one or more suspect was serving in the military may additionally need a military prosecutor, at least in the initial stages of the investigation.

here had repeatedly stated, denying an avowal (*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 avowals 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‘*).”

Even though taken out of context from the factualities of the crime in question, such assertions are nonetheless normative enough to reveal the discourse that stands in Syrian courts when it comes to avowal, and more broadly, evidence.

What does it mean that an avowal must be frank and emanating from a free will? One obvious interpretation is that an avowal must not be delivered under duress, otherwise “telling the truth” would become meaningless. But a more deeper explanation would look in relation to the relation to one’s self, the fact that what is revealed in an avowal is that inner self, or as the judge stated in item 6 above, the fact that every crime has a “motive” or “cause”: identifying the killer is not enough, if the motive is not there yet. What else would provide us with the motive but the avowal from the one who presumably committed the act of killing? We therefore need to understand why the discourse of the accused must, in the last resource, come at the rescue of the forensic objectivity of the juridical discourse; and why, at times, when the defendant is unable to fill that gap, psychiatric and medical discourse is ready to step into that unbearable silence. Moreover, as the case analyzed below points out, defendants, at times, in the solitary confinement of their prison cell, draft “letters” on their own, addressed to family members, friends, confidants, or even counsels and judges, which on their own pose additional problems at identifying the meaning of avowals as speech acts. Where do auto-biographical statements fit? What role should we accord them?

But then all those truth-claims need to be detected by *someone*, hence the importance of the judge’s discretionary powers; or, as item 5 above states, it is “up to the judge” to make distinctions, to decipher a genuine confession from a faked one, or an implicit avowal from one that seems more straightforward, or whether a denial should be accepted as such. More importantly, it is up to the judge to narrate the “motive” of the crime, as without this *dāfi‘* the judicial process would be devoid of its substance. In all this, therefore, the judge acts as a “hearer” in the face of a suspect-speaker of sorts, a suspect who at the end of a hearing may have said very little, or nothing at all. To relieve himself from such deadlock, the judge may at the end seek psychiatric help for his suspect, but, whatever the outcome, all discretionary powers are in his hands.

As the avowal has become in nineteenth-century Europe the centerpiece of the criminal dossier, “telling the truth,” the discourse of the culprit, must come from the subject herself. In sum, the discourse of judges and doctors, though necessary, is not enough. What we need to

question, therefore, is, through an analysis of dossiers, *how* the avowal has become the centerpiece of evidence, what role does it serve, and the deadlocks that the system has placed upon itself with such requirement. We will do so by examining a single case of a daughter who was accused of murdering her mother in Aleppo (north of Syria) in the late 1990s. In themselves, the letters that the daughter had drafted to a family member acting as confidant do not have much judicial value, hence it remains uncertain why they were included in the dossier at all, or whether they were read and taken seriously. What is certain, however, is that judges tend to seldom explicitly refer to such extra-judicial documents. By giving them importance, I want to question the significance of the techniques of avowal whether they emanate from the accepted norms of the courtroom, or whether they are situated on the fringes of such norms. I want to argue that between the approved inside and the outside there is an invisible bond, one that redeems self-incriminations. However, this does not mean that judges and doctors and other experts know what to do with such confessions, or that they are used to better the public's understanding of the case at hand.

Arson and matricide: the daughter rehabilitates the law

In her most sweeping statement to the Aleppo Jināyāt criminal court⁵ prior to the hearings, the accused stated on 26 May 1996 that⁶

I confess for 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 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 gazed at her. She then cut her throat with a knife she had grabbed from the kitchen. But as her mother resisted, the daughter rushed for a hammer to finish off the mother. The beating was so severe 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.

⁵ The contemporary meaning of *jināya* is still in line with its old classical meaning of "crime," broadly understood as a serious offence against someone. In Islamic jurisprudence the highest crime is against another person's soul (*nafs*), whose punishment is the payment of blood money, or the *diyya*.

⁶ Aleppo Jināyāt file 701/996; final ruling missing.

Besides the daughter's brief description of killing her mother while the latter was deep in her sleep, the dossier is not 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 otherwise perfectly comprehensible. 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 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 all remains uncertain. We have no knowledge how seriously they were taken by decision makers, primarily judges.

A note at the upper left identifies the source of the "donation" as Fatima's brother, Muhammad Jamal Sari Basha (b. 1959) who delivered it to the judicial authorities in April 1996, only few months amid the crime on August 1995, which poses a problem of trust: 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,⁷ hoping that when you will receive this missive you will be in good health, as God wishes. In case you would care to ask, I

⁷ Muhammad 'Ali was the brother of Fatima's husband, hence her brother-in-law. If, as she claims, he

am doing well, and the only thing that I miss is seeing my dear son Sami Shawwa.⁸ I also want you to talk to my brothers so that they would drop their lawsuit against me,⁹ and to get me out of my prison. I cannot take it anymore, as I am on the verge of **committing another crime** in prison. I am unable to live here far away from my son Sami, as I am 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, there will be more and more blood,¹⁰ and I can do that from my prison, and not only in talk.¹¹

A very, very important remark.

My dear Muhammad 'Ali Shawwa. I am going to tell you something I cannot hide anymore than I did, and I am 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 all participated 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,¹² because until now I have not appeared in court,¹³ 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 is 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 brother Muhammad, and who was, first, behind Muhammad's marriage,¹⁴ 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 have been betrayed (victimized) for killing my mother**. She was

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.

⁸ 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.

⁹ The brothers had apparently filed a civil lawsuit against their incarcerated sister, requesting monetary compensation for the death of their mother.

¹⁰ In the original Arabic: "I will arrange for them seas of blood—not a single sea only."

¹¹ All emphasis in bold and italics is mine.

¹² For the killing of her mother.

¹³ 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.

¹⁴ 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.

the victim of her own evil acts, as she had slept with my [two] husbands al-‘Alla¹⁵ and your brother Shawwa. She has abused me and abused herself, and she is now receiving her judgment (*dār al-ḥaqq*); regret does not help here.

I beg you to take care of my son Sami,¹⁶ your brother’s son, consider him one of your kids, and you have from my part all thanks and esteem.

I have also sent a letter to my husband,¹⁷ your brother Muhammad Shawwa.¹⁸

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 patricide and matricide, incest and 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 note, one more time, that there is no evidence that any of this material had any effect on the investigation at large. Nor is there evidence that the chief judge pressed to reopen the case of the allegedly murdered father; nor did the judge request any medical or psychiatric evaluation of Fatima for that matter.

The violence of the mute woman and the power of speech

The image that 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

¹⁵ In all likelihood he was Fatima’s first husband.

¹⁶ 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.

¹⁷ This letter has no trace in the dossier I consulted in the late 1990s.

¹⁸ Punctuations have been modified from the original Arabic to make room for a more comprehensible text.

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.

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 investigating judge, it was the mother and her sisters.

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.

The father was absent for the simple reason that he was allegedly killed by his three 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 look 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 patriarchal values are constantly challenged. 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 that family members took for granted and were 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."¹⁹ 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 [my mother] 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."²⁰

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 self-incriminating statements from other cases and inmates.²¹ Many manifest that urge *to pose oneself as a spectator to the crime at hand*, with letters drafted with that internal fury at expressing oneself, of stating a truth that has not been yielded yet, as if the judicial authorities failed to elucidate 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? Let us assume that a 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 an absent father, a dominant mother, a lover, or a cousin

¹⁹ 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.

²⁰ Jean-Pierre Peter and Jeanne Favret, "The Animal, the Madman, and Death," 192–93.

²¹ Zouhair Ghazzal, *The Crime of Writing*, Beirut: Presses de l'Ifpo, 2015.

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 more general one between the murderer, her victim, and the addressee; with the two triangular structures not necessarily 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 whom 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, as it doubles as 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 as the absent male. 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?

The first triangular structure is caught between culprit, victim, and addressee (spectator), in which 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 spectator to the spectacle that she had created for herself and others. As spectator she looks at her own sufferings from the distance of her prison cell, portraying herself as having been victimized, while her sufferings were the outcome of such persecution. The crime itself was therefore portrayed as a process of redemption from long-term sufferings. If the mother was the oppressor, the beneficiary was no one else but the brother-in-law. In the second triangular structure the murderer sets herself as spectator, not so much, however, of the crime that she had committed, but rather to the sufferings she had endured at the hands of her mother, husband, and brothers; she identifies with the father as someone, like herself, that had been victimized 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 narrator: in other words, she doubles herself as spectator and impartial narrator of her own sufferings, providing a rationale for the crime 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,²² “impartial observers” expressing their grievances and outrage became fairly common.²³ 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,²⁴ 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,²⁵ beginning with the modern European novel constructed on a single narrator²⁶ (which in its later incarnations evolves as a stream-of-consciousness or multi-narrators techniques²⁷), or in the biographical essay 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 her own making, together with a reflexive self which observes such action. This reflexive narrator therefore constitutes the third element in triangular structure 1 suggested above, as she watches both spectator and spectacle:

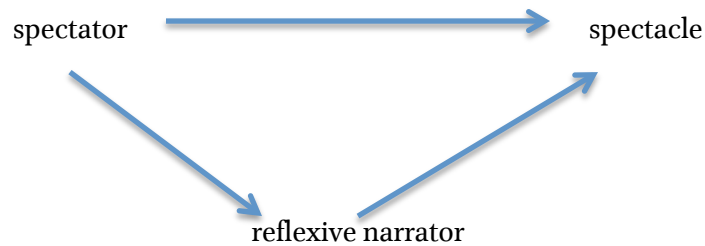


Figure 1. General theory of the modern spectator

Compared to which we get the triangular structure 2, which serves as a common matrix for crime in general:

²² Jürgen Habermas, *The Structural Transformation of the Public Sphere*, Boston: The MIT Press, 1991.

²³ Luc Boltanski, *La souffrance à distance*, Paris: Gallimard, 1993, 2007, 92ff.

²⁴ J.L. Austin, *How to Do Things With Words*, Boston: Harvard University Press, 1975.

²⁵ Christian Ruby, *La Figure du spectateur. Éléments d'histoire culturelle européenne*, Paris: Armand Colin, 2012.

²⁶ The prototype here is Laurence Sterne's *Tristram Shandy*.

²⁷ For example, in the works of James Joyce and William Faulkner.

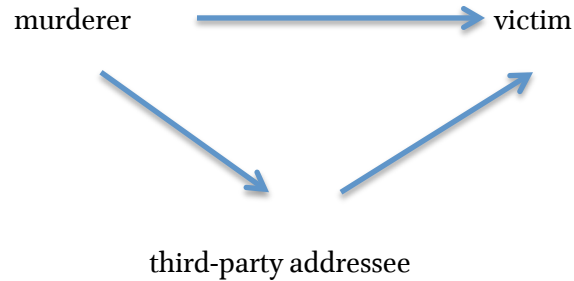


Figure 2. The spectator in relation to a crime scene

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,²⁸ is that they take an active primordial role in *both* triangular structures. In structure 1 the actor is a criminal who murders her victim, while eying a mysterious third-party addressee, which would refuse her role as recipient with a guilt feeling. In structure 2 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, 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 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).²⁹ What is unique about such criminals who metamorphose into narrators of their own crimes is that they exercise the art of biography as a confessional genre 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*.³⁰ Such self-incriminating genres might overlap with literary and artistic works in society at large, hence the privacy of the inmate and her sufferings that could be echoed in the world at large. What is tragic about the Syrian prototype of inmates which all of a sudden, and unexpectedly, turn as narrators³¹ of their own

²⁸ 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.

²⁹ 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.

³⁰ Robert B. Pippin, *Fatalism in American Film Noir: Some Cinematic Philosophy*, Charlottesville: University of Virginia Press, 2012.

³¹ In some cases 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.

crimes, is the absence of connection to the outside world. Those are inmates which exercise the art of biography, airing their confessions and grievances to friends and relatives in writing, posing themselves as narrators of their own crimes, yet cannot possibly receive recognition from the outside. There is very little in Syrian society that points to any public attention to criminals: crimes are neither reported in the state-controlled media, nor in the work of arts.³²

The criminal writes a 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 impartial narrator, which in this instance is interiorized, creating a subject fully aware of her actions and misgivings. But the conflation of roles between spectator and self-introspection, gives the narrator the opportunity to construct a theater of representations from multiple viewpoints in the name of the person who is still recovering from the traumatic experience of crime. When lawyers and judges draft 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 determined by different viewpoints, as much as by the norms of justice.³³ 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. But if the biographical statements of culprits show anything, it would be, indeed, that inner voice, sometimes narrated as a dialogue with a real or imagined other: it is that introspectiveness, which judges typically eschew, which constitutes the heart of biography. One can speak of “vicarious possession” of that observer which absorbs the acts of both spectator and patient (the one who suffers), which is precisely what judges want to avoid. 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.

In the historical shift between the spectacle of public executions of the absolutist régimes, where spectators were supposed to contemplate the aura of the execution (hence, behind it, the will of the sovereign), and modern spectacles with their triangular structures, where compassion and pity for the sufferings of others are crucial for a self-reflexive observer, stands the lives of infamous people like Fatima.³⁴ If there is a parallel between the end of public executions and the rationalization of justice, and the desire to find a cause and justification

³² 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.

³³ 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.

³⁴ Boltanski, *La souffrance*, 66–67; Michel Foucault, *Surveiller et punir*, Paris: Gallimard, 1975.

for the crime, the persona of the criminal, that abnormal individual, becomes central for both the judicial and medical authorities. While Boltanski speaks of a “doubling of the spectator (*le dédoublement du spectateur*),”³⁵ which doubles as a self that acts and another self that observes, Foucault claims of a 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*).” We are thus confronted, in the modern age, with that “topography of interiority,” where a person would multiply into unlimited series of enunciative functions. When Fatima wrote in the privacy of her prison cell to a beloved one, she was attempting to represent her crime in ways that the judicial system could not have anticipated.

A criminal is indebted to society—and to her family, when kin matters. A homicide is a crime because a life has been taken away. But it is also a debt to society because a life has been taken away that could not be compensated in monetary terms, punishment, or otherwise. Strictly speaking, a lost life could only be compensated by another lost life, hence the institution of feud in so-called primitive societies known for their inter-generational feuds. In modern societies where state institutions monitor crimes and homicides, the debt is paid back to society through punishment and incarceration. But for Fatima to pay her debt to society (and her family), it was not enough to serve for many years with hard labor incarcerated in a prison cell, or even to be placed on death row. What she wanted, and what she strived for, was to narrate her own truth, in her own voice, even if that meant someone else drafting that letter on her own behalf. What mattered was that she had to narrate her own truth outside the machinery of justice.

³⁵ Boltanski, *La souffrance*, 92.

References

- Abi Samra, Muḥammad. *Mawt al-abad al-sūrī. Shahādāt jil al-ṣamt wa-l-thawra* [The Death of Syria's Eternity. Testimonies of the Silence and Revolution Generation]. Beirut: Riad el-Rayyes Books, 2012.
- ʿAwwā, Muḥammad Salim al-. *Fi uṣūl al-niẓām al-jināʿi al-Islāmi*. 2nd. ed. Cairo: Dār al-Maʿārif, 1983 [1979].
- Boltanski, Luc. *La souffrance à Distance*. Paris: Gallimard, 1993.
- Dulong, Renaud, ed. *L'aveu. Histoire, sociologie, philosophie*. Paris: Presses Universitaires de France, 2001.
- Fahmy, Khaled. "The Anatomy of Justice: Forensic medicine and criminal law in nineteenth-century Egypt." *Islamic Law and Society* 6, no. 2 (1999): 224–71.
- Foucault, Michel. *Mal faire, dire vrai. Fonction de l'aveu en justice*. Louvain: Presses Universitaires de Louvain, 2012.
- Foucault, Michel. *La société punitive. Cours au Collège de France, 1972–1973*. Paris: EHESS–Gallimard–Seuil, 2013.
- Garapon, Antoine. *Bien juger. Essai sur le rituel judiciaire*. Paris: Éditions Odile Jacob, 1997.
- Ghazzal, Zouhair. *The Grammars of Adjudication*. Beirut: Presses de l'Ifpo, 2007.
- Ghazzal, Zouhair. *The Crime of Writing*. Beirut: Presses de l'Ifpo, 2015.
- Graeber, David. *Debt. The first 5,000 years*. Brooklyn: Melville House, 2011, 2012.
- Peter, Jean-Pierre 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.
- Pippin, Robert. *Fatalism in American Film Noir: Some Cinematic Philosophy*. Charlottesville: University of Virginia Press, 2012.
- ʿUṭrī, Mamdūḥ. *Qānūn al-ʿuqūbāt*. Damascus: Muʿassasat al-Nūrī, 1993.