

Between microstoria and ethnomethodology:
What to look for in criminal cases in contemporary Syria

Zouhair Ghazzal
Loyola University Chicago
zghazza@luc.edu

What is common to microstoria and ethnomethodology is that both strongly ascertain their preference for small-scale objects of research: “*Small is beautiful*,” runs the common motto, or “Less is more,” and “God is in the details.” Thus, even though microstoria is mostly concerned with small-scale historical data, while ethnomethodology is in its essence anchored in the anthropological and sociological *lebenswelt*, what brings the two together is a fondness for “thick description” within carefully selected ranges of data, snubbing claims for *longue durée* exhaustiveness. Historians tend, however, whatever the scale of their research, to believe in broad historical formations, or in objective social structures that would affect the behavior of individuals, while microstoria, in spite of shifting its scale of research to the very small, is not exempt from looking at individuals in terms of the objective world of rules and structures. Ethnomethodology by contrast shuns Durkheimian pretensions that “social facts” are situated “outside” individual actions, or that there is an objective reality of social facts, and believes in no preordained structures, promoting instead an analysis of concrete day-to-day interactionist situations that would describe how actors would improvise and create norms as they go along—the norm *is* the practice itself—not an “external” structure.

This study explores, in the context of microstoria’s and ethnomethodology’s overlapping and conflicting methodologies, and within the range of historical and anthropological horizons, how an approach to criminal records in contemporary Syrian society is possible. I assume that both microstoria and ethnomethodology could eventually lead to a sociology of social action, where the documentation of norms would be its core value. To begin with, the study of an unfolding crime in Syria represents several logistic and analytic difficulties. Primary among them is the difficulty at collecting data exhaustively, in particular the taping of police interrogations, and the investigative judge’s sessions with suspects and witnesses, not to mention the court hearings. We are therefore left with the documents that each case-file contains, and upon which the court based its ruling. But we’re yet confronted with another problem, that of the unavailability of a continuum of *historical* records: since the files are preserved on average for no more than 20 to 25 years, it is difficult to properly analyze and evaluate the evolution of the criminal system. We therefore have to content ourselves for the most part with written documents, as they have been delivered to us by the judicial authorities, which could be both a blessing and a curse. But in either case, some of the methodological criteria of microstoria and ethnomethodology are met, such as the micro analysis of a limited number of texts that would help us to discern the bigger picture, or the interpretation of texts as the process through which actors document criminal events. The study, based on a couple of contemporary cases from the city of Aleppo (north of Syria), explores how best to make use of the findings of microstoria and ethnomethodology in the domain of the practice of criminal law in an Islamic society.

“Haste is from the devil,”
Harold Garfinkel quoting an Arab proverb, *al-‘ajala mina al-shaytān*.

The relationship between ethnomethodology and microstoria seems at first hand to be based both on a misunderstanding and an imbalance among disciplines. Thus, ethnomethodology has created since Garfinkel’s *Studies in Ethnomethodology* a theoretical canon of its own, including a core sociological theory, and a line of interpreters and disciples faithfully following the canon, which led to many concrete fieldwork studies. By contrast, microstoria’s reputation seems to rely solely on masterworks that inaugurated the movement back in the 1970s and 1980s, such as Carlo Ginzburg’s *Cheese and Worms*, and Giovanni Levi’s *Inheriting Power*, in addition to works of synthesis that reflect more the migration of the movement from Italy to neighboring countries, than a systematic theory.¹ To be sure, the lack of theory is common to historians, which at their best think of history as a “writing” enterprise or as a “craft,” along the lines propounded in Fernand Braudel’s *Écrits sur l’histoire*, and Marc Bloch’s *Métier d’historien*. In short, historians, whether *longue durée* or microstoria, tend to point to their own historiographical narratives as self-containing a “theory” that cannot possibly stand on its own, outside the empirical studies that made it possible, that is, as something that is self-sufficient and autonomous, with the possibility of being replicated elsewhere, under different space-time conditions.²

Our enterprise—that of understanding ethnomethodology and microstoria in light of each other’s achievements—is therefore fraught from the beginning with an imbalance among disciplines, namely history and sociology: the latter being known for its theoretical exigencies, while the former prides itself for unearthing unknown facts and narrating them meaningfully. It remains to be seen whether microstoria, in its own peculiar way of handling documents, could serve as a bridge towards sociological theories in the social sciences. But whether sociological theories, and in particular ethnomethodology, could be beneficial to historical analysis, would remain one of those longstanding issues. It is thus generally assumed that the French historians of the first *Annales* generation seem to have derived their notions of “social structure” and “social fact”—the “fact” being “contained” within a much broader and invisible “structure”—from all kinds of sociological notions of their time, in particular Durkheim’s *fait social*. Such possible links and infatuations, however, are generally left unexplored by historians, beginning with the *Annales*’s founders, Marc Bloch and Lucien Febvre. By the time the *Annales* received its maturity and success at the hands of its second generation of historians, and even though Braudel famously declared history as “*la reine des sciences sociales*,” little has been done to elicit that relationship between history and the rest of the social sciences, in particular sociology. Braudel’s *Écrits* are in themselves an exemplar of that kind of haziness, as beyond that willingness—and, one should add, generosity from Braudel’s part—to

¹ Jacques Revel, ed., *Jeux d’échelles: La micro-analyse à l’expérience*, Paris: Seuil-Gallimard, 1996.

² See, for example, Carlo Ginzburg, *À distance: Neuf essais sur le point de vue en histoire*, translated by Pierre-Antoine Fabre. Paris: Gallimard, 2001.

“borrow” sociological concepts on “structure” that reflect his taste for things that change slowly, there is little solid work that would point to the possibility of history working with sociology.

Surprisingly, the little theoretical progress that was to be accomplished in history came from the Anglo-Saxons, first from E.P. Thompson’s *Making of the English Working Class*, and then from what became known as the “Cambridge school,” best represented by the works of Quentin Skinner and J.G.A. Pocock. Skinner’s use of J.L. Austin’s “speech acts” theory to elucidate the *meaning* of historical documents (mainly Renaissance and early modern political texts) could be of interest for our purposes here. In effect, even though the Cambridge school was more into “social theory” than sociology per se, the benefits that it derived from the “linguistic turn” should help us construct some overlaps between ethnomethodology and microstoria. For one thing, historians are always preoccupied with the reading and interpreting of documents, even though they rarely reflect on their methods for interpreting texts. For another, ethnomethodology’s preoccupation with language is fairly obvious, considering that its main “measurement” tools rely mostly on the *linguistic* interaction of actors caught within situated encounters. I think that the “gap” between ethnomethodology and microstoria could eventually be bridged following the linguistic link lead.

Let us first concentrate on the misunderstanding created by *micro*-storia. By bringing ethnomethodology close to microstoria, the assumption must have been that both operate within the dictum “small is beautiful”—hence both are fundamentally, in their respective core methodologies, *micro*. Such presumption seems fairly obvious from the standpoint of microstoria, considering in particular that the inauguration of the movement in Italy in the 1970s was against Braudel’s *longue durée*. When the movement migrated to France in the 1980s the *Annales* was in full crisis, and Jacques Revel, who was at the head of the team that inherited Braudel’s legacy, made it clear that the new revamped *Annales*, now subtitled *Histoire, sciences sociales*, should work at much “smaller scales” than did its illustrious progenitor. It was now thought that “history” went too fast, by covering large periods without the critical tools that were needed for the craft. It neglected the careful study of documents, gave preference to serialization and numerical analysis over the agency of actors, and, above all, lacked that careful blend of sociological and anthropological analysis that was cherished by Durkheimians and Weberians alike. It is as if the *Annales* historians have been pondering why, despite their worldwide success, the social sciences have gone more in depth when it came at understanding the deep motivations of social actors. History had therefore to be repositioned in its relation to the social sciences in what was perceived as a “critical juncture,”³ which amounted to a remodeling of historical projects more so on the works of anthropologists (in particular Fredrik Barth⁴) than sociologists. That anthropologists would have attracted the attention of historians looks in retrospect understandable and fairly common, if not long overdue.

³ Editorial, “Histoire et sciences sociales: Un tournant critique?” *Annales É.S.C.*, 2, April-March 1988: 291-93.

⁴ Clifford Geertz’s “thick description” may have played a role as well in the reorientation of the new *Annales*.

Anthropologists are better at understanding key social institutions like kinship, religion, magic, and rituals, topoi that have increasingly entered the historians's vocabulary. But what attracted historians towards anthropologists was not so much the topoi per se, as much the way they were studied, that is, with an emphasis on meaning and the actor's agency.

As recently stated by Giovanni Levi, the purpose of *micro*-history is "to understand general things that the general point-of-view fails to understand."⁵ The "micro" trope therefore comes at the rescue of the "general" for the simple reason that the general, by its stubbornness to remain general, fails to understand the specific and general. Microhistory should in principle pose a challenge to history as it has been practiced thus far, namely, not simply the history of political chronologies, which has already been severely critiqued by the *Annales*, but rather the critique should be extended to the *Annales* themselves, in their tendency not only to be general, but also in the way they analyze the specific. Microstoria would in effect like to profit from recent advances in the social sciences—social theory and sociology, cultural anthropology, hermeneutics and the linguistic turn—and incorporate them into its findings. Microstoria is overall very selective in its assessment of the social sciences: for instance, Lévi-Straussian structuralist anthropology seems to win less favor than the cultural anthropology pioneered by the likes of Geertz and Barth, as the latter focuses more on the actor and the meaning of action. Considering that "the significance of the past must also be reestablished [with urgency]," microstoria must pose a challenge to the naïve historical objectivism that is very much predominant in the academic literature. Such a naïveté consists in a mechanical, if not repressed, relationship between text and meaning, "as if a necessary relationship existed between text and reality in which the historical text represented a definite world endowed with meaning."⁶ By dissociating text from its mechanical (ideological) meaning, microstoria would reconsider the past in terms of its present, that is, to reinvent "the political use of history." In other words, once we dissociate the text from a spontaneous meaning attributed to it, what a historical reassessment of the text would provide is precisely a *political* meaning. In effect, the factualization of knowledge at school, and the way the natural sciences, arts and humanities are taught from the lower to the upper academic levels, primarily imply a *political* attitude towards knowledge, one that precisely eschews all kinds of political considerations, preferring the fragmentation of knowledge rather than its reconstruction along complex systems of meaning. If a "fact-oriented approach" dominates the teaching and writing of history, it is certainly because the "problem-oriented reading that takes account of chronologies and complex developments" has been altogether eschewed. Giovanni Levi looks at the "fact-oriented" approach in terms of a *politics* that favors superficial congruities and immediate correspondences over "deep-seated differences."

⁵ In a conference organized in Venice in September 2004 by Bruno Latour and Pasquale Gagliardi, and whose proceedings were recently published under the title *Les atmosphères de la politique*, Paris: Les Empêcheurs, 2006: "Comprendre des choses générales que le point de vue général ne permet pas de comprendre."

⁶ Giovanni Levi, "The Distant Past: On the Political Use of History," *Mediterranean Historical Review* 16, 1 (2001): 61-73.

Whenever historians choose not to close the “hermeneutic circle” by asphyxiating their texts within a set of immediate meanings, they would then be open to the *specific differences* of a period, region, society or civilization. Levi here joins Tocqueville in the latter’s assessment of democracies as systems that are threatened by memory: “Not only does democracy make each man forget his ancestors: it hides his descendants from him, and separates him from his contemporaries; it constantly brings him back to himself alone, threatening to ultimately confine him entirely in the solitude of his own heart.”⁷ This “affirmation of fragmented memory” under the triumph of liberal capitalism, the end of communism, and the end of history, only leads to a feeling of loss and an impossibility to recover collective meaning: “for many historians, the loss of collective sense or meaning of the past has made it possible to recover subjective views which generally express disintegration rather than a multiplicity of viewpoints.” What we need to keep in mind here—in light of our exploration in the second part of the paper of individualized criminal court histories—is the subtle difference that Giovanni Levi draws between *disintegration* and *multiplicity of viewpoints*. Considering that the current scene in democratic societies is one of disintegration of memory (“the culture of narcissism”), constructing a multiplicity of viewpoints for a period, society, or social group, implies at best a complex operation of interpreting texts and endowing them with the meanings that they had lost, which, at its heart, amounts to a *political* operation of the first kind.

In this passage from the micro to the macro, how does microhistory proceed? In truth, there is no well defined path: as there are various ways of interpreting texts and constructing meaning, is there a definite method to adopt? The point here is that we need to move from an “authoritarian memory” to a memory that can host a multiplicity of viewpoints, with unlimited and unexplored paths. For instance, in *Inheriting Power*, Levi opts for “a banal place and an undistinguished story.” The purpose behind such a choice was, indeed, multifold. To begin with, since the factualization of history implies its homogenization and the dismissal of all “unwanted” material, the historian must “recover” those hidden voices of the path, hence “banality” could be a tool to look below the surface, forcing the historian not to be content with what we have been accustomed to see. Lévi’s démarche tackles the quasi-mechanical way of “reading” texts, which amounts to a direct association of text to meaning, as if no *interpretation* would be required. In effect, it all amounts in the final analysis to a bracketing of meaning in favor of an “objectivity” of facts. It is precisely this reconstruction of multi-phonic meanings that turns out to be microstoria’s main objective.

Historians are usually preoccupied with *change*. In European history the transition from feudalism to capitalism has been on the agenda of many historians, with that tendency to think such transition as promoted by statist centralizing factors: namely, the post-feudal absolutist state of the early modern era had set for itself the agenda of centralization, tax-collection, and the slow subjugation (if not elimination) of “local” differences for the sake of a more homogenized center. There is that tendency, therefore, to portray “the total mercantilization of capitalism as the only full realization of an economic rationality

⁷ Alexis de Tocqueville, *De la démocratie en Amérique*, vol. 3, part 2, chapter 2.

that was before partial and latent.”⁸ *Micro-storia* is *one* way to deconstruct such an hegemonic historical model: by looking at *longue durée* transformations through small settings and short periods—a reconstruction of a generally accepted thesis on *different* grounds than has been hitherto assumed. Rather than describe a “center” that slowly absorbs “peripheral local cultures,” the aim would rather be to *document* how “both local society and the central power emerged changed.” In short, the endeavor is to point to *heterogeneous* processes, not simply because they were different from the start, but because of the modes of interactions between social actors and their milieus, wherever they happen to be located.

The main point for our purposes here—and that’s (in my view) where an overlap exists with ethnomethodology—is that the main benefit to go small would be to avoid hasty assumptions about the decision-making strategies of groups or individuals. In effect, there is a tendency among historians and social scientists to assume that overreaching structures, trends, rules and norms, which are usually imposed by hegemonic groups, administrations, institutions, and states, are de facto “interiorized” by actors. The movement of history tends to be therefore determined by broad strategies of subjugation, discipline and punish, and normalization (routinization) of behavior. I think that both microstoria and ethnomethodology resist such homogenizing techniques, albeit with different conceptual tools, while underscoring that structures, rules, and norms do *not* generate preestablished results. For example, regarding seventeenth-century Piedmont’s peasant society that was resisting the spread of new society, Levi sees an “ambiguity of the rules,” difficulties at arriving at decisions, and an “ability to act on limited information.” There were therefore different strategies that were adopted for “the conscious utilization of inconsistencies in systems of rules and sanctions.” We can see here, perhaps more clearly, what purposes does it serve to go micro: to avoid the simplified causal mechanisms held relevant to the determination of behavior. Once we stop viewing actors as simply “applying rules” and being subjugated to formal or informal structures, the task of the researcher becomes de facto more complex. Finally, microhistorians should not feel compelled to maintain the small-scale of their research, as the “big picture” now looks under a different light: the territory, the family, kinship, production, taxation, and the state, are examples of entities that could look different under the labor of microstoria.⁹ Micro and macro complement one another.¹⁰

We’ve reached a point where microstoria could be brought side-by-side to ethnomethodology in some helpful perspective. A misunderstanding must be cleared regarding the use of *micro*: is the micro scale as important for ethnomethodology as it is to microstoria? We have argued above that *micro-storia*, by modifying the scale of research from the general to the micro, challenges many of the historical taken-for-

⁸ Giovanni Levi, *Inheriting Power. The Story of an Exorcist*, Chicago: University Press, 1988, xiv.

⁹ Giovanni Levi, “Family and kin—a few thoughts,” *Journal of Family History* 15, no. 4 (1990): 567.

¹⁰ Giovanni Levi, “The Origins of the Modern State and the Microhistorical Perspective,” in J. Schlumbohm (ed.), *Mikrogeschichte/Makrogeschichte: Komplementar oder incommensurabel?* (Göttingen, 1998), 53-82.

granted, for instance, that policies of homogenization that swept Europe in the late middle ages and early modernity absorbed many local cultures. Thus, by going down the scale, microstoria aims at documenting processes and strategies of local communities at a lower level, which tend to be left over by historians. Ignoring such micro-descriptions would imply surrendering to hegemonic forms of discourse of an authoritarian nature. Behind such general statements as “state centralization policies implied a systematic collection of taxes in all provinces,” lies all kinds of local practices that involve individuals and groups, which ought to be at the heart of historiographical writing. By going small, microstoria therefore *subverts* the large clichéd understandings of history: for instance, through a careful reading of texts, an attention to detail of an anthropological nature, a favoritism towards the local, and a scrutiny of the strategies deployed by actors and groups. Larger processes would then look and feel different, once the small receives its due share.

In contrast to microstoria, the objective of ethnomethodology (EM) is to observe and document “*members’ methods*” for producing particular social orders wherever they occur, *whether the phenomena are large or small*.¹¹ In effect, EM’s core program is to discern that its main focus is *social order whatever the scale of the operation*. Hence this focus on social order, as EM’s main objective, is not “micro” in any meaning of the term. Does this imply a substantial difference with *micro-storia*? It would all depend on how we read *specific* differences between microstoria and EM, on one hand, and the more *broader* issues between the two disciplines of sociology (and anthropology) and history on the other. In effect, history, whatever its tendency, is known to opt for fairly large time frameworks and institutional conglomerations, compared to which anything in sociology or anthropology would look “small.” Which implies that historians would by definition look at EM’s approaches as “small,” in light of their own historiographical practices. Moreover, *some* historiographical practices, as pioneered by microstoria, would look “small” to most historians, even though such “smallness” would not necessarily impress sociologists or anthropologists.

From the perspective of EM’s program, however, such debate would only confuse the issue, simply because the sole focus should be on *social order*, whatever the scale of the operation. It could indeed be argued that microstoria shares that interest in social order with EM, but that the former lacks the methodological focus for doing so: like most historiographical methods, microstoria has evolved piecemeal from the fieldwork itself. What we can therefore do is check EM’s program in terms of microstoria and vice versa.

Unlike microstoria, EM is based on a reconsideration of the sociological heritage in Europe and north America. Garfinkel made EM’s program a working out of Durkheim’s famous aphorism: “The objective reality of social facts is sociology’s fundamental principle.” Garfinkel reads EM’s program in light of Durkheim’s *second* altered version:

¹¹ Besides Garfinkel’s well known *Studies*, I am relying for my brief survey of EM on Garfinkel’s *Ethnomethodology’s Program: Working Out Durkheim’s Aphorism*, edited and introduced by Anne Warfield Rawls, New York: Rowman & Littlefield Publishers, Inc., 2002.

“The objective reality of social facts is sociology’s fundamental *phenomenon*.” Which Garfinkel interprets as follows:

“Ethnomethodological investigations have their origins, aims, directions, policies, methods, the corpus status of their methods and results, their clients, and their consequences, in worldly and real work of making Things that Durkheim was talking about discoverable, and making their discovery accountably evident as Things of immortal, ordinary society.”¹²

Garfinkel’s “contention” with Durkheim has often been misread as a major disagreement over the proceedings of sociology, namely that Durkheim’s “objective reality” of “social facts” only takes into consideration the *constraining* sets of daily rules and normative values, bypassing the “subjectivities” of actors in learning, adapting, negotiating, or rejecting. It could be argued that the bulk of the social sciences, and history for that matter, have followed Durkheim’s aphorism to the letter, namely that, in the last century, the social sciences have for the most part accounted for the “structures” and “rules” that drive actors into specific actions. Thus, while sociologists and anthropologists sought mostly for *synchronic* rules and norms, historians worked their own *diachronic* structures. In both instances, however, the actors’ practices of these rules, or their structural constraints, were left out either because it was taken-for-granted that actors simply “apply” rules, or else the structures are in themselves so empowering that they would leave little margin for users to act in ways that would not conform to an “average” behavior. Both microstoria and ethnomethodology challenge such “objectivist” or “structuralist” approaches by carefully endorsing the viewpoint of the actors’ practices. They would do so not simply by pointing out to “deviances,” but more importantly, by underscoring the fact that neither rules, norms, or structures, clearly define *how* actors should act the way they do.

EM’s main aim is to tackle the question of *meaning* through the *social*, rather than, say, philosophically or linguistically. This concern with social order, how it is maintained and reproduced, is a common concern to the social sciences, but EM has its peculiar take on the social. To begin, rather than explicate the maintenance and reproductive nature of the social order in terms of self-reproductive rules and structures, bracketing the practices of actors, EM emphasizes the role of *accounts* in the organization of social order and perception. Since the meaningful, patterned, and orderly character of everyday life is something that people must work constantly to achieve, then one must also assume that they have some *methods* for doing so, and consequently, that they can *account* for their respective methods. Such accounting constitutes the “*documentary methods*” that actors deploy in order to explicate the orderliness of social situations. To underscore EM’s attention to methods over rules and structures, which represents the contentious point with traditional sociology and the social sciences, Garfinkel does not think of members’ methods in terms of rules or grammars (or the structures of historians and anthropologists). The rules and norms, whenever they exist, simply enunciate abstract formulas, leaving aside the *shared methods* that actors attend to mutually construct the

¹² Garfinkel, *Ethnomethodology’s Program*, 67.

meaningful orderliness of social institutions. In the second part of this paper, when discussing two contemporary criminal cases, I point to the differences between the “rules of law” (*règles de droit*) and the *documentary methods* attended by all those who participated in the construction of a case, namely, suspects and witnesses, policemen, lawyers and judges, and medical experts. The rules themselves, which preoccupy so much jurists and historians of law, hardly tell us anything about the unfolding and documenting of a case.

Which brings us back to the various *levels* of analysis, the micro and macro, the smaller picture and the broader trends. Garfinkel sees EM not as examining society at an “individual” or “micro” level, but rather as examining the venerable trope of social order. Even if the scene of analysis is situated at a micro level—e.g. the proceedings of a jury—the final purpose would be the examination of social order, namely, the shared methods needed by the actors to construct the patterned orderliness of daily life. One can argue that microstoria does not have a more general aim beyond debunking objective trends through micro studies, hence a major difference with EM. This remains, however, a matter of interpretation and personal choice, meaning that some historians debunk general assumptions through micro studies, only to bounce back to the objective structures with more forceful ideas.

For our purposes here, what is relevant is to see how individuals are *outlived* by what is beyond them, that is, by the patterned orderliness that was already there in the first place, and that will remain there once they’re all gone. In the passage quoted earlier, Garfinkel refers to “Durkheim’s immortal society”: society is immortal in that the patterned orderliness of situations outlives the particular persons who staff them. EM emphasizes the presence of scenes and situations over the individuals that populate them, and for good reason: it is indeed the former that constructs the patterned orderliness of everyday life. In other words, actors perform only in relation to specific scenes and situations. Hence Durkheim’s “social facts” can now be appreciated within a different perspective from mainstream sociology: namely, that those social facts do *not* act as external and coercive social norms, but as the *achieved* social facts of particular situated encounters. The reason why social facts must be achieved rather than simply “internalized” is because the shared practices are permanently negotiated in order to be mutually intelligible. Garfinkel’s contention is more with the traditional line of sociologists, which he accuses of only formally analyzing social facts, than with Durkheim. It could be argued that both EM and microstoria are practices against formal analysis (FA), which limits itself to the “outside” social order rather than to the schemes of mutual intelligibility which require the production of shared recognizable practices. For example, in the two cases that we will be analyzing, both of which involving rape, the *public documentation of rape* proves the most difficult “recognizable practice” to nail down. At the same time well-known but unspoken, as soon as assailants and their rape victims begin to talk, they realize that they’re unable to *document* what happened. As statements describing the rape scene are the most difficult thing to get from assailants and victims, various official memos “fill the gap” and come up with what *they* think happened. In this case, formal analysis (FA) would only focus on the rules of law (what Syrian penal law has to say on sexual assault) and the judge’s ruling, and check whether there is a

“correlation” (or lack thereof) between the two. My approach below, which is based on insights from EM and microstoria, looks at the *entire* judicial file for each case as an attempt by the involved actors (primarily the suspects and witnesses, policemen, judges and lawyers, and medical experts) to *document* the crime scene. The documentation, as represented in the case-file itself, consists of the actors’ original *oral utterances* in their official *transcribed* formula. As the original oral utterances are unavailable, and have been lost forever, the documentation consists only of transcribed and paraphrased statements, which is enough for our purposes, because it was “enough” for the judicial authorities to proceed with the ruling. Certainly, additional documents would have been beneficial, for instance, a full transcript of each direct-examination conducted first in private by the investigative judge, and then in public by the chief judge, in order to compare between the original oral statements and the process of their transcription. But even the unavailability of such a documentation should not deter us from our main task, namely, to *document how persons produce social order in particular contexts*. In the case of rape, the law does not tell us what a rape *is*, how “it” should be documented, and what would be permissible or not in the process of documentation. FA fails to detect the importance of such issues, in particular regarding their relevance at explicating how persons manage to produce social order. FA generally assumes the *a priori* existence of such an order, to which actors simply “abide” to.

Legal research, whether of a historical or sociological nature, has for a long time been trapped into the normalcy of rules and norms. Researchers tend to forget that rules are always incomplete, they do not tell people what to do or not do, and that there are always cases that do not fit the rules. Rules have nothing to say when it comes at *documenting* a rape. Yet, that does not mean that actors are within an incessant process of “improvisation.” Actors must rather be able to learn to produce *recognizable* social orders in situated encounters. For instance, the difficulty that actors who were “participants” in a rape scene typically encounter is to produce accountable descriptions that would be part of a recognizable social order. Since rape, in particular in societies where kin and family ties are strong, is seldom discussed in public, the actors’ documentation tends to leave behind big “memory gaps.” Due to the rarity of rape—and, more so, its *publicizing*—we notice that actors have to *create* that whimsical post-rape world, with that awkward sense that the rules to be “followed” are not there. More precisely, actors are caught, while documenting a rape scene, in the production of *recognizable* values in which they recognize themselves. Which implies that no matter how harsh the rape experience might have been on their lives—for both victim and assailant—they feel more compelled in their accounts, and in retrospect, to present the crime as if it had followed rules or norms, or as if the break up of the basic rules of decency led to the crime. In short, rape in its uniqueness confirms the general rule that actions cannot be accounted in terms of an already made world, whose rules, norms, and structures coerce the lives of individuals: actions themselves bear only a retrospectively accountable relations to the rules they claim to follow.

If EM is concerned in the *observation* of actors caught up in the production of recognizable sounds and movements, by contrast microstoria’s main preoccupation is in the *reading* of texts and their interpretation, looking for the “organizational things”

behind “social facts.” Can historical documents capture the richness of embodied experience? In principle, both enterprises—EM and microstoria—should nicely overlap: observation and reading could come together once we assume that the social order is not limited to rules and rule following, but rather with the inscrutable reproducibility of social orders, that is, *the embodied production of social facts*. It doesn’t matter then whether such observations of social facts are directly conducted (e.g. through video taping), or through a careful reading of documents (the authors are unavailable for direct observation). I have argued elsewhere that since *texts themselves are practices*, the study of texts should focus on their inner construction and their communicative value as speech acts.¹³ Suffice to say that, in line with the work of Michel de Certeau, I look at the enterprise of writing history as *anthropological* in its essence, and, following Skinner, since texts *are* also speech acts, EM would fit well within such a historical perspective that urges us to move from formal institutions to local practices. I tend to agree with Charles Lemert’s assessment that “Ethnomethodology shares the fate of all hermeneutical methods: an inescapable bondage to the intersubjective history in which social reality is assumed to be constructed.”¹⁴ Following similar reasoning, it could be argued that both EM and microstoria share that inescapable bondage to intersubjective history, hence the reluctance of an academic world, which values “objectivity,” to embrace them wholeheartedly.

Oedipus unbound

A common characteristic to many if not all of 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. Strangely enough, it’s the original deposition of the alleged culprit to the police and investigative 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: the police reports that first document the crime, and where all initial depositions of suspects and witnesses are located; the *ihala* (referral) report, in which a judge transfers the case to the *Jinayat* criminal court; the lawyers’ memos and appeals; the *Jinayat* ruling; and, in case of an appeal, the Damascus *Naqd* cassation court. All those 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 still 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 in understanding the inner workings of the Syrian judiciary when it comes to crime.

¹³ *The Grammars of Adjudication. The economics of judicial decision-making in fin-de-siècle Ottoman Beirut and Damascus*, Beirut: Institut Français du Proche-Orient, 2007.

¹⁴ Charles Lemert, *Durkheim’s Ghosts: Cultural Logics and Social Things*, Cambridge: University Press, 2006, 201.

There are several interrelated reasons as to why the suspect's initial deposition to the police and public prosecution office transforms the culprit into a de facto *chef d'orchestre*, which not only renders the defense's role superfluous, but even directly affects all subsequent rulings. 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 does not allow 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. In other words, it's the defendant's preliminary utterances, and which he might later deny, that receive their legal sanction through the court system. In sum, the case achieves its *raison d'être* from the defendant himself, whose utterances become the de facto *modus operandi* of the case, and whose source of legitimation is the criminal court itself.

Our case here,¹⁵ which the investigative judge in a sober report dated 28 August 1995, has 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 (*mujāma 'at umm-ihī bi-l-ikrāh*).” The original depositions of both parties to the police on 3 June 1995, are stated in a two-page recto-verso handwritten report, drafted by Aleppo's general prosecutor (*al-muhāmi al-āmm*). 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 next to her, and her 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 (*tasmahin*) my father and you do not accept me?’ He then grabbed me and forced me on the floor, and then 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-nāhiya al-tanāsuliyya faqat*) and also my face. He then asked 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

¹⁵ Aleppo criminal courts, case 288/1996.

consider myself as plaintiff on my own behalf (*mudda 'iya shakhsiyya*), 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. “I was asleep in bed and suddenly woke up with the desire to have sex (*udaji 'u*) 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 summoned her to shut up or I’ll slaughter her (*adhbahu-ha*), but she never left her bed.”

The final deposition was that of the sister. Nora was born in 1980 and 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 then went to bed without knowing what happened between them. I should add that my brother did attempt before 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 tabi 'iyya*).”

The report notes in its concluding remarks 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 refrained from identifying the source.¹⁶

Except for the defendant’s deposition, which will be denied in toto in a counter-deposition to the Jinayat criminal court on 17 January 1996, not much novel factual evidence will come to the dossier. It is as if everyone—from the police and prosecution office, 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 (*mahdar istijwāb*) that mother, son, and daughter had furnished to the investigative judge. The son was interrogated first the

¹⁶ DNA testing is not common in the Syrian courts.

day after the alleged rape (June 4). The night of the incident (June 3) the defendant was at a marriage ceremony at their village of Khafsah Kabir where, according to his own testimony, he went back home totally drunk. His mother was lying on the floor and asleep, and his sister was close to her: “I lied close to my mother with the intention of having sex (*mujāma‘atu-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 (*ujāmi‘u-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 *mashayikh* (village elders) told me that I might be under the influence of magic (*sihr*). I soon began to do abnormal things, then woke up, and realized that I drunk a lot the previous night. I must add that I never had sex with my mother before.” To the question that the doctor’s report shows that penetration (*mujama‘a*) 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 (*fadiha*).

A couple of remarks at this second testimony. First, the defendant now (24 hours after his first testimony) fully denies 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’ pants leaves the possibility of uncertainty. Both mother and son had fainted in their original police deposition. Twenty-four hours later, the son denies penetration *in toto*—a position that he will reiterate later and throughout his trial. Now, as in his prior deposition, the defendant portrayed the alleged incident in a dreamlike fashion. 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.

The mother gave her own deposition to the investigative 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 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, and 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 then that my son had raped me. He then 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 *mudir* (director) of the *nahiya* (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 (*sahr*).”

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 perceives 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) and 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 (for instance, Lebanon); the dissolution of family bonds: the father not only goes for another and stronger labor market, but leaves his family behind and marries 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 substitutes for the loss, and places the son in the 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 investigative 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 takes 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, and therefore my mother could not have had sex with anyone." The substitution with the father figure works both ways: as an absence (no father), and as a presence (penetration).

In the extremely brief doctor's report on 3 June 1995, the medical examiner notes 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.¹⁷ 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 for now 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.

The first systematic report was completed by an examining judge (*qadi tahqiq*) on 28 August 1995, and reiterated 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 the physical evidence (*dalil madi*) of 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 (*ightisab bi-l-'unf*), which is punishable under article 489/199 of the penal law.

The gap between the defendant's denial, the lack of an "outside" witness, and the presence of sperm in the mother's vagina, led the judge to the conclusion that the denial had no "material 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 *ihala* (referral) judge whose ruling was drafted on 30 October 1995. 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 by the general prosecution and investigative judge: both had reconstructed the misdemeanor (*junha*) to be one of rape punishable under article 489 of the penal code, while the *ihala* judge condemned that kind of rape—the son to his own mother—as "an act contrary to life" (*fi'l munaf-in li-l-hayat*), hence punishable under article 506 of the penal code, even

¹⁷ 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.

though the judge accepted also 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 entire cross-examination, however, handily comes in four handwritten pages, the outcome of two sessions on February 8 and March 7 1996, and which do not add much to the case. In the first session the defendant stated that he reiterated his previous statements on January 17 1996 to the Jinayat, in which he had stated the following (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 then arrested me, and my statements to the investigating magistrate (*qadi al-tahqiq*) 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.” The defendant therefore de facto “withdrew” his previous statements a month prior to the courts’ hearings. But then, in that very brief statement, it was the only time that accusations of misbehavior were made against his mother, the kind that are usually presented by defendants in honor killings, prior to their vindication. In effect, and in a way very similar to honor statements, the plaintiff transforms 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 denounces his mother’s improper behavior rapes her but does not kill her. Rape therefore assumes here the status of an honor killing. But instead of honoring himself, the culprit is dishonored, and the mother reassumes her role as mother, as someone protective of her child.

As the defendant only reiterated 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, and which had the mother and her “witness”-daughter cross-examined, had absolutely nothing new either. Indeed, a common trait to all the cross-examinations that we’ve been through is their low-key attitude towards disputants and their witnesses, to the point that cross-examinations—always conducted by the chief judge—seldom add any new factual information to the dossier prior to its circulation within the Jinayat.

On 6 June 1996, only a week prior to the court’s final ruling, 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 reiterated all the well 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 15 June 1996, based on that of the *ihala*, sentenced the defendant to ten years imprisonment with forced labor according to article 489 of the penal law.

Documenting the indescribable

EM's enterprise rests on the assumption of an actor's ability to recognize and organize "socially acceptable behavior" or "joint lines of action."¹⁸ 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. EM by contrast is based on *interactionist* settings which are available to the researcher either through direct fieldwork experience, or else were recorded by others (e.g. official authorities) and made available to the researcher. 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 investigative judge's office, and the courtroom. Considering that the above quoted statements were all uttered in those three well-defined settings, and were then either quoted verbatim or paraphrased and edited, does the setting itself help us understand better? EM requires that the researcher, whether directly present on the scene or not (in this case, knowledge of the scene is provided through documents), detects how actors recognize and organize "socially acceptable behavior." In effect, EM considers that the social order is not *given* once and for all, but is rather constructed in every situated encounter. To be sure, Garfinkel did not argue against external constraint; he rather insisted on moving from the analysis of the formal side of institutions to local practices. Simply put, in our case here, neither the judiciary nor society at large sets "rules" for incest and rape. Moreover, the law only defines what the punishment of incest and rape ought to be, but, again, does not establish rules or norms for either one. What we see unfolding, from document to document, is the three "witnesses" documenting incest and rape. By the time of the final ruling, 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

¹⁸ There hasn't been much ethnomethodological work on the Arab and Islamic courts, with the notable exception of Baudouin Dupret's *Le jugement en action*, Geneva: Droz, 2006.

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, between 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 what EM would define as one of those “indexical expressions” which would delimit the social negotiations taking place within a specific

setting. In other words, the trio 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 is socially acceptable behavior based on the event under discussion. They do so by indexing various expressions and behaviors into what is 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 indicates a bodily “ease,” even though she was in the presence of a male stranger; hence the assumption here is, 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. In similar vein, 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. Needless to say, a rape accident, as documented later by the protagonists, benefits enormously from such language games.

Triple rapes

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.¹⁹ In the first incident, the farmer and his wife were awoken after midnight by loud knocks at their door. When the farmer asked the intruder to identify himself, he said that he is 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 then 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 things 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.

¹⁹ Idlib Jinayat 357/1998

Four months later, three hooded men in the same area allegedly used the same procedure to violate 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 claimed 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 process of constructing evidence is the key component for each lawsuit. Each case rests on a tension between what a formal investigation requires—that is, abiding by the rules and procedures—and the normative values within a community. Even though the *final* construction of evidence is only in the hands of the courts, the process itself, which could go on for years, is not limited to the police and prosecution. As the documentation of a crime proves to be a *common* enterprise shared by the police, prosecution, plaintiffs and defendants, and witnesses, not to mention their families and kin, *language variations* are of key importance for understanding such complex practices. Moreover, considering various *limits* imposed on language, what is left out might have been as revealing as what has been *recorded in writing*. Our case here, for instance, allegedly involved the rape of two women on separate occasions, 4 months apart, possibly by the same three men. But there's a self-imposed *limit* as to what a raped woman and her kin can *publicly* utter to a policeman, prosecutor, or judge, while documenting her rape. While such limitations could vary from one community to another, the tendency would be not “to ask too much,” and accept what the woman has to say at face value. 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, and raped the wife in one and the daughter in the other. The alleged rapes have therefore *de facto* imposed themselves as the *central* issues of both cases, around which much of the evidence circulated. As evidence for rape proves difficult to accumulate on a solid basis (DNA evidence would have been more decisive, but to date is still unavailable in Syria), the investigations had at times shifted towards the alleged thefts, as they tend to be more common and straightforward, lumping at times the thefts with the rapes: the more evidence accumulated against the assailants regarding the stolen objects, the likelihood of rape received more prominence and veracity.

Let us assume that a case *begins* with the police investigation and the depositions left by plaintiffs, defendants, and their witnesses. We have to imagine that the inter-subjective self is not simply passively applying norms, but *confronting* norms which it intends to use and manipulate, hoping that such a process would be beneficial for the purposes of the moment, and for constructing a semblance of *solidarity* with the state authorities (police, prosecution, and judges), on one hand, and family and community at large on the other. Whether such a process could be detected in police transcripts, among others, is another issue. That primarily depends on *how* such transcripts were recorded. Syrian police transcripts, which record misdemeanors, felonies, and crimes, do not include verbatim accounts of interrogations, but are rather polished versions of the in situ sessions with plaintiffs, defendants and witnesses. We are therefore left with a double reconstruction of the *original* “live” sessions through the polished and heavily edited police files.

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 is his first 9:00AM deposition.

plaintiff statements	comments
<p>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 (<i>kinya</i> or <i>kunya</i>). He’s from the village of Yatinah. They were hooded, and asked me for their lost sheep. I told them that I haven’t noticed anything.</p>	<p>Considering that all three intruders were hooded—even though the description fails to mention how the faces were exactly concealed—the plaintiff was quick to identify them. The defense will 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 plaintiff manage to identify them that easily?</p> <p>More importantly, however, is that the alleged offenders were not identified by their full names: two of them were purportedly the sons of X, while the third was known through his first name only.</p> <p>In sum, none of the offenders was <i>fully</i> identified, but only <i>globally</i> in terms of the <i>nisba</i>: father, locality, and village, that is, in terms of <i>what really matters</i>. But what matters for the community is not necessarily what the state authorities are looking for. In effect, to the latter what matters most are <i>individuals</i> identifiable with their <i>full names</i>. The plaintiff’s strategy—in the early hours after the incident—was to locate the assailants through their community.</p>
<p>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 then started searching the room, mishandling the furniture, opening the closet, then searched into a small wallet, looking for money, but didn’t find anything.</p>	
<p>They then assaulted my 23-year old</p>	<p>The daughter’s rape, in the father’s</p>

<p>daughter Sabiha, and all three did it with her (<i>ifta'alu ma'aha</i>).</p>	<p>account, was extremely concise—one sentence. In itself it doesn't account for the gravity of the charge: it is simply 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 <i>what is left out</i>, and which the listener will have to assume on his/her own. The speaker is therefore begging for the listener's benevolence while leaving him/her with their own free imagination to fully reconstruct the crime scene (a technique that many writers and filmmakers use).</p>
<p>Then they started picking up various objects. They took a black-and-white size 12 TV (SHARP), a clock, and a watch from the closet's drawer.</p>	<p>Notice that the stolen objects were accounted for in the same flat tone as the alleged triple rapes. But since we're relying on <i>modified</i> police transcripts, we'll never know for sure the level of <i>performance</i> in the plaintiff's voice. As the TV set was the most easily identifiable object, it will turn out as the only <i>reliable</i> piece of evidence.</p>
<p>They then searched my wife's chest and took a golden necklace. Even though they couldn't find anything else, they remained in the house for about an hour, searching and damaging all along before leaving.</p>	
<p>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 (<i>mudda'i shakhsi</i>) against all three. I recall that Amin was wearing a <i>gillabiyya</i>, 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.</p>	<p>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.</p>

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 cross-examinations. The plaintiff's deposition therefore represents the basic minimum, and was followed by a police visit to the farmer's home, whose

description they 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 then, the assailants might have dragged Sabiha on her bed, where she was sleeping prior to their intrusion, and raped her there, or the blood stains might have been an outcome of later bleeding. The police was not, however, that curious in 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
<p>At 4:20AM this night, while I was at 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.</p>	<p>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—<i>ex post facto</i>. Nor did the police press her for going deeper. After all, considering that three individuals were accused from day one for a crime that they might not have committed, it should have mattered <i>how</i> they were identified by their alleged victims.</p> <p>Very little had therefore changed from earlier documentations, as neither police nor prosecution seemed curious enough for subtler variations.</p>
<p>They then tied our hands, legs and eyes with scotch tape. All three raped me, and the first one was Amin. I knew that even though my eyes were closed, because he was wearing a <i>gillabiyya</i>. Then the sons of Fawwaz Sultan followed. We couldn't scream because they had sealed our mouths with tape. They then left me alone and went away, taking a TV set and two watches with them.</p>	<p>The documentation of the rape scene, even though more detailed, doesn't add much to what the father had stated earlier.</p>
<p>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.</p>	

The daughter's deposition only confirmed what the father had already stated, and thus added very little to what was already 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 whole 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 a 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 <i>gillabiyya</i> with a jacket; the other two were slightly taller but younger. Both were wearing pants and jackets, one was slim, and the other was more obese.	No mention here of the <i>hooded</i> intruders, as in the police deposition, though the introduction here is more detailed.
They threw themselves over my father and tied his hands and legs, then sealed his mouth and eyes with scotch tape, they then hit 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 want. The others came and tied me with a scarf and a	

<p>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 ‘<i>abiyeh!</i>”²⁰” They placed a cover on my eyes and started messing around with the room.</p>	
<p>One of them said, “If we can’t find anything in the room we’ll then tarnish the man’s reputation.” He came towards me and another one held me from the front, while the third one raped me. The other two also raped me after they took off my pajama. One of them then sat on my belly with his legs crossed after I’ve hit him.</p>	<p>The triple rape scene is here a bit more detailed, 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.</p>
<p>...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?”...</p>	<p>Even though the alleged assailants received a better identification, there’s still not much evidence, mainly because the victim had no chance to <i>see</i> them, but only got to identify them through their voices.</p>

The defense then went on and quoted other statements by the plaintiff, uttered at different moments of the investigation, and compared 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

²⁰ 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!”

under circumstances in which most people would have lost their minds.” The defense finally quoted the medical report, drafted on 23 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 to 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),²¹ 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 (*wahsh*) 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, came to the whimsy conclusion “that it was unlikely from an intuitive point of view (*al-nāhiya al-fītriyya*) that two brothers come together jointly to rape the same girl.”

The centerpiece of the case was not the alleged thefts but the rapes—a 23-year old women losing her virginity, and a married woman that was raped in the presence of her husband and children. As no one—not even the accused, prosecution and judges—seems 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 represented a major hurdle for plaintiffs and prosecutors alike. Moreover, all three defendants had witnesses confirming 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 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 conglomerations, in particular when the alleged perpetrators are 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 all 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, does not go without all the unconscious social prejudices that it entails. Moreover, when the victim is a young

²¹ Those were the two left out suspects of the many sons of Fawwaz Sultan.

woman, which society perceives as naïve, and with a limited social and sexual experience, questions begin to surface 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 questioned by witnesses, police, prosecutors and judges. Thus, for instance, the Idlib Jinayat, in its final 17-page ruling on 6 February 1999, questioned how Sabiha could have possibly known her assailants solely from their voices, considering that “as a girl (*fatāi*) she had been much less in contact (*ih̄tikāk*) with the accused [prior to the incident] than her father.” The court, which was referring to Sabiha’s claim that she had been observing the accused for months prior to the incident, because they kept trespassing over their properties, and heard two of them address 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 capacity to identify *on her own* her assailants, as if she was in need of a mentor, the court then argued that evidence shows 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. A policeman overheard Sabiha saying to her mother “There’s no one but them—the house of Fawwaz Sultan,” while Sabiha herself was quoted as providing contradictory evidence regarding the 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 to as “bad guys” (*ashqiya*) often looking for trouble.) The court therefore suspected that the identification of the accused did not come firsthand, but was an outcome of guesses and speculations. In its concluding statement the court decided that there is no sufficient evidence that would make anyone of the accused guilty of any wrongdoing, and ruled that all three should be set immediately free.

Denying the facts, finding the truth

The question posed at the beginning of this essay was regarding the “meanings” that could be drawn from the behavioral patterns of actors in particular situations. Put simply, we raised the traditional questions that the social sciences have been preoccupied with since Marx, Durkheim, and Weber: What is the social order of this particular society? How could the researcher detect such a social order? And what is the meaning of that particular social order?

The “meanings” of behavioral patterns in a social group are described by the empirical measures of that behavior. In our criminal cases the “measurement” is solely tied to statements uttered by actors to the judicial authorities and professionals associated with them. As our *démarche* was mostly concerned with the “reading” of such statements, our main assumption was that an actor does not hide any significant values from the observer. Since there is no such thing as a well defined and established social order with its norms and values set once and for all, actors construct the meaning of their actions in each

social setting. For example, when confronted with an event like rape, assailants, victims, witnesses, court authorities and professionals, have to incessantly document their notions of rape, incest, gender and sexual differences, paternal authority and power relations. Since the meaning of a social act—e.g. speech acts—is created by the actor, the researcher must adopt an interpretive stance in relation to such acts, whether of a linguistic or non-discursive nature. The meaning of behavior in a situated encounter is only tied to what an actor *does*, and the construction of the totality of that meaning for specific social settings is left to the researcher.

What brings microstoria and ethnomethodology together is that paramount interest at debunking meaning behind observed practices. Both disciplines have opted not to be limited to the formal (objective) analysis of behavior and institutions, while taking at heart the challenge that only actors in their daily practices carry the meanings that they endow to the world they live in. Interpretation and the construction of meaning must therefore begin with the observation of practice itself.