

Law-in-Action and the Making of Law in Contemporary Syrian Society

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My research studies legal practices and the making of law in contemporary Syrian society (from the 1980s to the present) within a comparative perspective. There are specific flaws, common to legal studies in the last couple decades, that I address. First, my research bypasses the notion of “Islamic law” by focusing on the normative practices of the law; and, second, it aims at connecting, through inter-disciplinary approaches, ranging from legal theory and history, to sociology and anthropology, various societies and legal practices situated within the west Asian continent. I study legal systems through a sociology of action that documents norms from the viewpoints of the actors themselves.

(a) Existing research on the topic: theoretical and empirical aims

A social norm is a rule that is neither promulgated by an official source, such as a court or legislature, nor enforced by a threat of legal sanctions, yet is regularly complied with. Broadly speaking, therefore, and precisely because norms are not enacted by any specific authority, they tend to share a wider dissemination in society. In effect, while state-sponsored rules usually (though not always) consist of written codes and statutes, the dissemination of norms is more subtle, if not invisible. Norms are better enforced than rules precisely because of their wider dissemination and internalization by actors. Thus, even the behavior of judges is primarily norm- rather than law-driven.

Ever since Émile Durkheim has labored on the notion of “collective consciousness” (*conscience collective*), the general assumption that impacted the most on the social sciences was that the norms “that matter” are enacted within a community on the basis that they could be publicly approved and enforced—or at least tacitly so. The social and historical sciences were particularly attracted at describing rules, norms, structures, or discourses, which map a particular territory by providing normative values for individuals and their communities. Social actors were thus assumed to “internalize” such norms either consciously or unconsciously.

In reality the social and historical sciences have struggled a great deal to understand how norms become concretely effective within a community. Even though Max Weber opened the door towards an understanding of norms from the viewpoint of social action, historical and sociological studies have for the most part opted for what lies “outside” an individual consciousness, which de facto leads to a false dichotomy between a subjective consciousness and an objective life-world. For example, in the case of Islamic societies and civilizations, it is generally assumed that “Islam” or “Islamic law” provide such normative values. Such broad presuppositions, however, do not say much about how actors concretely manage their sets of norms, as they simply assume that actors are generally “predisposed” towards acting in conformity within the religious and legal norms of society.

When few years ago I started working on the contemporary Syrian penal system, I was immediately attracted to an anthropology of norms as a guideline for my research. Such a démarche was an outcome of the documentary evidence at my disposal, namely the case-files that narrate an event from the vintage viewpoints of the actors themselves. For example, a defendant would “speak” differently to her lawyer, or to the court expert or psychiatrist, or to the investigative judge, or to the chief judge, on the same case in which she had been accused of a wrongdoing, pending on the frame of investigation imposed by the official authority in question. Which led me to investigate the norms that actors ascribe to based on the *situated encounters* that make the *documentation* of such norms possible. In other words, the norms do not exist “objectively” per se, waiting to be “interiorized” by actors. Researchers only “know” about norms through the documentation that actors provide within situated encounters.

Benefiting from the work of pioneering figures in American sociology like Erving Goffman and Harold Garfinkel, I now place more emphasis on how actors interact within situated encounters.

This focus on the practice of actors inaugurates a new démarche, which does not limit the life-world to discourse, ideology, or the normative rules of society, but expands it to concrete situational frameworks. With that subtle shift towards what actors concretely do, I, as a scientific observer of various situated encounters, must pay much more attention to what actors say and do (or what they do by saying something).

We tend to think that as individuals—or “persons”—we abide by the rules and normative values of society. What we easily forget, however, is that rules do not tell us what to do, how to proceed, and how to think and act concretely within situated encounters. Once we begin to observe actors we realize that their actions would neither fit neatly within rules nor normative systems of values. Documenting what actors do, and depicting their “methods” of practice, has led me to a reformulation of my research, and the discovery of new horizons and topoi.

One aspect of the empowerment of norms over rules, at least in societies like Syria where kinship values matter, is the preponderance of private violence at solving long-standing feuds among families and groups. But our concern here, however, is less the power of norms than the imposition of rules by the state in order to mediate such conflicts. In other words, actors have to mediate their feuds through a court of law, and in so doing they *document* their conflict in such a way that the constructed evidence plays safely on their side. For the researcher, the documentation of the actors (that is, all participants in an investigation: plaintiffs, defendants, witnesses, judges, lawyers, policemen, doctors and other professionals), *as presented in the case-file*, should be the *starting point* of our scientific inquiry. Thus, rather than analyzing the rules themselves *abstractly*, we begin directly with the way they are documented by the actors themselves. What in effect the participants in an investigation routinely do is to *account* for the event in question from their *own* perspective. In such an exercise of *accountability*, they *document* the event from a perspective that is their own, and possibly that of the “group” to which they belong. The civil or criminal case thus becomes an *artifact* through which legal and social relations are *constructed* among users.

An anthropology of court cases therefore neither reduces the process of judicial decision making to the rules themselves (or the social norms for that matter), nor to questioning whether judges made “just” or “unjust” decisions. By centering every case on processes of *accountability* and *documentation*, legal anthropology opens case-files to *all* participants, without limiting the case to what judges or other court officials do or fail to do. Such a démarche obviously opens up the notion of rule of law considerably, as it neither limits abidance to the rules and norms to judges only, nor to the cost of compliance, testimony and evidence, as the law and economics school (among others) normally does.

The formal analysis of law either attributes too much importance to the space of courtrooms or none at all. In the first instance, courtrooms are perceived as the space where the law is “applied,” and hence prove crucial for “testing” the congruence (or lack thereof) between codes and practices, or between theory and practice. In the second instance, and from the vintage viewpoint of legal theory, courtrooms have no importance at all, since they contribute little, if at all, to theory itself. They may have some sociological significance for an anthropology of law, but such a field is usually well demarcated from theory per se, as it contributes little to it.

We consider that classical legal theory confusingly fractures all kinds of legal practices (beginning with the drafting of codes and statutes, to parliamentary legislation and courtroom hearings), for the simple reason that it does not, indeed, admit them as *practices*, and because it does not admit *itself* as a practice. My research, by bringing together various disciplines—in particular legal theory, legal anthropology, ethnomethodology and microhistory—addresses, however, some of the issues raised above, namely the practices of drafting codes and legal texts, the parliamentary debates on legislative issues, and the courtroom hearings, in terms of the performance and documentation attended by actors.

(b) *Research agenda*

In the last few years I’ve been working on a number of related projects within the horizon of the social sciences, all of which are concerned with the documentation of normative rules by the social actors.

I’ve conducted since 2003 a study on criminal cases in Syria, and the main purpose of the Institute for Advanced Study fellowship is to complete my manuscript on *The Ideal of Punishment* and prepare it for publication by 2009.

In the early phase of the project, in 2003–2005, I’ve collected over a hundred of criminal cases from the cities of Aleppo and Idlib (north of Syria). Even though access to such material was difficult and hectic (there are neither archive centers per se, nor an adequate indexing and preservation of the case-files beyond an average twenty-year period), I’ve photocopied many files (on average 200 to 300 pages each), and begun a process of systematic case-by-case study, which focuses less on formal procedures, and more on *how actors interact and express themselves within specific situations*. Indeed, the documentation of each case by the actors themselves depends much on such situated interactions.

In the second phase of the project, in 2005–2006, I’ve started collecting civil cases from the same cities, and photocopied dozens of case-files. Even though civil cases are loaded with

more technical jargon than the criminal ones, the same methods of analysis could be applied for either criminal or civil cases.

In the summer 2007 I was able to receive permission to study the Aleppo *waqf* system (mortmain properties that were endowed as “trust”). As with civil and criminal cases, the *waqf* lawsuits would follow a similar pattern of textual analysis: that is, how actors document the status of their properties, and how *consensual agreements are negotiated, stated and made*. In sum, texts should not be limited only to what they say and to the structure and meaning of statements (or utterances), as the *performative* side of texts is what matters most.

The first part of the project, *The Ideal of Punishment*, which is limited to crime and punishment in the contemporary Syrian courts, needs one more year to be fully completed. I am therefore applying for the Institute for Advanced Study fellowship to complete my book on crime and publish it by 2009.

The archival work on *The Ideal of Punishment*, which is the first volume in my series on contemporary Syrian legal practices, is mostly done, thanks to all those who helped me access the courts archives of Aleppo and Idlib in 2003–2007. As such state archives are neither published nor destined to be published, having access was the most critical part of the project. Moreover, as public state institutions in Syria tend to grossly neglect efficient archival work, which makes it hard for researchers to do any on-site research, not much remains in the courts records beyond the 1980s. It is therefore essential that researchers do their best to seize the moment before such case-files go into oblivion.

In the meantime, over half of the chapters in the manuscript have been drafted, and some published in collective books or presented in conferences and workshops. The structure of the book follows a case-by-case analysis: every chapter revolves around the narration of a single case, which in turn creates its own thematic structure. Since there are multiple narrations (“voices”) for each case, emanating from various actors (plaintiffs and defendants, witnesses, policemen, lawyers and judges, doctors, psychiatrists, and medical experts), the challenge would be to create a minimal degree of coherence. That’s where the thematic topoi come to help. I’m constructing the book around themes that have developed from sociological research based on courtroom interactions: the actors’ documentation of an event, the situated encounters, the notion of “identity” and that of “cognitive style,” and the rules, normative values, and the making of law.

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